



Federal Communications Commission  
Washington, D.C. 20554

May 21, 2021

Sun Broadcasting, Inc.  
James Schwartzel  
2824 Palm Beach Boulevard  
Fort Myers, FL 33916  
[Jim.Schwartzel@sbroadcast.com](mailto:Jim.Schwartzel@sbroadcast.com)  
(via electronic mail)

Re: Request for Tolling Waiver  
WLZE-LD, Fort Myers, FL  
Facility ID No. 41376  
LMS File No. 0000144499

Dear Licensee,

On May 4, 2021, Sun Broadcasting, Inc. (Sun), the licensee of WLZE-LD, Fort Myers, Florida (WLZE-LD 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 Sun's request and toll the expiration date of WLZE-LD's construction permit 180 days through December 20, 2021.<sup>1</sup>

*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.<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>

*Request For Tolling Waiver.* Sun requests waiver of the tolling rule and tolling of its construction permit (LMS File No. 0000145004) for its modified digital facilities (Mod CP) through December 20,

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<sup>1</sup> Because 180 days from the Station's current construction expiration date falls on Saturday, December 18, 2021, we will extend the construction permit to the next business day, which would be Monday, December 20, 2021. *See* 47 CFR § 1.4.

<sup>2</sup> *See* 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).

2021. As part of the Incentive Auction repacking process, WLZE-LD's channel 20 was displaced by WVEA-TV, Tampa, Florida, that was repacked to channel 20. WLZE-LD timely filed a displacement application requesting a construction permit for channel 27 and that application was granted on June 21, 2018.<sup>5</sup> Since the grant of its displacement application for channel 27, Sun states that construction has been delayed by a tower design problem adversely affecting construction of the tower structure that will house the Station's facilities – the tower of Fort Myers Broadcasting Company (FMBC)'s WINK-TV, Fort Myers, Florida, a full power station that was repacked as a result of the Commission's Incentive Auction and repacking process.

As outlined in FMBC's recent request for tolling waiver, granted on April, 19, 2021,<sup>6</sup> construction of the WINK-TV tower has been delayed by unforeseeable tower design problems requiring additional local land use approvals as well as FCC environmental review of FMBC's tower construction proposal. FMBC reported in that filing that it was working with local and FCC officials to obtain the remaining approvals. FMBC stated that the new tower is fabricated and ready to ship, its new antenna and transmission line are also manufactured and being stored in a warehouse and ready for shipment. FMBC further stated that the transmitter for WINK-TV's post-auction channel facility is already installed at the transmitter site. FMBC represented that, upon grant of all necessary construction permit modification applications, it will be in a position to construct the new WINK-TV tower along with the final post-auction channel facilities.

Sun maintains that construction of the WLZE-LD's displacement facilities on channel 20 required the grant of a minor modification to specify the new WINK-TV tower location. Until FMBC obtained a grant of its tower antenna structure registration application, neither WINK-TV nor WLZE-LD could obtain a grant of a minor change application specifying the new WINK-TV tower location. We note that, subsequent to Sun filing its tolling waiver request, FMBC's antenna structure registration application for WINK-TV was granted, as was Sun's minor change application to WLZE-LD Mod CP. Sun is now poised to complete installation of its displacement facilities on the WINK-TV tower. Meanwhile, WLZE-LD is operating on its displacement channel from a temporary site under an engineering STA extension.<sup>7</sup>

Sun argues that the public interest benefit of waiving the tolling rule and extending WLZE-LD's Mod CP is substantial. In return for this delay, WLZE-LD, its advertisers and viewers will avoid the disruption of service that would otherwise result if the waiver was denied and Sun was forced to go silent. Accordingly, Sun requests waiver and tolling of its construction permit through December 20, 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 Mod CP to December 20, 2021.<sup>8</sup> Sun has demonstrated it has been diligently making progress towards completion of its displacement facility, but was unable to complete construction of the Station's Mod CP facilities due to construction delays outside of its control. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Station's construction permit.

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<sup>5</sup> See LMS File No. 0000051993 as modified by LMS File No. 0000145044.

<sup>6</sup> See LMS File No. 0000141654 (granting tolling through October 27, 2021). WXCW(TV), Naples, Florida is also located on the same tower and has also been granted tolling through October 27, 2021. See LMS File No. 0000141856.

<sup>7</sup> See LMS File No. 0000133330.

<sup>8</sup> 47 CFR § 73.3598(b).

We remind Sun that, pursuant to the Reimbursement Expansion Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs reasonably incurred as a result of the reorganization of broadcast television spectrum.<sup>9</sup> Please note, however, that additional expenses incurred, such as those resulting from changes in a station's plan to construct its displacement facility that are unrelated to the displacement, may not be eligible for reimbursable from the Fund.

We further remind Sun that the deadline for submitting final expense documentation for reimbursement for the Station is September 5, 2022.<sup>10</sup> Thus, we strongly encourage the Station to diligently pursue completion of the current deadlines to improve the likelihood that there will be sufficient funds available to reimburse the Station for its legitimate expenses, and we encourage Sun to submit eligible invoices as soon as practicable.

The above facts considered, Sun Broadcasting, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 00000145044) for WLZE-LD, Fort Myers, Florida, **IS TOLLED through December 20, 2021**. We remind Sun that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>11</sup> To the extent the Station seeks an additional extension of tolling, such a request must include a detailed plan for completing construction of the Station's facilities. We will look unfavorably upon any future request that does not include such a plan.

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): Joseph A. Belisle, III, Esq.

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<sup>9</sup> See *Consolidated Appropriations Act, 2018*, Pub. L. 115-141, at Division E, Title V, § 511, 132 Stat. 348 (2018) (codified at 47 U.S.C. § 1452(j)-(n)). See also 47 CFR § 73.3701 (Reimbursement Under the Reimbursement Expansion Act); *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 34 FCC Rcd 1690 (2019); and *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking and Order, 33 FCC Rcd 7855 (2018).

<sup>10</sup> See *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, Public Notice, 35 FCC Rcd 11273, 11277, paras. 10-11 (IATF/MB Oct. 7, 2020) (setting three filing deadlines for the submission of all outstanding repack invoices, notably: 1) October 8, 2021 for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period; 2) March 22, 2022 for entities assigned completion dates in the second half of the transition period; and 3) September 5, 2022 for all other participants in the reimbursement program).

<sup>11</sup> 47 CFR § 73.3598(b).