



Federal Communications Commission
Washington, D.C. 20554

September 30, 2021

Virgin Islands Public Broadcasting System
Tanya-Marie Singh
P.O. Box 7879
Charlotte Amalie, St. Thomas, VI 00801
tsingh@wtjx.org
(via electronic mail)

Re: Request for Tolling Waiver
WTJX-TV, Charlotte Amalie, VI
Facility ID No. 70287
LMS File No. 0000160482

Dear Licensee,

On September 27, 2021, 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 November 30, 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

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).

VIPBS requests waiver of the tolling rule and tolling of its construction permit for the Station's post-incentive auction channel facilities. VIPBS was granted an extension and multiple waivers of the tolling rule and the Station's construction permits was most recently tolled to September 30, 2021.⁵ The Station is currently operating on its post-auction channel with interim facilities.⁶

VIPBS states that permitting matters have delayed construction. VIPBS cites an initial delay relating to a correction of the coordinates for the Station's then-existing 250-foot tower with the Federal Aviation Administration (FAA), which was resolved. VIPBS further states that its tower contractor submitted the initial permitting package to the Virgin Islands Department of Planning and Natural Resources (DPNR) for replacement of the 250-foot tower, which was apparently lost. VIPBS reports that its contractor submitted a second package on May 28, 2021, and that DPNR requested additional information on July 27, 2021. VIPBS states it addressed the issues, and a public hearing was held August 30, 2021. VIPBS is hopeful that it will receive final approval within the next few weeks.

VIPBS also reports that significant progress has been made in dismantling the Station's old facilities. As of July 15, 2021, the Station's existing antennas were removed and the old tower had been fully dismantled. VIPBS states that all of the materials needed for construction of the new tower are now on site and work on the new tower foundation is underway. VIPBS estimates the tower will be erected during the month of October 2021, and the TV antenna system will be installed by mid-November 2021.

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive the rules and toll the expiration date of the Station's construction permit through November 30, 2021.⁷ VIPBS has demonstrated it did not complete construction of its post-auction channel facilities due to permitting and construction delays. We also find that grant of VIPBS' 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 initiated temporary operations 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 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."⁸ 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.

⁵ LMS File Nos. 0000072190, 000084077, 0000109082, 0000121556, 0000137289 and 0000155929. WTJX was repacked from channel 44 to channel 36.

⁶ See LMS File No. 0000121555.

⁷ 47 CFR § 73.3598(b).

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) (*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.").

We further remind VIPBS that the Station's deadline for submitting final expense documentation for reimbursement for the Station is **March 22, 2022**.⁹ 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 its legitimate repacking expenses, and we encourage VIPBS to submit eligible invoices as soon as practicable.

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 November 30, 2021**. Grant of this tolling waiver does not permit WTJX to recommence operation on its pre-auction channel. While we anticipate this will be VIPBS' final request for tolling, we remind VIPBS that any subsequent tolling requests will be subject to the Commission's tolling provisions.¹⁰ To the extent the Station seeks an additional extension of tolling, such a request must include a detailed plan for completing construction of the Station's permanent post-auction facilities. We will look unfavorably upon any future request that does not include such a plan.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Brad Deutsch, Esq.

⁹ The Station was granted an extension of the October 8, 2021 invoice submission deadline and the Station's deadline was extended to March 22, 2022. *See* LMS File No. 0000158784. *See also Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 35 FCC Rcd 11273, 11277, paras. 10-11 (IATF/MB Oct. 7, 2020) (setting three filing deadlines for submission of all remaining repack invoices: for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period, the deadline for submitting all remaining invoices is October 8, 2021; the deadline for entities assigned completion dates in the second half of the transition period is March 22, 2022; and the deadline for all other participants in the reimbursement program is September 5, 2022).

¹⁰ *See* 47 CFR § 73.3598(b). A station may also seek a waiver of the tolling rule to receive additional time to construct in the case where "rare or exceptional circumstances" prevent construction. *See 1998 Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17536, para. 42 (1999).