



Federal Communications Commission
Washington, D.C. 20554

March 11, 2021

Gray Television Licensee, LLC
WVFX
4370 Peachtree Road
Atlanta, GA 30319
robert.folliard@gray.tv
(via electronic mail)

Re: Request for Tolling Waiver
WVFX(TV), Clarksburg, WV
Facility ID No. 10976
LMS File No. 0000138023

Dear Licensee,

On March 5, 2021, Gray Television Licensee, LLC (Gray), the licensee of Station WVFX(TV), Clarksburg, West Virginia (WVFX 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 Gray's waiver request and toll WVFX's construction permit through September 7, 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

¹ Because six months (180 days) from the Station's current construction expiration date falls on Sunday, September 5, 2021, we will extend the construction permit to the next business day, which due to the Labor Day holiday would be Tuesday, September 7, 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.*

demonstrate that “rare and exceptional circumstances” prevented construction by the station’s construction permit expiration date.⁵

Gray requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities for an additional six months. WVFX has been granted a construction permit extension and its construction permit was extended to March 8, 2021.⁶ WVFX is currently operating on its post-auction channel with an interim facility.⁷

Gray states that construction of the Station’s post-auction channel facilities continues to be delayed because of significant and unexpected structural concerns with its existing tower. Gray states that it has hired an independent engineering team to direct and supervise construction of the Station’s post-auction facility. Gray states that it has engaged a company to construct a replacement tower and following several on-site evaluations during the Fall, it confirmed that the existing tower must be replaced in order to build the repack facility. Gray maintains that it has now ordered the steel to construct the tower, delivery of which is expected in June 2021. Gray estimates that construction of the tower will take approximately 30 days thereafter. Once the tower is built, Gray anticipates it will need an additional 90-120 days to complete all construction. Based on the foregoing, Gray requests that the Commission waive its tolling rule and toll the WVFX construction permit for an additional six months.

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 September 7, 2021.⁸ Gray 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 Gray’s waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WVFX 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 WVFX’s signal while it operates using its interim facility, we believe that Gray 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 Gray 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

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 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 No. 0000120287. WVFX was repacked from channel 10 to channel 13.

⁷ See LMS File No. 0000138026.

⁸ 47 CFR § 73.3598(b).

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 Gray of the deadline for submitting final expense documentation for reimbursement for the Station is March 22, 2022.¹⁰ 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 Gray to submit eligible invoices as soon as practicable.

The above facts considered, Gray Television Licensee, LLC’s request for waiver of the Commission’s tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000034189) for WVFX(TV), Clarksburg, West Virginia, **IS TOLLED to September 7, 2021**. Grant of this tolling waiver does not permit WVFX to recommence operation on its pre-auction channel. We also remind Gray 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 mail): Joan Stewart, Esq.

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 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).

¹¹ *See* 47 § CFR 73.3598(b).