



Federal Communications Commission
Washington, D.C. 20554

March 3, 2020

ION Media Jacksonville License, Inc.
601 Clearwater Park Road
West Palm Beach, FL 33401

Re: Request for Tolling
WPXU-TV, Jacksonville, NC
Facility ID No. 37971
LMS File No. 0000105905

Dear Licensee,

On February 12, 2020, ION Media Jacksonville License, Inc. (ION), the licensee of WPXU-TV, Jacksonville, North Carolina (WPXU or Station), filed the above-referenced request for waiver, as amended, of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant ION's request and toll the expiration date of WPXU's construction permit to September 7, 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

ION requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities. WPXU is currently operating on its post-auction channel with temporary

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).

facilities.⁵ WPXU was previously granted an 180-day construction permit extension to March 4, 2020.⁶

In October 2019, ION was informed by its tower owner that tower work would be completed by February 1, 2020. However, ION has since been informed by the tower owner that the engineering contractor has not yet committed to a shipment date for the steel required to modify the tower's guy anchors. A tower crew cannot be booked until the materials are on site. As a result, it will not be possible for ION to complete the installation of the Station's main antenna prior to the March 4, 2020, expiration of the Station's current construction permit. Therefore, ION requests that the Commission waive its tolling rule and toll the WPXU construction permit expiration date to September 7, 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 September 7, 2020. ION has demonstrated it is unable to complete construction of its post-auction channel facilities due to delays receiving necessary steel and inability to schedule its tower crew until materials are received. We also find that grant of ION's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WPXU 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 WPXU's signal while it operates using its interim facility, we believe that ION 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 ION 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, ION Media Jacksonville License, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000072136) for WPXU-TV, Jacksonville, North Carolina **IS TOLLED to September 7, 2020**. Grant of this tolling waiver does not permit WPXU to recommence operation on its pre-auction channel. We also remind ION

⁵ See LMS File No. 0000090811. WPXU was repacked from channel 34 to channel 16.

⁶ See LMS File No. 0000074583.

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.").

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 'Barbara A. Kreisman', with a long horizontal flourish extending to the right.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Ms. Bianca Frye

⁸ See 47 § CFR 73.3598(b).