



Federal Communications Commission
Washington, D.C. 20554

December 17, 2020

West Virginia Educational Broadcasting Authority
Chuck Roberts
600 Capitol Street
Charleston, WV 25301
croberts@wvpublic.org

Re: Request for Tolling Waiver
WSWP-TV, Grandview, WV
Facility ID No. 71680
LMS File No. 0000129372

Dear Licensee,

On December 3, 2020, West Virginia Educational Broadcasting Authority (WVEBA), the licensee of WSWP-TV, Grandview, West Virginia (WSWP or Station), filed the above-referenced request, as amended, for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant WVEBA's request and toll the expiration date of WSWP's construction permit through June 30, 2021.

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.¹ All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.² 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.³ 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.⁴

WVEBA requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities through June 28, 2021. WSWP has been granted a construction

¹ See 47 CFR § 73.3700(b)(5).

² See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

³ *Id.*

⁴ 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).

permit extension and its construction permit was extended to December 30, 2020.⁵ WSWP is currently operating on its post-auction channel with temporary facilities.⁶

WVEBA states that construction of the Station's permanent post-auction channel facilities has been further delayed because of the State of West Virginia procurement process that was preventing the purchase of the Station's post-auction channel antenna. That process was only just recently completed as was the antenna fabrication. WVEBA is now working to secure a helicopter and tower crew to complete the antenna installation. WVEBA anticipates that the crews will be scheduled by mid-to-late December 2020 but does not expect all the work to be complete by the expiration date of the Station's construction permit. Based on the foregoing, WVEBA requests that the Commission waive its tolling rule and toll the WSWP construction permit expiration date an additional 180 days to June 28, 2021.

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 June 28, 2021.⁷ WVEBA has demonstrated it has been unable to complete construction of its post-auction channel facilities due to construction and equipment delivery delays. We also find that grant of WVEBA's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WSWP 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 WSWP's signal while it operates using its interim facility, we believe that WVEBA 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 WVEBA 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."⁸ 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 WVEBA of the deadline for submitting final expense documentation for reimbursement for the Station is March 22, 2022.⁹ Thus, we strongly encourage the Station to diligently pursue satisfaction of the current deadlines to improve the chances that there will be sufficient funds

⁵ LMS File No. 0000115741. WSWP was repacked from channel 10 to channel 8.

⁶ See LMS File No. 0000129371.

⁷ 47 CFR § 73.3598(b).

⁸ 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.").

⁹ See *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 Oct. 7, 2020) (setting three filing deadlines for submission of all remaining repack invoices: for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period, the deadline for submitting all remaining invoices is October 8, 2021; the deadline for entities assigned completion dates in the second half of the transition period is March 22, 2022; and the deadline for all other participants in the reimbursement program is September 5, 2022).

available to reimburse the Station for its legitimate repacking expenses, and we encourage WVEBA to submit eligible invoices as soon as practicable.

The above facts considered, West Virginia Educational Broadcasting Authority's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000034625) for WSWP-TV, Grandview, West Virginia, **IS TOLLED through June 30, 2021**. Grant of this tolling waiver does not permit WSWP to recommence operation on its pre-auction channel. We also remind WVEBA 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): Tom W. Davidson, Esq.
Attorney of Record

¹⁰ See 47 CFR § 73.3598(b).