

WNJS(TV) – Request for Tolling of Construction Permit
LMS File No. 34585

New Jersey Public Broadcasting Authority (“NJPBA”), licensee of noncommercial educational TV station WNJS(TV), Camden, New Jersey (“WNJS”), respectfully requests nine months of additional time to construct its permanent post-auction facilities pursuant to a waiver of the tolling provisions contained in Section 73.3598 of the Commission’s rules. As set forth herein, WNJS has been unable to construct its permanent facilities due to rare and exceptional circumstances beyond its control.

Background

WNJS is assigned to transition from Channel 22 to Channel 23 in Phase 4 of the repack. The station’s transition plan calls for, among other things, replacement of the station’s existing transmitter. The NJPBA is a state agency that operates a noncommercial educational public TV network consisting of several transmission sites serving the State of New Jersey with high-quality public TV programming and emergency communications. As a state agency, the NJPBA is required by law to proceed through the State of New Jersey’s “bid and award” procurement process for larger projects such as the purchase of WNJS’s permanent post-repack facilities. This procurement process involves other elements of New Jersey state government and includes substantial delays outside of the WNJS licensee’s control.

In October 2018, WNJS determined that it would not be possible to complete the state procurement process in time to secure delivery of the station’s new facilities and install them prior to the end of Phase 4. At that point, the station modified Form 399 and its transition plan to include interim Channel 23 facilities to ensure that the station would be able continue serving its viewers while timely ceasing broadcasts on its pre-auction channel. NJPBA requested and was granted a one-time purchasing waiver from the State with a procurement threshold of \$150,000. This exemption enabled the NJPBA to rapidly award a contract for the equipment necessary to build an interim, low-power facility for WNJS to ensure continuity of service until the station’s full power facility can be procured consistent with state requirements. Prior to the completion of Phase 4, WNJS ceased operations on its pre-auction facilities and began broadcasting on its post-auction channel over temporary facilities pursuant to a grant of special temporary authority.

Meanwhile, WNJS continues to navigate the New Jersey state procurement process. The New Jersey Division of Purchase and Property (“NJDP”) is the state agency responsible for procurement of the equipment and services related to the repacked WNJS transmitter. Regarding this project, NJDP provided the following statement for inclusion in this tolling request:

“Our current established project plan has the NJ Public Broadcasting Authority’s task, T3085 FCC Repack, targeted to have the Evaluation Report & Recommendation Committee report completed & submitted by December 27th, 2019. The Award Recommendation Approval is targeted for January 27, 2020 of which a ten-day Protest Period will begin on January 28, 2020. The contract award would then occur on February 14, 2020.”

NJPBA estimates that it will take an additional 200 days past contract award for equipment to be delivered, installed, and integrated, and is hoping to put the permanent WNJS facility into operation by the end of September 2020.

Waiver Request

In the *Incentive Auction Report and Order*, the Commission stated that it would grant six-month extensions of post-auction construction permits pursuant to the incentive auction rules, and that further extensions of time would be subject to the tolling provisions contained in Section 73.3598 of the Commission's rules.¹ The Media Bureau has noted that in the event that construction of a station has been disrupted by circumstances other than those provided for in its tolling rules, "[s]tations 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."² The Media Bureau has waived the tolling rules to provide additional construction time for a station that was unable to timely construct its post-auction facilities, in that case due to delays associated with Canadian frequency coordination.³

WNJS has been unable to construct its permanent facilities due to rare and exceptional circumstances beyond its control. WNJS is required by law to make major purchases through the New Jersey state procurement process. This process is simply incompatible with the aggressive buildout timelines associated with the television repack. Grant of a waiver is not likely to negatively impact the overall transition schedule and will not cause interference to other stations, as WNJS already has ceased operation on its pre-auction channel and is operating on its post-auction channel with temporary facilities. Good cause thus exists to waive the tolling provisions of Section 73.3598 of the Commission's rules and extend the expiration of WNJS's construction permit for nine months (*e.g.*, until October 29, 2020).

¹ See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, *Report and Order*, 29 FCC Rcd 6567, 6804-6806, paras. 580-584 (2014) ("*Incentive Auction Report and Order*"); 47 C.F.R. § 73.3598.

² Public Notice, Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines, 33 FCC Rcd 8240, 8245, n.34 (MB and IATF 2018), *citing* 1998 Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes, *Memorandum Opinion and Order*, 14 FCC Rcd 17525, 17536, para. 42 (1999).

³ Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Cross Hill Communications, LLC (Mar. 22, 2019) available at LMS file No. 0000064627.