

**Gray Television Licensee, LLC
WVFX(TV), Clarksburg, WV (FID 10976)
Request to Reinstate and Toll Construction Permit**

Gray Television Licensee, LLC, licensee of WVFX(TV), Clarksburg, West Virginia (“WVFX” or the “Station”), requests reinstatement and tolling pursuant to Section 73.3598(b) of the Station’s repack construction permit (the “Repack CP”)¹ for an additional six months to allow the Station to complete construction of a new tower and complete its transition to its post-Incentive Auction facility.²

The Station was granted an extension of the Phase Completion Date for the Station and an extension of its construction permit to March 8, 2021.³ The Station subsequently transitioned from its pre-auction channel to an interim facility on its post-auction Channel 13 operating pursuant to an Engineering STA.⁴ The Station will continue to operate with its interim facility while it completes construction of its final repack facility on Channel 13.

The Station’s construction of its final repack facility has been delayed because of significant and unexpected structural concerns with its existing tower. Gray acquired WVFX in May 2017. In planning for construction of the Station’s repack facility, Gray relied on the representations of the previous licensee as to the fitness of the tower. However, a subsequent structural analysis revealed that the tower was significantly stressed. Gray has explored numerous options including reconfiguration of the existing equipment on the current tower and construction of a new tower. As explained in its previous extension requests, Gray’s efforts to secure a final structural analysis and move forward with a replacement tower were significantly

¹ File No. 145139.

² Gray requests reinstatement and extension of its existing tolling request nunc pro tunc. Also, to the extent necessary, Gray request a waiver of the deadline for filing a request to tolling. The Commission’s Rules specify that requests for additional time to complete construction should be filed not less than ninety (90) days prior to the CP expiration date. 47 CFR § 73.3700(b)(5)(iv). The FCC may grant a waiver for good cause shown. The agency typically grants a waiver where the particular facts make strict compliance inconsistent with the public interest. N.E. Cellular Tel. Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 CFR § 1.3. Waiver of the deadline for requesting additional time is in the public interest as it will allow the Commission to grant the requested Waiver of Tolling, which will allow Station to continue its efforts to complete construction of the permanent post-auction facilities that it will use to serve the public. Therefore, good cause exists, and this waiver should be granted.

³ File Nos. 116615 and 120287.

⁴ File No. 119356, as extended by 129895. File No. 0000160483.

hampered by the wide-spread shutdowns relating to the COVID-19 pandemic. Once travel and work restrictions eased, Gray moved quickly to restart its construction efforts.

Gray has made significant progress toward construction of the final facility. The new tower has been built and the crew is on-site installing the transmission line. Likewise, the transmitter building has been built and the transmitter has been delivered and installed. The last major piece of equipment needed to complete construction is the antenna, which is scheduled to ship at the end of September. Based on the current schedule, construction of the final facility is expected to be complete by early November.

Tolling of the Repack CP is justified. In its Public Notice adopting the post-Incentive Auction transition scheduling plan, the Media Bureau and the Incentive Auction Task Force declared 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 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.⁷ If a station does not qualify for tolling under these criteria, good cause may exist to waive the Commission’s tolling provisions and still toll the expiration of the Station’s construction permit where the station can demonstrate that “rare and exceptional circumstances” prevented construction.⁸

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).

⁶ 47 C.F.R. § 73.3598(b).

⁷ Id.

⁸ See 1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes, Memorandum Opinion and Order, 14 FCC Rcd. 17525 ¶ 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.”).

Tolling is appropriate in this circumstance because the Station's inability to complete construction of the Repack CP is due to exceptional circumstances outside of its control. The Station relied significantly on the representations of the previous owner as to the fitness of the tower. Once it became clear the tower was unsafe for further construction and would have to be replaced, manufacturing, construction and travel were all significantly limited if not shut down by the COVID-19 pandemic. However, the Station continued to work diligently on the tower design while COVID-19 restrictions were in place. The Station has made significant progress with construction of its final facility and needs only a short time longer to complete construction.

In the Incentive Auction Report and Order, the FCC committed to "work diligently with stations to ensure that service disruptions are minimized to the fullest extent possible through the use of a variety of mechanisms."⁹ Providing the Station with additional time to complete construction will allow it to continue to serve viewers without any competing harm. Moreover, because the deadline for Gray to submit its invoices for the repack is not until March 22, 2022, this additional time should have no effect on the Commission's reimbursement process. In short, the public interest will be served by grant of a waiver and tolling of WVFX's construction permit.

While Gray is working diligently to complete construction within the next 60 days, out of an abundance of caution, it is requesting reinstatement and tolling of WVFX's Repack CP for an additional six months.

⁹ See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Report and Order, 29 FCC Rcd. 6567 §§ 569-70 (2014).