



Federal Communications Commission  
Washington, D.C. 20554

June 6, 2023

Puerto Rico Public Broadcasting Corporation  
P.O. Box 190909  
San Juan, PR 00919  
[MLasanta@wipr.pr](mailto:MLasanta@wipr.pr)  
(via electronic mail)

Re: Request for Tolling Waiver  
WIPR-TV, San Juan, PR  
Facility ID No. 53859  
LMS File No. 0000214352

Dear Licensee,

Puerto Rico Public Broadcasting Corporation (PRBC), the licensee of WIPR-TV, San Juan, Puerto Rico (WIPR or Station), has filed a request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date (Request). For the reasons below, we grant PRBC's request and toll the expiration date of the Station's construction permit through November 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.<sup>1</sup> All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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

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<sup>1</sup> See 47 CFR § 73.3700(b)(5).

<sup>2</sup> See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

<sup>3</sup> *Id.*

<sup>4</sup> 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 its construction permit was most recently tolled to April 30, 2023.<sup>5</sup> The Station is currently operating from interim facilities on its post-auction channel.<sup>6</sup>

In its well-documented Request, PRBC demonstrates that it has made progress completing construction of its post-auction channel facilities; however, it continues to face delays due to circumstances outside of its control. Most notably, PRBC cites the devastation caused by Hurricane Fiona, which made landfall in Puerto Rico on September 18, 2022, and which PRBC states caused damage to the Station. Specifically, PRBC reports that Hurricane Fiona brought more than thirty inches of rain throughout Puerto Rico. PRBC states that many roads were damaged, especially in the mountainous area where the Station's tower site is located. The roadways are currently inaccessible and PRBC reports that it is working with the Puerto Rico Department of Natural and Environmental Resources (DEMA) and the Federal Emergency Management Agency (FEMA) to obtain emergency funds to rebuild the damaged roadway.

PRBC reports that, since the grant of its last tolling waiver in January 2023, FEMA is in the process of obtaining and reviewing proposals for a design to reconstruct the damaged roadway. Once FEMA has approved the design and has allocated the associated funding, PRBC anticipates that the road will be rebuilt within 90 days thereafter. At that time, PRBC estimates that it will be able to schedule a time for the company that will install the Station's tower to complete its work. PRBC states that if the road is rebuilt by September 2023, it should be able to complete construction of the station's post-incentive auction facility by the first quarter of 2024. Accordingly, in light of these circumstances, PRBC requests waiver of the tolling rule and tolling of the Station's construction permit.

*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 Station's construction permit through November 1, 2023. We find that PRBC was unable to complete construction of the Station's post-auction channel facilities due to damage from Hurricane Fiona that have prevented access to the station's tower site.. We find that grant of PRBC's waiver and tolling request are 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 channels and initiated temporary operations on its post-auction channel from an interim site. To the extent some viewers are unable to receive the Station's signal while it operates using interim facilities, we believe that PRBC 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 permits. Although PRBC indicates it is not likely to complete construction of the station until the first quarter of 2024, it only requests tolling through November 1, 2023. In order to continue to monitor progress of the Station's construction and to ensure that they are taking all steps necessary to complete construction, we find that tolling through November 1, 2023 is appropriate.

The above facts considered, Puerto Rico Public Broadcasting's request for tolling **IS GRANTED**. The construction permit (LMS File No. 0000034681) for WIPR-TV, San Juan, Puerto Rico, **IS TOLLED to November 1, 2023**. Grant of this tolling waiver does not permit the Station to recommence operation on its pre-auction channel. While we anticipate this will be PRBC's final request for tolling, we remind PRBC that any subsequent tolling request will be subject to the Commission's

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<sup>5</sup> LMS File No. 0000199181.

<sup>6</sup> LMS File Nos. 0000214418 WIPR was repacked from channel 43 to 26.

tolling provisions.<sup>7</sup> 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. Further, grant of this waiver of the tolling rules does not extend PRBC's deadline for submitting final expense documentation for reimbursement for the Stations.<sup>8</sup>

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): Mark Denbo, Esq.

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<sup>7</sup> 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).

<sup>8</sup> The Station was granted an extension of its January 17, 2023 invoice submission deadline and the Station's deadline was extended to April 30, 2023. See Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to Puerto Rico Public Broadcasting Corporation (January 31, 2023) (on file at LMS File No. 0000199232); 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).