



Federal Communications Commission
Washington, D.C. 20554

March 24, 2021

Televiscentro of Puerto Rico, LLC
Javier Maynulet
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San Juan, PR 00936
javier.maynulet@wapa-tv.com
(via electronic mail)

Re: Request for Tolling Waiver
WNJX-TV, Mayaguez, PR
Facility ID No. 73326
LMS File No. 0000139098

Dear Licensee,

On March 12, 2021, Televiscentro of Puerto Rico, LLC (TPR), the licensee of WNJX-TV, Mayaguez, Puerto Rico (WNJX or Station), filed the above captioned request for waiver of the Commission's tolling rules and tolling of the Station's construction permit expiration dates, as amended. For the reasons below, we grant TPR's request and toll the expiration date of the Station's construction permit to August 2, 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 construction permit expiration date.⁵

¹ Because TPR seeks tolling until August 1, 2021, which falls on Sunday, we will extend the construction permit to the next business day, which would be Monday, August 2, 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.*

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).

TPR requests waiver of the tolling rule and tolling of its construction permit for the Station's post-incentive auction channel facilities. TPR was granted an extension and multiple waivers of the tolling rule and the Station's construction permit was tolled to March 29, 2021.⁶ The Station is currently operating on its post-auction channel with interim facilities.⁷

Since grant of its last tolling request, TPR states that it has made substantial progress with respect to the Station's tower work. TPR states that the equipment and vehicles needed for the tower reinforcement were received in January 2021 and the tower company began the structural reinforcement work in March 2021. Because of precautions that were necessary to comply with COVID-19 protocols, TPR states that the work has taken somewhat longer than originally anticipated. In addition, TPR states that the tower work will need to be performed in several steps in coordination with the other stations operating on the tower. Currently, TPR reports that the tower crew is in the process of installing a new stacked antenna for WNJX and another co-located station which also uses the tower. When the antenna installation is complete, TPR states that the crew will need to complete antenna sweep tests and adjustments. TPR anticipates that the work will be completed by the end of April and counsel has informed Media Bureau staff that additional testing and adjustments will need to be conducted through mid-June 2021. Accordingly, TPR seeks a waiver of the tolling rules and tolling of the Station's construction permit until August 1, 2021.

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive the rules and toll the expiration date of the Station's construction permit.⁸ TPR has demonstrated it did not complete construction of the Station's post-auction channel facilities due to construction delays. We also find that grant of TPS's waiver and 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 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 Station's signals while they operate using interim facilities, we believe that TPR has every incentive to ensure viewers are fully informed about the Station's transition plans. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Station's construction permits.

We remind TPR 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."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.

⁶ LMS File Nos. 0000058592, 0000067112, 0000083476, 0000109004, and 0000122219.

⁷ See LMS File No. 0000139099. WNJX was repacked from channel 23 to channel 31.

⁸ 47 CFR § 73.3598(b).

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.").

We further remind TPR of the deadline for submitting final expense documentation for reimbursement for the Station is October 8, 2021.¹⁰ Thus, we strongly encourage the Station to diligently pursue satisfaction of the current deadlines to improve the chances that there will be sufficient funds available to reimburse the Station for its 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 request for tolling **IS GRANTED**. The construction permit (LMS File No. 0000029719) for WNJX-TV, Mayaguez, Puerto Rico, **IS TOLLED to August 2, 2021**. Grant of this tolling waiver does not permit the Station to recommence operation on its pre-auction channel. 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 To the extent the Station seeks an additional extension of tolling, such a request must include a detailed plan for completing construction of the Station's permanent post-auction facilities. We will look unfavorably upon any future request that does not include such a plan.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

¹⁰ See *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 35 FCC Rcd 11273, 11277, paras. 10-11 (IATF/MB Oct. 7, 2020) (setting three filing deadlines for submission of all remaining repack invoices: for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period, the deadline for submitting all remaining invoices is October 8, 2021; the deadline for entities assigned completion dates in the second half of the transition period is March 22, 2022; and the deadline for all other participants in the reimbursement program is September 5, 2022).

¹¹ See 47 § CFR 73.3598(b).