

## **Request for Tolling of Construction Permit**

ION Media Charleston, License, Inc. (“ION”), licensee of television station WLPX-TV, Charleston, West Virginia (FCC Facility ID No. 73189) (the “Station”), pursuant to Section 73.3598(b) of the Commission’s rules, respectfully requests a waiver of the tolling provisions for the Station’s post-auction construction permit (“CP”) for Channel 18. See LMS File No. 0000069627. The Station is currently operating on its post-auction Channel 18 using interim facilities pursuant to FCC authorizations.<sup>1</sup> Based on the following circumstances beyond ION’s control, the Station respectfully requests tolling of the Station’s CP.

The FCC may grant waiver for good cause shown.<sup>2</sup> A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.<sup>3</sup> In considering a waiver, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>4</sup> Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>5</sup> As set forth below, the Station meets the Commission’s tolling restriction waiver due to rare and exceptional circumstances.

The Commission’s rules permit a single 180-day post-transition construction permit extension.<sup>6</sup> Any subsequent requests for an extension of time to construct are subject to the Commission’s Tolling Rule.<sup>7</sup> The Station’s original CP was set to expire on October 18, 2019, at the end of Phase 6. As set forth in the CP extension request and STA filings referenced above, the Station was unable to construct its permanent post-repack facilities by the Phase 6 deadline, and instead began operating on its post-auction channel using interim facilities. As a result, the Station requested and received a six-month extension of the Station’s CP and has been operating pursuant to the current STA.

The Station had requested and received authorization to move to a new tower because ION’s former tower lease would be unavailable for its post-repack operations.<sup>8</sup> The Station and

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<sup>1</sup> CP Extension File No. 0000078308/STA File No. 0000084150

<sup>2</sup> 47 C.F.R. § 1.3.

<sup>3</sup> Northeast Cellular Tel. Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>4</sup> WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972); Northeast Cellular, 897 F.2d at 1166.

<sup>5</sup> Northeast Cellular, 897 F.2d at 1166.

<sup>6</sup> See 47 CFR §73.3700(b)(5).

<sup>7</sup> See Reminder for Post-Auction Transition Requirements and Deadlines, 33 FCC Rcd 8240, 8244-8245 (2018).

<sup>8</sup> See LMS File No. 0000069627

WOWK-TV are co-located on this tower. WOWK-TV was assigned to Transition Phase 10 of the repack. In order for WOWK-TV to change out its antenna for Phase 10, the top of the tower needs to remain open to allow placement of WOWK-TV's main antenna. Under the current CP, the Station's permanent antenna will be mounted near the top of the tower. Since the Station's antenna would otherwise be in the way of WOWK-TV's installation, ION will need to wait for WOWK-TV's work to be completed.

ION has worked diligently to complete construction within the initially granted six-month extension period, but circumstances beyond its control have prevented completion. Despite ION's coordination efforts with WOWK-TV, it is not possible for ION to complete the installation of the Station's main antenna and transition to its permanent post-repack facility by the March 4, 2020 expiration of the Station's current Construction Permit.

ION respectfully requests that its CP be tolled since the Station is not able to operate on its permanent post-repack facilities at this time and, therefore, will not be able to cover its CP as planned with a license application on its permanent facilities. Accordingly, the Station seeks a waiver of the Commission's tolling restrictions and an extension of 180 days to construct the Station's post-repack facilities. ION respectfully submits that this request is in the public interest because it would allow the Station to continue providing broadcast service to viewers in its community while it constructs its permanent post-repack facilities. In support of this request, ION emphasizes that the Station transitioned on time by the Phase 6 completion deadline using interim facilities on its post-auction Channel 18. Therefore, grant of this request will have no cognizable impact on the Commission's overall repack transition timeline, while allowing the Station to construct its permanent facilities and continue to serve its viewers.