



Federal Communications Commission
Washington, D.C. 20554

February 13, 2023

VPM Media Corporation
Mark Spiller
23 Sesame Street
Richmond, VA 23235
mspiller@vpm.org
(via electronic mail)

Re: Request for Tolling Waiver
WVPT(TV), Staunton, VA
Facility ID No. 60111
LMS File No. 0000207080

Dear Licensee,

VPM Media Corporation (VPM), the licensee of Station WVPT(TV), Staunton, Virginia (WVPT or Station), filed the above-referenced request for waiver of the Commission's tolling provisions and tolling of the Station's digital construction permit expiration date (Request), as amended.¹ For the reasons below, we grant VPM's Request, waive the applicable rules, and toll WVPT's digital construction permit expiration date through April 30, 2023.

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.² All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.³ 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.⁴ 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.⁵

¹ LMS File No. 0000207080 (filed Jan. 18, 2023; amended Feb. 10, 2023).

² See 47 CFR § 73.3700(b)(5).

³ See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

⁴ *Id.*

⁵ 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).

VPM requests waiver of the tolling rule and tolling of the expiration date of the WVPT digital construction permit for the Station's post-incentive auction channel facilities. VPM was granted an extension and multiple waivers of the tolling rule and the Station's construction permit was most recently tolled to January 17, 2023.⁶ The Station is currently operating on its post-auction channel with interim facilities.⁷

Since the grant of its last tolling waiver in September 2022, VPM states that it has continued to pursue construction of its channel 15 repack facilities. In a well-documented filing, VPM notes that on September 1, 2022, the Commission issued a Report and Order approving the channel 15 substitution.⁸ VPM was required to obtain consent from the nearby Green Bank Radio Observatory and the Sugar Grove Research Station – both part of the National Radio Astronomy Observatory (NRAO) - for its proposed channel 15 substitution. VPM then filed an application to modify its construction permit for the channel 15 facilities on September 29, 2022, which the Station subsequently modified.⁹ On January 20, 2023, the Commission granted VPM's application to construct the channel 15 facility. Following grant of its channel 15 application, VPM states that it began working with its vendors to finalize and update their proposals and planning for the installation and launch sequence as were required as part of the consent it received from the NRAO. VPM states that it has finalized orders with its equipment vendors and expects that the antennas will be delivered in April and the transmitters will be delivered in the summer. Based on the foregoing, VPM requests that the Commission waive the tolling rule and toll the WVPT construction permit expiration date.

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 through April 30, 2023.¹⁰ VPM has demonstrated it has been unable to complete construction of its post-auction channel facilities due to delays in obtaining a final "Quiet Zone" approvals of its proposed channel change. Now that consent has been obtained, the channel change approved by the Commission and a construction permit for channel 15 issued, VPM is now cleared to complete construction of the Station's post-auction channel facilities. We also find that grant of VPM's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WVPT has already ceased operation on its pre-auction channel and is operating from an interim facility on its post-auction channel. To the extent some viewers are unable to receive WVPT's signal while it operates using its interim facility, we believe that VPM 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. While VPT seeks tolling through July 17, 2023, in order to ensure diligent progress continues we find it is appropriate to extend the Station's Displacement CPs through April 30, 2023.

⁶ LMS File Nos. 0000116867, 0000129932, 0000150136, 0000176744, 0000189759 and 0000199129. WVPT was repacked from channel 11 to channel 12 and operates channel 12 on a shared basis with WVPY(TV), New Market, Virginia.

⁷ See LMS File No. 0000199189.

⁸ *Table of Allotments, Television Broadcast Stations (Staunton, Virginia)*, Report and Order, MB Docket No. 21-248, DA 22-919, 2022 WL 4079022 (MB Sept. 1, 2022).

⁹ LMS File No. 0000201196 (modifying LMS File No. 0000055362).

¹⁰ 47 CFR § 73.3598(b).

We further remind VPM of the deadline for submitting final expense documentation for reimbursement for the Station is **April 30, 2023**.¹¹ **We caution the Station that we do not anticipate allowing further extensions of the Station's extended invoice filing deadline. A station's failure to complete any remaining construction in a timely manner and to make final submissions by the assigned invoice filing assignment deadline could preclude that station from receiving full reimbursement.** Unobligated amounts in the Fund must be rescinded to Treasury and the Commission staff (with the support of the Fund Administrator) must have sufficient time to fully process all reimbursement requests and complete close-out procedures prior to July 3, 2023.¹² The Fund Administrator will initiate close out procedures for any entity that has failed to initiate interim close-out procedures by the Station's extended invoice filing deadline. Any unused allocations made to that entity's account will be returned to the Fund and made available for allocation to other program participants or rescinded to Treasury. Thus, we strongly encourage the Station to diligently pursue satisfaction of the current deadline and we encourage VPM to submit eligible invoices as soon as practicable.

The above facts considered, VPM Media Corporation's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000201196) for WVPT(TV), Staunton, Virginia, **IS REINSTATED AND TOLLED to April 30, 2023**. Grant of this tolling waiver does not permit WVPT to recommence operation on its pre-auction channel. Although we expect that this will be VPM's final request for tolling, we remind VPM that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹³ 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): Ari Meltzer, Esq.

¹¹ The Station was granted an extension of its January 17, 2023 invoice submission deadline and the Station's deadline was extended to April 30, 2023. *See* Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to VPM Media Corporation (Feb. 13, 2023) (on file at LMS File No. 0000207081); *see also 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 2020) (setting filing deadlines for submission of repack invoices).

¹² *See id.* at 11277-78, para 13.

¹³ *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 Streamlining MO&O*, 14 FCC Rcd at 17536, para. 42.