

Request for Tolling of Construction Permit
Lowcountry 34 Media, LLC
W27DP-D, New Bern, North Carolina (Facility ID No. 184531)
CDBS File No. BNPDTL-20100209AAP

Request for Tolling of Construction Permit

Lowcountry 34 Media, LLC (“Lowcountry”), permittee of low-power television station (“LPTV”) W27DP-D, New Bern, North Carolina (Facility ID No. 184531) (“W27DP-D”), pursuant to Section 73.3598(b) of the Commission’s rules,¹ hereby respectfully requests tolling of W27DP-D’s construction permit, CDBS File No. BNPDTL-20100209AAP (“Construction Permit”), or if necessary, waiver of the Commission’s tolling rules, to allow for an extension of W27DP-D’s Construction Permit to account for the delays in construction of W27DP-D’s facilities. Based on the unusual, rare, and extraordinary circumstances described below, Lowcountry seeks tolling of W27DP-D’s Construction Permit for 30 days – i.e., until February 9, 2022.

BACKGROUND

W27DP-D’s initial construction permit was granted on July 11, 2012 (“Initial Construction Permit”).² On March 15, 2021, W27DP-D’s previous permittee, DTV America Corporation (“DTV”), filed a request for extension of W27DP-D’s Initial Construction Permit (“Construction Permit Extension Request”).³ On June 23, 2021, W27DP-D’s Construction Permit Extension Request was granted – thereby extending the expiration date of W27DP-D’s Initial Construction Permit until January 10, 2022.

On June 17, 2021, an application was filed with the FCC to assign W27DP-D’s Initial Construction Permit from DTV to Lowcountry (the “Assignment Application”).⁴ The Assignment Application was granted on July 28, 2021, and was consummated on July 30, 2021.⁵

On or about September 19, 2021, the Video Division of the FCC’s Media Bureau (“Division”) imposed an administrative freeze on the processing of all applications filed for LPTV stations licensed, permitted, or pending assignment to Lowcountry while the Division investigated Lowcountry for its purported violations of the Commission’s rules (the “Investigation”). The Division froze processing of all applications (“Filing Freeze”) filed for LPTV stations licensed, permitted, or pending assignment to Lowcountry during the pendency of its Investigation (“Freeze Period”). The Freeze Period approximately ended during the last week of November 2021 when the Division began reviewing Lowcountry’s applications again after it wrapped its Investigation and commenced negotiations of a Consent Decree with Lowcountry.

¹ 47 C.F.R. § 73.3598(b).

² CDBS File No. BNPDTL-20100209AAP.

³ LMS File No. 0000139742.

⁴ See LMS File No. 0000150360. After filing the Assignment Application, Lowcountry filed an amendment to W27DP-D’s Construction Permit Extension Request to include a certification by Lowcountry stating that it would construct W27DP-D within the applicable construction deadline. See Amendment, LMS File No. 0000139742 (filed June 18, 2021).

⁵ Notification of Consummation, LMS File No. 0000154887 (filed July 30, 2021).

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The Division's formal conclusion of its Investigation of Lowcountry is pending the Division and Lowcountry's entry into a Consent Decree which should occur during early to mid-January 2022.

Following the lift of the Filing Freeze, on January 3, 2022, an application was filed with the FCC to assign W27DP-D's Initial Construction Permit to Gray Television Licensee, LLC ("Gray").⁶ At Gray's request, Lowcountry also filed an application for minor modification of W27DP-D's Initial Construction Permit on December 27, 2021 ("Minor Modification Application") to relocate W27DP-D to an alternative site due to the unavailability of tower sites at the location specified in the station's Initial Construction Permit.⁷ W27DP-D's Minor Modification Application remains pending as of the date of this request.

DISCUSSION

A permittee of an LPTV station may seek additional time to construct a station's facilities pursuant to a request for waiver of the tolling standard under Section 73.3598(b) of the Commission's rules upon a showing of "rare and exceptional circumstances . . . beyond [the permittee's] control."⁸ The Commission may grant a waiver for good cause shown.⁹ A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.¹⁰ In considering a waiver, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹¹ Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.¹² As explained below, such special, rare, and extraordinary circumstances exist in the present case of W27DP-D.

As the Video Division is well aware, during the Freeze Period, Lowcountry was unable to undertake efforts necessary to construct W27DP-D. As a result, Lowcountry was under tremendous pressure to identify a tower and put into place the equipment and crew necessary to complete construction of W27DP-D's facilities by the January 10, 2022 deadline because of the delays caused by the Investigation – circumstances beyond Lowcountry's control. Nevertheless, Lowcountry undertook all efforts it could in less than six weeks to attempt to meet the January 10, 2022 deadline.

⁶ LMS File No. 0000178338.

⁷ LMS File No. 0000177962.

⁸ *See 1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes*, Memorandum Opinion and Order, 14 FCC Rcd. 17525, 17541, ¶ 42 (1999).

⁹ 47 C.F.R. § 1.3.

¹⁰ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

¹² *Northeast Cellular*, 897 F.2d at 1166.

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In addition to the delays imposed by the Investigation, construction of W27DP-D's facilities has been severely hampered by the unavailability of tower sites at the location specified in its Initial Construction Permit – thereby prompting Lowcountry, on behalf of Gray, to file the station's Modified Construction Permit Application. This application specifies the one tower site available in the area for W27DP-D. Since its filing, however, Commission staff has informed Lowcountry that it will not grant W27DP-D's Modified Construction Permit Application since it specifies a site relocation 0.4 miles beyond the 30-mile relocation limit. Accordingly, W27DP-D's Initial Construction Permit will require tolling until a feasible tower site within the 30-mile limit can be identified.

Lastly, Lowcountry's ability to negotiate and execute any necessary tower site agreements for W27DP-D's facilities has been recently hampered by its business attorney contracting COVID-19 – who has been ill for several weeks now. Lowcountry will likely be unable to finalize any necessary tower agreements for W27DP-D until its business attorney recovers.

In light of these exceptional circumstances, Lowcountry requests tolling for 30 days in order to identify an alternative site and obtain a lease there. Extending W27DP-D's construction deadline is in the public interest as it would provide Lowcountry with the time lost during the Freeze Period to undertake all necessary actions to construct W27DP-D's facilities pursuant to its Displacement Construction Permit. Tolling of the construction deadline is further supported by the extraordinary circumstances presented by the COVID 19 pandemic, which are beyond Lowcountry's control. Without the requested tolling, construction of the station will not be completed, thereby depriving viewers in New Bern, North Carolina of a free, over-the-air LPTV outlet.

CONCLUSION

For the foregoing reasons, the Commission should toll the construction deadline for W27DP-D's Construction Permit by 30 days to ensure Lowcountry sufficient time for the construction of the station.

DECLARATION

I, **Jeffrey Winemiller**, hereby attest to the following:

1. I am the Manager of Lowcountry 34 Media, LLC.
2. I have personal knowledge of the facts set forth in the foregoing Request for Tolling of Construction Permit ("Request").
3. I have read the Request, and the statements therein are truthful and correct to the best of my knowledge, information, and belief.

I hereby certify that to the best of my knowledge, information, and belief, under penalty of perjury, the foregoing statements are true and correct.

A handwritten signature in black ink, appearing to read "Jeffrey Winemiller", written in a cursive style.

Jeffrey Winemiller

Dated: January 10, 2022