



Federal Communications Commission
Washington, D.C. 20554

September 11, 2020

Graham Media Group, Michigan, Inc.
Marcus Williams
550 West Lafayette Boulevard
Detroit, MI 48226
marcus@wdiv.com
(via electronic mail)

Re: Request for Tolling Waiver
WDIV-TV, Detroit, MI
Facility ID No. 53114
LMS File No. 0000120859

Dear Licensee,

On August 27, 2020, Graham Media Group, Michigan, Inc. (Graham), the licensee of WDIV-TV, Detroit, Michigan (WDIV 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 Graham's request and toll the expiration date of WDIV's construction permit to March 8, 2021.¹

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

¹ Because 180 days from the Station's current construction expiration date falls on Sunday March 7, 2021, we will extend the construction permit to the next business day, which would be Monday, March 8, 2021. *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).

Graham requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities to March 8, 2021. WDIV is currently operating on its post-auction channel using an auxiliary facility while it completes construction of its post-auction channel facilities.⁶ WDIV was previously granted a construction permit extension through September 9, 2020.⁷

Graham states that it has been working diligently toward completing the installation of the Station's post-auction channel antenna but, due to the COVID-19 pandemic, it was informed that the company that it contracted to install the Station's post-auction antenna would be unable to complete construction by the current construction permit deadline. Graham states that it has not been able to engage an alternative qualified tower crew. Counsel for Graham has confirmed to Bureau staff that the installation of the antenna did not occur by September 9, 2020. Therefore, in light of these circumstances, Graham requests tolling of the Station's construction permit to March 8, 2021. Counsel has informed Bureau staff that Graham anticipates installation of the Station's post-auction antenna will be complete well prior to its new construction permit deadline.

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 to March 8, 2021.⁸ Graham has demonstrated it has been unable to complete construction of its post-auction channel facilities due to construction delays. We also find that grant of Graham's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WDIV has already ceased operation on its pre-auction channel and is operating from an auxiliary facility on its post-auction channel. To the extent some viewers are unable to receive WDIV's signal while it operates using its auxiliary facility, we believe that Graham 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 Graham 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 Station's transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

We further remind Graham that the Commission has stated that the Bureau may announce a deadline for the submission of final expense documentation for reimbursement well before the statutory deadline of July 3, 2023.¹⁰ Thus, we strongly encourage the Station to diligently pursue satisfaction of the

⁶ See LMS File No. 0000107487. WDIV was repacked from channel 45 to channel 32.

⁷ See LMS File No. 0000093533.

⁸ 47 CFR § 73.3598(b).

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) (*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.").

¹⁰ See *id.* at 6567, para. 616; *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, MB Docket 18-214 and GN Docket No. 12-268, Report and Order, 34 FCC Rcd 1690, 1739, para. 105 (2019). See also *Incentive Auction Task Force and Media Bureau Report on the Status of the Post-Incentive Auction Transition and Reimbursement*

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 Graham to submit eligible invoices as soon as practicable.

The above facts considered Graham Media Group, Michigan, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000027872) for WDIV-TV, Detroit, Michigan, **IS TOLLED to March 8, 2021**. Grant of this tolling waiver does not permit WDIV to recommence operation on its pre-auction channel. We also remind Graham that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹¹

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic email): Jennifer Johnson, Esq.

Program et al., MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 34 FCC Rcd 304, 312, para. 23 and n.35 (IATF/MB 2019).

¹¹ See 47 CFR § 73.3598(b).