



Federal Communications Commission
Washington, D.C. 20554

June 13, 2022

Gray Television Licensee, LLC
WHSV-TV
50 North Main Street
Harrisonburg, VA 22802
robert.folliard@gray.tv
(via electronic mail)

Re: Request for Tolling Waivers
WHSV-TV, Harrisonburg, VA
Fac ID No. 4688
LMS File Nos. 0000189593 and
0000189594

Dear Licensee,

This concerns requests for waiver of the Commission's tolling provisions and tolling of construction permit expiration dates (Requests), as amended, filed by Gray Television Licensee, LLC (Gray), licensee of full power television station WHSV-TV, Harrisonburg, Virginia (WHSV-TV or Station). Gray's request specifically is in regards to the tolling of two digital-to-digital replacement translators (DRTs). For the reasons below, we grant Gray's Requests and toll the expiration date of the Station's construction permits to September 6, 2022.

Background. Requests for additional time to construct a low power digital facility 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. WHSV-TV is a full power television station licensed to Harrisonburg, Virginia. The Station was granted two construction permits for DRTs at Luray and Broadway, Virginia, to recover service losses that resulted when the Station was repacked during the

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).

Incentive Auction and repacking process (DRT CPs).⁴ In January 2022, Gray was granted waivers of the tolling rules and the expiration dates of the DRT CPs were tolled to April 25, 2022.⁵

Gray provides a well-documented showing as to its efforts to complete construction of its DRTs since the January 2022 tolling of their expiration dates. With respect to the Luray DRT, Gray states that it is diligently pursuing construction of these facilities. Gray reports that concrete for the tower base was poured in mid-April 2022. Gray states that it will next begin stacking tower steel and install the antenna in early to mid-June 2022 at which point the transmitter company will install and commission the transmitter in mid-June 2022.

As for the Broadway DRT, Gray states that it has been working to develop a “stormwater management plan” for submission for local county approval. Gray states that it has hired a civil engineer for this project; however, the engineer failed to deliver the plans within a month of the expected date, at which point Gray hired a different engineer. Gray states that it expects to receive the stormwater management plans from this new engineer in early June 2022 which Gray states will allow it to finalize its “Special Use Permit” from the local county. Once that is complete, Gray estimates it will need approximately 12 weeks to complete construction and the Broadway DRT should be ready to commence operations in late August 2022.

Based on the foregoing, Gray requests that the Commission waive its tolling rules and toll the DRT CPs expiration dates.

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive the rules and toll the expiration dates of the Station’s DRT CPs.⁶ Gray has demonstrated that it has been diligently making progress towards completion of the DRT CPs but was unable to complete construction due delays obtaining local land use approvals and other construction delays. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the DRT CPs.⁷

The above facts considered, the requests for waiver of the tolling rules of Gray Television Licensee, LLC **ARE GRANTED** and the expiration date of the digital-to-digital replacement construction permits (LMS File Nos. 0000054694 and 0000054695) for WHSV-TV, Harrisonburg, Virginia, **ARE TOLLED** to September 6, 2022. We remind Gray that any subsequent tolling requests

⁴ See LMS File No. 0000054694 and 0000054695. The Station has fully completed construction of its repacked facility.

⁵ See LMS File Nos. 0000146624 and 0000169311. We note that the channel (15) for the Broadway DRT may be subsequently displaced if full power television station WVPT(TV), Staunton, VA is permitted to change its channel from 11 to 15. See *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Staunton, Virginia)*, Notice of Proposed Rulemaking, MB Docket No. 21-248, RM-11910, DA-21-694 (MB 2021). Gray has requested a displacement channel (25) for the Broadway DRT.

⁶ 47 CFR § 73.3598(b).

⁷ We note that while in the body of its applications Gray requested that the DRT CPs be extended through October 21, 2022, in its amended exhibits Gray requests that the DRT CPs be extended through September 6, 2022. Based on the information provided and in order to allow staff to monitor progress we believe that an extension through September 6, 2022 is sufficient.

will be subject to the Commission's tolling provisions.⁸ To the extent Gray seeks additional tolling, such a request must include a detailed plan for completing construction and a showing demonstrating that completion of the Stations' DRT facilities was prevented for an eligible tolling reason or additional rare and extraordinary circumstances outside of Gray's control.⁹ We will look unfavorably upon any future request that does not include such information.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

⁸ 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 *Streamlining MO&O*, 14 FCC Rcd at 17536, para. 42.

⁹ *Id.*