



Federal Communications Commission
Washington, D.C. 20554

March 30, 2020

Caguas Educational TV, Inc.
P.O. Box 3869
Carolina, PR 00984

Re: Request for Tolling
WUJA(TV), Caguas, PR
Facility ID No. 8156
LMS File No. 0000108378

Dear Licensee,

On March 19, 2020, Caguas Educational TV, Inc. (CETV), the licensee of WUJA(TV), Caguas, Puerto Rico (WUJA or Station), filed the above-referenced request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant CETV's request and toll the expiration date of WUJA's construction permit through September 28, 2020.¹

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

¹ Because 180 days from the Station's current construction expiration date falls on Saturday, September 26, 2020, we will extend the construction permit to the next business day, which would be Monday, September 28, 2020. *See* 47 CFR 1.4.

² *See* 47 CFR § 73.3700(b)(5). Grant of an extension of the construction permit deadline does not alter the deadline by which a station must cease operating on its pre-auction channel. A station anticipating the need for an extension must submit an extension application using FCC Form 2100, Schedule 337. The application must demonstrate that the station is unable to complete construction on time due to circumstances that were either unforeseeable or beyond the station's control. *See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567,6804-05, paras. 581-2 (2014) (*Incentive Auction R&O*); 47 CFR § 73.3700(b)(5)(ii) and (iii).

³ 47 CFR § 73.3598(b).

⁴ *Id.*

demonstrate that “rare and exceptional circumstances” prevented construction by the station’s construction permit expiration date.⁵

CETV requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities to September 28, 2020. WUJA was granted an extension and two waivers of the tolling rule and its construction permit was tolled to March 30, 2020.⁶ WUJA is currently operating an interim facility on its post-auction channel.⁷

CETV states that it has worked diligently to construct the Station’s post-auction channel facilities. CETV reports that construction of WUJA’s new tower remains incomplete and the recent COVID-19 pandemic and associated outbreaks and government restrictions on business in Puerto Rico has hampered its efforts in scheduling the engineers and construction crews necessary to either complete construction of WUJA’s new tower.⁸ In the interest of the health and safety of its engineers and construction workers, CETV has suspended all work on WUJA’s facilities for the time being. Accordingly, CETV seeks a waiver of the tolling rules and tolling of its construction permit deadline to September 28, 2020.

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 Station’s construction permit. Specifically, the COVID-19 pandemic has caused the Station to delay completion of its permanent post-auction facilities. We find that grant of CETV’s tolling waiver 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 its pre-auction channel and has resumed operations on its post-auction channel with an interim facility. To the extent some viewers are unable to receive WUJA’s signal while it operates using its interim facility, we believe that CETV 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 waiver and tolling of the Station’s construction permit.

We remind CETV 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

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. 0000058675, 0000067235 and 0000067238. WUJA was repacked from channel 48 to channel 24. WUJA operates on channel 24 on a shared basis with WDWL(DT), Bayamon, Puerto Rico.

⁷ LMS File No. 0000108375.

⁸ The World Health Organization has classified the COVID-19 outbreak as a pandemic, and the President of the United States has declared it a national emergency.

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) (“The appropriate scope of ‘costs reasonably incurred’ necessarily will have to be decided on a case-by-case basis.”).

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.

The above facts considered, Caguas Educational TV, Inc.'s request for tolling **IS GRANTED**. The construction permit for WUJA, Caguas, Puerto Rico **IS TOLLED to September 28, 2020**. Grant of this tolling waiver does not permit WUJA to recommence operation on her pre-auction channel. We also remind CETV that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹⁰

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Francisco Montero, Esq.

¹⁰ See 47 CFR § 73.3598(b).