



Federal Communications Commission
Washington, D.C. 20554

July 31, 2018

America-CV Station Group, Inc.
13001 N.W. 107th Avenue
Hialeah Gardens, FL 33018

Francisco R. Montero, Esq.
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1300 North 17th Street 11th Floor
Arlington, VA 22209

Re: Request for Extension of Time to
Construct Post-Auction Channel Facility
WJWN-TV, San Sebastian, Puerto Rico
Facility ID No. 58342
LMS File No. 0000056370

Dear Licensee,

On July 6, 2018, America-CV Station Group, Inc. (America-CV) the licensee of station WJWN-TV, San Sebastian, Puerto Rico (Station or WJWN-TV), filed the above captioned application seeking a 180-day extension of its construction permit expiration date and waiver of the 90-day construction permit extension filing deadline. For the reasons below, we grant America-CV's requests.

Background. Pursuant to Section 73.3700(b)(5) of the Commission's rules, a station may request a single extension of its construction permit deadline of up to 180 days to complete construction of its post-auction facility.¹ 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, not less than 90 days before the assigned construction permit deadline.² 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.³ In addition, a waiver of the application filing deadline is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation

¹ See 47 CFR § 73.3700(b)(5). All subsequent requests for additional time to construct are subject to the Commission's tolling provisions, 47 CFR § 73.3598(b).

² 47 CFR § 73.3700(b)(5)(iv).

³ The *Incentive Auction R&O* provides examples of six circumstances that might justify an 180-day extension of a station's post-auction construction permit: (1) weather related delays; (2) delays in construction due to the unavailability of equipment or a tower crew; (3) tower lease disputes; (4) unusual technical challenges; or (5) delays caused by the need to obtain government approvals, such as land use or zoning approvals, or to observe competitive bidding requirements prior to purchasing equipment or services; and (6) financial hardship with sufficient supporting evidence. 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).

from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis.⁴

On January 11, 2018, the Media Bureau, granted America-CV's request to modify WJWN-TV's post-auction transition phase deadline to permit the Station to transition to its post-auction channels prior to the start of Phase 1 due to damage to its transmission facilities during Hurricane Maria. The Station was assigned a new testing period start date of July 1, 2018, and is required to cease operation on its pre-auction channel by August 1, 2018.⁵ In its pending application for an extension, America-CV states that it has been working diligently to complete construction of its post-auction facility, but because of the major damage suffered throughout Puerto Rico as a result of Hurricane Maria, America-CV is unable to complete construction of its final post-auction facility by August 1, 2018. America-CV goes on to state it anticipates receipt of the necessary equipment by the end of July with plans to commence program testing on its new channel in August. The Station is currently silent.⁶ America-CV also requests waiver of the 90-day extension filing deadline stating that it was unable to file by May 3, 2018, since it was unaware at the deadline that it would require an extension and be unable to complete construction of its post-auction facility by its currently assigned construction permit deadline.

Discussion. Upon review of the facts and circumstances presented, we find America-CV's request to extend the construction permit deadline to construct WJWN-TV's post-auction facility meets the requirements for a 180-day extension. America-CV has demonstrated that, despite reasonable efforts, the circumstances in Puerto Rico following Hurricane Maria are such that an extension is needed to complete construction of its post-auction facility. We find grant of the request will have no impact on the overall transition schedule or cause interference to other stations because WJWN-TV is currently silent on its pre-auction channel and will remain silent until the Station is able to commence operation on its post-auction channel using the facilities authorized in its post-auction construction permit.⁷ We also find that grant of the request will not have any negative impact on viewers because the station is already silent and we note that WJWN-TV is continuing to diligently pursue construction of its post-auction facility and has every incentive to proceed as expeditiously as possible.⁸ Furthermore, based on the unique situation confronted by America-CV, waiver of the 90-day extension filing deadline is in the public interest and consistent with the Commission's general waiver standard since the Station did not know, despite its best efforts, that it would not be able to complete construction of its post-auction facility until after the 90-day filing deadline.

⁴ See *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).

⁵ *Incentive Auction Task Force and Media Bureau Grant Waiver of the Post-Auction Transition Schedule and Modify the Transition Phase Assignments of Repacked Stations in Puerto Rico and the U.S. Virgin Islands*, Public Notice, 33 FCC Rcd 138 (MB 2018) (*Puerto Rico/USVI Public Notice*),

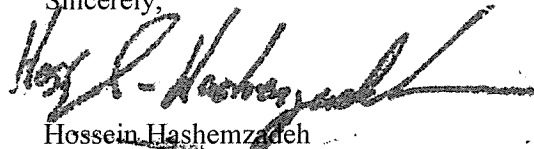
⁶ See Request for Extension of Silent Authority, LMS file No. 0000054110 (granted May 15, 2018)

⁷ If America-CV determines it must commence operations using a temporary facility it must file for and receive grant of special temporary authority prior to commencing such operations. See 47 CFR § 73.1635.

⁸ Because the Station is silent and unable to conduct the required on-air viewer notifications, see 47 CFR § 73.3700(c), the Video Division has granted WJWN a waiver of those requirements and authorized the Station to conduct consumer notifications via alternative means. Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to America-CV Station Group, Inc. (Jul. 31, 2018) available at LMS File No. 000058583. See also *Puerto Rico/USVI Public Notice*, 33 FCC Rcd at 141, para. 8 ("To the extent a station is silent and is not able to comply with its consumer education requirements, it must file a request for waiver of 47 CFR § 73.3700(c) as a Legal STA in LMS.").

The above facts considered, America-CV's, request for waiver of the construction permit extension deadline and application for extension of construction permit expiration date **ARE GRANTED**. The construction permit for WJWN-TV, San Sebastian, Puerto Rico, **IS EXTENDED** for 180 days **to January 28, 2019**. Grant of this extension does not alter the deadline by which the Station must discontinue operations on its pre-auction channel – 11:59pm local time on August 1, 2018, nor in this case permit the station to recommence operations on its pre-auction channel. We also remind America-CV that any subsequent requests for extension of its construction permit deadline will be subject to the Commission's tolling provisions.⁹

Sincerely,

A handwritten signature in dark ink, appearing to read "Hossein Hashemzadeh", written over a horizontal line.

Hossein Hashemzadeh
Deputy Chief, Video Division
Media Bureau

⁹ See 47 § CFR 73.3598(b).