



Federal Communications Commission
Washington, D.C. 20554

April 7, 2020

Puerto Rico Public Broadcasting Corporation
P.O. Box 190909
Hato Rey, PR 00918

Re: Requests for Tolling Waiver
WIPM-TV, Mayaguez, PR
WIPR-TV, San Juan, PR
Facility ID No. 53863 and 53859
LMS File No. 0000110376 and
0000110372

Dear Licensee,

On March 30, 2020, Puerto Rico Public Broadcasting Corporation (PRBC), the licensee of WIPM-TV, Mayaguez, Puerto Rico (WIPM) and WIPR-TV, San Juan, Puerto Rico (WIPR) (collectively Stations) filed requests for waiver of the Commission's tolling provisions and tolling of the Stations' construction permit expiration dates. For the reasons below, we grant PRBC's requests and toll the expiration date of the Stations' 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

PRBC requests waiver of the tolling rule and tolling of its construction permits for its post-incentive auction channel facilities to September 28, 2020. The Stations are currently operating interim facilities on their post-auction channels.⁶ The Stations were each granted an extension and then two waivers of the tolling rule and their construction permits currently expire on March 30, 2020.⁷

PRBC states that it has taken substantive steps to complete construction of the Stations’ post-auction channel facilities; however, the Puerto Rican government has not yet authorized funds for the projects. Once PRBC has received the necessary funds, it will, as necessary, proceed with ordering all equipment, scheduling vendors, and obtaining local zoning approval. Accordingly, PRBC seeks waivers of the tolling rules and tolling of its construction permit deadlines 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 Stations’ construction permits. Specifically, approval and funding delays from the Puerto Rican Government have caused PRBC to be unable to complete construction of the Stations’ post-auction facilities by their construction permit deadline. We find that grant of PRBC’s tolling requests is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. The Stations have already ceased operation on their pre-auction channels and have resumed operations on their post-auction channels with interim facilities. To the extent some viewers are unable to receive the Stations’ signals while they operate using interim facilities, we believe that PRBC has every incentive to ensure viewers are fully informed about the Stations’ transition plans. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Stations’ construction permits.

We remind PRBC 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 Stations’ transition plans that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The above facts considered, Puerto Rico Public Broadcasting’s requests for waiver of the Commission’s tolling provisions **ARE GRANTED**. The construction permits for WIPM-TV, Mayaguez,

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. 0000111346 and 0000111347. WIPM was repacked from channel 35 to 32 and WIPR from channel 43 to 26.

⁷ LMS File Nos. 0000055291, 0000055292, 0000067308, 0000067309, 0000082557 and 0000082558.

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.”).

Puerto Rico, and WIPR-TV, San Juan, Puerto Rico **ARE TOLLED to September 28, 2020.** Grant of these tolling waivers does not permit the Stations to recommence operation on their pre-auction channels. We also remind PRBC 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): Mark Denbo, Esq.

⁹ See 47 § CFR 73.3598(b).