



Federal Communications Commission  
Washington, D.C. 20554

January 31, 2023

Puerto Rico Public Broadcasting Corporation  
P.O. Box 190909  
San Juan, PR 00919  
[MLasanta@wipr.pr](mailto:MLasanta@wipr.pr)  
(via electronic mail)

Re: Requests for Tolling Waiver  
WIPR-TV, San Juan, PR  
Facility ID No. 53859  
LMS File No. 0000199181

Dear Licensee,

Puerto Rico Public Broadcasting Corporation (PRBC), the licensee of WIPR-TV, San Juan, Puerto Rico (WIPR or Station), has filed a request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date (Request). For the reasons below, we grant PRBC's request and toll the expiration date of the Station's construction permit through April 30, 2023.

*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>

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

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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).

tolling rule and its construction permit was most recently tolled to September 6, 2022.<sup>5</sup> The Station is currently operating from interim facilities on its post-auction channels.<sup>6</sup>

In its well-documented Request, PRBC demonstrates that it has made progress on completing construction of its post-auction channel facilities; however, it continues to face delays due to circumstances outside of its control. Most notably, PRBC cites the devastation caused by Hurricane Fiona, which made landfall in Puerto Rico on September 18, 2022, and which PRBC states caused damage to the Station. Specifically, PRBC reports that Hurricane Fiona brought more than thirty inches of rain throughout Puerto Rico. PRBC states that many roads were damaged, especially in the mountainous area where the Station's tower site is located. The roadways are currently inaccessible and PRBC reports that it is working with the Puerto Rico Department of Natural and Environmental Resources (DEMA) and the Federal Emergency Management Agency (FEMA) to obtain emergency funds to rebuild the damaged roadway. PRBC reports that FEMA visited the site in December 2022, and has advised PRPBC that it will take approximately 2-3 months to provide a design for the reconstruction of the damaged roadway, and then an additional 3 months to complete the planning process. Once the planning process is completed, and DEMA allocates the funding, PRPBC anticipates that the road will be rebuilt within 90 days thereafter. At that time, PRPBC represents that it will be able to schedule a time for the company that will install the Tower to complete its work.

In addition, PRBC reports that the Station's new antenna was delivered to PRBC's offices in San Juan. The Station's new tower is still being constructed. Before the tower can be erected, PRBC states that a geotechnical report must be completed. This report will consist of the results from soil and related testing to determine whether the tower company's design for the tower foundation can be implemented as presently proposed. Before the soil and related testing can begin and before the report can be issued, however, PRBC states that the Permits Management Office for Puerto Rico (PMO) must issue a permit to allow for the clearing of trees and brush from the tower site. PRBC reports that there have been delays in obtaining the necessary PMO permit in large part due to the COVID-19 pandemic and its after-effects. PRPBC expects to receive the permit grant in January 2023.

Accordingly, in light of these circumstances, PRBC requests waiver of the tolling rule 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 Section 73.3598(b) of the Rules and to toll the expiration date of Station's construction permit through April 30, 2023. We find that PRBC was unable to complete construction of the Station's post-auction channel facilities due to damage from Hurricane Fiona, as well as, government permitting and construction delays. We find that grant of PRBC's waiver and tolling request are not likely to negatively impact the overall transition schedule and will not cause interference to other stations. The Station has already ceased operation on its pre-auction channels and initiated temporary operations on its post-auction channel. To the extent some viewers are unable to receive the Station's signal while it operates using interim facilities, we believe that PRBC 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 waiver and tolling of the Station's construction permits.

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<sup>5</sup> LMS File No. 0000186994.

<sup>6</sup> LMS File Nos. 0000202001. WIPR was repacked from channel 43 to 26.

We further remind PRBC of the deadline for submitting final expense documentation for reimbursement for the Station is **April 30, 2023**.<sup>7</sup> **We caution the Station that we do not anticipate allowing further extensions of the Station's extended 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.<sup>8</sup> The Fund Administrator will initiate close out procedures for any entity that has failed to initiate interim close-out procedures by the Station's extended invoice filing deadline. Thus, we strongly encourage the Station to diligently pursue satisfaction of the current deadline and we encourage PRBC to submit eligible invoices as soon as practicable.

The above facts considered, Puerto Rico Public Broadcasting's request for tolling **IS GRANTED**. The construction permit (LMS File No. 0000034681) for WIPR-TV, San Juan, Puerto Rico, **IS TOLLED to April 30, 2023**. Grant of this tolling waiver does not permit the Station to recommence operation on its pre-auction channel. While we anticipate this will be PRBC's final request for tolling, we remind PRBC that any subsequent tolling request will be subject to the Commission's tolling provisions.<sup>9</sup> 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): Mark Denbo, Esq.

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<sup>7</sup> The Station was granted an extension of its January 17, 2023 invoice submission deadline and the Station's deadline was extended to April 30, 2023. *See* Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to Puerto Rico Public Broadcasting Corporation (January 31, 2023) (on file at LMS File No. 0000199232); *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 filing deadlines for submission of repack invoices).

<sup>8</sup> *See id.* at 11277-78, para 13.

<sup>9</sup> *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).