



Federal Communications Commission
Washington, D.C. 20554

December 2, 2021

RSS Media Marketing
Sandra Smith
201 Tyler Drive
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Rocky Mount, NC 27804
sandra@whigtv.com
(via electronic mail)

Re: Request for Tolling Waiver
WHIG-CD, Rocky Mount, NC
Facility ID No. 59988
LMS File No. 0000167693

Dear Licensee,

On November 9, 2021, RSS Media Marketing (RSS), the licensee of WHIG-CD, Rocky Mount, North Carolina (WHIG-CD or Station), filed the above-referenced request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant RSS' request and toll the expiration date of WHIG-CD's construction permit through January 10, 2022.

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.¹ All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.² 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.³ 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.⁴

¹ See 47 CFR § 73.3700(b)(5).

² See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

³ *Id.*

⁴ 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).

RSS requests waiver of the tolling rule and tolling of its construction permit for the Station's post-incentive auction channel facilities through January 10, 2022. RSS was granted an extension and multiple waivers of the tolling rule and the Station's construction permit was most recently tolled to November 10, 2021.⁵ The Station is currently operating on its post-auction channel with interim facilities.⁶

As RSS reported in previously waiver filings, construction of the Station's post-auction channel facilities was delayed due to an issue with the structural integrity of the Station's tower. RSS initially planned to modify the Station's tower but a tower study determined that it was not an option. Because RSS was unable to find suitable space on nearby towers to continue to serve its existing viewers, RSS planned to construct a new tower.

Since the grant of its last tolling waiver in August 2021, however, RSS states that the owner of the tower where the Station's temporary facilities are currently located advised RSS that there is space available higher on that tower. In light of this development, RSS maintains that it will avoid building a new tower and relocate its permanent antenna to the higher position on the Station's current tower. RSS is preparing an application for minor modification to specify the higher antenna position and will be filing it shortly. Upon grant, RSS states that it can quickly re-position its antenna to the new higher position within a matter of weeks. Accordingly, RSS requests a waiver of the tolling rules and brief tolling of its construction permit to January 10, 2022.

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive the rules and toll the expiration date of the Station's construction permit to January 10, 2022.⁷ RSS has demonstrated it did not complete construction of its post-auction channel facilities due to issues relating to its tower =. We also find that grant of RSS's tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WHIG-CD has already ceased operation on its pre-auction channel and initiated temporary operations on its post-auction channel. To the extent some viewers are unable to receive WHIG-CD's signal while it operates using its interim facility, we believe that RSS 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 tolling of the Station's construction permit.

We remind RSS 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."⁸ 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.

⁵ LMS File Nos 0000116800, 0000130180, 0000144217, and 0000154899. WHIG-CD was repacked from channel 31 to channel 30.

⁶ See LMS File No. 0000167769.

⁷ 47 CFR § 73.3598(b).

⁸ 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 RSS that the deadline for submitting final expense documentation for reimbursement for the Station is **March 22, 2022**.⁹ 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 RSS to submit eligible invoices as soon as practicable.

The above facts considered, RSS Media Marketing's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000028657) for WHIG-CD, Rocky Mount, North Carolina, **IS TOLLED through January 10, 2022**. Grant of this tolling waiver does not permit WHIG-CD to recommence operation on its pre-auction channel. While we anticipate this will be RSS's final request for tolling, we remind RSS that any subsequent tolling requests will be subject to the Commission's tolling provisions.¹⁰ To the extent the Station seeks an additional extension of tolling, such a request must include a detailed plan for completing construction of the Station's permanent post-auction facilities. We will look unfavorably upon any future request that does not include such a plan.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Ronald Maines, Esq.

⁹ 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).

¹⁰ See 47 CFR § 73.3598(b). A station 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. See *1998 Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17536, para. 42 (1999).