



Federal Communications Commission
Washington, D.C. 20554

January 28, 2020

Philadelphia Television Station WPSG, Inc.
Daniel G. Ryson
1725 DeSales St. NW
Suite 501
Washington, DC 20036

Re: Request for Tolling
WPSG, Philadelphia, PA
Facility ID No. 12499
LMS File No. 0000094129

Dear Licensee,

On December 26, 2019, Philadelphia Television Station WPSG, Inc. (CBS), the licensee of WPSG, Philadelphia, Pennsylvania (WPSG 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 CBS' request and toll the expiration date of WPSG's construction permit for 180 days to July 27, 2020.

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

CBS requests waiver of the tolling rule and tolling of its construction permit for its post-incentive

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).

auction channel facilities. WPSG is currently operating on its post-auction channel with temporary facilities.⁵ WPSG was previously granted a construction permit extension through January 29, 2020.⁶ CBS states that construction of the Station's post-auction channel facilities have continued to be delayed because of the discovery and necessary abatement of asbestos within pipe insulation used throughout one of the transmitter buildings. Until the asbestos issues were resolved, other significant projects such as the replacement of an HVAC system, electrical systems, and the utility substation could not begin on time. CBS states that those projects, in turn, have delayed the primary transmitter installation. Additionally, CBS reports that further structural work is required on the complex tower that cannot be done during the weeks of Philadelphia winter weather preceding the January 29, 2020 construction permit expiration date. Based on the foregoing, CBS requests that the Commission waive its tolling rule and toll the WPSG construction permit expiration date for 180 days to July 27, 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 Station's construction permit to July 27, 2020. CBS has demonstrated it did not complete construction of its post-auction channel facilities due to construction delays. We also find that grant of CBS' waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WPSG 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 WPSG's signal while it operates using its interim facility, we believe that CBS 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.

We remind CBS 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."⁷ 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.

The above facts considered, CBS Broadcasting, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000034323) for WPSG, Philadelphia, Pennsylvania **IS TOLLED to July 27, 2020**. Grant of this tolling waiver does not permit WPSG to recommence operation on its pre-auction channel. We also remind CBS that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.⁸

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

⁵ See LMS File No. 0000084294. WPSG was repacked from channel 32 to channel 33.

⁶ See LMS File No. 0000072283.

⁷ 47 U.S.C. § 1452(b)(4)(A)(i). See also *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

⁸ See 47 § CFR 73.3598(b).