



Federal Communications Commission
Washington, D.C. 20554

March 9, 2020

HSH Birmingham (WSES & WGWW) License, LLC
HSH Myrtle Beach (WWMB) Licensee, LLC
201 Massachusetts Avenue, NE
Suite C-1
Washington, DC 20002

Re: Requests for Tolling Waiver
WSES, Tuscaloosa, AL
WWMB, Florence, SC
Facility ID Nos. 3133 and 21258
LMS File Nos. 0000106634 and
0000106659

Dear Licensee,

On February 26, 2020, HSH Birmingham (WSES & WGWW) License, LLC, licensee of Station WSES, Tuscaloosa, Alabama (WSES); and HSH Myrtle Beach (WWMB) Licensee, LLC, licensee of Station WWMB, Florence, South Carolina (WWMB) (collectively HSH 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 HSH's requests and toll the expiration date of the Stations' construction permit through September 7, 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

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.*

construction permit expiration date.⁴

HSH requests waivers of the tolling rule and tolling of the Stations' construction permits for their post-incentive auction channel facilities through September 7, 2020. The Stations are currently operating on their post-auction channels with temporary facilities.⁵ The Stations were each granted construction permit extensions and their permits currently expire March 9, 2020.⁶ HSH outlined the various delays the Stations have encountered in completing construction of their permanent post-auction channel facilities including weather delays and the lack of available crews to complete installation of facilities. Therefore, HSH seeks waivers of the tolling rules and tolling of the Stations' construction permit deadlines to September 7, 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 September 7, 2020. We find that HSH was unable to complete construction of its post-auction channel facilities due to weather and construction delays. We also find that grant of HSH'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 HSH 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 HSH 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, HSH Birmingham (WSES & WGWW) License, LLC and HSH Myrtle Beach (WWMB) Licensee, LLC's requests for waiver of the Commission's tolling provisions **ARE GRANTED**. The construction permits (0000034332 and 0000034330) for WSES, Tuscaloosa, Alabama and WWMB, Florence, South Carolina **ARE TOLLED to September 7, 2020**. Grant of these tolling waivers does not permit the Stations to recommence operation on their pre-auction channels. We

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. 0000106635 and 0000106662. WSES was repacked from channel 33 to channel 36 and WWMB from channel 21 to 26.

⁶ See LMS File Nos. 0000080559 and 0000080563.

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.").

also remind HSH that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.⁸

Sincerely,

A handwritten signature in black ink, appearing to read 'B. A. Kreisman', with a stylized, flowing script.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

⁸ See 47 § CFR 73.3598(b).