



Federal Communications Commission
Washington, D.C. 20554

October 2, 2019

Christian Television of Palm Beach County, Inc.
Chris Mavros
P.O. Box 6922
Clearwater, FL 33758

Re: Request for Tolling Waiver
WFGC, Palm Beach, FL
Facility ID No. 11123
LMS File No. 0000080773

Dear Licensee,

On August 30, 2019, Christian Television of Palm Beach County, Inc. (CTPB), the licensee of WFGC, Palm Beach, Florida (WFGC 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 CTPB's request and toll the expiration date of WFGC's construction permit through April 6, 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

CTPB requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities through April 6, 2020. WFGC is currently operating on its post-

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).

auction channel with temporary facilities.⁵ WFGC was previously granted a six month construction permit extension due to delays in obtaining the necessary permits from Palm Beach County.⁶ CTPB states that it has worked diligently to complete its permanent post-auction channel facilities; however, CTPB was only recently informed that its tower crew could no longer make its scheduled installation date of mid-September to early October 2019. CTPB attempted without success to hire other tower crews to perform the work. CTPB asserts that waiver of the tolling rules is warranted because the delay in receiving the Palm Beach County permit and tower crew delays and availability, all of which CTPB maintains were out of its control. Accordingly, CTPB seeks a waiver of the tolling rules and tolling of its construction permit deadline to April 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 Station's construction permit to April 6, 2020. We find that CTPB was unable to complete construction of its post-auction channel facilities due circumstances that were outside of its control, including delays in the permitting process, and tower crew delays and availability. We also find that grant of CTPB's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WFGC 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 WFGC's signal while it operates using its interim facility, we believe that CTPB 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 CTPB 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, Christian Television of Palm Beach County, Inc.'s, request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000034361) for WFGC, Palm Beach, Florida **IS TOLLED to April 6, 2020**. Grant of this tolling waiver does not permit WFGC to recommence operation on its pre-auction channel. We also remind

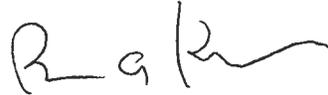
⁵ See LMS File No. 0000068464.

⁶ See LMS File No. 0000068466.

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.").

CTPB that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.⁸

Sincerely,

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

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Joseph C. Chautin, III, Esq.

⁸ See 47 § CFR 73.3598(b).