



Federal Communications Commission
Washington, D.C. 20554

March 21, 2022

Telecinco, Inc.
Lymarisa Rosa
P.O. Box 43
Mayaguez, PR 00681
Lrosa@telecincoinc.com
(via electronic mail)

Re: Request for Tolling Waiver
WRFB(TV), Carolina, PR
Facility ID No. 54443
LMS File No. 0000186209

Dear Licensee,

On March 9, 2022, Telecinco, Inc. (Telecinco), the licensee of WRFB(TV), Carolina, Puerto Rico (WRFB or Station), filed the above-referenced request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit, as amended. For the reasons below, we grant Telecinco's waiver request and toll WRFB's construction permit to September 6, 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).

Telecinco requests waiver of the tolling rule and tolling of its construction permit for the Station's post-incentive auction channel facilities. Telecinco was granted an extension and multiple waivers of the tolling rule and the Station's construction permit was most recently tolled to March 22, 2022.⁵ The Station is currently operating on its post-auction channel with interim facilities.⁶

Telecinco states that it will not complete construction by the March 22, 2022 deadline due to circumstances beyond its control. As noted in its previous tolling waiver requests, the Station's local tower construction company went bankrupt in 2021, necessitating the hiring of a new company. Telecinco states that the Station's tower vendor has since hired a local crew and has completed constructing the tower foundation. Due to severe supply-chain delays, however, Telecinco represents that the new tower has not yet been shipped to Puerto Rico. Telecinco maintains that it has been unable to obtain a firm shipping date. Accordingly, Telecinco requests waiver of the Commission's rules and tolling of the construction permit expiration date.

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 through September 6, 2022.⁷ Telecinco has demonstrated it did not complete construction of its post-auction channel facilities due to construction delays. We also find that grant of Telecinco's tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WRFB 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 WRFB's signal while it operates using its interim facility, we believe that Telecinco 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 Telecinco 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. 0000055271, 0000067310, 0000082223, 0000110138, 0000122551, 0000141020, 0000153595 and 0000161089. WRFB was repacked from channel 51 to channel 30.

⁶ See LMS File No. 0000185739.

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 Telecinco that the Station's deadline for submitting final expense documentation for reimbursement for the Station is **September 6, 2022.**⁹ **We caution the stations that we do not anticipate allowing further extensions of the final September 6, 2022 invoice filing deadline. A station's failure to complete any remaining construction in a timely manner and to make final submissions by the assigned invoice filing assignment deadline could preclude that station from receiving full reimbursement.** Unobligated amounts in the Fund must be rescinded to Treasury and the Commission staff (with the support of the Fund Administrator) must have sufficient time to fully process all reimbursement requests and complete close-out procedures prior to July 3, 2023.¹⁰ The Fund Administrator will initiate close out procedures for any entity that has failed to initiate interim close-out procedures by the September 6, 2022 invoice filing deadline. Any unused allocations made to that entity's account will be returned to the Fund and made available for allocation to other program participants or rescinded to Treasury. Thus, we strongly encourage the Station to diligently pursue satisfaction of the current deadlines and to submit eligible invoices as soon as practicable.

The above facts considered, Telecinco, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit for WRFB(TV), Carolina, Puerto Rico, (LMS File No. 0000034795) **IS TOLLED to September 6, 2022**. Grant of this tolling waiver does not permit WRFB to recommence operation on its pre-auction channel. While we anticipate this will be Telecinco's final request for tolling, we remind Telecinco that any subsequent tolling requests will be subject to the Commission's tolling provisions.¹¹ 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): Lee Petro, Esq.

⁹ The Station was granted an extension of the March 22, 2022 invoice submission deadline and the Station's deadline was extended to September 6, 2022. *See* LMS File No. 0000185719. *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 6, 2022).

¹⁰ *See id.* at 11277-78, para 13.

¹¹ *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).