



Federal Communications Commission  
Washington, D.C. 20554

November 13, 2019

Columbus (WTTE-TV) Licensee, Inc.  
Lisa Asher  
2000 West 41<sup>st</sup> Street  
Baltimore, MD 21211

Re: Request for Tolling Waiver  
WTTE, Columbus, OH  
Facility ID No. 74137  
LMS File No. 0000086180

Dear Licensee,

On October 10, 2019, Columbus (WTTE-TV) Licensee, Inc. (CLI) the licensee of WTTE, Columbus, Ohio (WTTE 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 CLI's request and toll the expiration date of WTTE's construction permit to December 9, 2019.<sup>1</sup>

*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>2</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>3</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>4</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>5</sup>

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<sup>1</sup> Because the requested new expiration date for the Station's construction permit falls on Sunday, December 8, 2019, we will extend the construction permit to the next business day, which would be Monday, December 9, 2019. See 47 CFR 1.4

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

<sup>3</sup> See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

<sup>4</sup> *Id.*

<sup>5</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) (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).

CLI requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities to December 9, 2019. WTTE is currently operating on its post-auction channel with temporary facilities.<sup>6</sup> WTTE was previously granted a six-month construction permit extension.<sup>7</sup> CLI states that recently the main transmission line unexpectedly failed a final sweep test and will need to be replaced. CLI does not expect that this process will be completed by the current construction permit deadline. Therefore, CLI seeks a brief waiver of the tolling rules and tolling of its construction permit deadline to December 9, 2019.

*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 to December 9, 2019. We find that CLI was unable to complete construction of its post-auction channel facilities due to failure of the transmission line to pass a final sweep test. We also find that grant of CLI's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WTTE has already ceased operation on its pre-auction channel and initiated temporary operations on its post-auction channel. To the extent some viewers are unable to receive WTTE's signal while it operates using its interim facility, we believe that CLI 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 CLI 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."<sup>8</sup> 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.

The above facts considered, Columbus (WTTE-TV) Licensee, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000034206) for WTTE, Columbus, Ohio **IS TOLLED to December 9, 2019**. Grant of this tolling waiver does not permit WTTE to recommence operation on its pre-auction channel. We also remind CLI that any

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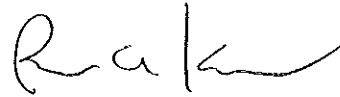
<sup>6</sup> See LMS File No. 0000071530.

<sup>7</sup> See LMS File No. 0000071543.

<sup>8</sup> 47 U.S.C. § 1452(b)(4)(A)(i). See also *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>9</sup>

Sincerely,

A handwritten signature in black ink, appearing to read 'Barbara A. Kreisman', with a stylized flourish at the end.

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail):  
Paul Cicelski, Esq.  
Scott R. Flick, Esq.

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<sup>9</sup> See 47 § CFR 73.3598(b).