



Federal Communications Commission
Washington, D.C. 20554

April 14, 2020

WSJV License, LLC
Brady Dreasler
P.O. Box 909
Quincy, IL 62306

Re: Request for Tolling Waiver
WSJV(TV), Elkhart, IN
Facility ID No. 74007
LMS File No. 0000111859

Dear Licensee,

On April 8, 2020, WSJV License, LLC (WLL), licensee of Station WSJV(TV), Elkhart, Indiana (WSJV or Station), filed the above-referenced request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant WLL's request and toll the expiration date of WSJV's construction permit through October 13, 2020.¹

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

WLL requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities through October 13, 2020. WSJV has been granted an extension and

¹ Because the date that WLL requested for its extended expiration date, October 12, 2020, falls on the Columbus Day holiday, we will extend the construction permit to the next business day, which would be Tuesday, October 13, 2020. *See* 47 CFR 1.4.

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).

its construction permit was extended to April 15, 2020.⁶ WSJV ceased operations on its pre-auction channel and is operating on its post-auction channel from an auxiliary facility while it completes construction of its post-auction channel facilities.⁷

WLL states that delays at other work sites have pushed back the ability of the station's tower work crew to perform the necessary work at the Station's tower site. Furthermore, while the Station has received its new combiner, installation is now delayed due to the COVID-19 pandemic.⁸ Accordingly, WLL requests that the Commission waive its tolling rule and toll the WSJV construction permit expiration date to October 13, 2020.

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. WLL has demonstrated it will be unable to complete construction of its post-auction channel facilities due to construction delays related to tower crew scheduling and installation of the Station's combiner due to the COVID-19 pandemic. We also find that grant of WLL's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WSJV has already ceased operation on its pre-auction channel and is operating an auxiliary facility on its post-auction channel. To the extent some viewers are unable to receive WSJV's signal while it operates its auxiliary facilities, we believe that WLL 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.

We remind WLL 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."⁹ Additional expenses incurred, such as expenses resulting from changes in a Stations' transition plans that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The above facts considered, WSJV License, LLC's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000027461) for WSJV(TV), Elkhart, Indiana, **IS TOLLED to October 13, 2020**. Grant of this tolling waiver does not permit WSJV

⁶ LMS File No. 0000086685. WSJV was repacked from channel 28 to channel 30.

⁷ LMS File No. 0000086837.

⁸ The World Health Organization has classified COVID-19 as a pandemic and the President declared it a national emergency.

⁹ 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) ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

to recommence operation on its pre-auction channel. We also remind WLL that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹⁰

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Stephen Hartzell, Esq.

¹⁰ See 47 § CFR 73.3598(b).