

**Request for Waiver of Tolling Provisions  
and Tolling of Construction Permit Expiration Date  
WFUT-DT (Facility ID 60555)**

Univision New York LLC (“Univision”), licensee of station WFUT-DT, Newark, NJ (the “Station”) hereby requests waiver of the Commission’s tolling provisions and tolling of the its construction permit expiration date.

The Station holds a construction permit (“CP”) authorizing construction of its post-auction facilities that was initially set to expire on the Phase 4 deadline of August 2, 2019. Because of the complex regulatory, commercial, and physical constraints related to its transmitter location atop the Empire State Building, the Station was granted a six-month extension of the CP expiration date until January 29, 2020 (File No. 0000078750). Additionally, the Station was granted Special Temporary Authority (STA) (File No. 0000078251) pursuant to which the Station ceased operations on its pre-transition Channel 30 and commenced temporary operations on its post-transition channel 26 using the existing Dielectric model TUF-C3-8/24U-2-S master nondirectional antenna located atop the Empire State Building.

The Station has worked diligently to complete its post-transition antenna, but difficulties associated with constructing on the Empire State Building continue to prevent the Station from building-out its finalized facilities by the current STA and CP expiration dates. Specifically, because the antenna specified in its CP cannot be installed in compliance with local building codes, the Station has had to redesign its post-auction antenna in order to comply with local building codes, as well as undertake the necessary structural reinforcements to the upper section of the Empire State Building tower. Additionally, the Station faces significant scheduling challenges, as it must contend with planned sidewalk closures initiated by local authorities for the coming 2020 construction season.

Accordingly, the Station respectfully requests waiver of the Commission’s tolling provisions and tolling of its CP expiration date (as well as grant of the concurrently-filed request for extension of its STA). The Media Bureau has explained that a station may seek additional extensions of its construction permit subject to the Commission’s tolling provisions.<sup>1</sup> These rules provide that a construction permit may be tolled under certain circumstances, including where “construction is delayed by any cause of action pending before any 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>2</sup> The Media Bureau has further explained that where construction of a station has been disrupted by circumstances other than those expressly provided for in the Commission’s tolling provisions, “[s]tations may also seek a waiver of the tolling rule to receive additional time to construct in cases where ‘rare or exceptional

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<sup>1</sup> See *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, DA 18-884, ¶ 13 & n.34 (2018) (“*Transition Deadlines PN*”) (citing 47 CFR § 73.3700(b)(5)(i)).

<sup>2</sup> 47 CFR § 73.3598(b)(2).

circumstances' prevent construction.'"<sup>3</sup> In considering a waiver, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>4</sup> Ultimately, a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>5</sup>

Grant of the instant request for waiver of the tolling rule and tolling of the Station's CP would be squarely within the Commission's policies. The Station has made diligent efforts to complete construction of its post-transition antenna. Despite this, circumstances outside of the Station's control have made it impossible for the Station to complete construction by the applicable CP expiration date. In order to comply with local legal requirements, the Station has had to redesign its post-auction antenna. Moreover, local requirements will prevent the Station from undertaking any construction during much of the coming 2020 construction season. Granting the instant request would therefore serve the public interest by allowing the Station to work through these many complex construction challenges, while avoiding an unnecessary disruption of the Station's Spanish-language programming.

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<sup>3</sup> *Transition Deadlines PN* ¶ 13 n.34 (citing *1998 Regulatory Review—Streamlining of Mass Media Applications, Rules and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17536 ¶ 42 (1999)).

<sup>4</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>5</sup> *Northeast Cellular*, 897 F.2d at 1166.