



Federal Communications Commission
Washington, D.C. 20554

January 6, 2020

Puerto Rico Public Broadcasting Corporation
P.O. Box 190909
Hato Rey, PR 00918

Re: Requests for Tolling
WIPM-TV, Mayaguez, PR
Facility ID No. 53863
LMS File No. 0000082557

WIPR-TV, San Juan, PR
Facility ID No. 53859
LMS File No. 0000082558

Dear Licensee,

On September 30, 2019, Puerto Rico Public Broadcasting Corporation (PRPBC), the licensee of WIPM-TV, Mayaguez, Puerto Rico (WIPM) and WIPR-TV, San Juan, Puerto Rico, (WIPR) (collectively the Stations), filed the above captioned requests for tolling of the Stations' construction permit expiration dates. For the reasons below, we grant PRPBC's requests and toll the expiration dates of WIPM and WIPR's construction permits for 180 days to **March 30, 2020**.

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

In the instant request, PRPBC notes that the Stations' pre-auction facilities were destroyed in Hurricane Maria. The Stations have both resumed operations at reduced power on their post-auction

¹ See 47 CFR § 73.3700(b)(5). Grant of an extension of the construction permit deadline does not alter the deadline by which a station must cease operating on its pre-auction channel. A station anticipating the need for an extension must submit an extension application using FCC Form 2100, Schedule 337. The application must demonstrate that the station is unable to complete construction on time due to circumstances that were either unforeseeable or beyond the station's control. See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567,6804-05, paras. 581-2 (2014) (*Incentive Auction R&O*); 47 CFR § 73.3700(b)(5)(ii) and (iii).

² 47 CFR § 73.3598(b).

³ *Id.*

channels.⁴ The Stations were granted 180-day extensions and then 180-day tolling of the expiration date of their post-transition channel construction permits through October 2, 2019.⁵ PRPBC now seeks additional time to complete construction of the Stations' post-transition channel facilities pursuant to the Commission's tolling provisions in section 73.3598 of the rules. PRPBC once again cites to an Act of God – Hurricane Maria – as justification for tolling of its construction permit. PRPBC recounts what it calls "significant damage" to the Stations' towers, and substantial damage to the related transmission facilities. PRPBC states that the ability to obtain permits, equipment, and resources to restore the Station's facilities has been challenging, as Hurricane Maria greatly strained the accessibility of services and materials in Puerto Rico.

In addition, with respect to WIPM, PRPBC states that construction of the Station's facilities has been delayed. PRPBC reports that the tower owner has hired a tower crew to reinforce the existing tower and has restacked the antennas located on the tower. In addition, PRPBC states that it has identified an antenna to purchase and is awaiting on appropriation of funds for this purpose from the Puerto Rican government. Upon receipt of the necessary funds, PRPBC will order and take delivery of the antenna shortly thereafter. In the meantime, however, PRPBC maintains that its engineering team cannot proceed with any installation.

As for WIPR, PRPBC states that construction was delayed for a significant period of time due to the tower owner's delay in deciding whether to rebuild the tower. PRPBC states further that, after being informed recently by the tower owner that the tower would not be reconstructed, it undertook steps to replace the tower for the Station. PRPBC reports that it has obtained a quote for this tower replacement work and is seeking funds from the Puerto Rican government. Once it has received the necessary funds, PRPBC states that it will work to obtain local zoning approval.

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to toll the expiration date of the Stations' construction permits to March 30, 2020. We find that PRPBC has demonstrated that it was unable to complete construction of the Stations' post-auction channel facilities due to Hurricane Maria – an "Act of God" tolling event. We find that grant of PRPBC's tolling requests are not likely to negatively impact the overall transition schedule and will not cause interference to other stations. The Stations have already ceased operation on its pre-auction channel, resumed operations on their post-auction channels at reduced power, and PRPBC is actively working towards completion of its permanent post-auction channel facilities. We believe that PRPBC has every incentive to ensure viewers that currently are not able to receive the Stations' signal due to its reduced power are fully informed about the Stations' plans to resume full operation on their post-auction channel once they are able to complete construction of their post-auction facility. Ultimately, we conclude that the public interest will be served by tolling of the Stations' post-transition channel construction permit. Pursuant to Section 73.3598(b) of the rules, we toll the expiration date of each of the Stations' construction permits for a total of 180 days, as requested by PRPBC.

We remind PRPBC that pursuant to the Spectrum Act, the Stations are 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."⁶ Additional expenses incurred, for

⁴ WIPM was repacked from channel 35 to 32 and WIPR from channel 43 to 26.

⁵ See LMS File No. 0000055292, 0000055291, 0000067308 and 0000067309.

⁶ 47 U.S.C. § 1452(b)(4)(A)(i). See also *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

instance, as a result of the grant of the Stations' voluntary phase changes or due to other changes in the Stations' transition plans that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund. Such additional costs might include, but may not be limited to, additional legal or engineering expenses; filing fees; and interim or additional equipment that was not contemplated when the Stations filed their initial estimated expenses but was subsequently necessitated due to their voluntary phase changes or other changes in the Stations' plans.

The above facts considered, Puerto Rico Public Broadcasting Corporation's requests for tolling **ARE GRANTED**. The construction permits for WIPM-TV, Mayaguez, Puerto Rico and WIPR-TV, San Juan, Puerto Rico **ARE TOLLED to March 30, 2020**. Grant of this tolling waiver does not permit PRPBC to recommence operation on its pre-auction channels. We also remind PRPBC that any subsequent requests for tolling of its construction permit deadlines will be subject to the Commission's tolling provisions.⁷

Sincerely,

A handwritten signature in black ink, appearing to read 'B A Kreisman', with a long horizontal flourish extending to the right.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Mark Denbo, Esq.

⁷ See 47 CFR § 73.3598(b).