

Tolling Waiver Request
Philadelphia Television Station WPSG, Inc.
WPSG(TV) Philadelphia, Pennsylvania
Facility ID 12499

Philadelphia Television Station WPSG, Inc. (ViacomCBS), licensee of WPSG(TV) Philadelphia, PA (the “Station”), herein seeks a waiver of the Commission’s tolling provisions for the Station’s post-transition construction permit (CP) pursuant to §73.3598(b).¹ As outlined below, this request is necessary due to unanticipated and extraordinary circumstances beyond *CBSViacom’s* control.

Background. WPSG was assigned to repack Phase 4 (August 2, 2019) and, despite a myriad of delays involving local permitting, environmental issues, and weather setbacks, made a timely transition to post-transition channel 33 using the station’s recently-installed interim antenna.² The Station did not require or request a Phase Waiver. Due to extensive interim facility construction delays, it was necessary for the main transmitter and antenna system to remain operational on pre-transition channel 32 until the date of the Phase 4 transition, far longer than had been planned. Since the channel 33 CP was slated to expire only 24 hours after the transition, *CBS* requested and was granted a 180-day CP extension.³

At the time the CP extension was requested, it was optimistically believed that construction could be completed in 180-days. Unfortunately, as outlined below, the well-established pattern of setbacks, challenges, and construction delays has continued.

Tolling Waiver Request. According to the Commission’s rules, after a six-month Construction Permit extension has been granted, further extensions would be subject to tolling provisions.⁴ The Media Bureau has noted that in the event station construction has been disrupted by circumstances other than those provided for in its tolling rules, “[s]tations may also seek a waiver of the tolling rule to receive additional time to construct in cases where ‘rare or

¹ See LMS file number 0000034323.

² See LMS file numbers 0000072282 and 0000084294.

³ See LMS file number 0000072283.

⁴ See §73.3700(b)(5) and §73.3598 of the Commission’s rules.

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exceptional circumstances’ prevent construction.”⁵ §73.3598(b) of the Commission’s rules outlines causes not under the control of the permittee that can toll the period of a Construction Permit. That list includes construction delays stemming from local government environmental requirements.

A significant part of WPSG’s repack construction delay was due to the discovery and necessary abatement of asbestos within pipe insulation used throughout one of the transmitter buildings. To comply with City of Philadelphia asbestos regulations, extensive work was required to conduct inspections, obtain and analyze air samples from inside and outside the building, to conduct asbestos abatement activities, and to determine whether the work was completed in a manner consistent with all applicable City of Philadelphia regulations.⁶

Until the asbestos issues were resolved, other significant projects such as the replacement of an HVAC system, electrical systems, and the utility substation could not begin on time. Those projects, in turn, have delayed the primary transmitter installation. Additionally, further structural work is required on the complex tower that cannot be done during the weeks of Philadelphia winter weather preceding the January 29, 2020 Construction Permit expiration.⁷

WPSG has already vacated its pre-auction channel and activated its post-auction channel. As a result, the Station is continuing to provide service to the public without causing interference, impacting the transition schedule, or delaying new 600 MHz band entrants. As explained above, it is believed good cause exists to toll the expiration of the WPSG Construction Permit until July 27, 2020 when *ViacomCBS* expects to have licensed its post-transition facilities.

⁵ Public Notice, Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines, 33 FCC Rcd 8240, 8245 n.24 (MB and IATV 2018) *citing* 1998 Regulatory Review – Streamlining of Mass Media Applications, Rules and Processes, *Memorandum Opinion and Order*, 14 FCC Rcd 17525, 17536 at ¶ 42 (1999).

⁶ See Philadelphia Department of Public Health Air Management Services *Asbestos Control Regulation*, Effective May 22, 1989.

⁷ The tower meets the criteria for “complex” due to having stacked antennas.