



Federal Communications Commission  
Washington, D.C. 20554

August 4, 2021

Puerto Rico Public Broadcasting Corporation  
P.O. Box 190909  
Hato Rey, PR 00918  
[MLasanta@wipr.pr](mailto:MLasanta@wipr.pr)  
(via electronic mail)

Re: Requests for Tolling Waiver  
WIPM-TV, Mayaguez, PR  
WIPR-TV, San Juan, PR  
Facility ID No. 53863 and 53859  
LMS File Nos. 0000153936 and  
0000153938

Dear Licensee,

On July 26, 2021, Puerto Rico Public Broadcasting Corporation (PRBC), the licensee of WIPM-TV, Mayaguez, Puerto Rico (WIPM) and WIPR-TV, San Juan, Puerto Rico (WIPR) (collectively Stations) filed requests for waiver of the Commission's tolling provisions and tolling of the Stations' construction permit expiration dates. For the reasons below, we grant PRBC's requests and toll the expiration date of the Stations' construction permits through September 30, 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.<sup>1</sup> All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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<sup>1</sup> See 47 CFR § 73.3700(b)(5).

<sup>2</sup> See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

<sup>3</sup> *Id.*

<sup>4</sup> 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).

PRBC requests waiver of the tolling rule and tolling of its construction permits for its post-incentive auction channel facilities. The Stations were each granted an extension and multiple waivers of the tolling rule and their construction permits were most recently tolled to July 27, 2021 for WIPR and August 2, 2021 for WIPM.<sup>5</sup> The Stations are currently operating interim facilities on their post-auction channels.<sup>6</sup>

With respect to WIPR, PRBC states that it has taken substantive steps to complete the construction of its post-auction channel facilities. Since the grant of its last tolling waiver, PRBC states that it has ordered a transmitter for the Station, which is ready for shipment. In addition, PRBC states that the tower manufacturer is scheduled to be at the site in late July 2021 to finalize the tower layout and at that time will provide a clearer indication as to when the tower will be installed. Along with the tower installation, PRBC states that it will also construct a new transmitter building, plus other related installations.

As for WIPM, PRBC states that it has taken substantive steps to complete the construction of its post-auction channel facilities. Because WIPM is on the same tower as Station WNJX, Mayaguez, Puerto Rico, and due to the lack of certified tower riggers, PRBC states that these efforts were delayed. Although WNJX has been able to complete its work and has filed an application for a license to cover its post-auction channel facilities, PRBC states that, due to a reorganization within the local government on Puerto Rico, there have been delays in obtaining final approval from the new agency that now controls the purchase of equipment and services for PRBC. PRBC expects that the governmental agency will issue its final approval soon, so that the transmitter can be delivered to the transmitter site by the end of August 2021. PRBC predicts that the transmitter installation may begin within two weeks after delivery and will be completed within a few weeks thereafter. PRBC states that the Station's antenna installation is complete and the transmission line has to be tested. However, PRBC states that there could be some delays if additional work or replacement of the transmission line is necessary following installation of the transmitter. PRBC plans to complete all work by the end of September 2021. Accordingly, in light of these delays, PRBC requests waiver of the tolling rule and tolling of the Stations' construction permits.

*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 Station's construction permits. We find that PRBC was unable to complete construction of the Stations' post-auction channel facilities due to government procurement and construction delays. We will toll the construction permit of the Stations through September 30, 2021. While the timeline set forth in PRBC's tolling requests asserts that PRBC will need potentially an additional six months to complete construction, we believe an extension through September 30, 2021, is appropriate and will allow us to better monitor the Station's construction progress. We find that grant of PRBC's waivers and 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 their pre-auction channels and initiated temporary operations on their post-auction channels. To the extent some viewers are unable to receive the Stations' signals while they operate using interim facilities, we believe that PRBC has every incentive to ensure viewers are fully informed about the Stations' transition plans. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Stations' construction permits.

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<sup>5</sup> LMS File Nos. 0000055291, 0000055292, 0000067308, 0000067309, 0000082557, 0000082558, 0000110372, 0000110376, 0000122457, 0000122455, 0000141194 and 0000141195.

<sup>6</sup> LMS File Nos. 0000153939 and 0000153945. WIPM was repacked from channel 35 to 32 and WIPR from channel 43 to 26.

We remind PRBC 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.”<sup>7</sup> Additional expenses incurred, such as expenses resulting from changes in a Stations’ transition plans that are not related to their post-incentive auction channel changes, may not be reimbursable from the Fund.

We further remind PRBC of the deadline for submitting final expense documentation for reimbursement for the Stations is **October 8, 2021**.<sup>8</sup> Thus, we strongly encourage the Stations to diligently pursue satisfaction of the current deadlines to improve the chances that there will be sufficient funds available to reimburse the Stations for their legitimate repacking expenses, and we encourage PRBC to submit eligible invoices as soon as practicable.

The above facts considered, Puerto Rico Public Broadcasting’s requests for tolling **ARE GRANTED**. The construction permits (LMS File Nos. 0000024551 and 0000034681, respectively) for WIPM-TV, Mayaguez, Puerto Rico and WIPR-TV, San Juan, Puerto Rico, **ARE TOLLED to September 30, 2021**. Grant of these tolling waivers does not permit the Stations to recommence operation on their pre-auction channels. We also remind PRBC that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission’s tolling provisions.<sup>9</sup> To the extent the Stations seek an additional extension of tolling, such a request must include a detailed plan for completing construction of the Stations’ permanent post-auction facilities. We will look unfavorably upon any future request that does not include such a plan.

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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

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<sup>7</sup> 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.”).

<sup>8</sup> 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).

<sup>9</sup> See 47 § CFR 73.3598(b).