



Federal Communications Commission
Washington, D.C. 20554

October 1, 2020

Puerto Rico Public Broadcasting Corporation
P.O. Box 190909
Hato Rey, PR 00918
MLasanta@wipr.pr
(via electronic mail)

Re: Requests for Tolling Waiver
WIPM-TV, Mayaguez, PR
WIPR-TV, San Juan, PR
Facility ID No. 53863 and 53859
LMS File Nos. 0000122455 and
0000122457

Dear Licensee,

On September 25, 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 March 29, 2021.¹

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 demonstrate that "rare and exceptional circumstances" prevented construction by the station's

¹ Because 180 days from the Station's current construction expiration date falls on Saturday March 27, 2021, we will extend the construction permit to the next business day, which would be Monday, March 29, 2021. *See* 47 CFR § 1.4.

² *See* 47 CFR § 73.3700(b)(5).

³ *See* 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

⁴ *Id.*

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 March 29, 2021. The Stations are currently operating interim facilities on their post-auction channels.⁶ The Stations were each granted an extension and then three waivers of the tolling rule and their construction permits currently expire on September 28, 2020.⁷ For the reasons below, PRBC seeks waivers of the tolling rules and tolling of its construction permit deadlines to March 29, 2021.

With respect to WIPR, the station's leased tower was completely destroyed as a result of Hurricane Maria. PRBC states that it was recently informed by the tower owner that the WIPR leased tower would not be repaired. As a result, PRPBC states that it has taken steps to replace the tower for the Station. PRPBC states that it has obtained a quote for this tower replacement. PRPBC states that it is now awaiting local zoning approval. Once that is obtained, PRBC states it will commence construction, erection, and rigging of the tower, along with construction of a new transmitter building and other related installations.

As for WIPM, PRBC states that it has taken substantive steps to complete the construction of its post-auction channel facilities, but because the Station is on the same tower as Station WNJX(TV), Mayaguez, Puerto Rico, and due to the lack of certified tower riggers, these efforts have been delayed. We note that WNJX has also requested tolling of the construction permit for its post-auction channel facilities based on similar circumstances.⁸ PRBC states that WNJX, who is in charge of overseeing the construction work, has established a firm schedule for the completion of the project. PRBC expects the transmitter to be installed sometime in November 2020, the tower to be reinforced by the end of February 2021, and full installation of all facilities to be completed in March 2021.

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 to March 29, 2021.⁹ Specifically, PRBC has been unable to complete construction of the Stations' post-auction facilities by their construction permit deadlines due to construction delays. We also find that grant of PRBC's waivers and tolling requests are 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 are operating from interim facilities on their post-auction channels. To the extent some viewers are unable to receive the Stations'

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. 0000122413 and 0000122424. WIPM was repacked from channel 35 to 32 and WIPR from channel 43 to 26.

⁷ LMS File Nos. 0000055291, 0000055292, 0000067308, 0000067309, 0000082557, 0000082558, 0000110372 and 0000110376.

⁸ See LMS File No. 0000122219.

⁹ 47 CFR § 73.3598(b).

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 Stations are 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."¹⁰ 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 PRBC that the Commission has stated that the Bureau may announce a deadline for the submission of final expense documentation for reimbursement well before the statutory deadline of July 3, 2023.¹¹ Thus, we strongly encourage the Stations to diligently pursue satisfaction of the current deadlines to improve the chances that there will be sufficient funds available to reimburse the Stations for their legitimate repacking expenses, and we encourage PRBC to submit eligible invoices as soon as practicable.

The above facts considered, Puerto Rico Public Broadcasting's requests for tolling **ARE GRANTED**. The construction permits (LMS File Nos. 0000024551 and 0000034681, respectively) for WIPM-TV, Mayaguez, Puerto Rico and WIPR-TV, San Juan, Puerto Rico **ARE TOLLED to March 29, 2021**. Grant of these tolling waivers does not permit the Stations to recommence operation on their pre-auction channels. We also remind TPR that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹²

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

¹⁰ 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.").

¹¹ *See id.* at 6567, para. 616; *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, MB Docket 18-214 and GN Docket No. 12-268, Report and Order, 34 FCC Rcd 1690, 1739, para. 105 (2019). *See also Incentive Auction Task Force and Media Bureau Report on the Status of the Post-Incentive Auction Transition and Reimbursement Program et al.*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 34 FCC Rcd 304, 312, para. 23 and n.35 (IATF/MB 2019).

¹² *See* 47 § CFR 73.3598(b).