

Justification for Reinstatement of CP and Further Waiver of Tolling

VPM Media Corporation (“VPM” or “Licensee”), licensee of television station WVPT(TV), Staunton, VA (Fac. ID 60111) (the “Station”) hereby submits this request pursuant to Section 73.3598(b) of the Commission’s Rules¹ for reinstatement the deadline for the Station’s construction permit (File No. 0000028448) (the “CP”) and a waiver of tolling of through July 17, 2023 to allow time for the FCC to process the Licensee’s pending Petition for Rulemaking to relocate the Station to UHF channel 15 and for the Licensee to construct the post-Incentive Auction facility.²

I. Background

In the *Closing and Channel Reassignment Public Notice*, the Commission assigned the Station to transition from RF channel 11 to RF channel 12 in Phase 10 of the post-Incentive Auction transition. Licensee initially planned to retune its existing Axcera transmitters from channel 11 to channel 12. After Licensee placed its orders, however, Axcera declared bankruptcy. Axcera initially indicated that it would continue to support the rechanneling project. However, on Oct 7, 2019, Axcera advised Licensee that the transmitters and exciters could not support rechanneling and that the Licensee would need to purchase new equipment. Licensee explored the possibility of using new transmitters with its existing antenna, but on Feb 24, 2020, Mega Industries (current owner of the MCI brand) advised Licensee that it no longer supports the existing antenna (originally purchased in 2001) and cannot model the pattern using a new or retuned transmitter. As a result, Licensee would have needed to replace both the transmitter and antenna at its Elliott Knob site.

In February 2020, the manufacturer of the existing tower at Elliott Knob, Valmont, performed a structural analysis to determine whether the tower could support the replacement antenna. This analysis was conducted on an expedited basis in an attempt to obtain consideration from

¹ 47 C.F.R. § 73.3598(b).

² To the extent necessary, Licensees request a waiver of the deadline for filing a request for tolling. The Commission’s Rules specify that requests for additional time to complete construction should be filed not less than ninety (90) days prior to the CP expiration date. 47 CFR § 73.3700(b)(5)(iv). The FCC may grant a waiver for good cause shown. The agency typically grants a waiver where the particular facts make strict compliance inconsistent with the public interest. *N.E. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 CFR § 1.3. Here, the delay in filing was attributable to VPM’s pending application for a construction permit on for its channel 15 facility. Waiver of the deadline for requesting additional time is in the public interest as it will allow the Commission to grant the requested Waiver of Tolling, which will allow Station to continue its efforts to complete construction of the permanent post-auction facilities that it will use to serve the public. Therefore, good cause exists, and this waiver should be granted.

the local planning board in March 2020. After reviewing both the original drawings from MCI and the proposed specifications from Dielectric, Valmont determined that the existing tower could not support the replacement antenna and that a replacement would be required. Although the initial structural analysis was performed at Licensee's request, the tower site owner has assumed responsibility for all subsequent analyses.

In the meantime, on June 30, 2020, the Station suspended operations on RF channel 11 and began operating on RF channel 12 on an interim basis using a new transmitter and its existing antenna. Licensee received several complaints from viewers about a loss of reception due to the unpredictable changes in pattern using the existing antenna, confirming that the interim facilities are not suitable for use on a permanent basis.

Rather than incur the time and expense of constructing a new tower, Licensee instead filed a petition for rulemaking to move to channel 15, which would allow it to use a lighter UHF antenna. File No. 0000149712. The FCC granted Licensee's petition on September 1, 2022. VPM filed its application for a construction permit for the channel 15 facilities on September 29, 2022. File No. 0000201196. That application remains pending.

Although VPM has undertaken efforts to prepare for the construction of the Station's channel 15 facilities, it is unable to finalize its equipment orders and commence construction until the channel 15 minor modification is granted. While VPM waits for the necessary approvals from the Commission, it is working with its vendors to finalize and update their proposals and planning for the installation and launch sequence specified by the NRAO. Assuming the application is granted in the near future, VPM hopes to complete construction in late spring or early summer.

II. The Commission Should Waive Tolling and Extend the DTS CP

Under the present circumstances, a waiver of tolling and extension of the CP is justified. In its Public Notice adopting the post-Incentive Auction transition scheduling plan, the Media Bureau and the Incentive Auction Task Force declared that "[r]eassigned stations and band changing stations that are unable to complete construction of their post-auction channel facilities by their deadlines may seek a single extension of up to 180 days."³ All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of Section 73.3598(b) of the Rules.⁴

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

³ *Incentive Auction Task Force & Media Bureau Adopt A Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 32 FCC Rcd. 890 ¶ 40 (MB & IATF 2017); 47 CFR § 73.3700(b)(5).

⁴ 47 C.F.R. § 73.3598(b).

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.⁵ If a station does not qualify for tolling under these criteria, good cause may exist to waive the Commission's tolling provisions and still toll the expiration of the Station's construction permit where the station can demonstrate that "rare and exceptional circumstances" prevented construction.⁶

A waiver of tolling is appropriate here because Licensee's inability to complete construction of its post-Incentive Auction facilities is due to rare and exceptional circumstances beyond its control. Since VPM submitted its last request for tolling in September, the Commission granted the petition for rulemaking, and VPM filed its minor modification application for the Station. However, Licensee cannot proceed further until the application is granted.

In the Incentive Auction Report and Order, the FCC committed to "work diligently with stations to ensure that service disruptions are minimized to the fullest extent possible through the use of a variety of mechanisms."⁷ Providing Licensee with additional time to complete construction will allow the Station to continue to serve viewers without any competing harm.

In short, the public interest will be served by grant of a waiver and tolling of WVPT's construction permit.

III. Conclusion

For the foregoing reasons, the Commission should grant VPM's request for reinstatement of its CP and waiver of the Commission's tolling provisions and toll WPVT's CP through July 17, 2023.

⁵ *Id.*

⁶ See *1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes*, Memorandum Opinion and Order, 14 FCC Rcd. 17525 ¶ 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.").

⁷ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd. 6567 §§ 569-70 (2014).