



Federal Communications Commission
Washington, D.C. 20554

November 2, 2020

JBS, Inc.
708-C Thimble Shoals Blvd.
Newport News, VA 23606
NEALROSENBAUM@GMAIL.COM
(via electronic mail)

Re: Request for Tolling Waiver
WYSJ-CA, Yorktown, VA
Facility ID No. 35134
LMS File No. 0000124348

Dear Licensee,

On October 8, 2020, JBS, Inc. (JBS), the licensee of Station WYSJ-CA, Yorktown, Virginia (WYSJ-CA or Station), filed the above-referenced request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit. For the reasons below, we grant JBS's waiver request and toll WYSJ-CA's construction permit through January 11, 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

JBS requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities to January 11, 2021. WYSJ-CA is currently silent while it completes

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).

construction of its post-auction channel facilities.⁵ WYSJ-CA was previously granted a construction permit extension and tolling through October 13, 2020.⁶

JBS states the Station has made substantial progress in building its post-auction channel facilities. JBS reports that the post-auction channel transmitter and new antenna have been delivered and are ready to be installed. JBS states that issues scheduling a tower crew and a dispute with the tower landlord have caused further delays and JBS has determined that it will not be able to complete construction of its post-repack facilities by the October 13, 2020 deadline. Given these delays, JBS requests tolling of the Station's construction permit for 90 days through January 11, 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 through January 11, 2021.⁷ JBS has demonstrated it did not complete construction of its post-auction channel facilities due to construction delays. We also find that grant of JBS's tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WYSJ-CA 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 WYSJ-CA's signal while it operates using its interim facility, we believe that JBS 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 JBS 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 JBS 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 available to reimburse the Station for its legitimate repacking expenses, and we encourage JBS to submit eligible invoices as soon as practicable.

⁵ See LMS File No. 0000117145. WYSJ-CA was repacked from channel 19 to channel 36.

⁶ See LMS File Nos. 0000096336 and 0000117142.

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, GN Docket No. 12-268, Public Notice, DA 20-1171, para. 10 (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).

The above facts considered, JBS, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000034756) for WYSJ-CA, Yorktown, Virginia, **IS TOLLED to January 11, 2021**. Grant of this tolling waiver does not permit WYSJ-CA to recommence operation on its pre-auction channel. We also remind JBS that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹⁰

Furthermore, we remind JBS that section 312(g) of the Communications Act of 1934, as amended, provides that "[i]f a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may extend or reinstate such station license . . . for any reason to promote equity and fairness."¹¹ Absent the resumption of operation, the Station's license is currently set to automatically expire on January 17, 2021. The Commission has exercised its discretion under section 312(g) to extend or reinstate a station's expired license "to promote equity and fairness" only in limited circumstances where a station's failure to transmit a broadcast signals for 12 consecutive months is due to compelling circumstances that were beyond the licensee's control.¹² To the extent JBS seeks an extension of the Station's license, silent authority, or additional tolling of its post-auction construction permit, any such request(s) must include a detailed plan for bringing the station back to operational status. We will look unfavorably upon any future request that does not include such a plan.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic email): David D. Burns, Esq.

¹⁰ See 47 CFR § 73.3598(b).

¹¹ 47 U.S.C. § 312(g). See 47 CFR §§ 73.1635(a)(4), 73.1740(c), and 73.1750.

¹² See e.g., *Community Bible Church, Letter Order*, 23 FCC Rcd 15012, 15014 (MB 2008) (reinstatement warranted where licensee took all steps needed to return to air, but remained off air to promote air safety after discovering and reporting that FCC and FAA records contained incorrect tower information); *Mark Chapman, Court-Appointed Agent*, Letter Order, 22 FCC Rcd 6578, 6580 (MB 2007) (reinstating license where silence necessitated by licensee's compliance with court order); *Universal Broadcasting of New York, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 10319 (MB 2019) (station unable to file STA to resume service due to a federal government shutdown), *aff'd* Letter Order, 35 FCC Rcd 7129 (MB 2020). The Commission has stated that it would consider cases where stations were forced to remain dark for more than 12 months by the repack process. See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6807, para. 585 (2014). See e.g., Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Sandford Broadcasting Group, Inc., licensee of WBFT-CD, Sanford, NC (Aug. 14, 2020), LMS File No. 0000116294.