



Federal Communications Commission
Washington, D.C. 20554

September 11, 2020

ION Media Jacksonville License, Inc.
601 Clearwater Park Road
West Palm Beach, FL 33401
BiancaFrye@ionmedia.com
(via electronic mail)

Re: Request for Tolling Waiver
WPXU-TV, Jacksonville, NC
Facility ID No. 37971
LMS File No. 0000120339

Dear Licensee,

ION Media Jacksonville License, Inc. (ION), the licensee of WPXU-TV, Jacksonville, North Carolina (WPXU or Station), filed the above-referenced request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant ION's request and toll the expiration date of WPXU's construction permit to March 8, 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 demonstrate that "rare and exceptional circumstances" prevented construction by the station's construction permit expiration date.⁵

¹ Because 180 days from the Station's current construction expiration date falls on Sunday March 7, 2021, we will extend the construction permit to the next business day, which would be Monday, March 8, 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.*

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).

ION requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities to March 8, 2021. WPXU is currently operating on its post-auction channel using an interim facility while it completes construction of its post-auction channel facilities.⁶ WPXU was previously granted a construction permit extension and subsequent tolling through September 7, 2020.⁷

ION states that the Station continues to experience significant construction challenges and delays due to engineering and construction issues at its leased tower site. After numerous delays in procuring the necessary construction materials, including delays occasioned by the COVID-19 pandemic,⁸ ION states that the tower owner has confirmed to ION that the modification work commenced on August 10, 2020. Upon completion of the modifications, ION predicts that it will be able to commence installation of the Station's permanent antenna. Therefore, in light of these circumstances, ION requests tolling of the Station's construction permit to March 8, 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 to March 8, 2021.⁹ ION has demonstrated it has been unable to complete construction of its post-auction channel facilities by its current construction permit expiration date due to construction delays. We also find that grant of ION's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WPXU 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 WPXU's signal while it operates using its interim facility, we believe that ION 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 ION 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."¹⁰ 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 ION that the Commission has stated that the Bureau may announce a deadline for the submission of final expense documentation for reimbursement well before the statutory deadline of July 3, 2023.¹¹ Thus, we strongly encourage the Station to diligently pursue satisfaction of the current

⁶ See LMS File No. 0000106044. WPXU was repacked from channel 34 to channel 16.

⁷ See LMS File Nos. 0000074583 and 0000105905.

⁸ The World Health Organization has classified COVID-19 as a pandemic and the President declared it a national emergency.

⁹ 47 CFR § 73.3598(b).

¹⁰ 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.")

¹¹ See *id.* at 6567, para. 616; *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, MB Docket 18-214 and GN Docket No. 12-268, Report and Order, 34 FCC Rcd 1690, 1739, para. 105 (2019). See also *Incentive Auction Task*

deadlines to improve the chances that there will be sufficient funds available to reimburse the Station for its legitimate repacking expenses, and we encourage ION to submit eligible invoices as soon as practicable.

The above facts considered, ION Media Jacksonville License, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000072136) for WPXU-TV, Jacksonville, Florida, **IS TOLLED to March 8, 2021**. Grant of this tolling waiver does not permit WPXU to recommence operation on its pre-auction channel. We also remind ION that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹²

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Force and Media Bureau Report on the Status of the Post-Incentive Auction Transition and Reimbursement Program et al., MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 34 FCC Rcd 304, 312, para. 23 and n.35 (IATF/MB 2019).

¹² See 47 CFR § 73.3598(b).