



Federal Communications Commission
Washington, D.C. 20554

January 8, 2021

Telecinco, Inc.
P.O. Box 43
Mayaguez, PR 00681
Lrosa@telecincoinc.com
(via electronic mail)

Re: Request for Tolling Waiver
WRFB(TV), Carolina, PR
Facility ID No. 54443
LMS File No. 0000122551

Dear Licensee,

On September 28, 2020, Telecinco, Inc. (Telecinco), the licensee of WRFB(TV), Carolina, Puerto Rico (WRFB or Station), filed the above-referenced request for tolling of the Station's construction permit expiration date. For the reasons below, we toll the expiration date of WRFB's construction permit through March 29, 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 180 days from the Station's current construction expiration date falls on Saturday, March 27, 2021, we will extend the construction permit to the next business day, which would be Monday, March 29, 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).

Telecinco requests tolling of its construction permit for the Station's post-incentive auction channel facilities to March 29, 2021. WRFB was granted an extension and then three waivers of the tolling rule and its construction permit was tolled to September 28, 2020.⁶ WRFB is currently operating from an interim facility on its post-auction channel.⁷

Telecinco states that it has taken substantive steps to complete construction of its post-auction channel facility which include replacement of its tower. Due to substantial damage caused by Hurricane Maria, Telecinco needed to construct a new tower for the Station. However, tower construction has been delayed due to the local construction permitting process. Although it expected to file for a permit for the replacement of an existing tower, Telecinco states that the local permit authority has indicated that it must instead file for a permit to construct a brand new tower. Telecinco states that this new requirement further delayed the construction process. Telecinco states that, to date, all other equipment needed to complete the construction of its post-auction channel facility has been ordered. Accordingly, Telecinco seeks tolling of its construction permit deadline to March 29, 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 to March 29, 2021.⁸ Telecinco has demonstrated it did not complete construction of its post-auction channel facilities due to construction and permitting delays. We also find that grant of Telecinco's tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WRFB 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 WRFB's signal while it operates using its interim facility, we believe that Telecinco 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.

We remind Telecinco 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. 0000055271, 0000067310, 0000082223, 0000110138. WRFB was repacked from channel 51 to channel 30.

⁷ LMS File No. 00000122550.

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 Telecinco 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 Telecinco to submit eligible invoices as soon as practicable.

The above facts considered, Telecinco, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit for WRFB(TV), Carolina, Puerto Rico (LMS File No. 0000034795) **IS TOLLED to March 29, 2021**. Grant of this tolling waiver does not permit WRFB to recommence operation on its pre-auction channel. We also remind Telecinco that any subsequent requests for tolling of the construction permit deadline will be subject to the Commission's tolling provisions.¹¹

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic email): Lee Petro, 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).