



Federal Communications Commission
Washington, D.C. 20554

July 14, 2020

Entravision Holdings, LLC
Mark Boelke
2425 Olympic Blvd STE 6000 W
Santa Monica, CA 90404

Re: Request for Tolling Waiver
WUTF-TV, Worcester, MA
Facility ID No. 30577
LMS File No. 0000117324

Dear Licensee,

On July 8, 2020, Entravision Holdings, LLC (Entravision), the licensee of WUTF-TV, Worcester, Massachusetts (WUTF 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 Entravision's request and toll the expiration date of WUTF's construction permit to August 1, 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

Entravision requests waiver of the tolling rule and a brief tolling of its construction permit for its post-incentive auction channel facilities to August 1, 2020. WUTF is currently operating on its post-

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).

auction channel with temporary facilities.⁵ WUTF was previously granted a construction permit extension and tolling and its construction permit expires on July 15, 2020.⁶

Entravision states that it had expected to complete construction of its post-auction channel facilities by its July 15, 2020 deadline, however construction was delayed because of travel restrictions due to the COVID-19 pandemic.⁷ Specifically, Entravision was expecting that its consulting engineer would be able to return to oversee the construction work, but travel from Florida to Massachusetts has been delayed as the engineer must observe a 14-day quarantine before beginning work. Counsel for Entravision has informed Video Division staff that the Station's engineering director now believes that he can secure the services of a Massachusetts-based engineer who can finalize the work and proof the new transmission system by the end of July. In light of these delays, Entravision requests that the Commission waive its tolling rule and briefly toll the WUTF construction permit expiration date to August 1, 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 briefly toll the expiration date of the Station's construction permit to August 1, 2020.⁸ Entravision has demonstrated it did not complete construction of its post-auction channel facilities due to construction delays. We also find that grant of Entravision's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WUTF has already ceased operation on its pre-auction channel and is operating on its post-auction channel from an interim facility. To the extent viewers are unable to receive WUTF's signal while it operates from its interim facility, we believe that Entravision 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 Entravision 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."⁹ 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.

We further remind Entravision that the Commission has stated that the Bureau may announce a deadline for the submission of final expense documentation for reimbursement well before the statutory

⁵ See LMS File No. 0000117375. WUTF was repacked from channel 29 to channel 19.

⁶ See LMS File Nos. 0000079850, 0000099597, and 0000113588.

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

⁸ 47 CFR § 73.3598(b).

⁹ 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) (*Incentive Auction R&O*), aff'd, *Nat'l Ass'n of Broadcasters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

deadline of July 3, 2023.¹⁰ Thus, we strongly encourage the Station to diligently pursue satisfaction of the current deadlines to improve the chances that there will be sufficient funds available to reimburse the Station for its legitimate repacking expenses, and we encourage Entravision to submit eligible invoices as soon as practicable.

The above facts considered, Entravision Holdings, LLC's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000034871) for WUTF-TV, Worcester, Massachusetts, **IS TOLLED to August 1, 2020**. Grant of this tolling waiver does not permit WUTF to recommence operation on its pre-auction channel. We also remind Entravision that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹¹

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail):
Barry Friedman, Esq.
(Attorney of Record)

¹⁰ See *id.* at 6567, para. 616; *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, MB Docket 18-214 and GN Docket No. 12-268, Report and Order, 34 FCC Rcd 1690, 1739, para. 105 (2019). See also *Incentive Auction Task Force and Media Bureau Report on the Status of the Post-Incentive Auction Transition and Reimbursement Program et al.*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 34 FCC Rcd 304, 312, para. 23 and n.35 (IATF/MB 2019).

¹¹ See 47 CFR § 73.3598(b).