



Federal Communications Commission
Washington, D.C. 20554

February 3, 2023

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 No. 0000206830

Dear Licensee,

This concerns request for waiver of the Commission's tolling provisions and tolling of construction permit expiration date (Request) 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 its displacement construction permit (Displacement CP) for its digital-to-digital replacement translator at Broadway, Virginia (Broadway DRT). For the reasons below, we grant Gray's Request and toll the expiration date of the Broadway DRT displacement construction permit to June 17, 2023.

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 a construction permit for the Broadway DRT.⁴ Gray

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).

⁴ See LMS File No. 0000054697.

was granted multiple waivers of the tolling rules and the expiration date of the original construction permit for the Broadway DRT was most recently tolled to January 17, 2023.⁵

In its well-documented showing, Gray states that, since the grant of its last tolling waiver in September 2022, the Commission adopted the proposed channel substitution for WVPT-TV, Staunton, Virginia, allowing that full power station to change its channel to channel 15.⁶ As a result, Gray states that the Broadway DRT's channel 15 was displaced. Gray subsequently filed a displacement application and on August 17, 2022, was granted a construction permit for channel 25 (Displacement CP).⁷

Since the grant of its displacement application, Gray states that it obtained a building permit from Shenandoah County and is working to complete construction. Gray reports that all concrete has been poured for the tower base and all equipment has been ordered. However, Gray states, construction has been stalled due to: (1) delays on the part of Shenandoah Valley Electric Corporation in delivering power to the site and (2) delays in delivering the main transmitter shelter, which requires up to 24 weeks for delivery and could not be ordered until after the permitting process was complete. Gray supplies documentation to support these claims. Gray states that it has been provided an estimate of early May 2023 for completion, although Gray is working with its vendors to complete construction as soon as possible. Based on the foregoing, Gray requests that the tolling rules be waived and its Displacement CP be tolled to June 17, 2023.

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 for the Broadway DRT to June 17, 2023.⁸ Gray has demonstrated that it has been diligently making progress towards completion of the Broadway DRT, but the facilities were displaced when the Commission granted the petition for rulemaking to permit WVPT to change channels to channel 15. Gray has been making progress to build the displacement facilities but has faced additional construction delays. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Displacement CP.⁹

The above facts considered, the request for waiver of the tolling rules of Gray Television Licensee, LLC **IS GRANTED** and the expiration date of the displacement construction permit (LMS File No. 00000177269) for the Broadway DRT for WHSV-TV, Harrisonburg, Virginia, **IS TOLLED** to June 17, 2023. **While we anticipate this will be the final tolling request submitted by Gray**, any subsequent tolling requests will be subject to the Commission's tolling provisions.¹⁰ To the extent Gray seeks additional tolling, such a request must include a detailed plan for completing construction and a

⁵ See LMS File Nos. 0000169311, 0000185594, and 0000197741.

⁶ See *Television Broadcasting Services Staunton, Virginia*, Final Rule, 87 FR 57148 (Sept. 19, 2022).

⁷ See LMS File No. 0000177269.

⁸ 47 CFR § 73.3598(b).

⁹ We note that, based upon the record, the Station has not provided documentation that would support reimbursement of expenses related to the DRTs. See Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Gray Television Licensee, LLC, n. 7 (Jan. 25, 2022) on file at LMS File Nos. LMS File Nos. 0000169311 and 0000146624.

¹⁰ 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.

showing demonstrating that completion of the Broadway DRT facilities was prevented for an eligible tolling reason or additional rare and extraordinary circumstances outside of Gray's control.¹¹ Such a request must also include supporting documentation for all claims. 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.

¹¹ *Id.*