



Federal Communications Commission
Washington, D.C. 20554

June 23, 2020

Eastern Television Corporation
Lilliam Perez
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Bayamon, PR 00960
perezlilliam7@gmail.com

Re: Request for Tolling
WRUA, Fajardo, PR
Facility ID No. 15320
LMS File No. 0000114985

Dear Licensee,

Eastern Television Corporation (ETC), the licensee of WRUA, Fajardo, Puerto Rico (WRUA or Station), filed the above-referenced request for waiver of the Commission's tolling provisions, reinstatement and tolling of the Station's construction permit. For the reasons below, we grant ETC's waiver request, reinstate and toll WRUA's construction permit to September 28, 2020.

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

ETC requests waiver of the tolling rule, reinstatement and tolling of its construction permit for its post-incentive auction channel facilities to September 28, 2020. WRUA is currently operating on its post-

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).

auction channel with temporary facilities.⁵ WRUA's transition to its post-auction channel facilities was first delayed as a result of damage to its pre-auction channel facilities from Hurricane Maria. Construction was further delayed because the Station's new tower remained unserved by commercial electrical power for several months as a result of extensive infrastructure damage on the island of Puerto Rico from the hurricane. In its instant request, ETC states that reconstruction of the Station's main transmitter site is now complete and commercial power has been restored. However, ETC continues, the situation in Puerto Rico is still tenuous as a result of hurricane damage, and now stay-at-home orders as a result of the COVID-19 pandemic.⁶ Currently, ETC is still waiting to receive its main antenna and transmission line, which have been delayed as a result of COVID-19. Based on the foregoing, ETC requests that the Commission waive its tolling rule, reinstate and toll WRUA's construction permit expiration date 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 reinstate and toll the expiration date of the Station's construction permit to September 28, 2020.⁷ ETC has demonstrated it did not complete construction of its post-auction channel facilities due to construction and equipment delivery delays. We also find that grant of ETC's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WRUA has already ceased operation on its pre-auction channel and initiated operations on its post-auction channel using an interim facility. To the extent some viewers are unable to receive WRUA's signal while it operates using its interim facility, we believe that ETC 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 ETC 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.

The above facts considered, Eastern Television Corporation's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000058611) for WRUA, Fajardo, Puerto Rico, **IS REINSTATED AND TOLLED to September 28, 2020**. Grant of this tolling waiver does not permit WRUA to recommence operation on its pre-auction channel. We also

⁵ See LMS File No. 0000114955. WRUA was repacked from channel 33 to channel 16.

⁶ The World Health Organization has classified COVID-19 as a pandemic and the President declared it a national emergency.

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) ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

remind ETC that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.⁹

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Davina S. Sashkin, Esq.

⁹ See 47 CFR § 73.3598(b).