

Justification for Tolling

Gray Television Licensee, LLC (“Gray”), licensee of television station WHSV-TV, Luray, Virginia (Fac. ID 4688) (the “Station”), hereby submits this request for tolling of the construction permit for the Station’s digital-to-digital replacement translator (“DTDRT”)¹ facilities (the “CP”). As is explained in more detail below, circumstances beyond the Station’s control—specifically, local zoning issues—have arisen that may prevent build-out of the authorized facilities by the CP expiration date. Thus, tolling is proper under the Commission’s rules.

In the *Closing and Channel Reassignment Public Notice*, the Commission assigned the Station to Channel 20 from Channel 49. Subsequently, the Commission granted an “unable to construct” waiver and authorized² the Station to construct its Channel 20 post-auction facility at a site at Elliott Knob, located 76.6 km from the Channel 49 site at Big Mountain. The Station has completed its transition to Channel 20 and is now licensed with its reassignment facility.³

Because of the 76.6 km change in the Station’s transmitter site location, widespread service loss has occurred. To recover those losses, Gray was authorized to construct three new DTDRT facilities, including the Channel 28 facility specified in the CP. The Channel 28 DTDRT is sited at Big Mountain.

On April 30, 2021, Gray received a letter from the Zoning Administrator of Page County, Virginia denying Gray’s zoning permit application to construct a new tower located at Big Mountain.⁴ The letter is attached hereto as Attachment A. Gray believes it has persuasive arguments to respond to the denial, including approval by the U.S. Forest Service for the new tower site, and has retained a local attorney to handle the zoning appeals process. Gray hopes that the matter can be resolved expeditiously. However, given its past experiences with local zoning authorities, Gray recognizes that the appeals process may take months to complete. Because the CP expires on February 14, 2022, Gray is submitting this request to ensure it has sufficient time to complete construction after the zoning issues are resolved. Construction of the Channel 28 DTDRT will resolve service loss occasioned by the Station’s transition to its post-Incentive Auction facilities, and therefore tolling the CP is necessary and in the public interest.

¹ File No. 0000054694.

² File No. 0000029912.

³ File No. 0000063970.

⁴ This request is timely submitted. See 47 C.F.R. § 73.3598(c) (“A permittee must notify the Commission as promptly as possible and, in any event, within 30 days, of any pertinent event covered by paragraph (b) of this section, and provide supporting documentation.”).

In its Public Notice adopting the post-Incentive Auction transition scheduling plan, the Media Bureau and the Incentive Auction Task Force affirmed that “[r]eassigned stations and band changing stations that are unable to complete construction of their post-auction channel facilities by their deadlines may seek a single extension of up to 180 days.”⁵ All subsequent requests for additional time to construct are subject to the Commission’s tolling provisions of Section 73.3598(b) of the Rules.⁶ The Commission’s tolling provisions provide that a construction permit deadline may be tolled under specific circumstances, including if “construction is delayed by any cause of action pending before any 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.”⁷

Here, tolling is proper under Section 73.3598(b)(2) of the Rules. Construction of the tower site is delayed because the local zoning authority has denied Gray’s zoning permit application. Without zoning approval, tower construction cannot begin. Gray is already in the process of appealing the zoning board’s decision, and has retained a local attorney to assist it in doing so. Gray also proactively reached out to the Page County Zoning Administrator to better understand the issues and the appeals process. Thus, Gray is working diligently to favorably resolve the zoning issues, but anticipates needing additional time to complete construction of the DTDRT facilities. Accordingly, Gray respectfully requests that the Commission toll the CP for a period of six (6) months.

