



Federal Communications Commission
Washington, D.C. 20554

May 12, 2020

CNZ Communications SE, LLC
15200 Sunset Blvd
Suite 202
Pacific Palisades, CA90272

Re: Request for Tolling Waiver
WLGA(TV), Opelika, AL
Facility ID No. 11113
LMS File No. 0000112261

Dear Licensee,

On April 15, 2020, CNZ Communications SE, LLC (CNZ), the licensee of WLGA(TV), Opelika, Alabama (WLGA or Station), filed the above-referenced request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant CNZ's request and toll the expiration date of WGLA's construction permit through November 16, 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

CNZ requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities through November 16, 2020. CNZ was granted an extension and two tolling

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).

waivers of the expiration date of its construction permit which now expires on May 20, 2020.⁵ CNZ is in the process of constructing a Distributed Transmission System (DTS) network. CNZ has completed construction of DTS site #1, from which it is currently operating, and is working to complete construction of DTS site #2. Although it intended to complete construction prior to its construction deadline, delays relating to the COVID-19 pandemic have made it unlikely that DTS site #2 will be ready by that date.⁶ Accordingly, CNZ requests that the Commission waive its tolling rule and toll WLGA's construction permit expiration date to November 16, 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 reinstate and toll the expiration date of the Station's construction permit. CNZ has demonstrated it will be unable to complete construction of its post-auction channel facilities due to construction delays completing its DTS #2 site. We also find that grant of CNZ's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WLGA has already ceased operation on its pre-auction channel and is operating an interim facility on its post-auction channel. To the extent some viewers are unable to receive WLGA's signal while it operates its interim facilities, we believe that CNZ 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 reinstatement of the Station's construction permit and grant of waiver and tolling of the Station's construction permit.

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

The above facts considered, CNZ Communications SE, LLC's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit for WLGA(TV), Opelika, Alabama, **IS TOLLED to November 16, 2020**. Grant of this tolling waiver does not permit WLGA to

⁵ See LMS File Nos. 0000063323, 0000072815 and 0000087687. WLGA was repacked from channel 30 to channel 17.

⁶ The World Health Organization has classified COVID-19 as a pandemic and the President declared it a national emergency.

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.").

recommence operation on its pre-auction channel. We also remind CNZ 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): Kathleen A. Kirby, Esq.

⁸ See 47 § CFR 73.3598(b).