

Gray Television Licensee, LLC (“Gray”), licensee of full power television WSHV-TV and permittee of digital replacement translator station WSHV-TV, Luray, VA (FID 4688) (the “Station”), requests a waiver of the Commission’s tolling rules to allow for an extension of the Station’s digital replacement translator construction permit (File No. 71677) (the “CP”) or tolling of the CP to account for the delays in obtaining zoning and quiet zone approval.

On August 31, 2018, Gray submitted an application for a digital-to-digital replacement translator at Big Mountain (the “Big Mountain DRT”) to provide service to Luray, which lost over-the-air service due to the necessary relocation of WSHV-TV. File No. 54794. On April 16, 2019, Gray filed an application to modify Big Mountain DRT to specify an alternate directional antenna and associated pattern, which the FCC granted.

All of the equipment needed for the Big Mountain DRT has been ordered and shipped. However, before commencing service on Channel 28, Gray needs: (1) a Forest Service Permit; and (2) permits from the Page County Zoning Board.

- Gray recently obtained the Forest Service Permit.
- The Zoning Board public hearing has been scheduled for October 26, 2021, after which the Page County Board of Directors must approve the application. The best-case scenario is that the Page County Board of Directors will approve the permits in late November, when it will be difficult if not impossible to schedule the tower work around the unpredictable winter weather.

The FCC’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>1</sup> 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.<sup>2</sup>

Here, a waiver or tolling is appropriate because the primary delay in completing construction of the Channel 28 facility is due to the ongoing review by Page County. Given that the Page County permitting process will not be complete until late November at the earliest, there likely will not be enough time (accounting for the winter weather) to complete construction before the February 14, 2022 CP deadline. Accordingly, the Commission should toll the CP from the date the paperwork was submitted on September 7, 2021 until the zoning process is complete. Alternatively, a waiver of the tolling standard is appropriate because extensive local permitting delays created “rare and exceptional circumstances” beyond Gray’s control that prevented construction. A waiver of tolling under these circumstances is consistent with the Commission’s approach to other construction related delays as part of the post-Incentive Auction transition. In its Public Notice adopting the post-Incentive Auction transition scheduling plan, the Media

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<sup>1</sup> 47 C.F.R. § 73.3598(b).

<sup>2</sup> 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”).

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.”<sup>3</sup> In justifying the provision of a one-time, 180-day extension, the FCC explained that “[g]iven the variety of challenges that stations may face in connection with the post-auction transition, stations that are able to demonstrate that they have experienced uncontrollable and unexpected delays in construction should be allowed a single extension of up to six months before being subject to our stricter tolling provisions.”<sup>4</sup>

For the reasons stated above, the Commission should either: (1) waive the tolling standard and provide Gray with an additional 180 days to complete construction of the Big Mountain DRT or (2) toll the CP until the zoning process is complete. Either approach will allow Gray to quickly restore over-the-air service to viewers who lost access to WSHV-TV’s signal as a result of the repack.

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<sup>3</sup> *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).

<sup>4</sup> *Incentive Auction Order* ¶ 583.