



Federal Communications Commission  
Washington, D.C. 20554

March 19, 2020

WMTM, LLC  
5670 Wilshire Blvd., Suite 1620  
Los Angeles, CA 90036

Re: Request for Tolling Waiver  
WDCO-CD, Woodstock, VA  
Facility ID No. 57905  
LMS File No. 0000105397

Dear Licensee,

On February 4, 2020, WMTM, LLC (WMTM), the licensee of WDCO-CD, Woodstock, Virginia (WDCO-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 WMTM's request and toll the expiration date of WDCO-CD's construction permit to July 27, 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.<sup>1</sup> All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of Section 73.3598(b) of the Rules.<sup>2</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>3</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>4</sup>

WMTM requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities to July 27, 2020. WDCO-CD is currently operating on its post-auction channel with temporary facilities.<sup>5</sup> WDCO-CD was previously granted a construction permit

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<sup>1</sup> See 47 CFR § 73.3700(b)(5).

<sup>2</sup> See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

<sup>3</sup> *Id.*

<sup>4</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) (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>5</sup> See LMS File No. 0000105680.

extension and tolling and its construction permit was tolled through March 13, 2020.<sup>6</sup> Completion of the Station's post-auction channel facilities was originally delayed because WDCO-CD needed to coordinate its construction activities with co-owned station WIAV-CD, Washington, DC, which is not a repacked station but will be displaced by a non-co-owned station after the Phase 8 phase deadline of March 30, 2020. Accordingly, WDCO-CD could not complete its construction until March 13, 2020. More recently, WMTM reports that the tower crew recently informed the Station that they are committed to other jobs until the beginning of March 2020. In addition, WMTM learned that its transmission line will not be shipped until March 13, 2020. Finally, WMTM reports that there was delay in getting the Station's construction plans approved by the tower owner. As a result of all of these delays, WMTM requests a waiver of the Commission's tolling rules and tolling of its construction permit to July 27, 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 July 27, 2020. We find that construction delays have prevented WDCO-CD from completing construction of its post-auction channel facilities by its current deadline. We also find that grant of WMTM's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WDCO-CD has already ceased operation on its pre-auction channel and initiated temporary operations on its post-auction channel. To the extent some viewers are unable to receive WDCO-CD's signal while it operates using its interim facility, we believe that WMTM 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 WMTM 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."<sup>7</sup> Additional expenses incurred, such as 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.

The above facts considered, WMTM, LLC's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000078661) for WDCO-CD, Woodstock, Virginia **IS TOLLED to July 27, 2020**. Grant of this tolling waiver does not permit WDCO-CD to recommence operation on its pre-auction channel. We also remind WMTM that any

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<sup>6</sup> See LMS File No. 0000073610 and 0000086668.

<sup>7</sup> 47 U.S.C. § 1452(b)(4)(A)(i). See also *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>8</sup>

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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

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<sup>8</sup> See 47 § CFR 73.3598(b).