



Federal Communications Commission  
Washington, D.C. 20554

October 4, 2022

South Carolina Educational TV Commission  
Mark Jahnke  
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Columbia, SC 29201  
[mjahnke@scetv.org](mailto:mjahnke@scetv.org)

Re: Request for Tolling Waiver  
WNTV(TV), Greenville, SC  
Facility ID No. 61010  
LMS File No. 0000198688

Dear Licensee,

On August 30, 2022, South Carolina Educational TV Commission (SCETV), the licensee of WNTV(TV), Greenville, South Carolina (WNTV 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 SCETV's request and toll the expiration date of WNTV's construction permit through January 17, 2023.

*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.<sup>1</sup> All subsequent requests for additional time to construct 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>

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 multiple waivers of the tolling rules and the expiration date of its construction permit was most recently

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<sup>1</sup> See 47 CFR § 73.3700(b)(5).

<sup>2</sup> See 47 CFR § 73.3700(b)(5)(i) citing 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) (*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).

tolled through September 6, 2022.<sup>5</sup> The Station is currently operating on its post-auction channel with authorized interim facilities.<sup>6</sup>

In its well-documented Request, SCETV details the progress it has made since the grant of its last tolling waiver in March 2022. SCETV stated that it completed construction of the Station's new tower in June 2022 and mounted the Station's post-auction channel antenna in July 2022. However, additional work remains to be completed and SCETV stated that it was going to be unable to complete this work prior to its September 6, 2022 construction deadline. At the time it filed its Request in August 2022, SCETV stated that it needed to install an "ice bridge" on the new tower and it would not be able to complete this work until after September 6, 2022. SCETV provided documentation to support its contention that delivery of the equipment for the ice bridge was delayed by the manufacturer. In addition, SCETV stated that it will need to obtain final Antenna Structure Registration from the Commission once all of the work on the tower is complete. SCETV maintains that it will be able to complete the remaining construction tasks prior to its extended deadline. 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 January 17, 2023.<sup>7</sup> SCETV has demonstrated it has been unable to complete construction of its post-auction channel facilities due to construction delays including 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 further remind SCETV of the deadline for submitting final expense documentation for reimbursement for the Station **is January 17, 2023.**<sup>8</sup> **We caution the Station that we do not anticipate allowing further extensions of the Station's extended invoice filing deadline. A station's failure to complete any remaining construction in a timely manner and to make final submissions by the assigned invoice filing assignment deadline could preclude that station from receiving full reimbursement.** Unobligated amounts in the Fund must be rescinded to Treasury and the Commission staff (with the support of the Fund Administrator) must have sufficient time to fully process all

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<sup>5</sup> LMS File Nos. 0000113886, 0000129848, 0000150893, 0000177617, and 0000185801. WNTV was repacked from channel 9 to channel 8 and operates on channel 8 on a shared basis with WRET-TV, Spartanburg, South Carolina.

<sup>6</sup> See LMS File No. 0000198330.

<sup>7</sup> 47 CFR § 73.3598(b).

<sup>8</sup> The Station was granted an extension of the September 6, 2022 invoice submission deadline and the Station's deadline was extended to January 17, 2023. See Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to South Carolina Educational TV Commission (October 4, 2022) (on file at LMS File No. 0000198687); see also *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 2020) (setting filing deadlines for submission of repack invoices).

reimbursement requests and complete close-out procedures prior to July 3, 2023.<sup>9</sup> The Fund Administrator will initiate close out procedures for any entity that has failed to initiate interim close-out procedures by the Station's extended invoice filing deadline. Any unused allocations made to that entity's account will be returned to the Fund and made available for allocation to other program participants or rescinded to Treasury. Thus, we strongly encourage the Station to diligently pursue satisfaction of the current deadline and we encourage SCETV to submit eligible invoices as soon as practicable.

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 January 17, 2023**. 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.<sup>10</sup> To the extent the Station seeks additional tolling, such a request must include a detailed plan for completing construction and a showing demonstrating that completion of the Station's permanent post-auction facility was prevented for either an eligible tolling reason or rare and extraordinary circumstances outside of SCETV's control.<sup>11</sup> 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): Margaret L. Miller, Esq.

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<sup>9</sup> *See id.* at 11277-78, para 13.

<sup>10</sup> *See* 47 § CFR 73.3598(b).

<sup>11</sup> *See id.* 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.