



Federal Communications Commission
Washington, D.C. 20554

August 4, 2021

Caguas Educational TV, Inc.
P.O. Box 3869
Carolina, PR 00984
conciliofav@hotmail.com
(via electronic mail)

Re: Request for Tolling Waiver
WUJA(TV), Caguas, PR
Facility ID No. 8156
LMS File No. 0000154001

Dear Licensee,

On July 26, 2021, Caguas Educational TV, Inc. (CETV), the licensee of WUJA(TV), Caguas, Puerto Rico (WUJA or Station), filed the above-referenced request for waiver of the rules and tolling of the Station's construction permit expiration date. For the reasons below, we grant CETV's request and toll the expiration date of WUJA's construction permit 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.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

CETV requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities. WUJA was granted an extension and then multiple waivers of the

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).

tolling rule and its construction permit was most recently tolled to July 27, 2021.⁵ WUJA is currently operating an interim facility on its post-auction channel.⁶

CETV states that, since the grant of its last tolling waiver, it has made significant progress on construction of its permanent post-auction channel facilities. CETV states that it has retained a contractor who is ready to build. CETV states that the contractor has procured the antenna and lines and installed the transmitter. The final obstacle CETV maintains that it faces is receiving the local permits and endorsements from the Puerto Rican government to proceed with construction of the tower. In particular, CETV states that it has worked persistently to complete the paperwork requirements and obtain approval and the appropriate documentation from more than twenty different agencies that must evaluate the tower construction permit application. At the time of filing CETV states that all of the different agencies that must provide their endorsements have provided them except one—the fire department. CETV states that all documentation needed to obtain the endorsements were submitted months ago, but the fire department has not yet assigned a person to study the application. CETV expresses concern that if the fire department continues to delay, other endorsements may expire, which would require additional time for those agencies to reissue their endorsements. Even after receipt of all endorsements, CETV states that the agency evaluating and issuing the final submission has an additional 30 days to respond or issue a Consulta de Ubicación (CU) and if they issue the latter it could require an additional process that could take years to complete.

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive the rules and toll the expiration date of the Station’s construction permit to March 29, 2021.⁷ CETV has demonstrated it did not complete construction of the Station’s post-auction channel facilities due to construction and permitting delays. We also find that grant of CETV’s tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WUJA has already ceased operation on its pre-auction channel and initiated temporary operations on its post-auction channel. To the extent some viewers are unable to receive WUJA’s signal while it operates using its interim facility, we believe that CETV 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 tolling of the Station’s construction permit. Although CETV requests tolling through January 27, 2021, we find based on the information provided that a tolling waiver through September 30, 2021, will allow Commission staff to continue to monitor construction progress.

We remind CETV 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

⁵ LMS File Nos. 0000058675, 0000067235, 0000067238, 0000108378 and 000141567. WUJA was repacked from channel 48 to channel 24. WUJA is currently operating on channel 24 on a licensed shared basis with WDWL(DT), Bayamon, Puerto Rico.

⁶ LMS File No. 0000154000.

⁷ 47 CFR § 73.3598(b).

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) (*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.”).

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 CETV that the deadline for submitting final expense documentation for reimbursement for the Station is **October 8, 2021**.⁹ Thus, we strongly encourage the Station to diligently pursue satisfaction of the current deadlines to improve the chances that there will be sufficient funds available to reimburse the Station for its legitimate repacking expenses, and we encourage CETV to submit eligible invoices as soon as practicable.

The above facts considered, Caguas Educational TV, Inc.'s request for tolling waiver **IS GRANTED**. The construction permit for WUJA(TV), Caguas, Puerto Rico (LMS File No. 0000059688), **IS TOLLED to September 30, 2021**. Grant of this tolling waiver does not permit WUJA to recommence operation on its pre-auction channel. While we anticipate this will be CETV's final request for tolling, we remind CETV that any subsequent tolling requests will be subject to the Commission's tolling provisions.¹⁰ To the extent the Station seeks an additional extension of tolling, such a request must

⁹ 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).

¹⁰ See 47 CFR § 73.3598(b). A station may also seek a waiver of the tolling rule to receive additional time to construct in the case where "rare or exceptional circumstances" prevent construction. See *1998 Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17536, para. 42 (1999).

include a detailed plan for completing construction of the Station's 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): Francisco Montero, Esq.