



Federal Communications Commission
Washington, D.C. 20554

October 7, 2021

Puerto Rico Public Broadcasting Corporation
P.O. Box 190909
Hato Rey, PR 00918
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. 0000161279 and
0000161282

Dear Licensee,

On September 30, 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 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

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).

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 September 30, 2021.⁵ The Stations are currently operating interim facilities on their post-auction channels.⁶

With respect to WIPR, PRBC states that it has taken substantive steps to complete the construction of its post-auction channel facilities; however, circumstances beyond PRBC's control have made it impossible to complete construction. PRBC states that, although construction of the Station's permanent tower and the associated transmitter shelter will likely not be completed until mid-2022 at the earliest, it has made good faith efforts to resume permanent operations. PRBC states that it has ordered a transmitter for the Station, which is ready for shipment, and expects to receive the Station's antenna and transmission line sometime in the Fall of 2021. In addition, PRBC states that the tower manufacturer visited the Station's tower site, La Santa Peak, in late July 2021 to finalize the tower layout and will be providing PRBC with a timeline as to when precisely the new tower will be installed. Along with the tower installation, PRBC states that it also will construct a new transmitter building, in addition to other related installations.

As for WIPM, PRBC states that it has taken substantive steps to complete the construction of its post-auction channel facilities. WIPM is co-located on the same tower as Station WNJX, Mayaguez, Puerto Rico. 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 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 in October 2021. After that approval is received, the Station's equipment can be delivered to the transmitter site and final construction work can begin sometime in late October or early November 2021. PRBC expects all work to be completed within just a few weeks after equipment delivery. PRBC states that the Station's antenna installation is complete, but the transmission line still has to be tested.

Accordingly, in light of these circumstances, 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 Stations' construction permits through March 22, 2022. We find that PRBC was unable to complete construction of the Stations' post-auction channel facilities due to government procurement and construction delays. 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. Although CETV request tolling through March

⁵ LMS File Nos. 0000055291, 0000055292, 0000067308, 0000067309, 0000082557, 0000082558, 0000110372, 0000110376, 0000122457, 0000122455, 0000141194, 0000141195, 0000153936 and 0000153938.

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

30, 2022, we find that tolling through March 22, 2022, is appropriate based on the facts provided, as well as the Stations' assigned deadline for submitting final reimbursement documentation

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."⁷ 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 **March 22, 2022**.⁸ 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 March 22, 2022**. Grant of these tolling waivers does not permit the Stations to recommence operation on their pre-auction channels. While we anticipate this will be PRBC's final requests for tolling, we remind PRBC that any subsequent tolling requests will be subject to the Commission's tolling provisions.⁹ To the extent the Stations seek an additional extension of tolling, such a request must include a detailed plan for

⁷ 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.").

⁸ The Stations were granted extensions of the October 8, 2021 invoice submission deadline and the Stations' deadline was extended to March 22, 2022. *See* LMS File Nos. 0000158340 and 0000158339. *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).

⁹ *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).

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): Mark Denbo, Esq.