

Tolling Waiver Requests  
KYW-TV and WPSG(TV) Philadelphia, Pennsylvania

CBS Broadcasting Inc. and Philadelphia Television Station WPSG, Inc. (ViacomCBS), licensees of KYW-TV (Facility ID 25453) and WPSG(TV) (Facility ID 12499) both Philadelphia, PA (the Stations), herein request waivers of the Commission's tolling provisions, pursuant to section 73.3598(b) of the Commission's rules, for construction of the main post-transition facilities of both Stations.<sup>1</sup> As discussed below, these requests are necessary due to delays beyond ViacomCBS' control.

Background. Both Stations were originally assigned to repack Phase 4, which had an August 2, 2019 completion date. Despite a myriad of delays involving local permitting, environmental issues, and weather setbacks, the Stations made timely transitions to their post-transition channels using interim facilities. However, due to extensive interim facility construction delays, it was necessary for the main transmitter and antenna systems to remain operational on pre-transition channels until the completion date, far longer than had been planned. As a result, ViacomCBS requested and was granted a 180-day CP extension for the primary facilities of both Stations.<sup>2</sup>

When the initial CP extension was requested, it was optimistically believed that construction could be completed in 180-days. Unfortunately, the well-established pattern of setbacks, challenges, and construction delays continued when asbestos pipe insulation was subsequently discovered throughout one of the transmitter buildings. To comply with City of Philadelphia regulations and assure worker safety, extensive work was required to conduct inspections, obtain and analyze air samples, perform asbestos abatement activities, and to verify that the work was completed in a manner consistent with City of Philadelphia regulations.

Until the asbestos issue was resolved, other significant projects such as the replacement of an HVAC system, electrical systems, and utility substation could not begin on time. Those projects, in turn, further delayed the primary transmitter installation. As a result, a second

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<sup>1</sup> See LMS file number 0000033618 (KYW-TV) and 0000034323 (WPSG).

<sup>2</sup> See LMS file number 0000072286 (KYW-TV CP Extension) and 0000072283 (WPSG CP-Extension).

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Tolling Waiver was requested and granted.<sup>3</sup> The Construction Permits are now scheduled to expire on July 27, 2020.

Recent Delays. On March 6, 2020, after the Centers for Disease Control and Prevention and U.S. Department of Health and Human Services declared COVID-19 a “public health emergency,” the Governor of Pennsylvania issued orders to discontinue all construction not related to life-sustaining activities. This order remained effective for two months, until May 6, 2020, when the Commonwealth allowed construction to resume. Further delays resulted from the need to demobilize and remobilize the site and new requirements to follow health and safety physical-distancing precautions.

Making matters worse, the helicopter crane subcontractor originally responsible for effectuating the primary antenna lifts for both Stations cancelled the contract for the lifts in Philadelphia and many other broadcast markets due to COVID-19 related issues in the United States and South America. Although another helicopter vendor was secured, the best available lift date was scheduled for the weekend of July 25<sup>th</sup>, just days prior to the Construction Permit expiration dates.

As the antennas are to be top-stacked, the lower KYW-TV antenna requires a heavy-duty mechanical design to safely support the WPSG antenna above it. Documentation provided by the antenna manufacturer specified an antenna weight of 17,500 pounds, well within the helicopter’s 20,000-pound limit. The manufacturer’s documented antenna weight was the basis for the FAA-approved flight plan.

The antennas arrived on June 21, four days prior to the planned lift. As part of their due-diligence efforts prior to the helicopter’s arrival, the tower crew weighed the antennas using certified scales. They determined that the KYW-TV antenna weighed 19,360-pounds even after

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<sup>3</sup> See LMS file number 0000094128 (KYW-TV Tolling Waiver) and 0000094129 (WPSG Tolling Waiver).

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removing the radomes and WPSG transmission line. Noting the discrepancy, this on-site measurement was double-checked and confirmed by a second set of recently calibrated scales.

On July 25th, the tower and helicopter crews removed the existing antennas without incident. However, it was necessary for the helicopter crew to scrub Sunday's scheduled lift out of an abundance of caution and because the FAA-issued authorization, which was based on the 17,500 published antenna weight now in question, was believed invalid for the higher weight. ViacomCBS supported this decision because, despite pressure to finish this project in a timely manner, human safety and compliance with Federal regulations must always come first.

At present, ViacomCBS is working with its consultants, the antenna manufacturer, the tower company, and the helicopter vendor to determine the best way forward. Notably, as helicopter lift ratings are often conservatively derated, one possibility being considered is another helicopter having a greater weight limit. Such an aircraft exists but is booked to another project through November.

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."<sup>4</sup>

The confluence of events described above, including prior environmental delays, weather delays, asbestos abatement, and the impact of a worldwide pandemic, is both rare and exceptional. Grant of a tolling waiver will not adversely impact the overall transition schedule

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<sup>4</sup> 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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and will not cause interference to other stations, as both Stations ceased operation on pre-auction channels using interim facilities. The Stations have every incentive to complete construction of their technically superior main facilities as soon as possible and intend to aggressively pursue the best-case scenario as long as doing so remains legal and safe.

ViacomCBS respectfully submits that good cause exists to continue tolling the expiration of the KYW-TV and WPSG(TV) Construction Permit until January 23, 2021.