



Federal Communications Commission
Washington, D.C. 20554

July 26, 2021

Wanda Rolon
P.O. Box 24
Toa Alta, PR 00954
pastorawandarolon@yahoo.com
(via electronic mail)

Re: Request for Tolling Waiver
WSJN-CD, San Juan, PR
Facility ID No. 48239
LMS File No. 0000152934

Dear Licensee,

On July 15, 2021, Wanda Rolon (Rolon), the licensee of WSJN-CD, San Juan, Puerto Rico (WSJN-CD or Station), filed the above captioned request for waiver of the Commission's tolling rules and tolling of the Station's construction permit expiration date. For the reasons below, we grant Rolon's request and toll the expiration date of WSJN-CD's construction permit to September 30, 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

Rolon requests waiver of the tolling rule and tolling of the construction permit for the Station's post-incentive auction channel facilities to July 15, 2021. WSJN-CD was granted an extension and

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).

multiple waivers of the tolling rule and its construction permit was most recently tolled to July 15, 2021.⁵ WSJN-CD is currently operating from an interim facility on its post-auction channel.⁶

Rolon states that she has continued to work diligently to construct WSJN-CD's new tower. According to Rolon, during this time, the Station's tower company has been working on preparations for the arrival of the new tower, including constructing the galvanized steel beams to support the tower base, reinforcing the anchors base plate, and installing new ground rods. Rolon states that the project was temporarily halted in early July 2021 while the tower company secured the necessary insurance liability certificate. Further, Rolon states that the tower and its accessories have been purchased but its shipment to Puerto Rico has since been delayed. Rolon expects delivery by the first week of August 2021. Upon delivery of the tower and equipment, Rolon estimates that the timeframe to complete the replacement and setup will take approximately five days thereafter. Accordingly, Rolon seeks a waiver of the tolling rules and tolling of its construction permit deadline.

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 to September 30, 2021.⁷ Rolon has demonstrated she did not complete construction of her post-auction channel facilities due to construction and permitting delays. We also find that grant of Rolon's tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WSJN-CD has already ceased operation on its pre-auction channel and initiated temporary operations on its post-auction channel. To the extent some viewers are unable to receive WSJN-CD's signal while it operates using its interim facility, we believe that Rolon has every incentive to ensure viewers are fully informed about the Station's transition plan. Ultimately, we conclude that the public interest will be served by grant of tolling of the Station's construction permit. Although Rolon requests tolling through January 11, 2021, we find based on the information provided that tolling through September 30, 2021, is sufficient and will account for the possibility of additional delays which frequently occur in Puerto Rico given the unique circumstances and challenges operators face on the island.

We remind Rolon 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 Rolon that the deadline for submitting final expense documentation for reimbursement for the Station is October 8, 2021.⁹ Thus, we strongly encourage the Station to diligently

⁵ LMS File Nos. 0000058617, 0000067028, 0000082470, 0000107622, 0000121817 and 0000141563.

⁶ LMS File No. 0000152948. WSJN-CD was repacked from channel 20 to channel 22. WSJN-CD operates on channel 22 on a shared basis with WELU, Toa Baja, Puerto Rico.

⁷ 47 CFR § 73.3598(b).

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

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 Rolon to submit eligible invoices as soon as practicable. Rolon has acknowledged this deadline and pledges to “continue to work diligently and make every effort to complete construction on WSJN’s new tower in a timely fashion.”

The above facts considered, Wanda Rolon’s request for waiver of the Commission’s tolling provision **IS GRANTED**.¹⁰ The construction permit for WSJN-CD, San Juan, Puerto Rico (LMS File No. 00000345420), **IS TOLLED to September 30, 2021**. Grant of this tolling waiver does not permit WSJN-CD to recommence operation on its pre-auction channel. While we anticipate this will be Rolon’s final request for tolling, we remind Rolon that any subsequent tolling requests 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 mail): Francisco Montero, Esq.

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 To the extent necessary the Station’s construction permit is reinstated.

¹¹ See 47 CFR § 73.3598(b). A station may also seek a waiver of the tolling rule to receive additional time to construct in the case where “rare or exceptional circumstances” prevent construction. See *1998 Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17536, para. 42 (1999).