



Federal Communications Commission
Washington, D.C. 20554

June 12, 2020

Fox Television Stations, LLC
Ann West Bobeck
400 N. Capitol Street, NW
Suite 890
Washington, DC 20001
ann.bobek@fox.com

Re: Request for Tolling
WRBW, Orlando, FL
Facility ID No. 54940
LMS File No. 0000114945

WOFL, Orlando, FL
Facility ID No. 41225
LMS File No. 0000114948

Dear Licensee,

On May 29, 2020, Fox Television Stations, LLC (Fox), the licensee of WRBW(TV), Orlando, Florida (WRBW) and WOFL(TV), Orlando, Florida (WOFL) (collectively Stations), filed the above-referenced requests for waiver of the Commission's tolling provisions and tolling of the Stations' construction permits. For the reasons below, we grant Fox's waiver requests and toll the Stations' construction permits for 180 days to December 28, 2020.¹

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.² All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of Section 73.3598(b) of the Rules.³ 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.⁴ 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

¹ Because 180 days from the Stations' current construction permit expiration dates falls on Sunday, December 27, 2020, we will extend the construction permit to the next business day, which would be Monday, December 28, 2020. See 47 CFR § 1.4.

² See 47 CFR § 73.3700(b)(5).

³ See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

⁴ *Id.*

demonstrate that “rare and exceptional circumstances” prevented construction by the station’s construction permit expiration date.⁵

Fox requests waivers of the tolling rule and tolling of its construction permits for its post-incentive auction channel facilities to December 28, 2020. The Stations are currently operating on their post-auction channel with auxiliary facilities.⁶ The Stations were previously granted construction permit extensions through June 30, 2020.⁷

Fox states there have been unforeseen delays in completing the construction of the Stations’ new shared tower due to the current COVID-19 pandemic.⁸ While significant progress has been made, Fox states that the tower work will not be completed by the Station’s current June 30, 2020 construction deadline. Fox points out that the ground must be excavated and concrete must be poured and then cured for at least thirty (30) days, after which generator and electrical infrastructure must be built and tested.⁹ Based on the foregoing, Fox requests that the Commission waive its tolling rule and toll the Stations’ construction permit expiration dates to December 28, 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 Stations’ construction permits to December 28, 2020.¹⁰ Fox has demonstrated it did not complete construction of the Stations’ shared tower due to construction delays. We also find that grant of Fox’s waiver and tolling requests is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. The Stations have already ceased operation on their pre-auction channels and initiated operations on their post-auction channels using an auxiliary facility. To the extent some viewers are unable to receive the Stations signals while they operate using their auxiliary facilities, we believe that Fox has every incentive to ensure viewers are fully informed about the Stations’ transition plans. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Station’s construction permit.

We remind Fox 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

⁵ 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).

⁶ See LMS File Nos. 0000092717 and 0000092719. WOFL was repacked from channel 22 to channel 33 and WRBW from channel 41 to channel 28.

⁷ See LMS File Nos. 0000085929 and 0000085919.

⁸ The World Health Organization has classified COVID-19 as a pandemic and the President declared it a national emergency.

⁹ The Stations anticipate that all work will be completed by the end of August, but due to the ongoing COVID-19 pandemic and chance of delays a result of Hurricane season, Fox is requesting an extension until the end of December out of an abundance of caution.

¹⁰ 47 CFR § 73.3598(b).

relocate its television service from one channel to the other.”¹¹ Additional expenses incurred, such as expenses resulting from changes in a Stations’ transition plans that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The above facts considered, Fox Television Stations, LLC’s requests for waiver of the Commission’s tolling provisions **ARE GRANTED**. The construction permits (LMS File Nos. 00000109733 and 0000109735) for WRBW, Orlando, Florida, and WOFL, Orlando, Florida, **ARE TOLLED to December 28, 2020**. Grant of these tolling waivers does not permit the Stations to recommence operation on their pre-auction channels. We also remind Fox that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission’s tolling provisions.¹²

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹¹ 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.”).

¹² *See* 47 CFR § 73.3598(b).