



Federal Communications Commission
Washington, D.C. 20554

March 30, 2020

WUTV Licensee, LLC
Harvey Arnold
10706 Beaver Dam Road
Cockeysville, MD 21030

Re: Request for Tolling
WUTV, Buffalo, New York
Facility ID No. 415
LMS File No. 0000106848

Dear Licensee,

WUTV Licensee, LLC (WLL), the licensee of WUTV, Buffalo, New York, New York (WUTV or Station), filed the above-referenced request for waiver of the Commission's tolling provisions, tolling and reinstatement of the Station's construction permit. For the reasons below, we grant WLL's waiver request, and reinstate and toll WUTV's construction permit for 120 days to May 28, 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

WLL requests waiver of the tolling rule, and reinstatement and tolling of its construction permit for its post-incentive auction channel facilities. WUTV is currently operating on its post-auction channel

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).

with temporary facilities.⁵ WUTV was previously granted a construction permit extension through January 29, 2020.⁶

WLL states the Station has made significant progress in constructing its post-transition facilities, including installation of the Station's post-auction channel transmitter. WLL has scheduled installation of the Station's permanent top-mount antenna, but that work will need to be completed by a helicopter lift and is not scheduled until May 2020. Based on the foregoing, WLL requests that the Commission waive its tolling rule, reinstate and toll the WUTV construction permit expiration date to May 28, 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 May 28, 2020.⁷ WLL has demonstrated it did not complete construction of its post-auction channel facilities due to construction delays. We also find that grant of WLL's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WUTV 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 WUTV's signal while it operates using its interim facility, we believe that WLL 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 WLL 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."⁸ 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, WUTV Licensee, LLC's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000075316) for WUTV, Buffalo, New York, **IS REINSTATED AND TOLLED to May 28, 2020**. Grant of this tolling waiver does not permit WUTV to recommence operation on its pre-auction channel. We also remind WLL that

⁵ See LMS File No. 0000105845. WUTV was repacked from channel 14 to channel 32.

⁶ See LMS File No. 0000077993.

⁷ 47 CFR § 73.3598(b).

⁸ 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.").

any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.⁹

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

⁹ See 47 CFR § 73.3598(b).