



Federal Communications Commission
Washington, D.C. 20554

January 7, 2021

RSS Media Marketing
Sandra Smith
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Rocky Mount, NC 27804
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(via electronic mail)

Re: Request for Tolling Waiver
WHIG-CD, Rocky Mount, NC
Facility ID No. 168101
LMS File No. 0000130180

Dear Licensee,

On December 29, 2020, RSS Media Marketing (RSS), the licensee of WHIG-CD, Rocky Mount, North Carolina (WHIG-CD or Station), filed the above-referenced request, as amended, for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant RSS' request and toll the expiration date of WHIG-CD's construction permit through April 30, 2021.

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

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.*

construction permit expiration date.⁴

RSS requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities through April 30, 2021. WHIG-CD has been granted a construction permit extension and its construction permit was extended to December 30, 2020.⁵ WHIG-CD is currently operating on its post-auction channel with an interim facility.⁶

RSS states that all equipment needed to complete construction of the Station's post-auction channel facility has been delivered and is on hand. RSS states that it is continuing to resolve the issue of the structural integrity of the Station's tower. RSS has retained an engineering firm to prepare a structural analysis report. The engineering firm only just recently delivered the first part of the report which found critical portions of the tower would be stressed beyond allowed limits when the Station's new equipment was added. RSS is now working with the engineering firm on the second part of its analysis to determine what needs to be done to reinforce the tower. RSS estimates that the reinforcement project will be completed within 75-90 days. Based on the foregoing, RSS requests that the Commission waive its tolling rule and toll the WHIG-CD construction permit expiration date through April 30, 2021.

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 through April 30, 2021.⁷ RSS has demonstrated it has been unable to complete construction of its post-auction channel facilities due to construction delays. We also find that grant of RSS' waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WHIG-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 WHIG-CD's signal while it operates using its interim facility, we believe that RSS 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 RSS 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."⁸ Additional expenses incurred, such as

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).

⁵ LMS File No. 0000116800. WHIG-CD was repacked from channel 31 to channel 30.

⁶ See LMS File No. 0000130183.

⁷ 47 CFR § 73.3598(b).

⁸ 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.").

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 RSS of the deadline for submitting final expense documentation for reimbursement for the Station is March 22, 2022.⁹ 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 RSS to submit eligible invoices as soon as practicable.

The above facts considered, RSS Media Marketing's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000028657) for WHIG-CD, Rocky Mount, North Carolina, **IS TOLLED through April 30, 2021**. Grant of this tolling waiver does not permit WHIG-CD to recommence operation on its pre-auction channel. We also remind RSS that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹⁰

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division Media Bureau

cc (via electronic mail): Ronald Maines, Esq.

⁹ See *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 35 FCC Rcd 11273, 11277, paras. 10-11 (IATF/MB Oct. 7, 2020) (setting three filing deadlines for submission of all remaining repack invoices: for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period, the deadline for submitting all remaining invoices is October 8, 2021; the deadline for entities assigned completion dates in the second half of the transition period is March 22, 2022; and the deadline for all other participants in the reimbursement program is September 5, 2022).

¹⁰ See 47 CFR § 73.3598(b).