

LEGAL STA – WAIVER REQUEST EXHIBIT

Caguas Educational TV Inc. (“Caguas”), licensee of Full Service Television station WUJA, Caguas, Puerto Rico (Facility ID No. 8156) (the “Station” or “WUJA”), hereby respectfully submits this Legal Special Temporary Authorization application (“STA”) to the Federal Communications Commission (“FCC”) or “Commission”) seeking waiver of the Phase 1-5 repack transition invoice submission deadline set forth in the *Public Notice* issued by the FCC,¹ until March 22, 2022.

As demonstrated below, grant of this waiver is in the public interest because despite its best efforts, bureaucratic delays from the Puerto Rican government—in part due to the COVID-19 pandemic and in part due to the lingering effects of the natural disasters that have plagued Puerto Rico over the last few years—have made it impossible for Caguas to complete construction of its Construction Permit.² Because Caguas has not yet been able to complete construction of the CP and strongly believes it will be unable to do so by the October 8, 2021 deadline set in the *Public Notice*, Caguas cannot provide final invoices pertaining to the construction of the CP by that deadline. As a result, soon after filing this STA, Caguas intends to also request an extension of the CP Tolling Request that the Commission previously granted so that the Station has the requisite time to complete construction.³ Accordingly, there is good cause for the FCC to grant the instant STA due to the circumstances experienced by Caguas that were out of its control.

¹ See *TV Broadcaster Relocation Fund Filing Deadline Approaches in Sixty Days*, *Public Notice*, DA 21-970 (rel. Aug. 9, 2021) (“*Public Notice*”).

² See FCC File No. 0000055314 (granted June 29, 2018) (“Construction Permit” or “CP”).

³ See FCC File No. 0000154001 (granted July 26, 2021) (“CP Tolling Request”).

I. REQUEST FOR WAIVER

As explained further below, Caguas's need for grant of this waiver stems from the bureaucratic delays caused by certain Puerto Rican governmental bodies, including the Oficina de Gerencia de Permisos ("OGPe"), which issues the relevant permits in Puerto Rico. The OGPe either has been non-operational or operating at a very limited capacity throughout the COVID-19 pandemic. Further, the Puerto Rican fire department has delayed issuance of the requisite endorsements so that Caguas may submit its final, complete application for the tower construction permits in the first instance. Caguas also notes that COVID-19 cases are substantially increasing in the region, further delaying construction. Because Caguas will be unable to meet its revised September 9, 2021 CP construction deadline, it will similarly be unable to complete construction until after the October 8, 2021 invoice submission deadline set by the *Public Notice*, and thus requests grant of the instant STA.⁴

Below, Caguas has provided an estimate of the extent of the work that remains to be completed, but is unable to provide a firm estimate of the costs that will be incurred to complete that work because as the COVID-19 pandemic rages on, raw material costs and shipping costs continue to increase. In addition, since construction has not yet commenced, Caguas anticipates that other costs will arise, not only as the foundation for the new WUJA tower is dug but also as hurricane season and the pandemic continue to rage on and wreak havoc in Puerto Rico. Further, Caguas is unable to provide a firm timeline during which the work will be completed in light of the unforeseen delays experienced thus far. Accordingly, Caguas believes an extension until the next invoice submission deadline, which is March 22, 2022, is warranted.

⁴ See *Public Notice* ¶ 1.

A. Need for Waiver

i. Construction Delays

Caguas initially filed the CP to commence operations on its post-auction channel at 10.0 kilowatts via an interim antenna in compliance with the August 1, 2018 post-auction transition deadline. However, Hurricane Maria had caused structural damage to WUJA's tower, which required the Station to replace the tower entirely.⁵ The FCC granted Caguas's STA extension request on July 9, 2019, so that Caguas could continue to work towards completing construction.⁶ The Commission then granted Caguas's request to continue operating WUJA on its interim antenna from its present antenna site so that WUJA could continue to provide service to the public while it constructed its facilities.⁷

Next, in September 2019, Caguas ordered a new tower. However, the manufacturer, Sabre, cannot install the tower until the requisite local Puerto Rican permits are issued. Unfortunately, as discussed in the CP Tolling Request, the COVID-19 pandemic has severely limited the operating capacity of the Puerto Rican government. While Caguas was still working on obtaining its permits pursuant to the STA in 2020,⁸ the OGPe closed for the majority of the year and at certain points operated remotely with a limited number of employees, which delayed securing the necessary paperwork and documentation. Due to these circumstances, Caguas was granted an additional STA extension by the FCC.⁹

⁵ *Id.*

⁶ *See* FCC File No. 0000076230.

⁷ *See* FCC File No. 0000064412.

⁸ *See* FCC File No. 0000094747.

⁹ *See* FCC File No. 0000108375.

