



Federal Communications Commission
Washington, D.C. 20554

October 5, 2020

Virgin Islands Public Broadcasting System
Tanya-Marie Singh
P.O. Box 7879
Charlotte Amalie, St. Thomas, VI 00801
tsingh@wtjx.org
(via electronic mail)

Re: Request for Tolling Waiver
WTJX-TV, Charlotte Amalie, VI
Facility ID No. 70287
LMS File No. 0000121556

Dear Licensee,

On September 14, 2020, Virgin Islands Public Broadcasting System (VIPBS), the licensee of WTJX-TV, Charlotte Amalie, Virgin Islands (WTJX 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 VIPBS' request and toll the expiration date of WTJX's construction permit through April 5, 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 Saturday April 3, 2021, we will extend the construction permit to the next business day, which would be Monday, April 5, 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*

VIPBS requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities to April 5, 2021. WTJX was granted an extension and two previous waivers of the tolling rule and its construction permit was tolled to October 5, 2020.⁶ WTJX is currently operating on its post-auction channel with temporary facilities.⁷

VIPBS states the Station's facilities were destroyed by hurricanes Irma and Maria in 2017 and it has been working ever since to rebuild them. VIPBS is currently operating from a side mounted antenna on its main tower. It has completed rebuilding its 100-foot auxiliary tower and plans to move the Station's post-auction channel antenna to the 100 foot tower and operate from that site while its main 250 foot tower is rebuilt. In addition to completing the necessary work on its main tower, VIPBS was recently informed by the Federal Aviation Administration (FAA) that it was required to file a correction, which is currently pending, to correct the coordinates of its main tower. VIPBS states that it estimates the work will be completed by March 2021. Accordingly, VIPBS seeks a waiver of the tolling rules and tolling of its construction permit deadline to April 5, 2021.

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive the rules and toll the expiration date of the Station's construction permit to April 5, 2021.⁸ VIPBS has demonstrated it did not complete construction of its post-auction channel facilities due to construction delays and FAA approval. We also find that grant of VIPBS's tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WTJX has already ceased operation on its pre-auction channel and initiated temporary operations on its post-auction channel. To the extent some viewers are unable to receive WTJX's signal while it operates using its interim facility, we believe that VIPBS 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 tolling of the Station's construction permit.

We remind VIPBS 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 VIPBS 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

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 LMS File Nos. 0000072190, 0000084077, and 0000109082.

⁷ See LMS File No. 0000121555. WTJX was repacked from channel 44 to channel 36.

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*

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 VIPBS to submit eligible invoices as soon as practicable.

The above facts considered, Virgin Islands Public Broadcasting System's, request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000025655) for WTJX-TV, Charlotte Amalie, Virgin Islands, **IS TOLLED to April 5, 2021**. Grant of this tolling waiver does not permit WTJX to recommence operation on its pre-auction channel. We also remind VIPBS 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): Brad Deutsch, Esq.

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).

¹¹ See 47 § CFR 73.3598(b).