



Federal Communications Commission
Washington, D.C. 20554

September 15, 2020

Birmingham (WABM-TV) Licensee, Inc.
WLFL Licensee, LLC
Raleigh (WRDC-TV) Licensee, Inc.
WTTO Licensee, LLC
Harvey Arnold
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(via electronic mail)

Re: Requests for Tolling Waiver
WABM(TV), Birmingham, AL;
WLFL(TV), Raleigh, NC; WRDC(TV),
Durham, NC; and WTTO(TV),
Homewood, AL
Facility ID Nos. 16820, 54963, 73295
and 74138
LMS File Nos. 0000121102,
0000121105, 0000121108 and
0000121110

Dear Licensees,

On September 3, 2020, Birmingham (WABM-TV) Licensee, Inc., licensee of WABM(TV), Birmingham, Alabama (WABM); WLFL Licensee, LLC, licensee of Station WLFL(TV), Raleigh, North Carolina (WLFL); Raleigh (WRDC-TV) Licensee, Inc., licensee of Station WRDC(TV), Durham, North Carolina (WRDC); and WTTO Licensee, LLC, licensee of Station WTTO(TV), Homewood, Alabama (WTTO) (collectively Sinclair and Stations) filed the above-referenced requests for waiver of the Commission's tolling provisions and tolling of the Stations' construction permit expiration dates. For the reasons below, we grant Sinclair's requests and toll the expiration date of the construction permits for WABM and WTTO for 60 days through November 6, 2020 and WLFL and WRDC for 90 days through December 7, 2020.¹

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.² All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.³ The Commission's tolling provisions provide that a construction permit deadline may be tolled under specific circumstances such as

¹ Because 90 days from WLFL and WRDC's current construction expiration date falls on Sunday, December 6, 2020, we will extend the construction permit to the next business day, which would be Monday, December 7, 2020. See 47 CFR § 1.4.

² See 47 CFR § 73.3700(b)(5).

³ See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

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.⁴ 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.⁵

Sinclair requests waivers of the tolling rule and tolling of the construction permits for the Stations' post-incentive auction channel facilities. The Stations are currently operating on their post-auction channels with interim facilities.⁶ The Stations were each granted construction permit extensions and subsequent tolling all with a construction permit expiration date of September 7, 2020.⁷

WRDC and WLFL Requests. Sinclair reports that the high-power channel 14 mask filter for WRDC failed during the initial transmitter turn on and the station's post-auction channel facilities cannot be operated until the mask filter is operational. Sinclair states that the mask filter has been returned to the manufacturer for redesign. WRDC and WLFL share an interim transmitter and because of the need to coordinate the stations transitions given their shared facilities, Sinclair states that commencing operation of WLFL final post-auction channel facilities will also be delayed. Therefore, Sinclair seeks waivers of the tolling rules and tolling of WLFL and WRDC's construction permit deadlines for 90 days through December 7, 2020.

WABM and WTTO Requests. Sinclair states that the transmitter installation crew is still working on scheduling a date to complete installation of WABM and WTTO's post-auction channel transmitters. Due to the current unavailability of a transmitter crew to complete the transmitter installations, Sinclair states that installation of the post-auction channel transmitters will not be completed until after September 7, 2020. Therefore, Sinclair seeks waivers of the tolling rules and tolling of WABM and WTTO's construction permit deadlines for 60 days through November 6, 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 Stations' construction permits for WABM and WTTO through November 6, 2020 and WLFL and WRDC through December 7, 2020.⁸ Sinclair has demonstrated it did not complete construction of the Stations' post-auction channel facilities due to construction delays. We also find that grant of Sinclair's waivers and tolling requests is not likely to negatively impact the overall transition schedule and will not cause

⁴ *Id.*

⁵ 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).

⁶ See LMS File Nos. 0000121103, 0000121106, 00000121109, 0000121111. WABM was repacked from channel 36 to 20; WLFL from channel 27 to 18; WRDC from channel 28 to 14; and WTTO from channel 28 to 21.

⁷ See LMS File Nos. 0000080542, 00000805556, 0000080557, 0000080558, 0000106630, 0000106652, 0000106660, and 0000106638.

⁸ 47 CFR § 73.3598(b).

interference to other stations. The Stations have already ceased operation on their pre-auction channels and are operating from interim facilities on their post-auction channels. To the extent some viewers are unable to receive the Stations' signals while they operate using interim facilities, we believe that Sinclair has every incentive to ensure viewers are fully informed about the Stations' transition plans. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Stations' construction permits.

We remind Sinclair that pursuant to the Spectrum Act, the Stations are 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."⁹ 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.

We further remind Sinclair that the Commission has stated that the Bureau may announce a deadline for the submission of final expense documentation for reimbursement well before the statutory deadline of July 3, 2023.¹⁰ Thus, we strongly encourage the Stations to diligently pursue satisfaction of the current deadlines to improve the chances that there will be sufficient funds available to reimburse the Stations for their legitimate repacking expenses, and we encourage Sinclair to submit eligible invoices as soon as practicable.

The above facts considered, Birmingham (WABM-TV) Licensee, Inc.; WLFL Licensee, LLC; Raleigh (WRDC-TV) Licensee, Inc.; and WTTE Licensee, LLC's requests for waiver of the Commission's tolling provisions **ARE GRANTED**. The construction permits (LMS File Nos. 0000034382 and 0000080600, respectively) for WABM(TV), Birmingham, Alabama; and WTTO(TV), Homewood, Alabama **ARE TOLLED to November 6, 2020**. In addition, the construction permits (LMS File Nos. 0000068685 and 0000068684, respectively) for WLFL(TV), Raleigh, North Carolina; WRDC(TV), Durham, North Carolina, **ARE TOLLED to December 7, 2020**. Grant of these tolling waivers does not permit the Stations to recommence operation on their pre-auction channels. We also remind Sinclair that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹¹

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

⁹ 47 U.S.C. § 1452(b)(4)(A)(i). *See also Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 et. al., Report and Order, 29 FCC Rcd 6567, 6821, para. 622 (2014) (*Incentive Auction R&O*), *aff'd*, Nat'l Ass'n of Broadcasters v. FCC, 789 F.3d 165 (D.C. Cir. 2015) ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

¹⁰ *See id.* at 6567, para. 616; *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, MB Docket 18-214 and GN Docket No. 12-268, Report and Order, 34 FCC Rcd 1690, 1739, para. 105 (2019). *See also Incentive Auction Task Force and Media Bureau Report on the Status of the Post-Incentive Auction Transition and Reimbursement Program et al.*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 34 FCC Rcd 304, 312, para. 23 and n.35 (IATF/MB 2019).

¹¹ *See* 47 § CFR 73.3598(b).