



Federal Communications Commission
Washington, D.C. 20554

January 14, 2021

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. 0000130612

Dear Licensee,

On January 6, 2021, JBS, Inc. (JBS), the licensee of WYSJ-CA, Yorktown, Virginia (WYSJ-CA 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 JBS's request and toll the expiration date of WYSJ-CA's construction permit through June 17, 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

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).

JBS requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities through June 17, 2021. WYSJ-CA has been granted a construction permit extension and twice been granted tolling and its construction permit was most recently extended to January 11, 2021.⁵ WYSJ-CA is currently silent while JBS completes construction of the Station's post-auction channel facilities.⁶

JBS states that it has made significant progress in constructing the Station's post-auction channel facilities including installation and testing of the transmitter, delivery of the antenna, and retention of a tower crew to perform installation. JBS states that the tower crew was scheduled to begin the process of installing the new antenna in early January when the new owner of the Station's tower suddenly announced that JBS would need to provide additional information regarding the structural condition of the tower and local building permit requirements. JBS states that it is now working to provide the required information, but JBS is not certain that the owner will give its consent for the antenna installation to commence and how much of a delay in completing construction will result. Based on the foregoing, JBS requests that the Commission waive its tolling rule and toll the WYSJ-CA construction permit expiration date through June 17, 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 17, 2021.⁷ JBS 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 JBS' waiver and 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 is silent. To the extent viewers are unable to receive WYSJ-CA's signal while it is silent, 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 waiver and 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.

⁵ See LMS File Nos. 0000096336, 0000117142 and 0000124348. WYSJ-CA was repacked from channel 19 to channel 36.

⁶ See LMS File No. 0000130611. By separate action, we are granting JBS' request and extending the Station's license and silent authority to June 17, 2021, pursuant to the equity and fairness provision of section 312(g) of the Communications Act of 1934, as amended. 47 U.S.C. § 312(g).

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.").

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.

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 through June 17, 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

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

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 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).

¹⁰ See 47 CFR § 73.3598(b).