



Federal Communications Commission
Washington, D.C. 20554

January 7, 2021

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

Re: Request for Tolling Waiver
WPPX-TV, Wilmington, DE
Facility ID No. 51984
LMS File No. 0000130065

Dear Licensee,

On December 23, 2020, ION Media Philadelphia License, Inc. (ION), the licensee of WPPX-TV, Wilmington, Delaware (WPPX 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 ION's request and toll the expiration date of WPPX's construction permit through July 22, 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).

ION requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities through July 22, 2021. WPPX has been granted a construction permit extension and twice been granted tolling and its construction permit was most recently extended to January 23, 2021.⁵ WPPX is currently operating on its post-auction channel with an interim facility.⁶

ION states that continues to experience construction challenges at the Station's Philadelphia tower site. ION states that is awaiting a final antenna mount design and a construction timeline from the manager of the tower site. ION states that, on July 30, 2020, ION was informed that the structural plan would need to change due to mechanical failure to another co-located station's top mount antenna. As a result, a new structural design is necessary in order to accommodate ION's main antenna. Although ION was informed in August 2020 that a new antenna and structural study was under way, as of the date of its filing, ION has not received a final antenna mount design or construction timeline. As a result, ION maintains that it will not be possible to complete construction of its post-auction channel facilities by its January 23, 2021 deadline. ION states that it will continue to work with the owners to finalize plans for and complete the tower modifications necessary for installation of the Station's permanent post-auction channel facility. Based on the foregoing, ION requests that the Commission waive its tolling rule and toll the WPPX construction permit expiration date through July 22, 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 July 22, 2021.⁷ ION 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 ION's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WPPX 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 WPPX'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."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. 0000072539, 0000093553 and 0000116301 WPPX was repacked from channel 31 to channel 34.

⁶ See LMS File No. 0000117652.

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 ION of the deadline for submitting final expense documentation for reimbursement for the Station is October 8, 2021.⁹ 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 ION to submit eligible invoices as soon as practicable.

The above facts considered, ION Media Philadelphia License, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000034931) for WPPX-TV, Philadelphia, Pennsylvania, **IS TOLLED through July 22, 2021**. Grant of this tolling waiver does not permit WPPX 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.¹⁰

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division Media Bureau

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 Oct. 7, 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).