

Gray Television Licensee, LLC
WSHV-TV, Broadway, VA (Fac ID 4688)

Gray Television Licensee, LLC (“Gray”), licensee of full power television station WSHV-TV and permittee of digital replacement translator station WSHV-TV, Broadway, VA (FID 4688) (the “Station”), requests a waiver of the Commission’s tolling rules, to allow for a further extension of the Station’s digital replacement translator construction permit (File No. 71679) (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 replacement translator at Great North Mountain (the “Great North Mountain DRT”) to provide service to Broadway, which lost over-the-air service due to the necessary relocation of WSHV-TV. File No. 54797. On April 16, 2019, Gray filed an application to modify Great North Mountain DRT to specify an alternate directional antenna and associated pattern, which the FCC granted. However, on June 15, 2021, the Commission issued a Notice of Proposed Rulemaking to substitute WVPT-TV’s channel 15 for channel 11 at Staunton, Virginia.¹ As a result, the CP will be displaced and Gray will need to modify its transmitter to operate on Channel 25 instead of Channel 15.

Since the Commission last granted a waiver of tolling, Gray has been working to develop its stormwater management plan for submission to Shenandoah County. Gray has hired Antonio Ancona, PE, Ph.D. as its civil engineer for this project. However, Dr. Ancona failed to deliver the plans within a month of the expected date, at which point Gray hired a different engineer, John Daughtrey, PE, of Network Building + Consulting, LLC (“NB&C”) to provide the stormwater and erosion drawings. Gray subsequently learned that, unbeknownst to it, Dr. Ancona was retiring. See attached correspondence. Gray expects to receive the plans from NB&C the week of June 7, 2022, which will allow it to finalize its Special Use Permit from Shenandoah County.

Once that is complete, Gray will need to construct the facility, which entails:

| Task | Estimated Completion Date |
|--|--|
| Dig and set up rebar; electrical dig and run | July 13-17, 2022 |
| Pour concrete for tower base, generator pad, and building | July 20-24, 2022 (needs to set minimum of two weeks) |
| Stack tower, install antenna and microwave dishes, building, generator, and electrical service | August 11, 15, 2022 |
| Install transmitter and microwave radios, test and proof | August 18-22, 2022 |

Gray anticipates that construction will take approximately 12 weeks and the Station will be able to commence service in late August.

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

¹ See *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Staunton, Virginia)*, Notice of Proposed Rulemaking, MB Dkt. No. 21-248, RM-11910, DA-21-694 (MB Jun. 15, 2021).

any zoning or environmental requirement.² 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.³

Here, a waiver of tolling is appropriate because the primary delay in completing construction of the Channel 25 facility was due both to the need to change channels and the ongoing review by the NRAO and Shenandoah County. Due to circumstances outside Gray's control, it has taken longer than expected to obtain the stormwater management plan, but that process should be completed within the next two weeks, allowing Gray to commence construction.

A waiver of the tolling standard is appropriate because the combination of the extensive local and federal permitting and coordination requirements for this site and the WVPT-TV Petition for Rulemaking created "rare and exceptional circumstances" beyond Gray's control that prevented construction. Gray had identified channel 15 as an available channel to serve Broadway, but the WVPT petition, if granted, is mutually exclusive with the CP. It would not have made sense for Gray to continue efforts to construct the facilities specified in the CP while the rulemaking to reallocate WVPT-TV's channel is pending. Rather, Gray identified another available channel and is taking steps to construct the digital replacement translator on that channel. The Commission can provide Gray with additional time to complete construction of its channel 25 facilities – which will provide sufficient time to complete 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 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."⁴ 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."⁵ Although the Commission was specifically addressing full power and Class A stations, here the Great North Mountain DRT is being displaced by a full power station that still has not completed its post-auction transition.

For the reasons stated above, the Commission should waive the tolling standard and provide Gray with additional time to complete construction of the Great North Mountain DRT. In recognition of

² 47 C.F.R. § 73.3598(b).

³ 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").

⁴ *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).

⁵ *Incentive Auction Order* ¶ 583.

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the September 6, 2022 deadline for submission of reimbursable expenses, Gray proposes that the FCC extend the CP through September 6, 2022.

From: Scott Kessler
Sent: Monday, May 9, 2022 9:01 AM
To: Charles Brown
Subject: Great North

Good Morning Charles,

I got a phone call from Antonio's secretary late Friday evening. Sounds like he's getting ready to retire.

I'll be working from home today and tomorrow [REDACTED]. I should be back on Wednesday [REDACTED].

Thanks,

Scott Kessler
Chief Engineer
office: 540.433.9191 x107
cell: 540.435.4004



From: Charles Brown <cbrown@qualtekwireless.com>
Sent: Wednesday, May 25, 2022 3:51 PM
To: Scott Kessler
Subject: RE: Translator Update

Hi Scott,

John Daughtrey, PE for NB&C was thinking the first week of June or approximately three weeks. I don't believe either one of us realized that June was just next week.

So Hopefully sometime during the week of June 7th or shortly after we'll have what we need.

Charles

From: Thomas Stone <TStone@comarktv.com>
Sent: Monday, May 23, 2022 2:52 PM
To: Charles Brown <cbrown@qualtekwireless.com>; Scott Kessler <scott.kessler@whsv.com>; Steve Richter <srichter@hvs-inc.com>; Jim Pohl <jpohl@hvs-inc.com>
Cc: Woody Brown <wbrown@pagecounty.virginia.gov>; Jeremiah Knowles <jknowles@cta-c.com>; Ray Pope <rpope@svec.coop>; Joshua Nicol <jnicol@svec.coop>; Mark Hensley <mhensley@rockinghamcountyva.gov>; robert.gardner@motorolasolutions.com
Subject: RE: Translator Update

[EXTERNAL SENDER] - Watch for Phishing Attack

Thanks for following up, Charles.

Tom

From: Charles Brown <cbrown@qualtekwireless.com>
Sent: Monday, May 23, 2022 2:30 PM
To: Scott Kessler <scott.kessler@whsv.com>; Thomas Stone <TStone@comarktv.com>; Steve Richter <srichter@hvs-inc.com>; Jim Pohl <jpohl@hvs-inc.com>
Cc: Woody Brown <wbrown@pagecounty.virginia.gov>; Jeremiah Knowles <jknowles@cta-c.com>; Ray Pope <rpope@svec.coop>; Joshua Nicol <jnicol@svec.coop>; Mark Hensley <mhensley@rockinghamcountyva.gov>; robert.gardner@motorolasolutions.com
Subject: RE: Translator Update

I would think mid to late August is an accurate timeline for now.

Charles Brown / Project Manager III / 540-569-6570
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Cbrown@qualtekwireless.com

