

Tolling Waiver Request
CBS Television Licenses LLC
WSBK-TV Boston, Massachusetts
Facility ID 73982

CBS Television Licenses LLC (ViacomCBS), licensee of WSBK-TV Boston, MA (the Station), herein requests a waiver of the Commission's tolling provisions, pursuant to section 73.3598(b) of the Commission's rules, for construction of the main WSBK-TV post-transition facility.¹ As discussed below, this request is necessary due to delays beyond ViacomCBS' control.

Background. WSBK-TV was originally assigned to repack Phase 8 (which had a March 13, 2020 completion date) and subsequently filed and received a modified assignment to Phase 7. This change caused the WSBK-TV Construction Permit expiration date to be altered to match the Phase 7 completion date of January 17, 2020. At the start of the Phase 7 Test Period, WSBK-TV successfully transitioned from channel 39 to channel 21 using the Station's permanently licensed auxiliary antenna.²

Tower owner American Towers LLC (ATC), the general contractor for construction of the main antenna site of WSBK-TV and many other Boston stations, has been experiencing a myriad of delays stemming from equipment unavailability, tower crew scheduling challenges, and harsh weather. A significant interruption occurred last fall due to the requirement of the town of Needham, MA, where the WSBK-TV tower is located, for a Special Permit before top-mounted antennas could be installed. Although the permit was eventually granted, the time-consuming approval process and delays from harsh winter weather prevented tower work for many months. Therefore, a 180-day construction permit extension request was requested and granted, with an expiration date of July 15, 2020.³

Recent Delays. Shortly after construction recommenced this winter, there was a transmission line burnout in the interim antenna system used by WSBK-TV and many other

¹ See LMS file number 0000034574.

² See LMS file number 0000086922.

³ See LMS file number 0000093139.

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Boston area stations.⁴ Emergency repairs required the tower crew to abandon work at the main site for several weeks. Since then, rain and high wind have contributed to numerous “bad weather” days further impacting progress. Although the tower crew has continued to work during the COVID-19 pandemic, related safety protocols and guidelines also have had some adverse effects on the schedule.

As a result of these challenges, the most recent forecast from ATC predicts a construction completion date of July 13, just a couple of days prior to the Station’s current construction permit expiration date of July 15. Although it is conceivable the work will be completed prior to July 15, the margin is slim and the prior weather pattern is difficult to ignore. If further delays beyond the Station’s control prevent a timely License Application “to cover” the WSBK-TV Construction Permit, ViacomCBS respectfully requests to extend the WSBK-TV tolling until January 11, 2021.⁵

In the *Incentive Auction Report and Order*, the Commission stated that after granting a six-month extension, further extensions of time would be subject to the tolling provisions contained in section 73.3598. The Media Bureau also 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 cases where ‘rare or exceptional circumstances’ prevent construction.”⁶

The confluence of events described above, including prior permitting delays, a particularly rainy and windy spring causing numerous weather delays, and the impact of a worldwide pandemic, is both rare and exceptional. Grant of a tolling waiver will not adversely

⁴ See LMS file numbers 0000106561 (Reduced Power Notification) and 0000108001 (Resume Operations).

⁵ Although construction is anticipated to be completed sooner, by seeking tolling for WSBK-TV until this date, our intent is to eliminate the need to request another tolling date for the Station.

⁶ 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.24 (MB and IATV 2018) *citing* 1998 Regulatory Review – Streamlining of Mass Media Applications, Rules and Processes, *Memorandum Opinion and Order*, 14 FCC Rcd 17525, 17536 at ¶ 42 (1999).

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impact the overall transition schedule and will not cause interference to other stations, as WSBK-TV ceased operation on its pre-auction channel last year using its permanent auxiliary antenna. WSBK-TV has every incentive to complete construction of its technically superior main antenna facility as soon as possible and intends to aggressively pursue the best-case scenario outlined above as long as doing so remains legal and safe.

ViacomCBS respectfully submits that good cause exists to continue tolling the expiration of the WSBK-TV Construction Permit until January 11, 2021.