



Federal Communications Commission
Washington, D.C. 20554

October 18, 2021

New Hampshire Public Broadcasting
Steve Chao
268 Mast Road
Durham, NH 03824
schao@nhpbs.org
(via electronic mail)

Re: Request for Tolling Waiver
W50DP-D, Hanover, NH
Fac ID No. 69322
LMS File No. 0000158835

Dear Licensee,

This concerns a request for waiver of the Commission's tolling provisions and tolling of construction permit expiration date (Request), as amended, filed by New Hampshire Public Broadcasting (NHPB), licensee of low power television station W50DP-D, Hanover, New Hampshire (W50DP-D or Station). For the reasons below, we grant NHPB's Request and toll the expiration date of the Station's construction permit to May 4, 2022.

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.¹ 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.² 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.³

Request For Tolling Waivers. The Station's digital channel 50 facility was displaced by the Incentive Auction and repacking process. NHPB filed displacement application requesting channel 36 in

¹ See 47 CFR § 73.3598(b).

² *Id.*

³ 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).

the Commission's displacement application filing window for displaced low power television stations that was granted on November 5, 2018 (Displacement CP) with an expiration date of November 5, 2021.⁴

Since the grant of the Displacement CP, NHPB states that it has made significant progress to construct the Station's displacement facility, including construction and operation on channel 36 with a temporary reduced power facility.⁵ NHPB states that it has already purchased and replaced the Station's antenna, installed a new circuit to power the Station's new transmitter, acquired a diesel generator to supply emergency power for the Station, purchased a new cooling system for the transmitter building, and is completing the process of ordering its new transmitter. However, NHPB maintains that it has encountered delays caused by reasons beyond its control including the unexpected passing of one of its engineers in February 2020, its senior director of engineering contracting COVID-19 which rendered him unable to work for several months and resulted in his retirement, and several well-documented COVID-19 pandemic-related supply chain and construction delays. Although NHPB has now selected a transmitter for purchase, NHPB reports that the current lead time for manufacture and delivery of the transmitter is 17 weeks. NHPB states that delivery of its new transmitter is not likely to occur until mid-winter 2021-2022, at a time when access to the Station's remote transmitter site is often limited due to weather. As a result, NHPB estimates that installation of the new transmitter will likely not be complete until sometime in March or April 2022. Based on the foregoing, NHPB requests that the Commission waive its tolling rules and toll its construction permit to May 4, 2022.

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 to May 5, 2022.⁶ NHPB has demonstrated that it has been diligently making progress towards completion of the Station's displacement facilities but was unable to complete construction due to well-documented construction delays many of which were related to the COVID-19 pandemic. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Station's construction permit.

We remind NHPB 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.⁷ Please note, however, that additional expenses incurred, such as those resulting from changes in a Station's plans to construct its displacement facilities that are unrelated to the displacement, may not be eligible for reimbursement from the Fund.

⁴ See LMS File No. 0000052528; *Special Displacement Window PN; Incentive Auction Task Force and Media Bureau Extend Post Incentive Auction Special Displacement Window Through June 1, 2018*, Public Notice, 33 FCC Rcd 3794 (IATF/MB 2018).

⁵ See LMS File No. 0000153329.

⁶ 47 CFR § 73.3598(b).

⁷ 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).

We further remind NHPB that the deadline for submitting final expense documentation for reimbursement for eligible Stations is September 5, 2022.⁸ Thus, we strongly encourage the NHPB 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 NHPB to submit eligible invoices as soon as practicable.

The above facts considered, the request for waiver of the tolling rules of New Hampshire Public Broadcasting **IS GRANTED** and the expiration date of the construction permit (LMS File No. 000052528) for W50DP-D, Hanover, New Hampshire, **IS TOLLED** to May 4, 2022. We note that another request for tolling or tolling waiver will not be favorably viewed unless accompanied by a showing and written support that completion of the Stations' permanent displacement facilities was prevented for an eligible tolling reason or by additional rare and extraordinary circumstances outside of the Stations' control.⁹ NHPB must also include with any such request a detailed plan for completing construction and returning the Stations to full power operation.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Brad Deutsch, Esq.

⁸ See *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, Public Notice, 35 FCC Rcd 11273, 11277, paras. 10-11 (IATF/MB 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).

⁹ See 47 CFR § 73.3598(b); *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.").