

Request to Toll or Waive, and for Further Extension of, Construction Permit Deadline

This Request to Toll or Waive, and for Further Extension of, Construction Permit Deadline is filed by Saint Augustine’s University (“SAU”), the licensee of WAUG-LD, Raleigh, NC, and permittee of the facility authorized in LMS File No. [0000054638](#) (the “displacement CP”). Tolling was most recently granted in LMS File No. [0000157547](#) through December 31, 2021. However, circumstances beyond SAU’s control have complicated construction efforts and made completion of the full, final facilities authorized by the displacement CP unattainable by the current expiration date. Consequently, and for the reasons set forth below, SAU respectfully requests tolling of the displacement CP’s construction deadline or waiver of the tolling rule sufficient to provide SAU an additional 30 days in which to construct the displacement facilities, up to and including January 31, 2022.

Background

SAU is a historically black university established in 1867 by the Episcopal Diocese of North Carolina. It is a four-year liberal arts university located in Raleigh with an average enrollment of approximately 1,000 students.

WAUG-LD is silent, with Commission authority, as of August 29, 2019, as a result of being displaced during the repack. *See* LMS File Nos. [0000080862](#), [0000114708](#), [0000120875](#), [0000136900](#) and most recently [0000157487](#).¹ SAU was operating its licensed digital facility prior to going silent August 29, 2019.²

SAU was granted a displacement construction permit for WAUG-LD on channel 4 in May 2018, but the permittee has not yet been able to build out the displacement facility due to a variety of circumstances outside its control. As noted above, the displacement CP, as tolled, currently expires December 31, 2021.

SAU’s explanation for the delays in construction are a matter of record with the Commission. Those reasons have been detailed in SAU’s silent STA filings and most recent prior tolling request. *See* LMS File Nos. [0000120875](#), [0000136900](#), [0000157487](#), and [0000157547](#). A brief summary is provided below:

¹ SAU has received extension of silent authority and for waiver of Section 312(g) most recently in LMS File No. [0000157487](#).

² For clarity, SAU did not miss the deadline to file an extension of time to convert to digital operations. *See Media Bureau Reminds Low Power Television and Television Translator Stations of July 13, 2021, Digital Transition Date*, Public Notice, DA 21-260 (rel. Mar. 4, 2021). Rather, SAU seeks additional time to construct its authorized displacement facility.

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- The COVID-19 pandemic hit HBCUs such as SAU hard.³ SAU's financial resources and human resources capable of being dedicated to the displacement construction project have been under stress for approximately 22 months. Resources have been tight for discretionary projects. However, SAU was able to secure dedicated funding for the project through a limited budget line-item that allows SAU to incur displacement expenses, seek reimbursement from the LPTV displacement reimbursement fund, receive reimbursement and replenish the pool of money, and then incur new displacement expenses. The process has been working, but it has taken longer than it would take if SAU had the funds to incur all expenses upfront.
- SAU's prior President, Irving McPhail, died in October 2020 after contracting COVID-19. For a period, University leadership necessarily needed to focus attention on keeping SAU running smoothly and managing the COVID-19 crisis while also beginning the search for a new President. The new President, Dr. Christine McPhail, was appointed in February 2021.
- SAU experienced turnover in university staff responsible for WAUG-LD. The General Manager of WAUG-LD and radio station WAUG(AM) and an adjunct faculty member who had been involved in oversight of the project both departed at year-end 2020. It took time in the early part of 2021 to identify new personnel to oversee the construction project.
- In the early part of 2021, SAU struggled to identify a project management company willing and available to manage the displacement project. SAU was able to secure these project management services and fund a down payment as of approximately May 2021.
- The COVID-19 pandemic has created supply chain delays and longer-than-normal lead times for services and equipment.
- The displacement facility is very nearly complete as of December 28, 2021. Unfortunately, an unexpected problem with the new antenna was discovered on December 27, 2021, as final construction work was being completed. The antenna is not working properly, and specialized equipment is needed to identify the issue so that the technical problem can be corrected or repaired. The specialized equipment (cabling and connectors) is not

³ See Challenges and Possibilities at HBCUs after the COVID-19 Pandemic, available at <https://www.aaup.org/article/challenges-and-possibilities-hbcus-after-covid-19-pandemic#.YRVwZlhKiM8> (last visited Dec. 28, 2021).

readily available, but it is expected to be delivered to the tower site in the first week or so of January 2022.

Tolling and Waiver Standards, and Public Interest Considerations

Additional time to construct post-auction displacement facilities may be granted subject to the Commission's tolling provisions found in Section 73.3598(b) of the Rules. *See Incentive Auction Task Force & Media Bureau Announce Procedures for Low Power Television, Television Translator & Replacement Translator Stations During the Post-Incentive Auction Transition*, Public Notice, 32 FCC Rcd. 3860, 3867 & nn.60–61 (2017) [hereinafter "*Displacement PN*"]. These tolling provisions provide that a construction permit can be tolled when specific circumstances beyond the control of the licensee occur. *See id.* (noting that a construction permit deadline may be tolled under specific circumstances such as acts of God and delays due to administrative or judicial review); 47 CFR § 73.3598(b).

