



Federal Communications Commission
Washington, D.C. 20554

March 30, 2020

Wanda Rolon
P.O. Box 24
Toa Alta, PR 00954

Re: Request for Tolling
WSJN-CD, San Juan, PR
Facility ID No. 48239
LMS File No. 0000107622

Dear Licensee,

On March 19, 2020, Wanda Rolon (Rolon), the licensee of WSJN-CD, San Juan, Puerto Rico (WSJN-CD 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 Rolon's request and toll the expiration date of WSJN-CD's construction permit through September 28, 2020.¹

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.² All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of Section 73.3598(b) of the Rules.³ 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.⁴ 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

¹ Because 180 days from the Station's current construction expiration date falls on Saturday, September 26, 2020, we will extend the construction permit to the next business day, which would be Monday, September 28, 2020. *See* 47 CFR 1.4.

² *See* 47 CFR § 73.3700(b)(5). Grant of an extension of the construction permit deadline does not alter the deadline by which a station must cease operating on its pre-auction channel. A station anticipating the need for an extension must submit an extension application using FCC Form 2100, Schedule 337. The application must demonstrate that the station is unable to complete construction on time due to circumstances that were either unforeseeable or beyond the station's control. *See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567,6804-05, paras. 581-2 (2014) (*Incentive Auction R&O*); 47 CFR § 73.3700(b)(5)(ii) and (iii).

³ 47 CFR § 73.3598(b).

⁴ *Id.*

demonstrate that “rare and exceptional circumstances” prevented construction by the station’s construction permit expiration date.⁵

Rolon requests waiver of the tolling rule and tolling of its construction permit for the Station’s post-incentive auction channel facilities to September 28, 2020. WSJN-CD was granted an extension and two previous waivers of the tolling rule and its construction permit was tolled to March 30, 2020.⁶ WSJN-CD is currently operating an interim facility on its post-auction channel.⁷

Rolon states she has worked diligently to construct WSJN-CD’s new tower, but significant work remains outstanding. Rolon reports that WSJN-CD has been working on obtaining local permits for the new antenna structure facilities. A study was completed in February 2020 and the construction team is now working on obtaining necessary local permits and government approvals in order to complete construction of WSJN-CD’s new tower. Rolon maintains that the recent earthquakes and the ongoing aftershocks in Puerto Rico, however, have continued to delay the construction process. Accordingly, Rolon seeks a waiver of the tolling rules and tolling of its construction permit deadline to September 28, 2020.

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 the Station’s construction permit. Specifically, local permitting requirements have resulted in construction delays and prevented Rolon from completing construction of WSJN-CD’s post-auction facilities. We find that grant of Rolon’s tolling request is 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 channel and has resumed operations on its post-auction channel with an interim facility. To the extent some viewers are unable to receive WSJN-CD’s signal while it operates using its interim facility, we believe that Rolon 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 permit.

We remind Rolon 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 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).

⁶ LMS File Nos. 0000058617, 0000067028 and 0000082470.

⁷ LMS File No. 0000107621. WSJN-CD was repacked from channel 20 to channel 22. WSJN-CD operates on channel 22 on a shared basis with WELU, Toa Baja, Puerto Rico.

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) (“The appropriate scope of ‘costs reasonably incurred’ necessarily will have to be decided on a case-by-case basis.”).

The above facts considered, Wanda Rolon's request for tolling **IS GRANTED**. The construction permit for WSJN-CD, San Juan, Puerto Rico **IS TOLLED to September 28, 2020**. Grant of this tolling waiver does not permit WSJN-CD to recommence operation on her pre-auction channel. We also remind Rolon that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.⁹

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Francisco Montero, Esq.

⁹ See 47 CFR § 73.3598(b).