Fortunately, 2021 has brought significant progress. The FCC granted Caguas's request to continue operating from its current location on its post-auction channel, and Caguas was able to resume its work to obtain the appropriate permits for the new WUJA tower.¹⁰ As of the date of this STA and Waiver Request, Sabre, the tower manufacturer and installer, has obtained a contractor, and Caguas has procured the antenna and lines and installed the transmitter.

However, despite Caguas's diligent efforts to complete construction, Caguas cannot take any further steps without receiving the appropriate permits from the OGPe. Caguas has submitted all of the requisite documentation to the 20 relevant permitting agencies and has received endorsements from every agency except for the fire department. Because Caguas lacks this final endorsement, it has not been able to complete construction of the new tower. Accordingly, the FCC granted the CP Tolling Request extending the deadline to complete construction to September 9, 2021.¹¹

Unfortunately, at this time Caguas is still missing the fire department endorsement and has no indication that the endorsement will be received in time for the Station to complete construction of the CP by the invoice submission deadline on October 8, 2021. For the endorsement to be completed, the OGPe must assign an inspector to review and assess the requested fire department endorsement documentation. As of the filing of this STA, the OGPe has not yet assigned an inspector to review and assess the endorsement request. Further, once that person is assigned, they could either approve the endorsement or request additional information, causing further delays. After the endorsement is finally approved, the tower construction permit documents must then be submitted for final approval. Even if no further

¹⁰ See FCC File No. 0000122320.

¹¹ See CP Tolling Request.

issues arise after submission of the permit documentation for final approval, the OGPe will not issue their approval for a minimum of 30 days. Moreover, the OGPe does not issue interim approvals for the documents already submitted and will not begin review of any documentation submitted thus far until all endorsements are received. Accordingly, further delays could occur if the OGPe requests additional information regarding any of the other documentation already submitted.

ii. Projected Remaining Work, Costs, and Timeline of Submission of Invoices

Caguas estimates that, in addition to obtaining the fire department endorsement and approval of the tower construction permit, the following work will be required to complete build-out of the construction permit: tower foundation construction, tower erection, rigging, antenna installation, antenna sweep, and testing of the equipment.

The costs of the tower installation, antenna, and transmission line, as understood by Caguas thus far, have been paid in full. The tower is currently estimated to cost \$80,966.00. In addition, when the tower arrives at the port, Caguas will be required to pay a local tax of 11.5% on the tower itself and shipping costs. Accordingly, the tax upon arrival at the port will equal at least \$9,311.09, plus the tax levied on the shipping costs that is dependent on the cost of shipping at the time the tower arrives at port. The antenna and components are currently estimated to cost \$75,284.06. When the antenna, transmission line, and components arrive, the same 11.5% tax will be levied on the price of that equipment and the cost to ship the equipment. Accordingly, the tax upon arrival at the port will equal at least \$8,657.67, plus the tax levied on the shipping costs that is dependent on the cost of shipping at the time it arrives at port.

However, the cost of raw materials has continued to increase, so the cost to install the tower may be greater than that the amount already paid by Caguas. Further, Caguas is in the

process of scheduling shipment of the tower, but until the requisite permits are approved, that shipping schedule cannot be confirmed, and thus the costs of shipping cannot be confirmed. Shipping costs to Puerto Rico have increased considerably during the last year as well, and all signs point to those costs continuing to increase. Caguas estimates that, as long as the final endorsement is received and the permit is approved quickly, the tower could be shipped by the end of September 2021.

The OGPe also charges a filing fee for the construction permit application, along with duties and “stamp” fees; however, because these costs are calculated based on the estimated cost of construction, Caguas is unable to provide a firm estimate of the final cost of the fees. For example, the municipal construction taxes cost 5% of the project’s value,¹² and the price of the filing fee itself varies based on the cost of the project.¹³ The Colegio de Ingenieros y Agrimensores de Puerto Rico, or College of Engineers and Surveyors of Puerto Rico (CIAPR), also charge for “stamps,” which vary in cost depending on the value of the work.¹⁴ In addition, the Aguas Buenas Municipality taxes construction at a rate of 4%, so the estimated tower construction municipality taxes will equal at least \$11,568.42. Lastly, Caguas anticipates that while digging the foundation for the tower and performing the other construction necessary for the Station’s operations, new costs will arise that may not be encompassed in any estimates it has received thus far due to hurricane season and the ongoing COVID-19 pandemic, which has

¹² *Doing Business– Economy Profile of Puerto Rico*, WORLD BANK (2020) at 13, <https://www.doingbusiness.org/content/dam/doingBusiness/country/p/puerto-rico/PRI.pdf>.

¹³ See Construction Permit – Integrated System of Permits, GOVERNMENT OF PUERTO RICO, <https://www.sip.pr.gov/web/guest/ciudadano/permisos/permisos-obra/construccion>.

