



Federal Communications Commission
Washington, D.C. 20554

September 30, 2022

Gray Television Licensee, LLC
WHSV-TV
50 North Main Street
Harrisonburg, VA 22802
robert.folliard@gray.tv
(via electronic mail)

Re: Request for Tolling Waivers
WHSV-TV, Harrisonburg, VA
Fac ID No. 4688
LMS File No. 0000197741

Dear Licensee,

This concerns request for waiver of the Commission's tolling provisions and tolling of construction permit expiration date (Request) filed by Gray Television Licensee, LLC (Gray), licensee of full power television station WHSV-TV, Harrisonburg, Virginia (WHSV-TV or Station). Gray's request specifically is in regards to the tolling of its displacement construction permit (Displacement CP) for its digital-to-digital replacement translator at Broadway, Virginia (Broadway DRT). For the reasons below, we grant Gray's Request and toll the expiration date of the Broadway DRT displacement construction permit to January 17, 2023.

Background. Requests for additional time to construct a low power digital facility 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. WHSV-TV is a full power television station licensed to Harrisonburg, Virginia. The Station was granted a construction permit for the Broadway DRTI.⁴ Gray

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).

⁴ See LMS File No. 0000054694. The Station has fully completed construction of its repacked facility.

was twice granted waivers of the tolling rules and the expiration date of the original construction permit for the Broadway DRT was most recently tolled to September 6, 2022.⁵

In its well-documented showing, Gray states that, since the grant of its last tolling waiver in June 2022, the Commission, on September 1, 2022, adopted the proposed channel substitution for WVPT-TV, Staunton, Virginia, allowing that full power station to change its channel to channel 15.⁶ As a result, Gray states that the Broadway DRT's channel 15 was displaced. Gray states it has already identified a displacement channel (channel 25) and its displacement application was recently granted (Displacement CP).⁷ In addition, in August 2022, Gray notes that it obtained the necessary permits from Shenandoah County to begin construction of the Broadway DRT. Gray expects to be able to complete construction of the Broadway DRT by its requested extended construction deadline of January 17, 2023. Based on the foregoing, Gray requests that the Commission waive its tolling rules and toll the Displacement CP for its Broadway DRT.

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive the rules and toll the expiration dates of the Displacement CP for the Broadway DRT to January 17, 2023.⁸ Gray has demonstrated that it has been diligently making progress towards completion of the Broadway DRT, but the facilities were only just recently displaced when the Commission granted the petition for rulemaking to permit WVPT to change channels to channel 15. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Displacement CP.

The above facts considered, the request for waiver of the tolling rules of Gray Television Licensee, LLC **IS GRANTED** and the expiration date of the displacement construction permit (LMS File No. 00000177269) for the Broadway DRT for WHSV-TV, Harrisonburg, Virginia, **IS TOLLED** to January 17, 2023. We remind Gray that any subsequent tolling requests will be subject to the Commission's tolling provisions.⁹ To the extent Gray seeks additional tolling, such a request must include a detailed plan for completing construction and a showing demonstrating that completion of the Broadway DRT facilities was prevented for an eligible tolling reason or additional rare and extraordinary

⁵ See LMS File Nos. 0000146624 and 0000185594.

⁶ See *Television Broadcasting Services Staunton, Virginia*, Final Rule, 87 FR 57148 (Sept. 19, 2022).

⁷ See LMS File No. 0000177269. Because the Broadway DRT is unbuilt, when the displacement application was granted, it was treated as a minor modification of the original Broadway DRT construction permit and assigned the Broadway DRT construction permit's current expiration date of September 6, 2022. See 47 C.F.R. § 74.787.

⁸ 47 CFR § 73.3598(b).

⁹ See 47 CFR § 73.3598(b). A station may also seek a waiver of the tolling rule to receive additional time to construct in the case where "rare or exceptional circumstances" prevent construction. See *Streamlining MO&O*, 14 FCC Rcd at 17536, para. 42.

circumstances outside of Gray's control.¹⁰ We will look unfavorably upon any future request that does not include such information.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Joan Stewart, Esq.

¹⁰ *Id.*