



Federal Communications Commission
Washington, D.C. 20554

November 13, 2019

Meredith Corporation
Joshua Pila
1716 Locust Street
Des Moines, IA 50309

Re: Request for Tolling Waiver
WNEM-TV, Bay City, MI
Facility ID No. 41221
LMS File No. 0000086014

Dear Licensee,

On October 10, 2019, Meredith Corporation (Meredith), the licensee of WNEM-TV, Bay City, Michigan (WNEM 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 Meredith's request and toll the expiration date of WNEM's construction permit to June 15, 2020.

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.¹ All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of Section 73.3598(b) of the Rules.² 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.³ 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.⁴

Meredith requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities to June 15, 2020. WNEM is currently operating on its post-auction

¹ See 47 CFR § 73.3700(b)(5).

² See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

³ *Id.*

⁴ 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).

channel with temporary facilities.⁵ WNEM was previously granted a six-month construction permit extension.⁶ Meredith states it is unlikely that the Station's new tower will be complete and the permanent post-auction channel facilities installed by the Station's current construction permit deadline because construction has not begun and tower companies have withdrawn from the project. Meredith is seeking a new tower crew to complete the project. Accordingly, Meredith seeks a waiver of the tolling rules and tolling of its construction permit deadline to June 15, 2020.

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 June 15, 2020. We find that Meredith was unable to complete construction of its post-auction channel facilities by the construction permit deadline due to the withdrawal of tower companies from the project. We also find that grant of Meredith's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WNEM 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 WNEM's signal while it operates using its interim facility, we believe that Meredith 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 Meredith 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."⁷ 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, Meredith Corporation's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000080625) for WNEM-TV, Bay City, Michigan **IS TOLLED to June 15, 2020**. Grant of this tolling waiver does not permit WNEM to recommence operation on its pre-auction channel. We also remind Meredith that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.⁸

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Christina Burrow, Esq.

⁵ See LMS File No. 0000075172.

⁶ See LMS File No. 0000072081.

⁷ 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.").

⁸ See 47 § CFR 73.3598(b).