

LEGAL STA – WAIVER REQUEST EXHIBIT

Ramon A Hernandez (“Hernandez”), licensee of low-power station WVDO-LD, Carolina, Puerto Rico (Facility ID No. 183026) (the “Station”), hereby respectfully submits this Legal Special Temporary Authority application (“STA”)¹ to the Federal Communications Commission (“FCC” or “Commission”). Because LMS does not permit filing of Legal STAs for inactive authorizations, this filing is being submitted as an amendment to the pending License to Cover² for the expired construction permit³ to which this filing pertains.

Hernandez respectfully requests waiver of Sections 73.3598(e) and (c) of the Commission’s rules,⁴ as well as any other rule the FCC deems necessary to facilitate reinstatement and extension of its Construction Permit (File No. 0000053169) (the “CP”) through November 3, 2021, the date on which construction was completed.⁵

The Station completed construction of the facilities on November 3, 2021. On November 18, 2021, Hernandez filed for a License to Cover the CP (the “LTC”).⁶ The FCC granted the LTC on November 23, 2021.⁷ The Video Division subsequently informed Hernandez that its LTC application would be dismissed because the CP expired on July 12, 2021.

Hernandez notes that intervening events entirely outside of its control so severely disrupted construction of the Station’s facilities that completion by July 12, 2021 was

¹ Due to LMS interface limitations with respect to filing applications against inactive authorizations, this Legal STA has been filed as an amendment to a pending, related License to Cover application, with a courtesy copy emailed to Evan.Morris@fcc.gov.

² LMS File No. 0000169647 (granted Nov. 23, 2021) (“LTC”).

³ LMS File No. 0000053169 (granted July 12, 2018) (“CP”).

⁴ 47 C.F.R. §§ 73.3598(e), (c).

⁵ See CP.

⁶ See LTC.

⁷ See Exhibit A.

impossible. As demonstrated below, grant of this waiver is in the public interest because, despite its best efforts, the enduring effects of Hurricane Maria starting September 20, 2017, the series of earthquakes in Puerto Rico between December 28, 2019 through 2020, and the unique impact on Puerto Rico of the Coronavirus pandemic starting in February 2020 made it impossible for the Station to complete the work necessary for normal operation after displacement prior to July 12, 2021. Furthermore, the Station was ready to resume operations on the date its LTC was granted and remains ready to do so immediately. Accordingly, there is good cause for the FCC to grant the instant STA due to the circumstances experienced by Hernandez that were out of its control.

**I. REQUEST FOR REINSTATEMENT AND EXTENSION OF CP BY
WAIVER OF CONSTRUCTION PERMIT RULES**

As explained further below, Hernandez's need for grant of this request for reinstatement and extension of the CP by waiver of the CP rules at Section 73.3598(e) and (c) of the Commission's rules, respectively, as well as any other rule the FCC deems necessary, stems from the effect of natural disasters and the global health crisis on the Station's ability to timely complete construction after displacement.⁸ Each obstacle to finishing construction was entirely outside of Hernandez's control. Because Hernandez would have been granted an extension had it requested one before the CP expired, and waiver is in the public interest, Hernandez requests grant of the instant STA.

A. Need for Waiver

i. Continued Impediments to Construction Caused by Hurricane Maria

On January 10, 2018, fewer than six months prior to the start of the CP, the Station had

⁸ 47 C.F.R. § 73.3598(e) and (c).

resumed operations⁹ on its pre-displacement frequency following a silent period¹⁰ caused by damage incurred during Hurricane Maria. On July 12, 2018, when displacement was granted and the CP began, the Station was still experiencing the effect of rolling blackouts, unavailability of transportation and fuel, and intermittent function of communications services caused by Hurricane Maria. Despite the challenges, the Station resumed operations¹¹ on its displacement frequency at reduced power¹² on March 5, 2019.

ii. Major Earthquakes and the Onset of the COVID-19 Pandemic Occurred Simultaneously

