



Federal Communications Commission
Washington, D.C. 20554

March 10, 2023

Telecinco, Inc.
Lymarisa Rosa
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. 0000198553

Dear Licensee,

Telecinco, Inc. (Telecinco), the licensee of WRFB(TV), Carolina, Puerto Rico (WRFB or Station), filed the above-referenced request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit, as amended (Request). For the reasons below, we grant Telecinco's Request, waive our rules, and toll WRFB's construction permit to August 1, 2023.

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

Telecinco requests waiver of the tolling rule and tolling of its construction permit for the Station's post-incentive auction channel facilities. Telecinco was granted an extension and multiple waivers of the

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).

tolling rule and the Station's construction permit was most recently tolled to September 6, 2022.⁵ The Station is currently operating on its post-auction channel with interim facilities.⁶

In a well-documented Request, Telecinco details the progress it has made since the grant of its last tolling waiver in March 2022. Telecinco recounts that, after Hurricane Maria hit Puerto Rico in 2017, it moved the transmission equipment to the temporary site specified in the Station's current reduced-power STA while transitioning from its pre-auction channel 51 to post-auction channel 30. Telecinco acquired an interim transmitter to operate at reduced power on channel 30 and installed it in the Station's existing transmitter building.⁷ Telecinco states that it determined that the transmitter building needs to be expanded. Construction of the modified transmitter building commenced on October 3, 2022, and Telecinco expects that the building construction will be completed no later than the end of March 2023.

Telecinco maintains that a separate factor that has delayed completion of the Station's permanent post-auction channel facilities is the fact that it must coordinate the installation of a new electric substation with the local power utility company. Telecinco predicts that this work is expected to be completed by the end of May 2023, with the final installation of the transmitter and submission of the transmitter proof and license application by the end of July 2023. Accordingly, Telecinco requests waiver of the Commission's rules and tolling of the construction permit expiration date through August 1, 2023.

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 through August 1, 2023.⁸ Telecinco has demonstrated it did not complete construction of its post-auction channel facilities due to unexpected construction delays, including notably the need to expand its transmitter building and coordination with the local power company to install a new substation. 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.

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. 0000203288) **IS TOLLED to August 1, 2023**. Grant of this tolling waiver does not permit WRFB to recommence operation on its pre-auction channel. While we anticipate this will be Telecinco's final request for tolling, we remind Telecinco that any subsequent tolling requests will be subject to the Commission's tolling provisions.⁹ To the extent the Station seeks an additional extension of tolling, such

⁵ LMS File Nos. 0000055271, 0000067310, 0000082223, 0000110138, 0000122551, 0000141020, 0000153595, 0000161089 and 0000186209. WRFB was repacked from channel 51 to channel 30.

⁶ See LMS File No. 0000203616.

⁷ Because of the change in power, in November 2022, the Station was granted a minor modification of its construction permit. See LMS File No. 0000203288.

⁸ 47 CFR § 73.3598(b).

⁹ 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* -

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. Further, grant of this waiver of the tolling rules does not extend Telecinco's deadline for submitting final expense documentation for reimbursement for the Station.¹⁰

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Lee Petro, Esq.

Streamlining of Mass Media Applications, Rules and Processes, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17536, para. 42 (1999).

¹⁰ The Station was granted an extension of the March 22, 2022 invoice submission deadline and the Station's deadline was extended to September 6, 2022. *See* LMS File No. 0000185719. *See also 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 2020) (setting filing deadlines for submission of repack invoices).