



Federal Communications Commission  
Washington, D.C. 20554

January 28, 2020

New Jersey Public Broadcasting Authority  
Richard A. Williams  
P.O. Box 777  
Trenton, NJ 08625

Re: Request for Tolling Waiver  
WNJS, Camden, NJ  
Facility ID No. 48481  
LMS File No. 0000093664

Dear Licensee,

On December 18, 2019, New Jersey Public Broadcasting Authority (NJPBA) the licensee of WNJS, Camden, New Jersey (WNJS 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 NJPBA's request and toll the expiration date of WNJS' construction permit to October 26, 2020.<sup>1</sup>

*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.<sup>2</sup> All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of Section 73.3598(b) of the Rules.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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

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<sup>1</sup> Because 270 days from the Station's current construction expiration date falls on Sunday, October 25, 2020, we will extend the construction permit to the next business day, which would be Monday, October 26, 2020. *See* 47 CFR 1.4.

<sup>2</sup> *See* 47 CFR § 73.3700(b)(5).

<sup>3</sup> *See* 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

<sup>4</sup> *Id.*

<sup>5</sup> *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).

incentive auction channel facilities to October 26, 2020. WNJS is currently operating on its post-auction channel with temporary facilities.<sup>6</sup> WNJS was previously granted a construction permit extension through January 29, 2020.<sup>7</sup> NJPBA states it is continuing to navigate the New Jersey state procurement process that previously contributed to delays in construction of the Station's post-auction channel facilities. According to NJPBA, the state agency responsible for procurement of the equipment and services related to the repacked WNJS transmitter does not expect to complete the award process until February 2020, after the Station's current deadline. NJPBA estimates that it will then take an additional 200 days past contract award for equipment to be delivered, installed, and integrated. Based upon these estimates, NJPBA requests tolling to October 26, 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 October 26, 2020. NJPBA has demonstrated it did not complete construction of its post-auction channel facilities due to delays in the public procurement process. We also find that grant of NJPBA's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WNJS 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 WNJS' signal while it operates using its interim facility, we believe that NJPBA 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 NJPBA 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."<sup>8</sup> 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, New Jersey Public Broadcasting Authority's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000034585) for WNJS, Camden, New Jersey **IS TOLLED to October 26, 2020**. Grant of this tolling waiver does not permit WNJS to recommence operation on its pre-auction channel. We also remind

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<sup>6</sup> See LMS File No. 0000075321. WNJS also shares its post-auction channel with co-owned WNJT, Trenton, New Jersey.

<sup>7</sup> See LMS File No. 0000072208.

<sup>8</sup> 47 U.S.C. § 1452(b)(4)(A)(i). See also *Incentive Auction R&O*, 29 FCC Red at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

NJPBA that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>9</sup>

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Kreisman', with a long horizontal flourish extending to the right.

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): Todd Gray, Esq.

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<sup>9</sup> See 47 § CFR 73.3598(b).