



Federal Communications Commission
Washington, D.C. 20554

September 11, 2020

HC2 Station Group, Inc.
Renee Ilhardt
450 Park Avenue, 30th Floor
New York, NY 10022
RILLHARDT@HC2Broadcasting.com
(via electronic mail)

Re: Request for Tolling Waiver
WVTT-CD, Olean, NY
Facility ID No. 10869
LMS File No. 0000120908

Dear Licensee,

HC2 Station Group, Inc. (HC2), the licensee of WVTT-CD, Olean, New York (WVTT-CD 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 HC2's request and toll the expiration date of WVTT-CD's construction permit to December 31, 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

HC2 requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities to December 31, 2020. WVTT-CD is currently operating on its post-auction

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).

channel using an interim facility while it completes construction of its post-auction channel facilities.⁵ WVTT-CD was previously granted a construction permit extension through August 31, 2020.⁶

HC2 states that it is awaiting Commission approval on a minor change application before it can complete its permanent post-auction channel facilities. The minor change application remains pending due to required inter-government coordination and is awaiting Canadian approval that HC2 has been told will not occur until November 20, 2020, due to the needs of repacked Canadian stations with frequency dependencies. Once the approval is obtained and the minor change application is granted, HC2 predicts that it will be able to quickly complete construction. Therefore, in light of these circumstances, HC2 requests tolling of the Station's construction permit to December 31, 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 December 31, 2020.⁷ HC2 has demonstrated it has been unable to complete construction of its post-auction channel facilities due to the need to coordinate full power operation with Canada. We also find that grant of HC2's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WVTT-CD has already ceased operation on its pre-auction channel and is operating from an interim facility on its post-auction channel. To the extent some viewers are unable to receive WVTT-CD's signal while it operates using its interim facility, we believe that HC2 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.

The above facts considered HC2 Station Group, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000088394) for WVTT-CD, Olean, New York, **IS TOLLED to December 31, 2020**. Grant of this tolling waiver does not permit WVTT-CD to recommence operation on its pre-auction channel. We also remind HC2 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 email): Rebecca Hanson, Esq.

⁵ See LMS File No. 0000117684. WVTT-CD was a winning "band changing" bidder and was repacked from channel 34 to channel 11.

⁶ See LMS File No. 0000105589.

⁷ 47 CFR § 73.3598(b).

⁸ See 47 CFR § 73.3598(b).