

WNTV(TV) – Request for Tolling of Construction Permit

South Carolina Educational Television Commission (“SCETV”), licensee of noncommercial educational TV station WNTV(DT), Greenville, South Carolina (“WNTV”), respectfully requests until October 31, 2022 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 ran 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. SCETV negotiated a special easement for the land on which the tower will be located with the State of South Carolina (landowner) and Duke Energy (easement holder), received zoning approval from the local authority (the Greenville County Zoning Commission), and received building approval from the Office of State Engineer. The local permitting process was much more complicated and took much, much longer than expected.

Note 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 fully occupied SCETV’s engineering and other staff over the course of the past many months.¹

¹ 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

In its prior tolling requests, filed in June 2021, December 2021, and March 2022, SCETV predicted that construction of the new tower would be completed in June 2022. In March 2022, in order to provide a buffer for any unexpected delays, SCETV requested until September 6, 2022 to construct WNTV's repack facilities. The Commission granted the request; the current repack permit for WNTV expires on September 6, 2022.

In the past, WNTV has obtained special temporary authority ("STA") to operate on its post-repack channel from temporary facilities and has recently filed for STA to operate from the new tower until such time as the station's permanent facilities can be completed and licensed by the FCC.²

Detailed Progress Report and Timeline to Completion

When granting SCETV's March 2022 tolling request, the FCC noted that a request for additional tolling must "include a detailed plan for completing construction" so that the Commission can continue to monitor the Station's progress.³ SCETV is pleased to report that although construction has been delayed slightly beyond the June 2022 completion date that SCETV predicted in its prior tolling requests, construction is nearly finished and is expected to be completed by the end of September 2022.

Substantial progress has been made since SCETV filed the previous tolling request in March 2022. Specifically:

1. The concrete for the tower's foundation was poured on March 15, 2022. Tower erection was postponed until June 15, 2022 due to manufacturing delays, but the tower has now been erected.
2. The antenna was mounted on the tower on July 14, 2022.
3. Tower accessories (ladder, transmission line mounts, etc.) and the vertical portion of the transmission line were installed in late July 2022.

At this point, the bulk of construction has been completed. All that remains is:

1. Installation of the ice shield that covers the horizontal transmission line. Delivery of the parts has been delayed by the manufacturer, but SCETV has designed a temporary workaround that will be installed within the next two weeks.
2. Testing of the antenna with an engineer from antenna manufacturer Dielectric, LLC. On August 9, 2022, SCETV discovered an internal air leak causing a loss of pressure in one of the antenna's pressurized components. The leak was repaired on August 17, 2022, but

² See LMS file number 0000198330.

³ Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau (March 21, 2022) available at LMS file number 0000185801. The Commission also reminded SCETV that all repack related invoices to the Fund Administrator must be submitted by September 6, 2022. SCETV has filed a request to extend the invoice submission deadline to January 17, 2023 that is currently pending before the Commission. See LMS file number 0000198687.

further testing is required and should be completed on or around September 6, 2022, barring further delays due to weather (rain is forecast for the majority of the next week).

3. Drone testing of the antenna pattern. SCETV has contracted with an outside vendor to conduct the tests and they should be completed by the end of September 2022.
4. Grant of the FCC Antenna Structure Registration (“ASR”) application. Prior to filing the application for license to cover this construction permit, SCETV must receive a grant of the tower’s ASR application which is currently pending before the Commission.⁴ The Commission cannot approve the ASR application, however, until the conclusion of a 30-day environmental notice period, which will not occur until September 16, 2022.⁵ SCETV is prepared to move expeditiously once the ASR application is granted to file the WNTV license to cover for its repack facilities.

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.⁶ 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 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.”⁷ 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.⁸

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

⁴ See file number A1220600.

⁵ See 47 C.F.R. § 17.4(c)(4).

⁶ 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.

⁷ 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).

⁸ Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Cross Hill Communications, LLC (Mar. 22, 2019) available at LMS file No. 0000064627.

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 Widelity 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 and needs only a few weeks beyond the current construction permit expiration date to complete WNTV's repack facilities. Out of an abundance of caution, SCETV requests waiver of the Commission's tolling provisions until October 31, 2022 to provide a buffer for further unanticipated delays (as of this date, SCETV fully expects the WNTV repack project to be completed by the end of September 2022 but seeks to avoid any need for additional tolling requests).

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 until October 31, 2022.