



Federal Communications Commission
Washington, D.C. 20554

March 30, 2020

Capitol Broadcasting Company, Inc.
Chrissy Cicuto
2619 Western Blvd
Raleigh, NC 27606

WRAZ-TV, Inc.
Jennifer B. Venable
2619 Western Boulevard
Raleigh, NC 27606

Re: Requests for Tolling Waiver
WRAL-TV, Raleigh, NC
WRAZ(TV), Raleigh, NC
Facility ID Nos. 8688 and 64611
LMS File Nos. 0000106589 and
0000106590

Dear Licensee,

On February 25, 2020, Capitol Broadcasting Company, Inc., licensee of Station WRAL-TV, Raleigh, North Carolina (WRAL); and WRAZ-TV, Inc., licensee of Station WRAZ(TV), Raleigh, North Carolina (WRAZ) (collectively CBC and Stations) filed the above-referenced requests for waiver of the Commission's tolling provisions and tolling of the Stations' construction permit expiration dates. For the reasons below, we grant CBC's requests and toll the expiration date of the Stations' construction permit through June 9, 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

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.*

demonstrate that “rare and exceptional circumstances” prevented construction by the station’s construction permit expiration date.⁴

CBC requests waivers of the tolling rule and tolling of the Stations’ construction permits for their post-incentive auction channel facilities through June 9, 2020. The Stations are currently operating on their post-auction channels with temporary facilities.⁵ The Stations were each granted two construction permit extensions and their permits currently expire March 9, 2020.⁶ CBC states that the Stations are collocated on a tower with other Raleigh area television stations. The Stations are unable to complete construction of their main facilities until construction of a top-mounted candelabra antenna configuration is completed. CBC explains that a helicopter is needed for this work and, scheduling of the helicopter has been delayed due to limited availability. Therefore, CBC seeks brief waivers of the tolling rules and tolling of the Stations’ construction permit deadlines to June 9, 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 Stations’ construction permits to June 9, 2020. We find that CBC was unable to complete construction of its post-auction channel facilities due construction delays. We also find that grant of CBC’s waivers and tolling requests is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. The Stations have already ceased operation on their pre-auction channels and initiated temporary operations on their post-auction channels. To the extent some viewers are unable to receive the Stations’ signals while they operate using interim facilities, we believe that CBC has every incentive to ensure viewers are fully informed about the Stations’ transition plans. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Stations’ construction permits.

We remind CBC 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 Stations’ transition plans that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The above facts considered, Capitol Broadcasting Company, Inc. and WRZ-TV, Inc.’s requests for waiver of the Commission’s tolling provisions **ARE GRANTED**. The construction permits (LMS

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 Nos. 0000027670 and 0000027700. WRAL was repacked from channel 48 to channel 17; and WRZ from channel 49 to 15. WRZ operates on channel 15 on a shared basis with WZGS-CD, Raleigh, North Carolina.

⁶ See LMS File Nos. 0000080708, 0000080709, 0000088422 and 0000088423.

⁷ 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) (“The appropriate scope of ‘costs reasonably incurred’ necessarily will have to be decided on a case-by-case basis.”).

File No. 0000075896 and 0000075888) for WRAL-TV, Raleigh, North Carolina and WRAZ, Raleigh, North Carolina **ARE TOLLED to June 9, 2020**. Grant of these tolling waivers does not permit the Stations to recommence operation on their pre-auction channels. We also remind CBC that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.⁸

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): David O'Connor, Esq.

⁸ See 47 CFR § 73.3598(b).