



Federal Communications Commission  
Washington, D.C. 20554

January 5, 2021

Mountain Lake Public Telecommunications Council  
1 Sesame Street  
Plattsburgh, NY 12901  
[bmccolgan@mlpbs.org](mailto:bmccolgan@mlpbs.org)  
(via electronic mail)

Re: Request for Tolling Waiver  
WCFE-TV, Plattsburgh, NY  
Facility ID No. 46755  
LMS File No. 0000129969

Dear Licensee,

On December 22, 2020, Mountain Lake Public Telecommunications Council (MLPTC), the licensee of WCFE-TV, Plattsburgh, New York (WCFE or Station), filed the above-referenced request, as amended, for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant MLPTC's request and toll the expiration date of WCFE's construction permit for 180 days through June 28, 2021.

*Background.* Pursuant to section 73.3700(b)(5) of the Commission's rules (Rules), a station that was assigned a new channel as a result of the Commission's incentive auction and repacking process may request a single extension of its construction permit deadline of up to 180 days to complete construction of its post-auction facility.<sup>1</sup> All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.<sup>2</sup> The Commission's tolling provisions provide that a construction permit deadline may be tolled under specific circumstances such as acts of God, delays due to administrative or judicial review, or construction that is delayed by any cause of action pending before a court of competent jurisdiction relating to any necessary local, state, or federal requirement for the construction or operation of the station, including any zoning or environmental requirement.<sup>3</sup> If a station does not qualify for tolling under these criteria, good cause may exist to waive the Commission's tolling provisions and tolling may still be warranted where the licensee can demonstrate that "rare and exceptional circumstances" prevented construction by the station's construction permit expiration date.<sup>4</sup>

MLPTC requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities through June 28, 2021. WCFE has been granted a construction permit

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<sup>1</sup> See 47 CFR § 73.3700(b)(5).

<sup>2</sup> See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

<sup>3</sup> *Id.*

<sup>4</sup> See 1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17542, para. 42 (1999) (recognizing that there may be "rare and exceptional circumstances" beyond the control of the licensee that do not fall under the tolling provisions, but "which would warrant the tolling of construction time." The Commission concluded that in such "limited circumstances," it would entertain requests for waiver of its "strict tolling provisions"); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown).

extension and its construction permit was extended to December 30, 2020.<sup>5</sup> WCFE is currently operating on its post-auction channel with an interim facility.<sup>6</sup>

MLPTC states that construction of the Station's post-auction channel facilities has been delayed due to the fact that the Station's tower is located in a remote mountain area with limited access. MLPTC has been working to devise a plan to deliver and install its equipment at this location. Construction was further delayed because of work stoppages that resulted from the COVID-19 pandemic. Most recently, MLPTC states that it encountered tower crew scheduling and weather issues that have delayed completion of construction. MLPTC states that the tower crew was not available until mid-November, at which point adequate and safe weather conditions no longer existed at the mountaintop tower site. MLPTC states that the tower crew has been tentatively rescheduled for late April to late May 2021 when conditions at the Adirondacks mountaintop site will likely again be safe for tower work. Based on the foregoing, MLPTC requests that the Commission waive its tolling rule and toll the WCFE construction permit expiration date through June 28, 2021.

*Discussion.* Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive section 73.3598(b) of the Rules and to toll the expiration date of the Station's construction permit through June 28, 2021.<sup>7</sup> MLPTC has demonstrated it has been unable to complete construction of its post-auction channel facilities due to construction delays. We also find that grant of MLPTC's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WCFE has already ceased operation on its pre-auction channel and is operating from an interim facility on its post-auction channel. To the extent some viewers are unable to receive WCFE's signal while it operates using its interim facility, we believe that MLPTC has every incentive to ensure viewers are fully informed about the Station's transition plan. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Station's construction permit.

We remind MLPTC that pursuant to the Spectrum Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other."<sup>8</sup> Additional expenses incurred, such as expenses resulting from changes in a Station's transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

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<sup>5</sup> LMS File No. 0000116511. WCFE was repacked from channel 38 to channel 36.

<sup>6</sup> See LMS File No. 0000129968.

<sup>7</sup> 47 CFR § 73.3598(b).

<sup>8</sup> 47 U.S.C. § 1452(b)(4)(A)(i). See also *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 et. al., Report and Order, 29 FCC Rcd 6567, 6821, para. 622 (2014) (*Incentive Auction R&O*), *aff'd*, *Nat'l Ass'n of Broadcasters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

We further remind MLPTC of the deadline for submitting final expense documentation for reimbursement for the Station is March 22, 2022.<sup>9</sup> Thus, we strongly encourage the Station to diligently pursue satisfaction of the current deadlines to improve the chances that there will be sufficient funds available to reimburse the Station for its legitimate repacking expenses, and we encourage MLPTC to submit eligible invoices as soon as practicable.

The above facts considered, Mountain Lake Public Telecommunications Council's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000034025) for WCFE-TV, Plattsburgh, New York, **IS TOLLED through June 28, 2021**. Grant of this tolling waiver does not permit WCFE to recommence operation on its pre-auction channel. We also remind MLPTC that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>10</sup>

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division Media Bureau

cc (via electronic mail): Derek Teslik, Esq.

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<sup>9</sup> See *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 35 FCC Rcd 11273, 11277, paras. 10-11 (IATF/MB Oct. 7, 2020) (setting three filing deadlines for submission of all remaining repack invoices: for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period, the deadline for submitting all remaining invoices is October 8, 2021; the deadline for entities assigned completion dates in the second half of the transition period is March 22, 2022; and the deadline for all other participants in the reimbursement program is September 5, 2022).

<sup>10</sup> See 47 CFR § 73.3598(b).