

Gray Television Licensee, LLC (“Gray”), licensee of full power television station WHSV-TV and permittee of digital replacement translator station WHSV-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 displacement of the Station by WVPT and 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 WHSV-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.<sup>1</sup> The FCC subsequently adopted the proposed reallocation, which became effective on September 19, 2022.<sup>2</sup> As a result, the CP has been displaced.

In anticipation of the reallocation of WVPT-TV, Gray submitted an application in December 2021 to modify the Station to operate on Channel 25. File No. 0000177269. That application was only recently granted. Meanwhile, Gray obtained a building permit from Shenandoah County on August 11, 2022 and is working to complete construction. Since the last update, all concrete has been poured for the tower base (see photo below) and all equipment has been ordered. However, construction has been stalled due to: (1) delays on the part of Shenandoah Valley Electric Corporation in delivering power to the site (see Exhibit A); and (2) delays in delivering the main transmitter shelter, which requires up to 24 weeks for delivery and could not be ordered until after the permitting process was complete (See Exhibit B). Gray has been provided an estimate of early May for completion, although Gray is working with its vendors to complete construction as soon as possible.

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<sup>1</sup> 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).

<sup>2</sup> *Television Broadcasting Services Staunton, Virginia*, Final Rule, 87 FR 57148 (Sept. 19, 2022).



*Tower base with concrete poured.*

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 any zoning or environmental requirement.<sup>3</sup> 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.<sup>4</sup>

Here, a waiver of tolling is appropriate. The initial delay in completing construction of the Channel 25 facility was due to the need to change channels and the ongoing review by the NRAO and Shenandoah County. Now that the special use permit has been obtained, Gray has encountered delays related to supply chain issues that are outside of its control. Construction should be completed shortly after power is delivered to the site and the shelter arrives.

The aforementioned events constitute "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-TV reallocation is mutually exclusive with the CP. Accordingly, Gray had to identify another available channel, which it is now working to construct.

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

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<sup>3</sup> 47 C.F.R. § 73.3598(b).

<sup>4</sup> 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").

extension of up to 180 days.”<sup>5</sup> 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.”<sup>6</sup> 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. Although Gray anticipates completing construction by May, to avoid the need for additional tolling, Gray proposes that the FCC extend the CP through July 17, 2023.

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<sup>5</sup> *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).

<sup>6</sup> *Incentive Auction Order* ¶ 583.

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

**EXHIBIT A**



# Shenandoah Valley Electric Cooperative

A Touchstone Energy® Cooperative 

**Mt Jackson District Office**  
763 Mt Jackson Rd  
Mt Jackson, VA 22842-0424  
(540) 437-1532  
[jnicol@svec.coop](mailto:jnicol@svec.coop)

Monday, January 16, 2023

Mr. Kessler,

I apologize for the delays with the installation of the primary electric line that will provide power to the Great North Mountain tower site. Some wind and ice storms in our service territory have set us back as well as some supply chain issues.

We are currently in the process of applying for permits with the Virginia Department of Motor Vehicles in order to install our power line in their space on Crooked Run Rd. We hope to have this taken care of quickly and to proceed directly once approval has been received. Again, thank you for your patience and understanding.

Please feel to contact me with any questions,

Josh Nicol

*Field Engineering Representative*

[jnicol@svec.coop](mailto:jnicol@svec.coop)

(540) 437-1532

EXHIBIT B

**From:** Jacob Harnish <[JHarnish@vfpinc.com](mailto:JHarnish@vfpinc.com)>  
**Sent:** Sunday, January 15, 2023 10:03 AM  
**To:** Charles Brown <[cbrown@qualtekwireless.com](mailto:cbrown@qualtekwireless.com)>; Bryan Cox <[BCox@vfpinc.com](mailto:BCox@vfpinc.com)>  
**Cc:** Scott Kessler <[scott.kessler@whsv.com](mailto:scott.kessler@whsv.com)>  
**Subject:** RE: Page Update and Great North updates

Charles,

I show you approved the preliminary drawings on December 14<sup>th</sup> (NOT October). See attached email from you.

Our proposal shows "24 weeks from approval of preliminary drawings" pending delivery of ancillary equipment.

Therefore the timeline is as follows:

- Preliminary drawing approval 12/14/22
- Estimated completion date 5/31/23

We will not ship until you make all arrangements to do so. Our Transportation Manager requires 10-15 business days to obtain truck and freight permits prior to shipment.

Physical construction and electrical integration takes approximately 8-10 weeks in production. Let me know if you have any questions.

*Jake Harnish*

Project Manager



5410 Fallowater Ln  
Roanoke, VA 24018  
O) 540-977-0500  
D) 540-444-5715  
C) 540-520-9962  
[www.vfpinc.com](http://www.vfpinc.com)

Please read our [recent COVID-19 Statement](#) to learn how VFP continues to prioritize our customer needs with our employee's well-being.