



Federal Communications Commission
Washington, D.C. 20554

April 7, 2020

The School Board of Miami – Dade County, FL
John LaBonia
172 NE 15TH St.
Miami, FL 33132

Re: Request for Tolling Waiver
WLRN-TV, Miami, FL
Facility ID No. 66358
LMS File No. 0000106369

Dear Licensee,

On February 20, 2020, The School Board of Miami – Dade County, FL (MDCPS), the licensee of WLRN-TV, Miami, Florida (WLRN or Station), filed the above-referenced request for waiver (as amended) of the Commission’s tolling provisions and tolling of the Station’s construction permit expiration date. For the reasons below, we grant MDCPS’s request and toll the expiration date of WLRN’s construction permit through October 5, 2020.

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

MDCPS requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities through October 5, 2020. WLRN is currently operating on its post-

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).

auction channel with temporary facilities.⁵ WLRN was previously granted a 180-day construction permit extension and subsequently tolling through April 6, 2020, due to delays caused by State government-mandated procurement requirements, as well as equipment availability and difficulties scheduling tower crews resulting from delays in the procurement process.⁶ While the Station has acquired its post-auction channel transmitter, it continued to encounter government procurement delays related to the necessary tower work and antenna installation. MDCPS also cites to delays completing its post-auction facilities due to the need to coordinate its tower work with FM radio stations that are located on the Station's shared tower. Furthermore, the current Coronavirus (COVID-19) pandemic has exacerbated these delays through the closures of hotels, restaurants and other accommodations needed by the out-of-state workers who need to travel to South Florida to complete the WLRN-TV project.⁷ As a result, MDCPS predicts it will not be able to complete construction of the Station's permanent post-auction channel facilities by its current deadline.. Accordingly, MDCPS seeks a waiver of the tolling rules and tolling of its construction permit deadline to October 5, 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 to October 5, 2020. We find that MDCPS was unable to complete construction of its post-auction channel facilities due to delays related to State-mandated procurement requirements and the need to coordinate construction with shared users on its tower and the COVID-19 pandemic. We also find that grant of MDCPS's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WLRN 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 WLRN's signal while it operates using its interim facility, we believe that MDCPS 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 MDCPS 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.

The above facts considered, The School Board of Miami – Dade County, FL's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000026166) for WLRN-TV, Miami, Florida **IS TOLLED to October 5, 2020**. Grant of this tolling waiver does not permit WLRN to recommence operation on its pre-auction channel. We also remind

⁵ See LMS File No. 0000106368. WLRN was repacked from channel 20 to channel 26.

⁶ See LMS File Nos. 0000066862 and 0000080759.

⁷ The Centers for Disease Control and Prevention is closely monitoring an outbreak of respiratory illness COVID-19 caused by a novel coronavirus. The World Health Organization classified it as a pandemic and the President declared it a national emergency.

⁸ 47 U.S.C. § 1452(b)(4)(A)(i). See also *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

MDCPS 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): Joseph A. Belisle, III, Esq.

⁹ See 47 § CFR 73.3598(b).