



Federal Communications Commission
Washington, D.C. 20554

October 7, 2021

Gray Television Licensee, LLC
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. 0000160513

Dear Licensee,

On September 27, 2021, Gray Television Licensee, LLC (Gray), the licensee of Station WVFX(TV), Clarksburg, West Virginia (WVFX or Station), filed the above-referenced request for reinstatement of construction permit, waiver of the Commission's tolling provisions and tolling of the Station's construction permit. For the reasons below, we grant Gray's requests, reinstate the Station's construction permit, and grant its waiver request and toll WVFX's construction permit through November 30, 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

Gray requests waiver of the tolling rule and reinstatement and tolling of its construction permit for its post-incentive auction channel facilities. Gray has been granted a construction permit extension

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).

and a waiver of the tolling rule and its construction permit was most recently tolled to September 7, 2021.⁵ WVFX is currently operating on its post-auction channel with interim facilities.⁶

Since grant of its last tolling waiver request, Gray states that it has made significant progress toward construction of the Station's permanent post-auction channel facilities. Gray states that the new tower has been built and a crew is on-site installing the transmission line. Gray states further that the transmitter building has been built and the transmitter has been delivered and installed. Gray maintains that the last major piece of equipment needed to complete construction is the antenna. Gray maintains that the antenna was delayed by the manufacturer due to COVID-19 pandemic delays that resulted in manufacturing and delivery backlogs. Based on the current schedule, Gray states that construction of the Station's permanent facilities is expected to be complete by early November 2021. Based on the foregoing, Gray requests waiver of the tolling rule, reinstatement and and tolling of the Station's construction permit.

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 November 30, 2021.⁷ Gray has demonstrated it did not complete construction of the Station's post-auction channel facilities due to a last-minute equipment failure. 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. The Station has already ceased operation on their pre-auction channels and is operating from interim facilities on its post-auction channel. To the extent some viewers are unable to receive the Station's signal while it operates using interim facilities, we believe that Gray has every incentive to ensure viewers are fully informed about the Station's transition plans. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Station's construction permit.⁸ Although Gray requests tolling for an additional 180 days, we find based on the information provided that tolling through November 30, 2021, will allow Commission staff to continue to monitor construction progress.

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 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.

⁵ LMS File Nos. 0000120287 and 0000138023. WVFX was repacked from channel 43 to channel 24.

⁶ See e.g., LMS File No. 0000160483.

⁷ 47 CFR § 73.3598(b).

⁸ We remind Gray of the importance of adhering to Commission deadlines and making timely filings. We will look unfavorably upon further tolling waiver requests that include reinstatement of the Station's construction permit due to their late filing.

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.").

We further remind Gray that the deadline for submitting final expense documentation for reimbursement for the Station is currently March 22, 2021.¹⁰ We strongly encourage the Station to diligently pursue satisfaction of its assigned submission deadline 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 November 30, 2021**. Grant of this tolling waiver does not permit WVFX to recommence operation on its pre-auction channel. While we anticipate this will be Gray's final request for tolling, we remind Gray that any subsequent tolling requests will be subject to the Commission's tolling provisions.¹¹ To the extent the Station seeks an additional extension of tolling, such a request must include a detailed plan for completing construction of the Station's permanent post-auction facilities. 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 mail): Joan Stewart, Esq.

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). A station may also seek a waiver of the tolling rule to receive additional time to construct in the case where "rare or exceptional circumstances" prevent construction. See *1998 Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17536, para. 42 (1999).