

## **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 six (6) 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 state approvals and 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 has expected approval of the local permitting by June 2021, but the local permitting process has been much more complicated and taken much, much longer than expected. Site engineering was planned to commence once the local permitting process was completed.

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 18 months.<sup>1</sup>

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<sup>1</sup> 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>

## **Prior Status**

Unfortunately, SCETV encountered a series of delays with local permitting for the new tower. The local zoning authority took the position that SCETV must obtain a special exemption to construct a new tower on the mountaintop site and SCETV also needed a special easement to move the existing power lines on the site to accommodate the new WNTV tower.

In its prior tolling request, SCETV estimated that the local permitting process would take between six to eight months from June 2021, that construction of the new tower would take three to four months after zoning approval is obtained, and that an additional month would be needed to hang and test the WNTV antenna and line. SCETV requested an additional 12 months to construct WNTV's repack facilities; SCETV was granted an additional six months of tolling; its current repack permit for WNTV expires on December 31, 2021.

In the past, 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.

## **Detailed Progress Report and Timeline to Completion**

When granting SCETV's most recent tolling request, the FCC stated: "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."

SCETV's estimates from its prior tolling request in June 2021 are proving to be valid – SCETV had estimated needing an additional 12 months. As the situation now stands, the local permitting process took six (6) months to complete; the tower construction process is now estimated to take approximately four to five months (from local permitting) and the antenna installation and line testing is estimated to take an additional month. Thus, SCETV anticipates completing the WNTV tower project (and the entire WNTV repack) by June 2022.

Since June 2021, SCETV has made significant progress resolving the local permitting issues for the WNTV repack tower site and obtaining state building approval. Specifically:

1. From June to September 2021, the State of South Carolina negotiated a special easement for the land on which the tower will be located. On or about September 9, 2021, the State of South Carolina (landowner) and Duke Energy (easement holder) successfully concluded an agreement for this special easement. Pursuant to that new easement agreement, Duke Energy has relocated certain power lines that were precluding construction of the new WNTV repack tower.
2. From June to September 2021, SCETV pursued local permitting for the WNTV repack tower. The local zoning authority (the Greenville County Zoning Commission) granted SCETV approval to build the new repack tower on the historic mountaintop site. SCETV received the official zoning approval letter on or about November 10, 2021.

3. On or about October 29, 2021, the Office of State Engineer (Construction) in South Carolina (part of the State's Division of Procurement Services) issued building approval to SCETV based on the local zoning approval.

In addition, SCETV has made significant progress since the Office of State Engineer issued building approval. Specifically:

1. As of December 7, 2021, the tower construction company has ordered all steel for the repack tower.
2. The tower construction company completed foundation drawings for the tower and, on or about December 7, 2021, the tower construction company received approval from the Office of State Engineer on the drawings.
3. The tower construction company has started work on grading the tower site.

Based on the progress to date, the tower construction company has provided a tentative timeline for completion of the WNTV repack tower project as follows:

- a. The tower construction company will undertake a tower location survey by approximately December 24, 2021. (The company has not had a return call from the surveyor as of yet, so this date may need to be adjusted).
- b. The tower construction company plans to dig the tower foundation by approximately January 15, 2022, weather permitting.
- c. The tower construction company plans to place rebar in the foundation and have the foundation inspection completed by approximately January 28, 2022, weather permitting.
- d. After passing inspection, the tower construction company will contact the concrete company to arrange for concrete pouring. At the present time, concrete orders require a six (6) week lead time, thus, this work is estimated for the week of March 7, 2022.
- e. The tower construction company estimates steel for the tower will be delivered to the site on or about March 7, 2022.
- f. The concrete has to cure for 28 days before tower erection can commence. The tower construction company is projecting tower erection from April 14, 2022 to May 4, 2022, weather permitting.
- g. The tower construction company is projecting that the WNTV repack antenna installation and transmission line check will take place during the 2<sup>nd</sup> week of June 2022, weather permitting.

### **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.<sup>2</sup> 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

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<sup>2</sup> 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.

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.”<sup>3</sup> 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.<sup>4</sup>

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 by state and local regulations to undertake the various steps described herein prior to constructing a new tower. As the FCC is aware, the local permitting process and the state procurement process can be very time consuming, particularly for a state entity. In 2013, the FCC commissioned a report to better understand the costs and challenges associated with the involuntary broadcaster channel changes. This report, known as the “Widely Report” identified potential bottlenecks, including zoning and permitting at tower locations with sensitive environmental, scenic or historical sites. It is fair to characterize WNTV’s repack tower site on Paris Mountain as one of those “sensitive” locations. Moreover, the Widely Report also included a section on Noncommercial Stations (PBS stations) noting the unique challenges faced by noncommercial broadcasters, including state procurement processes and the potential need for state legislative approvals. Thus, the very issues that have delayed the WNTV repack tower project were identified at the very beginning of the FCC’s repack process.

Grant of tolling/waiver did not negatively impact the overall transition schedule and did not cause interference to other stations, as WNTV had already ceased operation on its pre-auction channel and begun operations on its post-auction channel with temporary facilities.

SCETV has made good progress over the past six months and is on target to complete the WNTV repack project by the end of June 2022 – just as it had anticipated in June 2021.

For all the reasons stated above, good cause 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 (*i.e.*, until June 30, 2022).

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<sup>3</sup> 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).

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