



Federal Communications Commission
Washington, D.C. 20554

November 14, 2023

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

Re: Request for Tolling Waiver
WIPR-TV, San Juan, PR
Facility ID No. 53859
LMS File No. 0000224444

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 May 1, 2024.

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

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

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 November 1, 2023.⁵ The Station is currently operating from interim facilities on its post-auction channel.⁶

In its well-documented Request, PRBC demonstrates that it has made progress completing construction of its post-auction channel facilities; however, it continues to face delays due to circumstances outside of its control. Most recently, PRBC cites to the fact that the outside company contracted to undertake the construction was stopped in September 2023 by local authorities from working on the project because another permit was needed to remove soil in the construction area. PRBC reports that the permit was issued on October 31, 2023 and PRBC does not anticipate any further delays due to permitting issues.

PRBC also points to the devastation caused by Hurricane Fiona, which made landfall in Puerto Rico on September 18, 2022, and damaged the road to the Station's transmitter site. As a result the Station has been unable to access its tower site in order to complete construction of its permanent post-auction facility. PRBC reports that, since the grant of its last tolling waiver in June 2023, it has been 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. FEMA continues to work to obtain and review proposals for a design to reconstruct the damaged roadway. Once FEMA has approved the design and has allocated the funding, PRBC anticipates that the road will be rebuilt within 90 days. At that time, PRBC will be able to schedule a time for the company that will install the Station's tower to complete its work. If FEMA completes the roadway reconstruction project in early 2024, as PRBC hopes will occur, it should be able to complete construction of the station's post-incentive auction facility by its extended deadline. While awaiting the rebuilding of the roadway and delivery of the Station's tower, PRBC states that it has continued preparing the site for delivery and installation of the equipment including, among other things, demolition of the base of the tower that had collapsed following Hurricane Maria in 2017, and the modification of the anchors that will be associated with the rebuilt tower. 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 May 1, 2024.⁷ We find that PRBC was unable to complete construction of the Station's post-auction channel facilities due to damage from Hurricane Fiona that has prevented access to the station's tower site. 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 from an interim site. 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

⁵ LMS File No. 0000214352.

⁶ LMS File Nos. 0000214443. WIPR was repacked from channel 43 to 26.

⁷ We find that because some of the construction delay is unrelated to damage caused by Hurricane Fiona, the Commission's tolling provisions alone do not fully apply and waiver is necessary to toll the Station's construction permit. *See also* Letter from Barbara A. Kreisman to Puerto Rico Public Broadcasting Corp. (Mar. 24, 2022) (on file at LMS File Nos. 0000186994 and 0000186997) (granting the Station a waiver of the Commission's tolling rules based on construction delays caused by government procurement and equipment installation, which do not meet the Commission's tolling standard).

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.

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 May 1, 2024**. 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.⁸ 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. Further, grant of this waiver of the tolling rules does not extend PRBC's deadline for submitting final expense documentation for reimbursement for the Stations.⁹

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Mark Denbo, Esq.

⁸ 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).

⁹ 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).