



Federal Communications Commission
Washington, D.C. 20554

May 31, 2022

VPM Media Corporation
Mark Spiller
23 Sesame Street
Richmond, VA 23235
msspiller@vpm.org
(via electronic mail)

Re: Request for Tolling Waiver
WVPT(TV), Staunton, VA
Facility ID No. 60111
LMS File No. 0000189759

Dear Licensee,

On April 27, 2022, VPM Media Corporation (VPM), the licensee of Station WVPT(TV), Staunton, Virginia (WVPT or Station), filed the above-referenced request for reinstatement of the Station's digital construction permit and waiver of the Commission's tolling provisions and tolling of the digital construction permit expiration date. For the reasons below, we grant VPM's requests, reinstate WVPT's digital construction permit, waive the applicable rules, and toll the digital construction permit expiration date through September 6, 2022.

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).

VPM requests reinstatement of the WVPT digital construction permit, waiver of the tolling rule and tolling of the expiration date of the WVPT digital construction permit for the Station's post-incentive auction channel facilities. VPM was granted an extension and three waivers of the tolling rule and the Station's construction permit was most recently tolled to March 15, 2022.⁵ The Station is currently operating on its post-auction channel with interim facilities.⁶

Since the grant of its last tolling waiver in December 2021, VPM states that it has been pursuing its petition for rulemaking to change the Station's channel to channel 15.⁷ Before the Media Bureau can grant VPM's request to change to channel 15, VPM must obtain consent from the nearby Green Bank Radio Observatory (GBRO) and the Sugar Grove Research Station (SGRS). VPM notes that it has been through multiple rounds of revisions and continues to work to address the concerns of GBRO and SGRS. VPM reports that, on March 21, 2022, the Quiet Zone administrator finally released a letter with a "conditional" concurrence that approves the WVPT channel change to 15. However, until the administrator issues an unconditional approval, the Media Bureau cannot grant the petition for rulemaking to change the Station to channel 15. VPM states that it is continuing to work with the administrator to obtain this final unconditional approval. VPM is hopeful that such final approval can be obtained soon and that it will be able to complete the rulemaking process and change to channel 15 shortly thereafter. Based on the foregoing, VPM requests that the Commission waive its tolling rule and toll the WVPT construction permit expiration date.

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 6, 2022.⁸ VPM has demonstrated it has been unable to complete construction of its post-auction channel facilities due to delays in obtaining a final Quiet Zone approval of its proposed channel change. We also find that grant of VPM's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WVPT 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 WVPT's signal while it operates using its interim facility, we believe that VPM 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 VPM 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. 0000116867, 0000129932, 0000150136 and 0000176744. WVPT was repacked from channel 11 to channel 12 and operates channel 12 on a shared basis with WVPY(TV), New Market, Virginia.

⁶ See LMS File No. 0000176742.

⁷ See LMS File No. 0000149712.

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.").

We further remind VPM of the deadline for submitting final expense documentation for reimbursement for the Station is September 6, 2022.¹⁰ **We caution VPM that we do not anticipate allowing further extensions of the final September 6, 2022 invoice filing deadline. A station's failure to complete any remaining construction in a timely manner and to make final submissions by the assigned invoice filing assignment deadline could preclude that station from receiving full reimbursement.** Unobligated amounts in the Fund must be rescinded to Treasury and the Commission staff (with the support of the Fund Administrator) must have sufficient time to fully process all reimbursement requests and complete close-out procedures prior to July 3, 2023.¹¹ The Fund Administrator will initiate close out procedures for any entity that has failed to initiate interim close-out procedures by the September 6, 2022 invoice filing deadline. Any unused allocations made to that entity's account will be returned to the Fund and made available for allocation to other program participants or rescinded to Treasury. Thus, we strongly encourage VPM to diligently pursue satisfaction of the current deadline and we encourage VPM to submit eligible invoices as soon as practicable.

The above facts considered, VPM Media Corporation's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 000028448) for WVPT(TV), Staunton, Virginia, **IS REINSTATED AND TOLLED to September 6, 2022**. Grant of this tolling waiver does not permit WVPT to recommence operation on its pre-auction channel. We also remind VPM that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹² 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): Ari Meltzer, Esq.

¹⁰ The Station was granted an extension of the March 22, 2022 invoice submission deadline and its deadline was extended to September 6, 2022. *See* LMS File No. 0000186732; *see also 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 6, 2022).

¹¹ *See id.* at 11277-78, para 13.

¹² *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 Streamlining MO&O*, 14 FCC Rcd at 17536, para. 42.