



Federal Communications Commission
Washington, D.C. 20554

April 21, 2020

CBS Television Licenses, LLC
1725 DeSales St. NW
Suite 501
Washington, DC 20036

Re: Request for Tolling Waiver
WBZ-TV, Boston, Massachusetts
Facility ID No. 25456
LMS File No. 0000111935

Dear Licensee,

On April 9, 2020, CBS Television Licenses, LLC (CBS), licensee of Station WBZ-TV, Boston, Massachusetts (WBZ 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 CBS' request and toll the expiration date of WBZ's construction permit through October 27, 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

CBS requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities through October 27, 2020. WBZ has been granted an extension and tolling, and

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).

its construction permit has been extended to April 30, 2020.⁵ WBZ ceased operations on its pre-auction channel and is operating an auxiliary facility while it completes construction of its post-auction channel facilities.⁶

CBS states that, because of the WBZ tower location, it was required to obtain a special permit before its top-mounted post-auction channel antenna could be installed. CBS reports that it was able to obtain the special permit, but construction was delayed by weather. Once the tower crew resumed work in February 2020, CBS states that it was immediately diverted to the interim tower for emergency repairs to the broadband antenna system being utilized by WBZ and other Boston area television stations. Most recently, construction has been delayed due to the impact of the COVID-19 pandemic.⁷ According to CBS “the most recent Tower Owner projections now predict the site will not be completed by April 30, 2020.” Therefore, CBS requests that the Commission waive its tolling rule and toll the WBZ construction permit expiration date to October 27, 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. CBS has demonstrated it will be unable to complete construction of its post-auction channel facilities by its construction deadline due to construction delays. We also find that grant of CBS’s waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WBZ has already ceased operation on its pre-auction channel and is operating an auxiliary facility. To the extent some viewers are unable to receive WBZ’s signal while it operates its auxiliary facilities, we believe that CBS 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 CBS 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.”⁸ Additional expenses incurred, such as expenses resulting from changes in a station’s transition plans that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The above facts considered, CBS Television Licenses, LLC’s request for waiver of the Commission’s tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000034573) for WBZ-TV, Boston, Massachusetts, **IS TOLLED to October 27, 2020**. Grant of this tolling waiver does not permit WBZ to recommence operation on its pre-auction channel. We also remind CBS that any

⁵ LMS File No. 0000072330 and 0000092274. WBZ was repacked from channel 30 to channel 20.

⁶ LMS File No. 0000080192.

⁷ The World Health Organization has classified COVID-19 as a pandemic and the President declared it a national emergency.

⁸ 47 U.S.C. § 1452(b)(4)(A)(i). *See also Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 et. al., Report and Order, 29 FCC Rcd 6567, 6821, para. 622 (2014) (“The appropriate scope of ‘costs reasonably incurred’ necessarily will have to be decided on a case-by-case basis.”).

subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.⁹

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Daniel G. Ryson, Esq.

⁹ See 47 § CFR 73.3598(b).