



Federal Communications Commission  
Washington, D.C. 20554

October 16, 2020

Local Media TV Chicago, LLC  
5670 Wilshire Blvd.  
Suite 1620  
Los Angeles, CA 90036  
[fcc@loop.com](mailto:fcc@loop.com)  
(via electronic mail)

Re: Request for Tolling Waiver  
W40CN-D, Sugar Grove, IL  
Facility ID No. 71111  
LMS File No. 0000121553

Dear Licensee,

On September 11, 2020, Local Media TV Chicago, LLC (LM), the licensee of W40CN-D, Sugar Grove, Illinois (W40CN or Station), filed the above-referenced request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant LM's request and toll the expiration date of W40CN's construction permit through November 30, 2020.

*Background.* Pursuant to section 73.3700(b)(5) of the Commission's rules (Rules), a station that was assigned a new channel as a result of the Commission's incentive auction and repacking process may request a single extension of its construction permit deadline of up to 180 days to complete construction of its post-auction facility.<sup>1</sup> All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.<sup>2</sup> The Commission'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 tolling may still be warranted where the licensee can demonstrate that "rare and exceptional circumstances" prevented construction by the station's construction permit expiration date.<sup>4</sup>

LM requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities through November 30, 2020. W40CN was granted an extension and tolling of

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<sup>1</sup> See 47 CFR § 73.3700(b)(5).

<sup>2</sup> See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

<sup>3</sup> *Id.*

<sup>4</sup> See 1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17542, para. 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." The Commission concluded that in such "limited circumstances," it would entertain requests for waiver of its "strict tolling provisions"); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown).

its construction permit to October 13, 2020.<sup>5</sup> W40CN is currently silent while it completes its post-auction channel facilities.<sup>6</sup>

LM states that, because of ongoing construction delays with the original site it had selected for its post-auction channel facilities, the Station recently applied for and was granted authority to move to a different site where it can share an antenna that is already installed and operational. LM states that the Station was on track to complete construction of its post-auction channel facilities by its construction permit deadline when it was informed on September 2, 2020, that the construction and installation of the pre-fabricated transmitter building will be delayed. LM explains that the local municipal codes department is requiring changes to the prefabricated building before it can be approved to be installed on site. The building fabricator is working as expeditiously as possible, but work has been delayed due to restrictions caused by the COVID-19 pandemic. As a result, LM states that it will not be able to finish construction of its post-auction facility by the October 13, 2020 construction permit deadline. Because of these delays LM seeks a waiver of the tolling rules and tolling of its construction permit deadline through November 30, 2020.

*Discussion.* Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive the rules and toll the expiration date of the Station's construction permit through November 30, 2020.<sup>7</sup> LM has demonstrated it did not complete construction of its post-auction channel facilities due to construction delays. We also find that grant of LM's tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. W40CN has already ceased operation on its pre-auction channel and is silent. To the extent viewers are unable to receive W40CN's signal while it is silent, we believe that LM has every incentive to ensure viewers are fully informed about the Station's plan to resume operation on its post-auction channel. Ultimately, we conclude that the public interest will be served by grant of tolling of the Station's construction permit.

We remind LM that pursuant to the Spectrum Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other."<sup>8</sup> Additional expenses incurred, such as expenses resulting from changes in a Station's transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

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<sup>5</sup> LMS File Nos. 0000080109 and 0000110239. W40CN was repacked from channel 40 to channel 27.

<sup>6</sup> In light of the Stations extended period of silence, the Station's license is scheduled to automatically expire pursuant to section 312(g) of the Communications Act of 1934, as amended, 47 U.S.C. § 312(g), on October 18, 2020. We are simultaneously granting the Station's request for extension of its license under the equity and fairness provision of section 312(g) and silent authority to November 30, 2020. *See* LMS File No. 0000121554.

<sup>7</sup> 47 CFR § 73.3598(b).

<sup>8</sup> 47 U.S.C. § 1452(b)(4)(A)(i). *See also Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 et. al., Report and Order, 29 FCC Rcd 6567, 6821, para. 622 (2014) (*Incentive Auction R&O*), *aff'd*, *Nat'l Ass'n of Broadcasters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

We further remind LM of the deadline for submitting final expense documentation for reimbursement for the Station is March 22, 2022.<sup>9</sup> Thus, we strongly encourage the Station to diligently pursue satisfaction of the current deadlines to improve the chances that there will be sufficient funds available to reimburse the Station for its legitimate repacking expenses, and we encourage LM to submit eligible invoices as soon as practicable.

The above facts considered, Local Media TV Chicago, LLC's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000104087) for W40CN-D, Sugar Grove, Illinois **IS TOLLED through November 30, 2020**. Grant of this tolling waiver does not permit W40CN to recommence operation on its pre-auction channel. We also remind LM that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>10</sup>

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic email): Joan Stewart, Esq.

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<sup>9</sup> See *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, MB Docket No. 16-306, GN Docket No. 12-268, Public Notice, DA 20-1171, para. 10 (IATF/MB Oct. 7, 2020) (setting three filing deadlines for submission of all remaining repack invoices: for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period, the deadline for submitting all remaining invoices is October 8, 2021; the deadline for entities assigned completion dates in the second half of the transition period is March 22, 2022; and the deadline for all other participants in the reimbursement program is September 5, 2022).

<sup>10</sup> See 47 § CFR 73.3598(b).