



Federal Communications Commission
Washington, D.C. 20554

July 13, 2021

South Carolina Educational TV Commission
Mark Jahnke
1041 George Rogers Boulevard
Columbia, SC 29201
mjahnke@scetv.org

Re: Request for Tolling Waiver
WNTV(TV), Greenville, SC
Facility ID No. 61010
LMS File No. 0000150893

Dear Licensee,

On June 23, 2021, South Carolina Educational TV Commission (SCETV), the licensee of WNTV(TV), Greenville, South Carolina (WNTV or Station), filed the above-referenced request, as amended, for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant SCETV's request and toll the expiration date of WNTV's construction permit through December 31, 2021.¹

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.² All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.³ 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.⁴ 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.⁵

¹ We note that in its request SCETV requested tolling for a period of 12 months. We find that providing tolling through the end the current calendar year will provide sufficient time for SCETV to make construction progress and have a clearer picture of the timeframe for completion. If additional construction time is necessary, SCETV may file for additional tolling providing the most recent information with regards to the Station's construction status. We also find limiting tolling in this matter is prudent in light of the Station's March 2022 reimbursement filing deadline. *See infra* note 10.

² *See* 47 CFR § 73.3700(b)(5).

³ *See* 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

⁴ *Id.*

⁵ *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

SCETV requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities. WNTV has been granted a construction permit extension and was subsequently granted tolling of its construction permit through June 28, 2021.⁶ WNTV is currently operating on its post-auction channel with an interim facility.⁷

SCETV is in the process of constructing a new tower for the Station. Unfortunately, according to SCETV, it has encountered a series of delays with obtaining the necessary local building and zoning permits. Specifically, the local zoning authority has informed SCETV that it must obtain a special exemption to construct a new tower at the mountaintop site and SCETV will need a special easement to move the existing power lines on the site to accommodate the new tower. SCETV's local zoning counsel is gathering the necessary documents and materials requested by the zoning authority. The tower and site project are presently scheduled for a meeting with the local zoning authority in August 2021. As a result, SCETV now estimates that the local permitting process will take between six to eight months from June 2021, construction of the new tower will take three to four months after zoning approval is obtained, and an additional month will be needed to install and test the Station's antenna and transmission line. Based on the foregoing, SCETV requests that the Commission waive its tolling rule and toll the WNTV construction permit expiration date.

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 through December 31, 2021.⁸ SCETV has demonstrated it has been unable to complete construction of its post-auction channel facilities due to local permitting delays. We also find that grant of SCETV's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WNTV has already ceased operation on its pre-auction channel and is operating from an interim facility on its post-auction channel. To the extent some viewers are unable to receive WNTV's signal while it operates using its interim facility, we believe that SCETV 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 SCETV 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."⁹ 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.

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).

⁶ LMS File Nos. 0000113886 and 0000129848. WNTV was repacked from channel 9 to channel 8 and operates on channel 8 on a shared basis with WRET-TV, Spartanburg, South Carolina.

⁷ See LMS File Nos. 0000129849, 0000129849 and 0000150892.

⁸ 47 CFR § 73.3598(b).

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) (*Incentive Auction R&O*), *aff'd*, *Nat'l Ass'n of Broadcasters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

We further remind SCETV that the deadline for submitting final expense documentation for reimbursement for the Station is March 22, 2022.¹⁰ Thus, we strongly encourage the Station to diligently pursue satisfaction of the current deadlines to improve the chances that there will be sufficient funds available to reimburse the Station for its legitimate repacking expenses.

The above facts considered, South Carolina Educational TV Commission's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000034598) for WNTV(TV), Greenville, South Carolina, **IS TOLLED through December 31, 2021**. Grant of this tolling waiver does not permit WNTV to recommence operation on its pre-auction channel. We also remind SCETV that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹¹ 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 permanent post-auction 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):
Derek Teslik, Esq.
Margaret Miller, Esq.

¹⁰ See *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 35 FCC Rcd 11273, 11277, paras. 10-11 (IATF/MB Oct. 7, 2020) (setting three filing deadlines for submission of all remaining repack invoices: for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period, the deadline for submitting all remaining invoices is October 8, 2021; the deadline for entities assigned completion dates in the second half of the transition period is March 22, 2022; and the deadline for all other participants in the reimbursement program is September 5, 2022).

¹¹ 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 *1998 Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17536, para. 42 (1999).