



Federal Communications Commission  
Washington, D.C. 20554

May 15, 2023

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

Re: Request for Tolling Waivers  
WHSV-TV, Harrisonburg, VA  
Fac ID No. 4688  
LMS File No. 0000214718

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 July 31, 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.<sup>1</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>2</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>3</sup>

*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 DRT.<sup>4</sup> Gray

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<sup>1</sup> See 47 CFR § 73.3598(b).

<sup>2</sup> *Id.*

<sup>3</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) (*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).

<sup>4</sup> See LMS File No. 0000054697.

was granted multiple waivers of the tolling rules and the expiration date of the original construction permit for the Broadway DRT was most recently tolled to June 17, 2023.<sup>5</sup>

As previously reported, the Commission adopted a channel substitution for WVPT-TV, Staunton, Virginia, allowing that full power station to change its channel to channel 15.<sup>6</sup> As a result, the Broadway DRT's channel 15 was displaced. Gray subsequently filed a displacement application and on August 17, 2022, was granted a construction permit for channel 25 (Displacement CP).<sup>7</sup>

In its well-documented showing, Gray states that, since the grant of its last tolling waiver in February 2023, it has been continuing to complete construction of the Broadway DRT displacement facilities. Gray states that it recently received delivery of the main transmitter shelter after what Gray describes as "a long supply-chain disruption." However, Gray notes that the company undertaking the transmitter installation has reported that it will not be able to complete the work until after the current June 17, 2023 Displacement CP expiration date. The company estimates that it will need an additional two weeks to a month to complete construction. Based on the foregoing, Gray requests that the tolling rules be waived and its Displacement CP be tolled.

*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 the Displacement CP for the Broadway DRT to July 31, 2023.<sup>8</sup> Gray has demonstrated that it has been diligently making progress towards completion of the Broadway DRT, but the facilities were displaced when the Commission granted the petition for rulemaking to permit WVPT to change channels to channel 15. Gray has been making progress to build the displacement facilities but has faced additional construction delays. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Displacement CP.<sup>9</sup> While Gray requests that we toll the Broadway DRT's Displacement CP to September 15, 2023, based on the information provided we find that an expiration date of July 31, 2023, should provide sufficient time for Gray to complete construction. Further, given the numerous tolling waivers already granted to Gray, we find the earlier expiration date will allow us to more closely monitor the Station's construction progress.

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 July 31, 2023. **Although we anticipate this will be the final tolling request submitted by Gray**, any subsequent tolling requests will be subject to the Commission's tolling provisions.<sup>10</sup> 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

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<sup>5</sup> See LMS File No. 0000206830.

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

<sup>7</sup> See LMS File No. 0000177269.

<sup>8</sup> 47 CFR § 73.3598(b).

<sup>9</sup> We note that, based upon the record, the Gray has not provided documentation that would support reimbursement of expenses related to its DRTs.

<sup>10</sup> 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.

tolling reason or additional rare and extraordinary circumstances outside of Gray's control.<sup>11</sup> Such a request must also include supporting documentation for all claims. 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.

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<sup>11</sup> *Id.*