



Federal Communications Commission
Washington, D.C. 20554

October 7, 2021

WRGB Licensee, LLC
Harvey Arnold
10706 Beaver Dam Road
Cockeysville, MD 21030
fcccontacts@sbgstv.com
(via electronic mail)

Re: Request for Tolling Waiver
WRGB(TV), Schenectady, NY
Fac ID No. 73942
LMS File No. 0000151080

Dear Licensee,

On June 25, 2021, WRGB Licensee, LLC (WLL), licensee of full power television station WRGB(TV), Schenectady, New York (WRGB or Station) filed the above-referenced request for waiver, as amended, of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant WLL's Request and toll the expiration date of the Station's digital-digital replacement translator (DTDRT) construction permit to December 30, 2021.

Background. Requests for additional time to construct modified digital low power television facilities are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.¹ 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.² 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.³

Request For Tolling Waivers. In 2018, the Station filed an application for a digital-digital replacement translator (DTDRT) to replace a portion of its digital service area that was lost when it was

¹ See 47 CFR § 73.3598(b).

² *Id.*

³ 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) (*Streamlining MO&O*) (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).

repacked by the Commission's Incentive Auction. The construction permit for the DTDRT was granted on July 10, 2018 (DTDRT CP).⁴

Since the grant of the DTDRT CP, WLL states that it has been working to complete construction. In November 2020, WLL issued a purchase order for its new antenna. However, the tower crew hired to install the antenna discovered rust holes on the legs of the Station's tower. In the interests of safety, WLL told the tower crew to not proceed with the work. WLL's chief engineer promptly contacted the tower owner to discuss the problem and to advise him that WLL would work with them to address the issue and make sure the tower was structurally sound. Unfortunately, despite WLL's best efforts, it was unable to reach agreement with the tower owner to get a structural analysis completed by the July 10, 2021 DTDRT CP expiration date.

In August 2021, realizing that there seemed to be no clear path to getting a structural analysis completed by the tower owner, WLL retained its own tower study company to perform a structural analysis of the tower. The company quickly delivered a report in September 2021, which indicated that nine separate portions of the tower were structurally unacceptable, and provided 18 specific recommendations. In light of this report, WLL's installation company has continued to decline to install the antenna due to the structural safety issues. WLL is now working with the tower owner to schedule repair work on the tower in order to enable installation of the DTDRT antenna. WLL states that the transmitter already has been installed and electrical power to the transmitter is in place. WLL continues that the antenna and all other equipment, including the mask filter, is at the WRGB studios and ready for installation. Upon completion of necessary tower structural repairs and an engineer's certification that the tower is safe for installation of the DTDRT antenna, WLL states that the antenna will be installed. At that point, the DTDRT facility will go on the air and WLL will file an application for a license to cover.

Based on the foregoing, WLL requests that the Commission waive its tolling rules and toll its DTDRT CP to December 30, 2021.

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive the rules and toll the expiration date of DTDRT CP to December 30, 2021.⁵ WLL has demonstrated that it has been diligently making progress towards completion of the Station's DTDRT facilities but was unable to complete construction due to delays with a structural safety study of the facility's tower structure. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Station's DTDRT CP.

The above facts considered, the request for waiver of the tolling rules of WRGB Licensee, LLC. **IS GRANTED** and the expiration date of the construction permit (LMS File No. 0000054700) for WRGB(TV), Schenectady, New York, **IS TOLLED** to December 30, 2021. We note that another request for tolling or tolling waiver will not be favorably viewed unless accompanied by a showing and written support that completion of the Station's facilities was prevented by additional rare and extraordinary

⁴ See LMS File No. 0000054700; *Special Displacement Window PN; Incentive Auction Task Force and Media Bureau Extend Post Incentive Auction Special Displacement Window Through June 1, 2018*, Public Notice, 33 FCC Rcd 3794 (IATF/MB 2018).

⁵ 47 CFR § 73.3598(b).

circumstances outside of the Station's control. WLL must also include with any such request a detailed plan for completing construction.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Paul A. Cicelski, Esq.