



Federal Communications Commission  
Washington, D.C. 20554

July 30, 2020

Philadelphia Television Station WPSG, Inc.  
CBS Broadcasting, Inc.  
Daniel G. Ryson  
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Suite 501  
Washington, DC 20036  
[dryson@cbs.com](mailto:dryson@cbs.com)  
(via electronic mail)

Re: Request for Tolling  
WPSG(TV), Philadelphia, PA  
KYW-TV, Philadelphia, PA  
Facility ID Nos. 12499 and 25453  
LMS File No. 0000116423 and  
0000116422

Dear Licensee,

On June 23, 2020 Philadelphia Television Station WPSG, Inc., the licensee of WPSG(TV), Philadelphia, Pennsylvania (WPSG) and CBS Broadcasting, Inc., the licensee of KYW-TV, Philadelphia, Pennsylvania (KYW) (collectively CBS 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 CBS' requests and toll the expiration date of the Stations' construction permits to January 23, 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.<sup>1</sup> All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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<sup>1</sup> See 47 CFR § 73.3700(b)(5).

<sup>2</sup> See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

<sup>3</sup> *Id.*

<sup>4</sup> 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

CBS requests waivers of the tolling rule and tolling of the construction permits for the Stations' post-incentive auction channel facilities to January 23, 2021. The Stations are currently operating on their post-auction channels using interim facilities while they complete construction of their post-auction channel facilities.<sup>5</sup> The Stations were previously granted construction permit extensions and tolling through July 27, 2020.<sup>6</sup>

CBS states that construction of the Stations' post-auction channel facilities, including installation of the Stations' shared antenna via helicopter, was delayed as a result of impacts and restrictions on construction resulting from the COVID-19 pandemic.<sup>7</sup> CBS recently discovered that the Federal Aviation Administration (FAA) issued tower modification authorization was no longer valid because the weight of the Stations' antenna had increased. CBS is currently working with its consultants to resolve this matter before undertaking further work. Therefore, in light of these circumstances, and ongoing uncertainty concerning the Stations' construction schedule, CBS requests tolling of the Stations' construction permits to January 23, 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 Stations' construction permits to January 23, 2021.<sup>8</sup> CBS has demonstrated it did not complete construction of the Stations' post-auction channel facilities due to construction and permitting delays. We also find that grant of CBS' waivers and tolling requests is 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 are operating from interim facilities 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 CBS has every incentive to ensure viewers are fully informed about the Stations' 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 CBS 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."<sup>9</sup> 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.

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"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).

<sup>5</sup> See LMS File No. 0000100429 and 0000100113. WPSG was repacked from channel 32 to channel 33 and KYW from channel 26 to channel 30.

<sup>6</sup> See LMS File Nos. 0000072283, 0000094129, 0000072286, 0000094128.

<sup>7</sup> The World Health Organization has classified COVID-19 as a pandemic and the President declared it a national emergency.

<sup>8</sup> 47 CFR § 73.3598(b).

<sup>9</sup> 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.").

We further remind CBS 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.<sup>10</sup> Thus, we strongly encourage the Stations to diligently pursue satisfaction of the current deadlines to improve the chances that there will be sufficient funds available to reimburse the Stations for their legitimate repacking expenses, and we encourage CBS to submit eligible invoices as soon as practicable.

The above facts considered, Philadelphia Television Station WPSG, Inc. and CBS Broadcasting, Inc.'s request for waiver of the Commission's tolling provisions **ARE GRANTED**. The construction permits (LMS File No. 0000034323 and 0000033618, respectively) for WPSG(TV), Philadelphia, Pennsylvania and KYW-TV, Philadelphia, Pennsylvania, **ARE TOLLED to January 23, 2021**. Grant of these tolling waivers does not permit the Stations to recommence operation on their pre-auction channels. We also remind CBS that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>11</sup>

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>10</sup> 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 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).

<sup>11</sup> See 47 CFR § 73.3598(b).