



Federal Communications Commission
Washington, D.C. 20554

October 2, 2019

WNWO Licensee, LLC
10706 Beaver Dam Road
Cockeysville, MD 21030

Re: Request for Tolling Waiver
WNWO-TV, Toledo, OH
Facility ID No. 73354
LMS File No. 0000073443

Dear Licensee,

On May 28, 2019, WNWO Licensee, LLC (Sinclair), the licensee of WNWO-TV, Toledo, Ohio (WNWO 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 Sinclair's request and toll the expiration date of WNWO's construction permit through July 3, 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.¹ All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of Section 73.3598(b) of the Rules.² 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.³ 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.⁴

Sinclair requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities through July 3, 2020. WNWO is currently operating on its post-auction channel with temporary facilities.⁵ WNWO was granted a six-month construction permit

¹ See 47 CFR § 73.3700(b)(5).

² See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

³ *Id.*

⁴ 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).

⁵ See LMS File No. 0000068561.

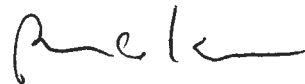
extension because tower construction delays resulting from the bankruptcy of the tower company that was subcontracted to make the necessary tower modifications. Sinclair reports that it has secured a new tower crew to complete the tower work for the Station's post-auction facilities. However, Sinclair has been informed that because of the complexity and significant amount of tower work and resources necessary to complete construction will take approximately 15 to 20 weeks to complete that the tower crew can begin construction in early March 2020. Accordingly, Sinclair seeks a waiver of the tolling rules and tolling of its construction permit deadline to July 3, 2020.

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive Section 73.3598(b) of the Rules and to toll the expiration date of the Station's construction permit to July 3, 2020. We find that WNWO's project is delayed due to a tower crew's bankruptcy and a tower crew's availability. We also find that grant of Sinclair's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WNWO has already ceased operation on its pre-auction channel and initiated temporary operations on its post-auction channel. To the extent some viewers are unable to receive WNWO's signal while it operates using its interim facility, we believe that Sinclair has every incentive to ensure viewers are fully informed about the Station's transition plan. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Station's construction permit.

We remind Sinclair 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."⁶ 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.

The above facts considered, WNWO Licensee, LLC's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit for WNWO-TV, Toledo, Ohio **IS TOLLED to July 3, 2020**. Grant of this tolling waiver does not permit WNWO to recommence operation on its pre-auction channel. We also remind WLL that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.⁷

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Paul Cicelski, Esq.

⁶ 47 U.S.C. § 1452(b)(4)(A)(i). *See also Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

⁷ *See* 47 § CFR 73.3598(b).