



Federal Communications Commission  
Washington, D.C. 20554

January 27, 2021

Univision New York, LLC  
Christopher G. Wood  
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[CWood@Univision.net](mailto:CWood@Univision.net)  
(via electronic mail)

Re: Request for Tolling  
WFUT-DT, Newark, NJ  
Facility ID No. 60555  
LMS File No. 132134

Dear Licensee,

On January 22, 2021, Univision New York, LLC (Univision) the licensee of WFUT-DT, Newark, New Jersey (WFUT or Station), filed the above-referenced request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant Univision's request and toll the expiration date of WFUT's construction permit to May 31, 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.<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>

Univision requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities to May 31, 2021. WFUT was granted an extension and two previous

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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).

waivers of the tolling rule and its construction permit was tolled to January 23, 2021.<sup>5</sup> WFUT is currently operating on its post-auction channel with an interim facility.<sup>6</sup>

Univision states that, because of the complex regulatory, commercial, and physical constraints related to the Station's transmitter location atop the Empire State Building, construction of the Station's final facilities has been delayed. Univision states that the Station has executed a new lease arrangement with the Empire State Building, which will allow the Station to modify its current interim facilities in order to use them as the Station's permanent post-auction facilities. Univision has filed an application for modification of the construction permit for its post-auction channel facility. Upon grant of the modification to its construction permit, and completion of necessary antenna modifications, Univision will file a license to cover the modified facilities. Therefore, in light of these circumstances, Univision requests tolling of the Station's construction permit expiration date to May 31, 2021.

*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 May 31, 2021.<sup>7</sup> Univision has demonstrated it did not complete construction of its post-auction channel facilities due to construction delays. We also find that grant of Univision's tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WFUT has already ceased operation on its pre-auction channel and initiated interim operations on its post-auction channel. To the extent some viewers are unable to receive WFUT's signal while it operates using its interim facility, we believe that Univision 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 Univision 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."<sup>8</sup> 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.

We further remind Univision of the deadline for submitting final expense documentation for reimbursement for the Station is October 8, 2021.<sup>9</sup> Thus, we strongly encourage the Station to diligently

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<sup>5</sup> LMS File Nos. 0000078750, 0000100059 and 0000118331.

<sup>6</sup> See LMS File No. 0000118332. WFUT was repacked from channel 30 to channel 26. WFUT operates on channel 26 on a shared basis with WXTV-DT, Paterson, New Jersey.

<sup>7</sup> 47 CFR § 73.3598(b).

<sup>8</sup> 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.").

<sup>9</sup> 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).

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 Univision to submit eligible invoices as soon as practicable.

The above facts considered, Univision New York, LLC's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000034667) for WFUT-DT, Newark, New Jersey, **IS TOLLED to May 31, 2021**. Grant of this tolling waiver does not permit WFUT to recommence operation on its pre-auction channel. We also remind Univision that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>10</sup>

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail):  
Matthew S. DelNero, Esq.  
Attorney of Record

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<sup>10</sup> See 47 CFR § 73.3598(b). To the extent Univision seeks additional tolling of its post-auction construction permit, any such request must include a detailed plan for completing construction. We will look unfavorably upon any future request that does not include such a plan.