



Federal Communications Commission  
Washington, D.C. 20554

September 11, 2020

University of North Carolina  
P.O. Box 14900  
Research Triangle Park, NC 27709  
[fcc\\_notice@unc.tv](mailto:fcc_notice@unc.tv)  
(via electronic mail)

Re: Request for Tolling  
WUNK-TV, Greenville, NC  
WUNJ-TV, Wilmington, NC  
Facility ID Nos. 69149 and 69332  
LMS File Nos. 0000120272 and  
0000120273

Dear Licensee,

On August 10, 2020, the University of North Carolina (UNC), the licensee of WUNK-TV, Greenville, North Carolina (WUNK) and WUNJ-TV, Wilmington, North Carolina (WUNJ) (collectively 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 UNC's requests and toll the expiration date of the Stations' construction permits to December 21, 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 demonstrate that "rare and exceptional circumstances" prevented construction by the station's construction permit expiration date.<sup>4</sup>

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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.*

<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).

UNC requests waivers of the tolling rule and tolling of the construction permits for the Stations' post-incentive auction channel facilities to December 21, 2020. The Stations are currently operating on their post-auction channels using auxiliary facilities while they complete construction of their post-auction channel facilities.<sup>5</sup> The Stations were previously granted construction permit extensions and tolling through August 31, 2020.<sup>6</sup>

UNC states that construction of the Stations' post-auction channel facilities has been delayed as a result of impacts and restrictions on construction resulting from the COVID-19 pandemic.<sup>7</sup> UNC is awaiting tower crews to arrive at the Stations' sites to complete installation of their post-auction channel facilities. UNC anticipates that the tower crews can be scheduled and be able to complete construction of both Stations' facilities prior to the extended deadline. Therefore, in light of these circumstances, UNC requests tolling of the Stations' construction permits to December 21, 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 December 21, 2020.<sup>8</sup> UNC has demonstrated it did not complete construction of the Stations' post-auction channel facilities due to construction delays. We also find that grant of UNC'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 are operating from auxiliary facilities on their post-auction channels. To the extent some viewers are unable to receive the Stations' signals while they operate using auxiliary facilities, we believe that UNC 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 UNC 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>9</sup> 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 UNC 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 deadline of July 3, 2023.<sup>10</sup> Thus, we strongly encourage the Stations to diligently pursue satisfaction of the current

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<sup>5</sup> See LMS File No. 0000106121 and 0000081301. WUNJ was repacked from channel 29 to 21 and WUNK from channel 23 to 25.

<sup>6</sup> See LMS File Nos. 0000074594, 0000074595, 0000107044 and 0000107045.

<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 CFR § 73.3598(b).

<sup>9</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) (*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.").

<sup>10</sup> 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*

deadlines to improve the chances that there will be sufficient funds available to reimburse the Stations for their legitimate repacking expenses, and we encourage UNC to submit eligible invoices as soon as practicable.

The above facts considered, the University of North Carolina's requests for waiver of the Commission's tolling provisions **ARE GRANTED**. The construction permits (LMS File No. 0000025767 and 0000025131, respectively) for WUNK-TV, Greenville, North Carolina and WUNJ-TV, Wilmington, North Carolina, **ARE TOLLED to December 21, 2020**. Grant of these tolling waivers does not permit the Stations to recommence operation on their pre-auction channels. We also remind UNC that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>11</sup>

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): Stephen Hartzell, Esq.

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*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).

<sup>11</sup> See 47 CFR § 73.3598(b).