



Federal Communications Commission
Washington, D.C. 20554

October 1, 2020

Televiscentro of Puerto Rico, LLC
Javier Maynulet
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Sam Juan, PR 00936
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(via electronic mail)

Re: Requests for Tolling Waivers
WNJX-TV, Mayaguez, PR
WTIN-TV, Ponce, PR
Facility ID No. 26681 and 73326
LMS File No. 0000122216 and
0000122219

Dear Licensee,

On September 23, 2020, Televiscentro of Puerto Rico, LLC (TPR), the licensee of WNJX-TV, Mayaguez, Puerto Rico (WNJX) and WTIN-TV, Ponce, Puerto Rico (WTIN) (collectively Stations), filed the above captioned requests for waiver of the Commission's tolling rules and tolling of the Stations' construction permit expiration dates. For the reasons below, we grant TPR's requests and toll the expiration dates of the Stations' construction permits to 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

TPR 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 were most recently tolled to September 28, 2020.⁷

As noted in previous requests, TPR again states that extensive modifications to each of the Stations' towers is still needed before the Stations' permanent antennas can be installed. TPR asserts that work on the Stations' towers was previously delayed due to the high demand for tower crews that have the necessary equipment to conduct the needed construction. Since grant of its last tolling request, TPR maintains that these difficulties were exacerbated because of the travel restrictions and quarantines resulting from the COVID-19 global pandemic. Recently, however, TPR states it has entered into an agreement with a tower company that will complete the necessary work for the Stations' towers. The tower company has provided a tentative schedule for conducting the necessary work, obtained on-site field data, and is now preparing drawings of the towers. TPR states that, as soon as the drawings are complete and TPR has approved them it will order the necessary materials. TPR states that shipping materials to Puerto Rico will require additional time, but as of the time of filing, the tower company expects to begin the necessary structural reinforcement in January 2021. Accordingly, TPR seeks a waiver of the tolling rules and tolling of the Stations construction permit deadlines for 180 days, through March 29, 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, 2021.⁸ TPR has demonstrated it did not complete construction of the Stations' post-auction channel facilities due to construction delays. We also find that grant of TPS's waivers and 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 are operating from interim facilities on their post-auction channels. To the extent some viewers are unable to receive the Stations' signals while they operate using interim facilities, we believe that TPR 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.

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. 0000121197 and 0000122200.

⁷ LMS File Nos. 0000058592, 0000058593, 0000067112, 0000067113, 0000083475, 0000083476, 0000109003 and 0000109004.

⁸ 47 CFR § 73.3598(b).

We remind TPR 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.”⁹ 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 TPR 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, 2023.¹⁰ 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 TPR to submit eligible invoices as soon as practicable.

The above facts considered, Televiscentro of Puerto Rico, LLC’s requests for tolling **ARE GRANTED**. The construction permits (LMS File Nos. 0000029719 and 0000034579, respectively) for WNJX-TV, Mayaguez, Puerto Rico and WTIN-TV, Ponce, 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.¹¹

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Sally Buckman, Esq.

⁹ 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.”).

¹⁰ *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).

¹¹ *See* 47 § CFR 73.3598(b).