



Federal Communications Commission
Washington, D.C. 20554

April 5, 2019

Sistema Universitario Ana G. Mendez, Inc.
P.O. Box 21345
San Juan, PR 00928

Re: Request for Tolling
WQTO, Ponce, PR
Facility ID No. 2175
LMS File No. 0000067088

Dear Licensee,

On January 28, 2019, Sistema Universitario Ana G. Mendez, Inc. (SU), the licensee of WQTO, Ponce, Puerto Rico (WQTO or Station), filed the above captioned request for tolling of the Station's construction permit expiration date. For the reasons below, we grant SU's request and toll the expiration date of WQTO's construction permit for 180 days from the date of this letter to **October 2, 2019**.

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

In the instant request, SU notes that the Station's pre-auction facilities were destroyed in Hurricane Maria. After requesting and being granted a phase change by the Commission, the Station resumed operations on its post-auction channel on one Distributed Transmission System (DTS) site. SU is planning to resume operations of WQTO using two DTS sites but has experienced unanticipated

¹ 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).

² 47 CFR § 73.3598(b).

³ *Id.*

difficulties involving the completion of the second DTS site. The Station was granted a 180-day extension of its post-transition channel construction permit.⁴ SU now seeks additional time to complete construction of its post-transition channel facilities pursuant to the Commission's tolling provisions in Section 73.3598 of the rules. SU cites to an Act of God – Hurricane Maria – as justification for tolling of its construction permit. SU states that obtaining the necessary equipment and resources to restore the Station's facilities has been challenging, as Hurricane Maria greatly strained the accessibility of services and materials in Puerto Rico. As a result of these issues, SU requests that the DTS construction permit be tolled for 180 days while it completes construction of the second DTS site.

Discussion. Upon review of the facts and circumstances presented, we find that SU has demonstrated that it was unable to complete construction of the Station's post-auction channel facilities due to Hurricane Maria – an "Act of God" tolling event that was outside of its control. We find that grant of SU's tolling 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, resumed operations on one of its two DTS sites on its post-auction channel, and is actively working towards completion of its second DTS site. We believe that SU has every incentive to ensure its remaining viewers are fully informed about the Station's plan to resume full operation on its post-auction channel once it is able to construct its second DTS site. Ultimately, we conclude that the public interest will be served by tolling of the Station's post-transition channel construction permit.

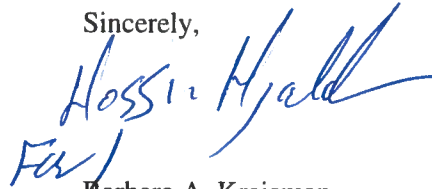
We note that under the circumstances affecting the Station's post-auction transition construction work in the aftermath of Hurricane Maria, we are unable to calculate the exact number of days between the time the tolling event began and ended. Given the totality of the circumstances and consistent with our precedent in similar situations, we find that a 180-day period is a reasonable tolling period. Pursuant to Section 73.3598(b) of the rules, we toll the expiration date of the Station's construction permit for a total of 180 days from the date of this letter.

We remind SU 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." Additional expenses incurred, for instance, as a result of the grant of the Station's voluntary phase change or due to other changes in the Station's transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund. Such additional costs might include, but may not be limited to, additional legal or engineering expenses; filing fees; and interim or additional equipment that was not contemplated when the Station filed its initial estimated expenses but was subsequently necessitated due to its voluntary phase change or other changes in the Station's plans.

⁴ See LMS File No. 0000055390.

The above facts considered, Sistema Universitario Ana G. Mendez, Inc.'s request for tolling **IS GRANTED**. The construction permit for WQTO, Ponce, Puerto Rico **IS TOLLED to October 2, 2019**. Grant of this tolling waiver does not permit SU to recommence operation on its pre-auction channel. We also remind SU that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.⁵

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Todd D. Gray, Esq.

⁵ See 47 § CFR 73.3598(b).