



Federal Communications Commission
Washington, D.C. 20554

October 7, 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. 0000161084

Dear Licensee,

On September 29, 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 March 22, 2022.

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 September 30, 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 including hiring a contractor who has procured the antenna, transmission lines, and installed the transmitter. CETV further states that it has now received all but two of the local governmental permits and endorsements necessary to complete constructing its facilities. WUJA is still waiting to receive an endorsement from the fire department, which the Station must have before it can proceed with constructing the tower. Upon receipt of that endorsement, CETV states that it will then submit the tower construction permit documents to the Oficina de Gerencia de Permisos (OGPe), which issues the final permits. Licensee notes that the OGPe requires at least 30 days to evaluate construction permit requests.

Meanwhile, CETV states that the Station's tower arrived at the San Juan, Puerto Rico port on September 28, 2021, and the antenna is expected to arrive in early October 2021. According to the tower construction company's most recent estimates, it will take no more than two to three months after the local Puerto Rico permits are granted to install the tower. After that, antenna installation and performing the antenna sweep likely will be completed expeditiously. Based on the foregoing, CETV requests waiver of the tolling rules and tolling of the Station's construction permit.

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 22, 2022.⁷ 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.

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 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.

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.").

We further remind CETV that the deadline for submitting final expense documentation for reimbursement for the Station is **March 22, 2022**.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 March 22, 2022**. 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 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.

⁹ The Station was granted an extension of the October 8, 2021 invoice submission deadline and the Station's deadline was extended to March 22, 2022. *See* LMS File No. 0000158816. *See also 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 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).