



Federal Communications Commission
Washington, D.C. 20554

April 21, 2020

KBSI Licensee, LP, et al.
Harvey Arnold
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Re: Requests for Tolling Waiver
KBSI, Cape Girardeau, MO;
WKEF(TV), Dayton, OH; WMSN-TV,
Madison, WI; WTOM-TV, Cheboygan,
MI; WVTV(TV), Milwaukee, WI;
WZTV(TV), Nashville, TN
Facility ID Nos. 418, 19593, 10221,
21254, 73155, and 74174
LMS File Nos. 0000112159,
0000112160, 0000112162, 0000112184,
0000112201, and 0000112204

Dear Licensee,

On April 13, 2020, KBSI Licensee, LP, licensee of Station KBSI(TV), Cape Girardeau, Missouri (KBSI); WKEF Licensee, LP, licensee of Station WKEF(TV), Dayton, Ohio (WKEF); WMSN Licensee, LLC, licensee of Station WMSN-TV, Madison, Wisconsin (WMSN); WPBN Licensee, LLC, licensee of Station WTOM-TV, Cheboygan, Michigan (WTOM); WVTV Licensee, Inc., licensee of Station WVTV, Milwaukee, Wisconsin (WVTV); and WZTV(TV) Licensee, LLC, licensee of Station WZTV, Nashville, Tennessee (WZTV) (collectively Sinclair and Stations) filed the above-referenced requests for waiver of the Commission's tolling provisions and tolling of the Stations' construction permit expiration dates. For the reasons below, we grant Sinclair's requests and toll the expiration date of the Stations' 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

¹ Because the date that Sinclair 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).

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

Sinclair requests waivers of the tolling rule and tolling of the Stations' construction permits for their post-incentive auction channel facilities through October 13, 2020. The Stations are currently operating on their post-auction channels with temporary facilities.⁶ The Stations were each granted a construction permit extension with expiration dates of April 15, 2020.⁷

Sinclair states that it has made significant progress in constructing the Stations' post-auction channel facilities, however tower crew and transmitter crew delays have prevented the Stations from completing installation of their top mount antennas, transmission lines, and/or permanent transmitters. Sinclair states that, with respect to all the Stations, additional delays have occurred because engineers, tower crews, and transmitter crews have been unable to travel due to the COVID-19 pandemic.⁸ Therefore, Sinclair has requested waivers of the tolling rules and tolling of the Stations' construction permit deadlines 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 Stations' construction permits to October 13, 2020. We find that Sinclair was unable to complete construction of the Stations' post-auction channel facilities due construction delays. We also find that grant of Sinclair's waiver and tolling requests are not likely to negatively impact the overall transition schedule and will not cause interference to other stations. The Stations have already ceased operation on their pre-auction channels and initiated temporary operations on their post-auction channels. To the extent some viewers are unable to receive the Stations' signals while they operate using interim facilities, we believe that Sinclair has every incentive to ensure viewers are fully informed about the Stations'

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).

⁶ See LMS File Nos. 0000112157, 0000112161, 0000112164, 0000112173, 0000112200 and 0000112203. KBSI was repacked from channel 22 to channel 36; WKEF from channel 18 to channel 34; WMSN from channel 49 to channel 18; WTOM from channel 35 to channel 16; WVTV from channel 18 to channel 27 and WZTV from channel 15 to channel 20.

⁷ See LMS File Nos. 0000086503, 0000086506, 0000086541, 0000086595, 0000086602, and 000086603. We do not consider a construction permit to have expired during the pendency of a tolling or extension request filed prior to a station's construction permit expiration date. Nevertheless, we encourage licensees to file requests as soon as practical or as otherwise required by the Commission's tolling rule.

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

transition plans. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Stations' construction permits.

We remind Sinclair that pursuant to the Spectrum Act, the Stations' are 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 station's transition plans that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The above facts considered, KBSI Licensee, LP, WKEF Licensee, LP; WMSN Licensee, LLC; WPBN Licensee, LLC; WVTM Licensee, Inc.; and WZTV Licensee, LLC's requests for waiver of the Commission's tolling provisions **ARE GRANTED**. The construction permits (LMS File Nos. 0000025127, 0000034522, 0000034381, 0000034388, 0000034387 and 0000028847, respectively) for KBSI(TV), Cape Girardeau, Missouri; WKEF(TV), Dayton, Ohio; WMSN-TV, Madison, Wisconsin; WTOM-TV, Cheboygan, Michigan; WVTM(TV), Milwaukee, Wisconsin; and WZTV(TV), Nashville, Tennessee, **ARE TOLLED to October 13, 2020**. Grant of these tolling waivers does not permit the Stations to recommence operation on their pre-auction channels. We also remind Sinclair 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):
Paul Cicelski, Esq.

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.").

¹⁰ *See* 47 CFR § 73.3598(b).