



Federal Communications Commission  
Washington, D.C. 20554

April 14, 2020

Nexstar Broadcasting, Inc.  
Elizabeth Ryder  
545 E. John Carpenter Freeway  
Suite 700  
Irving, TX 75062

Re: Requests for Tolling Waiver  
WOTV(TV), Battle Creek, MI  
WANE-TV, Fort Wayne, IN  
Facility ID No. 10212 and 39270  
LMS File Nos. 0000110602 and  
0000110605

Dear Licensee,

On March 31, 2020, Nexstar Broadcasting, Inc., licensee of Station WOTV(TV), Battle Creek, Michigan (WOTV) and WANE-TV, Fort Wayne, Indiana (WANE) (collectively Nexstar 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 Nexstar's requests and toll the expiration date of the Stations' construction permit through October 15, 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.<sup>1</sup> All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of Section 73.3598(b) of the Rules.<sup>2</sup> 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.<sup>3</sup> 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

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<sup>1</sup> See 47 CFR § 73.3700(b)(5).

<sup>2</sup> See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

<sup>3</sup> *Id.*

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

Nexstar requests waivers of the tolling rule and tolling of the Stations’ construction permits for their post-incentive auction channel facilities through October 15, 2020. The Stations are currently operating on their post-auction channels with temporary facilities.<sup>5</sup> The Stations were each granted a construction permit extension and their permits currently expire April 15, 2020.<sup>6</sup> Nexstar states that it has been diligently communicating with scheduled tower crews with respect to installation of the Stations’ new main post-auction antenna. However, the Stations have been subjected to various delays due to access to tower crew, weather delays, and most recently work delays due to COVID-19 pandemic.<sup>7</sup> . Therefore, Nexstar states construction of the Stations’ post-auction facilities will not be complete by April 15, 2020 and it seeks waivers of the tolling rules and tolling of the Stations’ construction permit deadlines to October 15, 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 October 13, 2020. We find that Nexstar was unable to complete construction of its post-auction channel facilities due construction and weather delays as well as the COVID-19 pandemic. We also find that grant of Nexstar’s waiver and tolling requests are 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 Nexstar 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 Nexstar 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.”<sup>8</sup> Additional expenses incurred, such as

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<sup>4</sup> 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).

<sup>5</sup> See LMS File Nos. 0000110600 and 00000110603. WOTV was repacked from channel 20 to channel 17 and WANE was repacked from channel 31 to 32.

<sup>6</sup> See LMS File Nos. 0000083871 and 0000084115.

<sup>7</sup> The World Health Organization has classified COVID-19 as a pandemic and the President declared it a national emergency.

<sup>8</sup> 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.”).

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, Nexstar Broadcasting, Inc.'s requests for waiver of the Commission's tolling provisions **ARE GRANTED**. The construction permits (LMS File Nos. 0000034787 and 0000034806, respectively) for WOTV(TV), Battle Creek, Michigan and WANE-TV, Fort Wayne, Indiana, **ARE TOLLED to October 15, 2020**. Grant of these tolling waivers does not permit the Stations to recommence operation on their pre-auction channels. We also remind Nexstar that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>9</sup>

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>9</sup> See 47 CFR § 73.3598(b).