



Federal Communications Commission
Washington, D.C. 20554

March 22, 2019

Cross Hill Communications, LLC
31 Pleasant Street
Suite 202
Claremont, NH 03743

Re: Request for Tolling Waiver
WYCI(TV), Saranac Lake, NY
Facility ID No. 77515
LMS File No. 0000064627

Dear Licensee,

On January 3, 2019, Cross Hill Communications, LLC (Cross Hill), the licensee of Station WYCI(TV), Saranac Lake, New York, (WYCI or Station), filed the above captioned application seeking a waiver of the Commission's tolling provisions and extension of the Station's construction permit expiration date.¹ For the reasons below, we grant Cross Hill's request and toll the expiration date of WYCI's construction permit through July 26, 2019.

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.² All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of Section 73.3598(b) of the Rules.³ 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.⁴ If a station does not qualify for tolling, good cause may exist to waive the Commission's

¹ See LMS file No. 0000064627 (as amended Jan. 25, 2019).

² See 47 CFR § 73.3700(b)(5). Grant of an extension of the construction permit deadline does not alter the deadline by which a station must cease operating on its pre-auction channel. A station anticipating the need for an extension must submit an extension application using FCC Form 2100, Schedule 337. The application must demonstrate that the station is unable to complete construction on time due to circumstances that were either unforeseeable or beyond the station's control. See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567,6804-05, paras. 581-2 (2014) (*Incentive Auction R&O*); 47 CFR § 73.3700(b)(5)(ii) and (iii).

³ 47 CFR § 73.3598(b).

⁴ *Id.*

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.⁵

In the instant request, Cross Hill asks that the Commission find that rare and exceptional circumstances exist to waive the tolling rules and toll the Station's expiration date for the period of time between the date it filed its current construction permit application until its grant. In support of this request, Cross Hill notes that on July 5, 2018, it filed an application for construction permit to modify its post-auction transition facility to a Distributed Transmission System (DTS). That application was not granted until November 8, 2018, following completion of required frequency coordination with Canada. Cross Hill had to modify the facility identified in its initially granted post-auction construction permit because a structural analysis of its current broadcast tower revealed that it would not be able to accommodate the approved antenna height for WYCI's post-auction facility. Because of WYCI's proximity to Canadian border, the new DTS construction permit was required to undergo Canadian coordination prior to grant.⁶ Following grant of the construction permit on November 8, 2018, Cross Hill states that the mountainous terrain and weather conditions in Upstate New York, where WYCI is located, limited its vendors ability to reach the Station's DTS transmission sites to complete construction by its current construction permit expiration date, February 28, 2019.⁷

Discussion. Upon review of the facts and circumstances presented, we find that rare and exceptional circumstances exist to waive Section 73.3598(b) of the Rules and toll the expiration date of the Station's construction permit for a total of 148 days. This amount of time includes the number of days WYCI's construction permit was pending and undergoing review by Canada (126 days) and the number of days the instant request was pending following expiration of WYCI's construction permit (22 days). We believe the facts in this case constitute rare and exceptional circumstances that were beyond the control of the station and sufficiently unique to warrant waiver. Specifically, in light of structural issues discovered related to the Station's existing tower, Cross Hill had to modify its post-auction construction plan and file for a new construction permit that needed to be coordinated with Canada. Following grant, construction of the Station's post-auction facility was further delayed by difficulty accessing the stations transmission sites and conducting necessary tower work due to winter weather. We note that this action is consistent with our decisions during the DTV transition where stations were eligible to apply for tolling in the event of delays caused by the need to coordinate an "original construction permit for a new DTV station" with Canada or Mexico.⁸ While no such tolling provision was established in the context of the post-auction repack, we believe this precedent supports the grant of Cross Hill's request.

⁵ 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).

⁶ LMS File No. 0000056042 (granted Nov. 8, 2018).

⁷ See Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Cross Hill Communications, LLC, (Nov. 6, 2018) available at LMS file No. 0000059456 (granted Nov. 6, 2018) (granting WYCI a single 180-day extension of its construction permit expiration date of September 1, 2018).

⁸ 47 CFR § 73.3598(b)(3).

We also find that grant of Cross Hill's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WYCI has already ceased operation on its pre-auction channel and is actively working towards resuming operation on its post-auction channel. We believe that Cross Hill has every incentive to ensure viewers are fully informed about the station's plan to resume operation on its post-auction channel once it is able to construct its post-auction facility. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Station's construction permit.

We remind Cross Hill that any additional expenses incurred as a result of the grant of the Station's voluntary phase change may not be reimbursable from the TV Broadcasters Relocation Fund.⁹ Such additional costs might include, but may not be limited to, additional legal or engineering expenses; filing fees; and interim or additional equipment that was not contemplated when the station filed its initial estimated expenses but was subsequently necessitated to complete the transition to its post-auction channel due to its phase change.

The above facts considered, Cross Hill Communications, LLC's request for waiver of the Commission's tolling provisions **ARE GRANTED**. The construction permit for WYCI(TV), Saranac Lake, New York **IS TOLLED to July 26, 2019**. Grant of this tolling waiver does not permit WYCI to recommence operation on its pre-auction channel. We also remind Cross Hill that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹⁰

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail):
Davina Sashkin, Esq.

⁹ See Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Cross Hill Communications, LLC, (May 30, 2018) available at LMS File No. 00000398 (granting a change in transition phase from Phase 7 to the period prior to the start of Phase 1).

¹⁰ See 47 § CFR 73.3598(b).