

WNTV(TV) – Request for Tolling of Construction Permit

South Carolina Educational TV Commission (“SCETV”), licensee of noncommercial educational TV station WNTV(TV), Greenville, South Carolina (“WNTV”), respectfully requests twelve (12) months of additional time to construct its permanent post-auction facilities pursuant to a waiver of the tolling provisions contained in Section 73.3598 of the Commission’s rules. As set forth herein, WNTV has been unable to construct its permanent facilities due to rare and exceptional circumstances beyond its control.

Background

WNTV was assigned to transition from Channel 9 to Channel 8 in Phase 10 of the repack. WNTV’s transition plan calls for, among other things, replacement of the station’s transmitter and construction of a new tower for the station’s facilities.

A structural study conducted early in the repack process determined that WNTV’s existing tower, built in the 1980s, was inadequate to meet the applicable TIA-222-G building standard. In fact, the engineering firm conducting the study recommended that the tower be decommissioned and torn down. Upon learning this, SCETV decided to look into purchasing or leasing land adjacent to the existing tower and to construct a new tower for WNTV’s permanent post-repack facilities. SCETV had been in discussions to purchase (or lease) the property since summer of 2017, but its efforts ran into numerous internal and external delays, from state government processes to staff turnover at SCETV. SCETV resolved most of the outstanding real estate issues in 2020. Since then, SCETV has been working to complete the design, permitting, and construction of the new tower, but has run into unexpected zoning delays and issues with the local authority, given the status of the Paris Mountain mountaintop site as a state park with historical status. The NEPA study begun in the summer of 2019 has been completed, as has the ASR registration process. Based on status as December 2020, SCETV had expected approval of the local permitting by now, but the local permitting process has been much more complicated and taken much, much longer than expected. Site engineering will be commenced once the local permitting process is complete.

Note that that SCETV, a state governmental entity, had all ten (10) of its ten (10) TV station transmission sites assigned to new TV channels and repacked, which has been a massive undertaking for a state public broadcaster serving the entire State of South Carolina. SCETV also pivoted during the COVID-19 pandemic to focus on K-12 education in the State of South Carolina and using its statewide TV network for datacasting to students without broadband, which effort fully occupied SCETV’s engineering and other staff over the course of the past 15 months.¹

¹ See <https://www.scetv.org/about/community-services/education-services> and <https://www.scetv.org/stories/2020/datacasting-offers-learning-delivery-options-students-without-broadband>

Current Status

Unfortunately, SCETV has encountered a series of delays with local permitting for the new tower. The local zoning authority has now taken the position that SCETV must obtain a special exemption to construct a new tower on the mountaintop site and SCETV will also need a special easement to move the existing power lines on the site to accommodate the new WNTV tower. SCETV's local zoning counsel is gathering the documents and other materials requested by the zoning authority. The WNTV tower and site project are presently scheduled for a zoning meeting in August 2021.

Thus, SCETV now estimates that the local permitting process will take between six to eight months from June 2021, that construction of the new tower will take three to four months after zoning approval is obtained, and that an additional month will be needed to hang and test the WNTV antenna and line.

WNTV has obtained special temporary authority (STA) to operate on its post-repack channel from its current facilities and plans to extend that STA until such time as the new tower can be built and the station's permanent facilities can be constructed.

Waiver Request

In the *Incentive Auction Report and Order*, the Commission stated that it would grant six-month extensions of post-auction construction permits pursuant to the incentive auction rules, and that further extensions of time would be subject to the tolling provisions contained in Section 73.3598 of the Commission's rules.² The Media Bureau has noted that in the event that construction of a station has been disrupted by circumstances other than those provided for in its tolling rules, “[s]tations may also seek a waiver of the tolling rule to receive additional time to construct in the case where ‘rare or exceptional circumstances’ prevent construction.”³ The Media Bureau has waived the tolling rules to provide additional construction time for a station that was unable to timely construct its post-auction facilities, in that case due to delays associated with Canadian frequency coordination.⁴

WNTV has been unable to construct its permanent facilities due to rare and exceptional circumstances beyond its control. WNTV was repacked onto a new channel and the WNTV tower could not be used for WNTV's planned repack facility. WNTV has been required by FCC rules and local regulations to undertake the various steps described herein prior to constructing a new tower. As the FCC is aware, this process can be very time consuming. Grant of tolling./waiver will not negatively impact the overall transition schedule and will not cause

² See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, *Report and Order*, 29 FCC Rcd 6567, 6804-6806, paras. 580-584 (2014) (“*Incentive Auction Report and Order*”); 47 C.F.R. § 73.3598.

³ Public Notice, Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines, 33 FCC Rcd 8240, 8245, n.34 (MB and IATF 2018), *citing* 1998 Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes, *Memorandum Opinion and Order*, 14 FCC Rcd 17525, 17536, para. 42 (1999).

⁴ Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Cross Hill Communications, LLC (Mar. 22, 2019) available at LMS file No. 0000064627.

interference to other stations, as WNTV already has ceased operation on its pre-auction channel and is operating on its post-auction channel with temporary facilities. Good cause thus exists to waive the tolling provisions of Section 73.3598 of the Commission's rules and extend the expiration of WNTV's construction permit for an additional twelve months (*e.g.*, until June 28, 2022).