



Federal Communications Commission
Washington, D.C. 20554

February 25, 2020

Greater Washington Educational Telecommunications Association
Legal & Business Affairs Dept.
3939 Campbell Ave
Arlington, VA 22206

Re: Request for Tolling
WETA-TV, Washington, DC
Facility ID No. 65670
LMS File No. 0000101838

Dear Licensee,

On January 29, 2020, Greater Washington Educational Telecommunications Association (GWETA), the licensee of WETA-TV, Washington, District of Columbia (WETA or Station), filed the above-referenced request for waiver, as amended, of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant GWETA's request and toll the expiration date of WETA's construction permit to July 27, 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

GWETA requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities. WETA is currently operating on its post-auction channel with

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).

temporary facilities.⁵ WETA was previously granted an 180-day construction permit extension to January 29, 2020.⁶ WETA states that it has made a great deal of progress on the construction of its post-auction channel facilities but that 5% of the necessary materials are still in transit and arrangements need to be made for the electrical work. Therefore, to provide for additional time to complete construction, GWETA requests that the Commission waive its tolling rule and toll the WETA construction permit expiration date to July 27, 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 27, 2020. Entravision has demonstrated it did not complete construction of its post-auction channel facilities due to construction delays. We also find that grant of GWETA's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WETA 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 WETA's signal while it operates using its interim facility, we believe that Entravision 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 GWETA 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."⁷ 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, Greater Washington Educational Telecommunications Association's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000029879) for WETA-TV, Washington, District of Columbia **IS TOLLED to July 27, 2020**. Grant of this tolling waiver does not permit WETA to recommence operation on its pre-auction channel. We also remind GWETA that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.⁸

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Margaret Miller, Esq.

⁵ See LMS File No. 0000078576. WETA was repacked from channel 27 to channel 31.

⁶ See LMS File No. 0000078107.

⁷ 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.").

⁸ See 47 § CFR 73.3598(b).