¹⁴ 20 L.P.R. § 731 (2012) (English text available at https://www.ciapr.org/wp-content/uploads/share/stories/Leyes/ley_319.html).

surged in Puerto Rico recently.¹⁵ Caguas also notes that none of the taxes levied on these items may be paid in advance to the OGPe because of the fluctuating nature of the work involved and because of the method of calculating taxes based on the cost of the equipment being shipped and work being done.

In light of the delays experienced so far, Caguas is unable to provide a firm estimate for the time period needed to complete the construction. As noted above, if the final endorsement is received soon and the permits are approved quickly, then the tower may be shipped by the end of September. It is slated to arrive at the San Juan, Puerto Rico port on September 20, 2021, although this date could change up until the tower is present on the ship and depending on the status of WUJA's permits. Further, Sabre has indicated that according to its installation schedule, it will take no more than two to three months after the local Puerto Rico permits are granted to install the tower. After that, antenna installation and performing the antenna sweep likely will be completed expeditiously. The antenna and components are slated to ship between September 9 and September 13, 2021, which could change due to hurricane season or other constraints.

B. Standard for Waiver

The Commission may waive its rules where good cause is shown.¹⁶ A waiver is appropriate where the facts of a particular matter make strict compliance with the Commission's

¹⁵ See *Tracking Coronavirus in Puerto Rico: Latest Map and Case Count*, THE NEW YORK TIMES (updated Sept. 3, 2021) <https://www.nytimes.com/interactive/2021/us/puerto-rico-covid-cases.html> (showing double digit percentage increases in tests, hospitalizations, and deaths over the last two weeks in Puerto Rico due to COVID-19). See also *COVID-19 in Puerto Rico*, CENTER FOR DISEASE CONTROL (last updated Aug. 30, 2021) <https://wwwnc.cdc.gov/travel/notices/covid-4/coronavirus-puerto-rico> (indicating Puerto Rico is experiencing a "Level 4: Very High" amount of COVID-19 in the population, which is the highest level on the CDC's scale).

¹⁶ 47 C.F.R. § 1.3.

rules inconsistent with the public interest.¹⁷ The waiver should be granted if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.¹⁸ Further, the *Public Notice* adopted by the Commission specifically contemplates waiver due to an event that “an entity faces circumstances beyond its control” including “local zoning.”¹⁹ As discussed below, these requirements are met for the requested waiver of the repack transmission invoice submission deadline, and therefore, the Commission should grant the instant waiver and extend this deadline for WUJA.

C. Good Cause Exists to Grant the Waiver, and the Waiver is in the Public Interest

There is good cause for the Commission to grant the instant waiver because WUJA has experienced significant delays in completion of construction due to circumstances beyond Caguas’s control. As noted above, Caguas has experienced administrative delays at the OGPe and the Puerto Rico fire department which has impeded Caguas’s ability to begin construction of the new WUJA tower. Further, the circumstances for waiver contemplated by the Commission in the *Public Notice* are exactly those that Caguas is facing. Caguas has been working towards obtaining the requisite permits throughout its CP build period, but with the lingering effects of past hurricanes, the current hurricane season, and the COVID-19 pandemic’s strain on the capacity of the Puerto Rican government, permitting has grinded to a halt and construction has been uniquely difficult to complete. These events undoubtedly constitute special circumstances outside of Caguas’s control. Granting a waiver of the deadline to submit invoices for reimbursement is also in the public interest because without this waiver, Caguas will be unable to

¹⁷ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁸ *Wait Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹⁹ *Public Notice* ¶ 2, n.4.

provide broadcast service to the public and will be left to grapple with the full costs of their transition, despite the transition being due to the FCC's repack.

In issuing the *Public Notice*, the Commission noted that waiver may be granted in limited circumstances, such as an event that “an entity faces circumstances beyond its control” including “local zoning.”²⁰ Caguas has done everything in its power to complete construction and submit invoices before the Commission's deadline. All of the appropriate equipment and personnel have been obtained, and Caguas has worked tirelessly with the OGPe and many other Puerto Rican government entities to obtain the requisite endorsements, paperwork, and permits. However, surging COVID-19 cases in the region are expected to further delay the commencement of construction. Even if the pandemic did not continue to rage on, no construction can commence until the permits have been granted. Caguas is still awaiting the issuance of a final endorsement from the fire department, and in the worst case scenario other than outright denial of the permits, Caguas may have to seek reissuance of other endorsements if they expire before the fire department issues this endorsement. Because the function of local government agencies throughout a global pandemic are not within the control of Caguas, the Commission should find that, pursuant to its rules and the *Public Notice*, the instant waiver is in the public interest and warranted under the circumstances.

II. CONCLUSION

Therefore, for the foregoing reasons, Caguas respectfully requests that the Commission grant the instant STA requesting waiver of the October 8, 2021 deadline to submit Phase 1-5 repack invoices until March 22, 2022.

²⁰ *Id.*