



Federal Communications Commission
Washington, D.C. 20554

April 7, 2020

Virgin Islands Public Broadcasting System
Tanya-Marie Singh
P.O. Box 7879
Charlotte Amalie, St. Thomas, VI 00801

Re: Request for Tolling Waiver
WTJX-TV, Charlotte Amalie, VI
Facility ID No. 70287
LMS File No. 00000109082

Dear Licensee,

On March 25, 2020, Virgin Islands Public Broadcasting System (VIPBS), the licensee of WTJX-TV, Charlotte Amalie, Virgin Islands (WTJX 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 VIPBS' request and toll the expiration date of WTJX's construction permit through October 5, 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

VIPBS requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities through October 5, 2020. WTJX 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 WTJX was previously granted a six-month construction permit extension and a tolling waiver and its construction permit was tolled to April 6, 2020.⁶ VIPBS states the Station's facilities were destroyed by hurricanes Irma and Marie and is still in the process of rebuilding the Station's facilities. Since the Hurricanes, the Station's rebuilding and transition project has been delayed by several major factors including difficulties obtaining estimates, materials, and labor. Construction of the Station's new tower has been most recently delayed by issues concerning approval of its lighting and painting by the Federal Aviation Administration (FAA). VIPBS expects to be able to once again begin construction following FAA approval and to be completed by its extended deadline. Accordingly, VIPBS seeks a waiver of the tolling rules and tolling of its construction permit deadline to October 5, 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 October 5, 2020. We find that VIPBS was unable to complete construction of its post-auction channel facilities due to delays in obtaining FAA approval for its new tower. We also find that grant of VIPBS' waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WTJX has already ceased operation on its pre-auction channel and is operating from temporary facilities on its post-auction channel. To the extent some viewers are unable to receive WTJX's signal while it operates using its interim facility, we believe that VIPBS 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 VIPBS 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, Virgin Islands Public Broadcasting System's, request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000025655) for WTJX-TV, Charlotte Amalie, Virgin Islands **IS TOLLED to October 5, 2020**. Grant of this tolling waiver does not permit WTJX to recommence operation on its pre-auction channel. We

⁵ See LMS File No. 0000109081. WTJX was repacked from channel 44 to channel 36.

⁶ See LMS File No. 0000072190 and 0000084077.

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.").

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

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Lawrence M. Miller, Esq.

⁸ See 47 § CFR 73.3598(b).