⁵ *Incentive Auction Task Force & Media Bureau Adopt A Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 32 FCC Rcd. 890 ¶ 40 (MB & IATF 2017); 47 CFR § 73.3700(b)(5). By its terms, section 73.3700(b)(5) allows licenses of “reassigned stations, UHF-to-VHF stations, and High-VHF-to-Low-VHF stations” to seek a one-time extension of their construction permits if they are unable to timely complete construction of their post-Incentive Auction facilities. Because WHSV was the station reassigned channels as a result of the Incentive Auction, and because WHSV has already completed construction of its post-auction facilities, Gray believes the tolling standard articulated in Section 73.3598 is the most appropriate vehicle via which to request relief.

⁶ 47 C.F.R. § 73.3598(b).

⁷ *Id.* at (b)(2).

ATTACHMENT A



County of Page, Virginia
Planning & Community Development
103 South Court St., Suite B
Luray, VA 22835

April 30, 2021

WHSV TV-3
Attention: Scott Kessler
50 North Main Street
Harrisonburg, VA 22802

RE: Zoning Permit Application to construct a new tower

Mr. Kessler:

You submitted a zoning permit application on April 13, 2021 to construct a new 120-foot tower located off Big Mountain Road, Shenandoah, and further identified by tax map number 58-A-2.

This property is located in Page County and is currently zoned as Park and Recreation (P-R). Under Section 125-8.E of the Page County Zoning Ordinance, it states the following:

"Pole-designed tower facilities or pole-designed structures not to exceed 100 feet in height with a minimum setback from all property lines of 200 feet, to be used for the primary purpose of communications, including, by way of illustration but not limited to, the following: telephone, radio, television, cable, and signal by special use permit."

It further states under Section 125-30.3.F(b)[2] of the Page County Zoning Ordinance,

*"**F.** District requirements. Wireless communications facilities shall be allowed in the following districts and subject to the limitations set forth in this section. Current § 125-13H of the Zoning Ordinance, Code of Page County, is hereby repealed.*

(1) Park-Recreation (§ 125-8E), Woodland-Conservation [§ 125-9D(7)], Agricultural [§ 125-10D(10)], Commercial [§ 125-12D(10)], Industrial (§ 125-13H).

(a) The following are permitted with a zoning permit issued under this section and § 125-50:

[1] Antennas attached to an existing tower or structure and not extending more than 20 feet above the highest point of the tower or structure.

***(b)** The following are permitted with a special use permit issued under this section and §§ 125-8E, 125-9D(7), 125-10D(10), 125-12D(10) and 125-13:*

[1] Antennas attached to an existing tower or structure extending more than 20 feet above the highest point of the tower or structure.

***[2]** Any new tower.*

Based on the above listed code sections, your zoning permit to construct a new 120-foot tower has been denied at this time. You have the right to apply for a special use permit to construct a new tower (not to exceed 100 feet in height). Should you decide to proceed with the application, I have attached a special use permit brochure that explains the permitting process, a special use permit application, and Section 125-30.3 (Wireless Communications Facilities) of the Page County Zoning Ordinance which is what the new tower will be required to comply with.

You may have the right to appeal this determination within 30 days of the date of this letter in accordance with Section 15.2-2311 of the Code of Virginia. This decision shall be final and un-appealable if it is not appealed within 30 days. Should you choose to appeal, the appeal must be filed with the Page County Zoning Administrator and the Board of Zoning Appeals (BZA) in accordance with Section 125-58 of the Page County Zoning Ordinance. This provision requires the submission of an application form, a written statement setting forth the decision being appealed, the grounds for the appeal, how the appellant is an aggrieved party, any other information you may want to submit, and a \$600.00 filing fee. The appeal form is available in our office at the above listed address, or online at

<http://www.pagecounty.virginia.gov/185/Zoning-Forms>. Once the appeal application is accepted, it will be scheduled for public hearing and decision before the BZA.

Please let me know if you have any questions. I can be reached at (540) 743-1324. My office hours are Monday through Friday, 8:00 a.m. to 5:00 p.m.,

Respectfully,

A handwritten signature in blue ink, appearing to read "Tracy Clatterbuck", is written over a horizontal line.

Tracy Clatterbuck, CZA
Zoning Administrator

Enclosures