



Federal Communications Commission
Washington, D.C. 20554

December 14, 2021

VPM Media Corporation
Mark Spiller
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Richmond, VA 23235
msspiller@vpm.org
(via electronic mail)

Re: Request for Tolling Waiver
WVPT(TV), Staunton, VA
Facility ID No. 60111
LMS File No. 0000176744

Dear Licensee,

On December 3, 2021, VPM Media Corporation (VPM), the licensee of Station WVPT(TV), Staunton, Virginia (WVPT 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 VPM's waiver request and toll WVPT's construction permit through March 15, 2022.

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

VPM requests waiver of the tolling rule and tolling of its construction permit for the Station's post-incentive auction channel facilities. VPM was granted an extension and two waivers of the tolling

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).

rule and the Station's construction permit was most recently tolled to December 27, 2021.⁵ The Station is currently operating on its post-auction channel with interim facilities.⁶

Since the grant of its last tolling waiver, VPM states that it has been working on an alternative technical proposal for its Elliot Knob distributed transmission system (DTS) site that involves changing the Station's channel to channel 15. VPM states that it completed its analysis, worked with its vendors and consulting engineer to develop the technical proposal, and submitted a petition for rulemaking to change the Station's channel to channel 15.⁷ The Media Bureau (Bureau) issued a Notice of Proposed Rulemaking on June 15, 2021, in which it proposed to substitute the Station's channel 15 for channel 11.⁸ Before the Bureau can grant VPM's request to change channel to channel 15, VPM must obtain consent from the nearby Green Bank Radio Observatory (GBRO) and the Sugar Grove Research Station (SGRS). VPM states that it is continuing to work with these two entities to obtain their consent; however, the process has proven challenging and time consuming. VPM notes that while both entities initially objected to the proposed channel change, VPM has worked to address their concerns. VPM states that its coordination efforts were stalled recently when a ransomware attack on the computer systems of its antenna vendor, Dielectric, delayed further consideration. Most recently, on December 2, 2021, VPM states that it received additional comments from SGRS, that SGRS did not address in previous comments, which VPM is working expeditiously to address.

Despite these delays, VPM states that moving to channel 15 remains preferable for a number of reasons including the fact that UHF equipment is more readily available than VHF equipment. VPM states that this is particularly relevant in light of the current supply chain issues facing the broadcast industry and its vendors. Second, VPM argues, because UHF antennas are lighter than VHF antennas, replacing the antenna at the Elliott Knob DTS site with a UHF antenna would reduce the total weight on the tower. VPM recently determined that it will be able to install the channel 15 antenna on WVPT's existing tower at Elliott Knob whereas remaining on channel 12 would require the construction of a new tower at that site.

Based on the foregoing, VPM requests that the Commission waive its tolling rule and toll the WVPT construction permit expiration date.

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 through March 15, 2022.⁹ VPM has demonstrated it has been unable to complete construction of its post-auction channel facilities due to construction delays. We also find that grant of VPM's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WVPT has already ceased operation on its pre-auction channel and is operating from an interim facility on its post-auction channel. To the extent some viewers are unable to receive WVPT's signal while it operates using its interim facility, we believe that

⁵ LMS File Nos. 0000116867, 0000129932 and 0000150136. WVPT was repacked from channel 11 to channel 12 and operates channel 12 on a shared basis with WVPY(TV), New Market, Virginia.

⁶ See LMS File No. 0000176742.

⁷ See LMS File No. 0000149712.

⁸ See *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Staunton, Virginia)*, Notice of proposed Rulemaking, MB Docket No. 21-248, DA 21-695 (MB 2021).

⁹ 47 CFR § 73.3598(b).

VPM 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. Although VPM requests tolling for six months, we find that tolling through March 15, 2022, is appropriate based on the Stations' assigned deadline for submitting final reimbursement documentation and so that the Commission can continue to monitor the Station's progress.

We remind VPM 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."¹⁰ 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 VPM of the deadline for submitting final expense documentation for reimbursement for the Station is March 22, 2022.¹¹ 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 VPM to submit eligible invoices as soon as practicable.

The above facts considered, VPM Media Corporation's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 000028448) for WVPT(TV), Staunton, Virginia, **IS TOLLED to March 15, 2022**. Grant of this tolling waiver does not permit WVPT to recommence operation on its pre-auction channel. We also remind VPM that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹² 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): Ari Meltzer, Esq.

¹⁰ 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.").

¹¹ *See 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 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).

¹² *See* 47 § CFR 73.3598(b).