



Federal Communications Commission
Washington, D.C. 20554

April 8, 2020

ION Media Charleston License, Inc.
601 Clearwater Park Road
West Palm Beach, FL 33401

Re: Request for Tolling
WLPX-TV, Charleston, WV
Facility ID No. 73189
LMS File No. 0000106036

Dear Licensee,

On February 14, 2020, ION Media Charleston License, Inc. (ION), the licensee of WLPX-TV, Charleston, West Virginia (WLPX or Station), filed the above captioned request for tolling, as amended, of the Station's construction permit expiration date. For the reasons below, we grant Ion's request and toll the expiration date of WLPX's construction permit for 180 days to October 13, 2020.¹

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

ION requests waiver of the tolling rule and tolling of its construction permit for the Station's post-incentive auction channel facilities to October 13, 2020. WLPX was granted an extension and its

¹ Because 180 days from the Stations' current construction expiration dates falls on October 12, 2020, the Columbus Day holiday, we will extend the construction permit to the next business day, which would be Tuesday, October 13, 2020. 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).

construction permit was extended to April 15, 2020.⁶ WLPX is currently operating an interim facility on its post-auction channel.⁷

In the instant request, ION states the Station had requested and received authorization to move to a new tower because ION's former tower lease would be unavailable for its post-auction facilities. The new tower is also occupied by WOWK-TV, Huntington, West Virginia, a repacked station that is assigned to transition phase 10, which has a phase completion date of July 3, 2020. ION explains that, in order for WOWK-TV to change out its antenna, the top of the tower needs to remain open to allow placement of WOWK-TV's main antenna. As a result, ION must wait until this work is complete before it can install the Station's permanent post-auction channel antenna. Accordingly, ION seeks a waiver of the tolling rules and tolling of its construction permit deadline to October 13, 2020.

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 October 13, 2020. Specifically, ION has shown it will be unable to complete construction of its final post-auction facility because of the need to coordinate its construction with co-located repacked station WOWK-TV. We find that grant of ION's 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 its pre-auction channel and is operating on its post-auction channel with an interim facility. To the extent some viewers are unable to receive WLPX'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.

The above facts considered, Ion Media Charleston License, Inc.'s request for tolling **IS GRANTED**. The construction permit for WLPX-TV, Charleston, West Virginia, **IS TOLLED to October 13, 2020**. Grant of this tolling waiver does not permit WLPX to recommence operation on her

⁶ LMS File Nos. 0000078308.

⁷ LMS File No. 0000106357. WLPX was repacked from channel 39 to channel 18.

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) ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

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.⁹

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail):

Bianca Frye
Terri Santisi
Shea Clark

⁹ See 47 § CFR 73.3598(b).