



Federal Communications Commission
Washington, D.C. 20554

July 10, 2020

Living Faith Ministries, Inc.
P.O. Box 1867
Abingdon, VA 24212
lisa@livingfaithtv.com
(via electronic mail)

Re: Request for Tolling Waiver
WLFB(TV), Bluefield, WV
Facility ID No. 37806
LMS File No. 0000116298

Dear Licensee,

On June 18, 2020, Living Faith Ministries, Inc. (LFM), the licensee of Station WLFB(TV), Bluefield, West Virginia (WLFB 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 LFM's waiver request and toll WLFB's construction permit to 180 days to January 11, 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

WLFB requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities to January 11, 2021. WFLB is operating an interim facility on its post-

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).

auction channel.⁵ WPAN was previously granted a construction permit extension through July 15, 2020.⁶

LFM states that completion of the Station's post-auction channel facilities has been delayed because of construction and equipment delivery delays due to the effects of the COVID-19 pandemic.⁷ LFM states that this includes effects on supply chains (such as steel for fabricating the WLFB's new tower), vendor availability (such as the tower crew necessary to install WLFB's new tower), and the provision of governmental services (such as the local authorities with jurisdiction over the permitting for WLFB's new tower). Because of these delays, LFM does not expect to be able to complete construction by its current construction permit deadline. Therefore, given these delays, LFM requests tolling of the Station's construction permit 180 days to January 11, 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 January 11, 2021.⁸ LFM has demonstrated it did not complete construction of its post-auction channel facilities due to construction, equipment deliver and local permitting delays. We also find that grant of LFM's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WLFB has already ceased operation on its pre-auction channel and is operating on its post-auction channel from an interim facility. To the extent viewers are unable to receive WLFB's signal while it operates from its interim facility, we believe that LFM 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 LFM 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.

We further remind LFM 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, 2023.¹⁰ Thus, we strongly encourage the Station to diligently pursue satisfaction of the current

⁵ See LMS File No. 0000108495. WLFB was repacked from channel 40 to channel 25.

⁶ See LMS File Nos. 0000094071.

⁷ The World Health Organization has classified COVID-19 as a pandemic and the President declared it a national emergency.

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.").

¹⁰ 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 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).

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

The above facts considered, Living Faith Ministries, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000034862) for WLFB(TV), Bluefield, West Virginia, **IS TOLLED to January 11, 2021**. Grant of this tolling waiver does not permit WLFB to recommence operation on its pre-auction channel. We also remind LFM 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):
Stephen Hartzell, Esq.
(Attorney of Record)

¹¹ See 47 CFR § 73.3598(b).