



Federal Communications Commission  
Washington, D.C. 20554

AUG 27 2014

In reply refer to: 1800B3-VM

Mr. James H. Jacobs, Jr.,  
Jacobs Broadcast Group, Inc.  
P.O. Box 7785  
Oxford, AL 36203

In re: W246DB, Eulaton, AL  
Facility ID No. 139976  
File No. BMPFT-20131230AOA

Request for Tolling

Dear Mr. Jacobs:

Jacobs Broadcast Group, Inc. ("JBG") filed a Request for Tolling on June 3, 2014 requesting that Commission toll the construction period for its construction permit for a new FM Translator Station W246DB, Eulaton, AL (the "Permit"). The permit was issued on March 8, 2013, and will expire on March 8, 2016. JBG's request states that tolling is necessary because it is prevented from building or selling the Permit due to its non-competition agreement with Jeff Beck Broadcasting, LLC, ("Beck") and a subsequent court injunction against the proposed sale of the Permit to Alabama 810, Inc. As detailed below, JBG's request is denied. Pursuant to Section 73.3598(b), tolling is not available under the circumstances listed in JBG's request.<sup>1</sup>

In support of its request, JBG states that on January 3, 2013, it entered into a non-competition agreement with Beck as part of JBG's sale of Stations WFZX(AM), Anniston, AL, WTDR-FM, Talladega, AL, W256BH, Oxford, AL, and W282BD, Anniston, AL to Beck. The agreement bars JBG from competition with Beck within the primary contours of Stations WFXZ(AM) and WTDR-FM for three years, ending on January 3, 2016. Shortly after JBG was granted the Permit, JBG filed an application for consent to assignment of the Permit to Alabama 810, Inc. on April 19, 2013.<sup>2</sup> On May 22, 2013, Beck requested and was granted an injunction against the sale to Alabama 810, Inc. by Calhoun County, Alabama, Circuit Court.<sup>3</sup> JBG's tolling request asks for the Permit's expiration date to be tolled until the earlier of the date when the court's injunction is lifted, or January 3, 2016, the date that the non-competition agreement expires.

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<sup>1</sup> Tolling of the construction period can be granted under the following circumstances beyond the control of the permittee: 1) Act of God (e.g., tornado, flood, hurricane, earthquake); 2) Administrative or judicial review of the grant of the permit; 3) Litigation related to a necessary governmental requirement for construction or operation of the station; 4) Failure of a condition precedent on the permit (e.g., prior channel substitution of another station). 47 C.F.R. §73.3598(b); *1998 Biennial Regulatory Review—Streamlining of Mass Media Application Rules and Processes*, Report and Order, 13 FCC Rcd 23056 (1998) ("*Streamlining R&O*"), *recon. granted in part and denied in part*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17540 (1999) ("*Streamlining MO&O*").

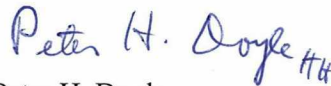
<sup>2</sup> File No. BAPFT-20130419AAP. That application was granted June 13, 2013, but the transaction was never consummated and the assignment authorization has lapsed.

<sup>3</sup> *Jeff Beck Broadcasting Group, LLC v. James Jacobs, and Jacobs Broadcasting Group, Inc.*, Order, 11CV-2013-900269.00 (Circuit Court of Calhoun County, Alabama, May 22, 2013).

JBG argues that tolling should be granted pursuant to 47 C.F.R. §73.3598(b)(2), which provides that the period of construction for an original construction permit shall toll when construction is delayed by any cause of action pending before any 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.

We disagree that Section 73.3598(b)(2) provides for tolling in these circumstances. Although the matters related to the assignment are in litigation, the litigation stems from the interpretation of the non-competition agreement. Such litigation involves a private contractual dispute rather than a “necessary local state or federal requirement for the construction or operation of the station.”<sup>4</sup> Furthermore, this matter stems not from a matter outside JBG’s control, but one in which it voluntarily engaged, by signing the non-competition agreement.<sup>5</sup>

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle" followed by a stylized set of initials "HH".

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>4</sup> 47 C.F.R. §73.3598(b)(2).

<sup>5</sup> See 47 C.F.R. §73.3598(b): “The period of construction for an original construction permit shall toll when construction is prevented by the following causes **not under the control of the permittee.** . . .” (emphasis added).