



Federal Communications Commission  
Washington, D.C. 20554

August 13, 2021

ION Media Philadelphia License, Inc.  
601 Clearwater Park Road  
West Palm Beach, FL 33401  
[Bianca.Frye@scripps.com](mailto:Bianca.Frye@scripps.com)  
(via electronic mail)

Re: Request for Tolling Waiver  
WPPX-TV, Wilmington, DE  
Facility ID No. 51984  
LMS File No. 0000150326

Dear Licensee,

On June 17, 2021, ION Media Philadelphia License, Inc. (ION), the licensee of WPPX-TV, Wilmington, Delaware (WPPX or Station), filed the above-referenced request for waiver of the rules and tolling of the Station's construction permit expiration date, as amended. For the reasons below, we grant ION's request and toll the expiration date of WPPX's construction permit through September 30, 2021.

*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>1</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>2</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>3</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>4</sup>

ION requests waiver of the tolling rule and tolling of its construction permit for the Station's post-incentive auction channel facilities. ION was granted an extension and multiple waivers of the tolling rule and the Station's construction permit was most recently tolled to July 26, 2021.<sup>5</sup> The Station

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<sup>1</sup> See 47 CFR § 73.3700(b)(5).

<sup>2</sup> See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

<sup>3</sup> *Id.*

<sup>4</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).

<sup>5</sup> LMS File Nos. 0000072539, 0000093553, 0000116301 and 0000130065. WPPX was repacked from channel 31 to channel 34.

is currently operating on its post-auction channel with interim facilities.<sup>6</sup>

ION states that it has been unable to construct the permanent WPPX post-auction channel facilities due to delays at the tower site owned and operated by ABC, Inc., and CBS/Westinghouse of PA Inc. (CBS) known as the Philadelphia Joint Venture Tower (PJVT). ION maintains that it had been waiting to receive a final antenna mount design and a construction timeline from CBS, the manager of the tower site. In July 2021, shortly before the Station's current construction permit expiration date, a structural engineering study was finally completed, and the WPPX antenna mount design was approved. ION also received a preliminary construction schedule which would allow for WPPX to complete the installation of its permanent antenna by the end of November 2021. ION states that the tower crew is schedule to arrive in late August 2021 to remove and replace the old antennas and transmission line. Once that is complete, ION states that the crew will work to modify the tower and install the new tower extensions. ION predicts that the tower will be completed in mid-October 2021, after which time the new antennas can be installed. ION reports that installation of the WPPX antenna is tentatively scheduled for the third week of October 2021 and antenna testing and final installations will follow shortly thereafter. ION is hopeful it will complete construction of the permanent WPPX post-auction channel facilities by the end of November. Accordingly, ION requests waiver of the Commission's rules and tolling of the construction permit expiration date.

*Discussion.* Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive the rules and toll the expiration date of the Station's construction permit to September 30, 2021.<sup>7</sup> ION has demonstrated it did not complete construction of its post-auction channel facilities due to construction delays. We also find that grant of ION's tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WPPX 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 WPPX's signal while it operates using its interim facility, we believe that ION 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 tolling of the Station's construction permit. Although ION requests tolling for an additional 180 days, we find based on the information provided that tolling through September 30, 2021, will allow Commission staff to continue to monitor construction progress.

We remind ION 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.

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<sup>6</sup> See LMS File No. 000015240.

<sup>7</sup> 47 CFR § 73.3598(b).

<sup>8</sup> 47 U.S.C. § 1452(b)(4)(A)(i). See also *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 et. al., Report and Order, 29 FCC Rcd 6567, 6821, para. 622 (2014) (*Incentive Auction R&O*), aff'd, *Nat'l Ass'n of Broadcasters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

We further remind ION that the deadline for submitting final expense documentation for reimbursement for the Station is **October 8, 2021**.<sup>9</sup> Thus, we strongly encourage the Station to diligently pursue satisfaction of the current deadlines to improve the chances that there will be sufficient funds available to reimburse the Station for its legitimate repacking expenses, and we encourage ION to submit eligible invoices as soon as practicable.

The above facts considered, ION Media Philadelphia License, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000034931) for WPPX-TV, Wilmington, Delaware **IS TOLLED to September 30, 2021**. Grant of this tolling waiver does not permit WPPX to recommence operation on its pre-auction channel. While we anticipate this will be ION's final request for tolling, we remind ION that any subsequent tolling requests will be subject to the Commission's tolling provisions.<sup>10</sup> To the extent the Station seeks an additional extension of tolling, such a request must include a detailed plan for completing construction of the Station's permanent post-auction facilities. We will look unfavorably upon any future request that does not include such a plan.

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): Henry Wendel, Esq.

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<sup>9</sup> See *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 35 FCC Rcd 11273, 11277, paras. 10-11 (IATF/MB Oct. 7, 2020) (setting three filing deadlines for submission of all remaining repack invoices: for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period, the deadline for submitting all remaining invoices is October 8, 2021; the deadline for entities assigned completion dates in the second half of the transition period is March 22, 2022; and the deadline for all other participants in the reimbursement program is September 5, 2022).

<sup>10</sup> See 47 CFR § 73.3598(b). A station 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. See *1998 Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17536, para. 42 (1999).