



Federal Communications Commission
Washington, D.C. 20554

July 8, 2020

University of North Carolina
P.O. Box 14900
Research Triangle Park, NC 27709
fcc_notice@unctv.org
(sent via electronic mail)

Re: Requests for Tolling Waiver

WUNL-TV, Winston-Salem, NC
Facility ID No. 69360
LMS File No. 0000116242

WUNP-TV, Roanoke Rapids, NC
Facility ID No. 69397
LMS File No. 0000116243

WUND-TV, Edenton, NC
Facility ID No. 69292
LMS File No. 0000116241

Dear Licensee,

On June 17, 2020, University of North Carolina (UNC), the licensee of WUNL-TV, Winston-Salem, North Carolina (WUNL); WUNP-TV, Roanoke Rapids, North Carolina (WUNP); and WUND-TV, Edenton, North Carolina (WUND) (collectively Stations), filed the above-referenced requests for waiver of the Commission's tolling provisions and tolling of the Stations' construction permits. For the reasons below, we grant UNC's waiver requests and toll WUNL and WUNP's construction permits for 180 days to January 4, 2021, and WUND's construction permit 180 days to January 11, 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

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.*

demonstrate that “rare and exceptional circumstances” prevented construction by the station’s construction permit expiration date.⁴

UNC requests waivers of the tolling rule tolling of its construction permits for the Stations’ post-incentive auction channel facilities. The Stations are currently operating on their post-auction channel with auxiliary facilities.⁵ WUNL and WUNP were previously granted construction permit extensions and tolling waivers through July 7, 2020, and WUND a construction permit extension through July 15, 2020.⁶

UNC states that it has been unable to complete construction of the Stations’ post-auction channel facilities because of construction delays. The Stations’ post-auction channel antennas were due to be installed by a Canadian company and such work could not be completed because of travel restrictions between the United States and Canada caused by the COVID-19 pandemic.⁷ UNC states that the company has been able to begin work again, but that installation of the Station’s antenna’s will not be completed before the Station’s construction permit deadlines. Based on the foregoing UNC requests that the Commission waive its tolling rule and toll the Stations’ construction permit expiration dates for an additional 180 days.

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 Stations’ construction permits.⁸ UNC has demonstrated it did not complete construction of the Stations’ shared tower due to construction delays. We also find that grant of UNC’s waiver and tolling requests is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. The Stations have already ceased operation on their pre-auction channels and initiated operations on their post-auction channels using an auxiliary facility. To the extent some viewers are unable to receive the Stations signals while they operate using their auxiliary facilities, we believe that UNC has every incentive to ensure viewers are fully informed about the Stations’ transition plans. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Station’s construction permit.

We remind UNC 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

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 See LMS File Nos. 0000081302, 0000081303, and 0000098257. WUNL was repacked from channel 32 to 33; WUNP from channel 36 to 27; and WUND from channel 20 to channel 29.

⁶ See LMS File Nos. 0000074596, 0000107046, 0000074598, 0000107047, and 0000086772.

⁷ The World Health Organization has classified COVID-19 as a pandemic and the President declared it a national emergency.

⁸ 47 CFR § 73.3598(b).

to relocate its television service from one channel to the other.”⁹ Additional expenses incurred, such as expenses resulting from changes in a Stations’ transition plans that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

We further remind UNC that the Commission has stated that the Bureau may announce a deadline for the submission of final expense documentation for reimbursement well before the statutory deadline of July 3, 2023.¹⁰ Thus, we strongly encourage the Stations to diligently pursue satisfaction of the current deadlines to improve the chances that there will be sufficient funds available to reimburse the Stations for their legitimate repacking expenses, and we encourage UNC to submit eligible invoices as soon as practicable.

The above facts considered, University of North Carolina’s requests for waiver of the Commission’s tolling provisions **ARE GRANTED**. The construction permits (LMS File Nos. 0000034443 and 0000034416, respectively) for WUNL-TV, Winston-Salem, North Carolina, and WUNP-TV, Roanoke Rapids, North Carolina, **ARE TOLLED to January 4, 2021**, and the construction permit (LMS File No. 0000025090) for WUND-TV, Edenton, North Carolina, **IS TOLLED to January 11, 2021**. Grant of these tolling waivers does not permit the Stations to recommence operation on their pre-auction channels. We also remind UNC that any subsequent requests for tolling of the Stations construction permit deadline will be subject to the Commission’s tolling provisions.¹¹

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Stephen Hartzell, Esq.

⁹ 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) (“The appropriate scope of ‘costs reasonably incurred’ necessarily will have to be decided on a case-by-case basis.”).

¹⁰ *See id.* at 6567, para. 616; *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, MB Docket 18-214 and GN Docket No. 12-268, Report and Order, 34 FCC Rcd 1690, 1739, para 105 (2019). *See also Incentive Auction Task Force and Media Bureau Report on the Status of the Post-Incentive Auction Transition and Reimbursement Program et al.*, MB Docket 16-306 and GN Docket No. 12-268, Public Notice, 34 FCC Rcd 304, 312, para. 23 and n.35 (IATF/MB 2019).

¹¹ *See* 47 CFR § 73.3598(b).