



Federal Communications Commission
Washington, D.C. 20554

April 13, 2021

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. 0000141194 and
0000141195

Dear Licensee,

On March 26, 2021, 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 construction permit for WIPM through August 2, 2021 and WIPR through July 27, 2021.

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

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).

PRBC requests waiver of the tolling rule and tolling of its construction permits for its post-incentive auction channel facilities. The Stations were each granted an extension and multiple waivers of the tolling rule and their construction permits were most recently tolled to March 29, 2021.⁵ The Stations are currently operating interim facilities on their post-auction channels.⁶

With respect to WIPR, the station's leased tower was completely destroyed in September 2017 as a result of Hurricane Maria. PRBC states that it has taken substantive steps to complete the construction of its post-auction channel facilities. PRPBC has ordered a transmitter for the Station, which is ready for shipment, and PRPBC expects to receive the associated antenna and transmission line sometime in May 2021. Upon receipt of such equipment, PRPBC pledges to commence construction, erection, and rigging of the tower, along with construction of a new transmitter building, plus other related installations. PRBC estimates that it is likely to take at least 12 more months in order to complete construction of the Station's tower and the associated transmitter shelter.

As for WIPM, PRBC states that it has taken substantive steps to complete the construction of its post-auction channel facilities. Because WIPM is on the same tower as Station WNJX, Mayaguez, Puerto Rico, and due to the lack of certified tower riggers, PRBC states that these efforts were delayed. PRPBC states that it has been informed that the WNJX tower owner has established a firm schedule for the tower work. PRBC reports that tower reinforcement and antenna stack replacement is complete. Moreover, PRPBC maintains that it expects to take delivery of the WIPM's transmitter by the beginning of April 2021 and expects to have it installed by the end of April 2021. PRBC anticipates that there could be some delays if additional work is necessary on the transmission line and due to the ongoing COVID-19 pandemic, there could be additional unanticipated delays. Accordingly, in light of these delays, PRBC requests waiver of the tolling rule and tolling of the Stations' construction permits.

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 Station's construction permits. We find that PRBC was unable to complete construction of the Stations' post-auction channel facilities due to a variety of construction related delays. We will toll the construction permit of WIPR until July 27, 2021. While the timeline set forth in CETV's tolling request asserts that they will need potentially an additional seven months to complete construction, we believe an extension through July 27, 2021 is appropriate and will allow us to better monitor the Station's construction progress. We will also toll the construction permit for WIPM until August 2, 2021, which is the same date that we tolled the construction permit of WNJX, the station with which it is collocated.⁷ We find that grant of PRBC'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 initiated temporary operations 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 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.

⁵ LMS File Nos. 0000055291, 0000055292, 0000067308, 0000067309, 0000082557, 0000082558, 0000110372, 0000110376, 0000122457 and 0000122455.

⁶ LMS File Nos. 0000141198 and 0000141199. WIPM was repacked from channel 35 to 32 and WIPR from channel 43 to 26.

⁷ See LMS File No. 0000139098.

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 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 of the deadline for submitting final expense documentation for reimbursement for the Stations is October 8, 2021.⁹ 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 August 2, 2021 and July 27, 2021, respectively**. 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.¹⁰ To the extent the Stations seek an additional extension of tolling, such a request must include a detailed plan for completing construction of the Stations’ 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 mail): Mark Denbo, Esq.

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) (*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.”).

⁹ *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).

¹⁰ *See* 47 § CFR 73.3598(b).