Additionally, for "good cause shown," the Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 C.F.R. § 1.3. In considering a waiver, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *Northeast Cellular*, 897 F.2d at 1166. These waiver standards have been applied to the Commission's tolling rules, including in the case of displaced stations seeking to extend time to construct final displacement facilities. *Displacement PN*, ¶ 19. Consistent with these considerations, the Commission will grant stations additional construction time where "rare or exceptional circumstances" beyond the Applicant's control prevent construction. *Id.*; *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" and concluding that in such "limited circumstances" the Commission would entertain requests for waiver of its "strict tolling provisions"). In the case of displaced stations, the Commission has indicated that it is likely "to look favorably" upon requests where a displaced station can demonstrate that it requires additional construction time due to an "inability to procure necessary resources" as a result of external circumstances. *See Displacement PN*, ¶ 19.

SAU acknowledges, with appreciation, the prior relief granted by the Commission. Given that SAU is on the verge of having fully completed the WAUG-LD displacement project, with thousands of dollars of displacement funds and significant human resources invested, SAU submits that the particular facts here demonstrate circumstances beyond the control of the licensee sufficient to qualify for tolling under Section 73.3598(b) or, in the alternative, the good cause necessary to waive Section 73.3598(b).

As a threshold matter, despite the many challenges SAU has faced in constructing its final displacement facilities, SAU has continued to take all necessary steps to complete construction by

the December 31, 2021, deadline. The following actions have been taken since August 2021 (the date of SAU's last tolling request):

- WAUG-LD tower repair services are complete.
- Iso-coupler installation, ice bridge replacement, and tower electrical services for the WAUG-LD tower are complete.
- Electrical work on the channel 4 transmitter is complete.
- The channel 4 replacement transmitter has been delivered and installed. The transmitter installers were on site and performed final proofing on or about December 22 and 23, 2021.
- The channel 4 antenna system has been delivered and installed. The antenna line sweep has also been completed. However, as described above, the antenna is not working properly at this time and needs additional diagnostics and, likely, repair to operate the station at full, authorized power.

Importantly, at this time all work to complete the WAUG-LD displacement facility is complete *except for* receipt and deployment of the specialized equipment to isolate and diagnose the precise problem with the antenna (which equipment has been requested and should be available the first week or so of January 2022), any needed repairs to cause the antenna to work properly, and, finally, setup of the ASI (which is scheduled to occur December 29 or 30, 2021).

SAU has previously explained the reasons for its construction delays. These reasons include the unforeseeable and unprecedented COVID-19 global pandemic—which impacted the supply chain and Station construction as well as SAU campus operations—and, on top of that, the above-described unforeseeable and untimely death of SAU's prior President and the departure of two key personnel members who were overseeing the displacement project. This most recent issue related to the new antenna not working as ordered was an unexpected and unforeseen development on the eve of the facility being powered on.

Each of the foregoing circumstances were beyond SAU's control. *See, e.g.*, 47 C.F.R. § 73.3598(b)(1). SAU respectfully submits that each is a "rare and exceptional circumstance" that constitutes "good cause" to grant the relief requested herein. A grant of such relief would further serve the public interest by allowing SAU to both return broadcast programming service of local interest to viewers in the Raleigh area and continue to provide a vital component of SAU's broadcast educational curriculum to its students and faculty. As further support, SAU notes that:

- SAU continues to undergo significant stresses impacting its finances, including the COVID-19 pandemic. As previously submitted, the source of funding for the channel 4 construction project is a limited budget line-item

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that allows SAU to incur displacement expenses, seek reimbursement from the LPTV displacement reimbursement fund, receive reimbursement and replenish the pool of money, and then incur new displacement expenses. This funding process has been working, but SAU requires reimbursements to be processed before incurring new costs. With significant funds already invested, and in light of its near completion, it would be unfortunate and inefficient if this project could not be seen through to full completion.

- SAU has made significant progress on the displacement construction project, as discussed above. The displacement facility is very nearly complete save the antenna issue described above and ASI setup.
- No interference issues would be caused by a grant of this waiver request, and a grant would not delay, alter, or affect in any way the nationwide transition of full power and Class A stations nor the construction of displacement facilities by low power television operators, nor the offering of new 600 MHz wireless services by new 600 MHz wireless licensees.
- No party would be injured or prejudiced by a grant of the waiver. To the contrary, SAU powered down WAUG-LD to make way for WNCN to begin serving viewers near the conclusion of Phase 5. Grant of the waiver will not undermine or delay any post-auction transition goals.

Conclusion

For good cause shown, SAU respectfully requests tolling of the displacement CP's construction deadline or waiver of the tolling rule sufficient to provide SAU an additional 30 days in which to construct its final displacement facilities, up to and including January 31, 2022. Grant of this request is in the public interest and will allow SAU to continue to serve its local communities with responsive programming and unique educational opportunities.

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