



Federal Communications Commission
Washington, D.C. 20554

July 14, 2020

George S Flinn , Jr .
6080 Mt. Moriah Ext.
Memphis, TN 38115
airwavesjd@aol.com
(via electronic mail)

Re: Request for Tolling Waiver
WFBD(TV), Destin, FL
Facility ID No. 81669
LMS File No. 0000117694

Dear Licensee,

On July 13, 2020, George S Flinn, Jr. (Flinn), the licensee of Station WFBD(TV), Destin, Florida (WFBD or Station), filed the above-referenced request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit. For the reasons below, we grant Flinn's waiver request and toll WFBD's construction permit to January 11, 2021.

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

Flinn requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities to January 11, 2021. WFBD is currently silent while Flinn completes

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).

construction of the Station's post-auction channel facilities.⁵ WFBD was previously granted a construction permit extension through July 15, 2020.⁶

Flinn states that, since the grant of its extension application, it has ordered the equipment necessary for completion of its post-auction channel facilities. However, installation of the equipment has been delayed several times because of the effects of the COVID-19 pandemic.⁷ Flinn expects to take delivery of the equipment and complete construction of its post-auction facility by October 2020. Therefore, given these delays, and in light of ongoing uncertainties in the construction schedule, Flinn requests tolling of the Station's construction permit to January 11, 2021.

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 January 11, 2021.⁸ Flinn has demonstrated it did not complete construction of its post-auction channel facilities due to construction delays. We also find that grant of Flinn's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WFBD has already ceased operation on its pre-auction channel and is currently silent. We believe that Flinn has every incentive to ensure viewers are fully informed about the Station's transition plan and plans to resume operation. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Station's construction permit.

We remind Flinn 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."⁹ 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.

We further remind Flinn that the Commission has stated that the Bureau may announce a deadline for the submission of final expense documentation for reimbursement well before the statutory deadline of July 3, 2023.¹⁰ Thus, we strongly encourage the Station to diligently pursue satisfaction of the current deadlines to improve the chances that there will be sufficient funds available to reimburse the Station for

⁵ See LMS File No. 0000117597. WFBD was repacked from channel 48 to channel 29.

⁶ See LMS File Nos. 0000087009.

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

⁸ 47 CFR § 73.3598(b).

⁹ 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) (*Incentive Auction R&O*), aff'd, *Nat'l Ass'n of Broadcasters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

¹⁰ See *id.* at 6567, para. 616; *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, MB Docket 18-214 and GN Docket No. 12-268, Report and Order, 34 FCC Rcd 1690, 1739, para. 105 (2019). See also *Incentive Auction Task Force and Media Bureau Report on the Status of the Post-Incentive Auction Transition and Reimbursement Program et al.*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 34 FCC Rcd 304, 312, para. 23 and n.35 (IATF/MB 2019).

its legitimate repacking expenses, and we encourage Flinn to submit eligible invoices as soon as practicable.

The above facts considered, George S. Flinn, Jr.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000027353) for WFBD(TV), Destin, Florida, **IS TOLLED to January 11, 2021**. Grant of this tolling waiver does not permit WFBD to recommence operation on its pre-auction channel. We also remind Flinn that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹¹ Furthermore, we remind Flinn that under section 312(g) of the Communications Act of 1934,¹² the license of a station that is silent for 12 consecutive months will automatically expire at the end of such period, absent a request for extension or reinstatement pursuant to the "equity and fairness" provision of section 312(g) and associated Commission precedent.¹³ WFBD's license is scheduled to automatically expire on January 17, 2021.¹⁴

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail):
Steve Simpson, Esq.
(Attorney of Record)

¹¹ See 47 CFR § 73.3598(b).

¹² 47 U.S.C. § 312(g).

¹³ *Id.*; see e.g., *V.I. Stereo Communications*, 21 FCC Rcd 14259, 14262 (2006) (reinstating license where silence due to destruction of towers in hurricanes); *Community Bible Church*, 23 FCC Rcd 15012, 15014 (MB 2008) (reinstatement warranted where licensee took all steps needed to return to air, but remained off air to promote air safety after discovering and reporting that FCC and FAA records contained incorrect tower information); *Mark Chapman, Court-Appointed Agent*, 22 FCC Rcd 6578, 6580 (MB 2007) (reinstating license where silence necessitated by licensee's compliance with court order); *Universal Broadcasting of New York, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd at 10319 (2019) (station unable to file STA to resume service due to a federal government shutdown).

¹⁴ See LMS File No. 0000097855 (stating station went silent on January 17, 2020).