Later that year, a series earthquakes began on December 28, 2019 and continued into 2020, including a 5.5 magnitude seismic event that further damaged the electrical grid upon which the Station depended for operations and construction.¹³ The Station began to suffer additional power interruptions. During this period, restrictions and precautions implemented in response to the Coronavirus pandemic further impeded the still-recovering transportation infrastructure with which the Station was already contending during construction. These restrictions also impaired the Station's ability to hire necessary tower riggers and other construction personnel necessary to completion. On these grounds, the Station filed for an STA on May 22, 2020 and was granted authority to operate at reduced power on June 26, 2020.¹⁴ On March 9, 2021, the FCC subsequently granted the Station's application to again operate

⁹ See LMS File No. 0000040463 ("Post-Hurricane Maria Resumption").

¹⁰ See LMS File No. 0000030290 ("Hurricane Maria Silence STA").

¹¹ See LMS File No. 0000068253.

¹² See LMS File No. 0000068328.

¹³ See LMS File No. 0000114189.

¹⁴ See *id.*

under those parameters for the same reasons.¹⁵

iii. WVDO-LD Diligently Pursued Completion of the CP Facilities

Throughout the unforeseeable and overlapping catastrophes that directly affected WVDO-LD's timeline of completion, the Station worked to the best of its ability to construct the CP facilities as soon as possible given the circumstances. In the midst of these good-faith efforts to construct the facilities and recover from the disasters, the Station inadvertently failed to request tolling of the CP. WVDO-LD sincerely regrets this oversight, takes its permit and license obligations seriously, and has taken measures going forward to ensure prompt action in advance of FCC deadlines.

B. Standards for Waiver and Construction Permit Tolling

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 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, Section 73.3598(b)(1) of the Commission's rules specifically contemplates tolling of the period of construction when construction is prevented by an event beyond the permittee's control, including "an act of God, defined in terms of natural disasters (e.g., floods,

¹⁵ See LMS File No. 0000137241.

¹⁶ 47 C.F.R. § 1.3.

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

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

tornados, hurricanes, or earthquakes).”¹⁹ As discussed below, the requirements are met for the requested waiver of the construction permit rules and the Commission should therefore reinstate and toll the CP through the completion of construction.

C. Good Cause, as Evidenced by Special Circumstances and the Public Interest Support Grant of the Waiver

There is good cause for the Commission to grant the instant waiver. The circumstances for tolling contemplated by the Commission in Section 73.3598(b)(1) are exactly those that Hernandez faced and overcame. The occurrence, severity, and extent of natural disasters are entirely out of a permittee’s control. Hernandez had no control over the hurricane that caused the largest blackout in U.S. history,²⁰ a series of earthquakes that worsened the instability of the local electrical grid, and government restrictions implemented in response to a global pandemic that closed government offices, restricted in-person work, and largely halted manufacture as well as transportation of goods. These events undoubtedly constitute special circumstances outside of the Station’s control that stem from an act of God.

WVDO-LD has experienced significant delays to completion of construction due these circumstances beyond Hernandez’s control. As noted above, after WVDO-LD was displaced, the Station faced obstacles to completing construction of its CP facilities due to the well-documented persistence of adverse conditions caused by Hurricane Maria including power

¹⁹ Hernandez understands that Hurricane Maria, the 2019-2020 series of earthquakes in Puerto Rico, and the COVID-19 pandemic starting in 2020 would qualify as acts of God.

²⁰ Eric Levenson, “Puerto Rico’s power outages are the largest in US history, report says” CNN (Oct. 26, 2017 2:02 PM) <https://www.cnn.com/2017/10/26/us/puerto-rico-power-outage/index.html> (last visited June 16, 2022).

outages,²¹ the worsening of that damage by a subsequent series of major earthquakes, and the logistical challenges of completing construction, an inherently in-person activity reliant on availability and transport of supplies, during COVID-19 restrictions and orders. The Station worked diligently to complete construction despite the impediments.

Granting waiver of the tolling rules and any other rules the FCC deems necessary is also in the public interest. Because the devastating effects of the aforementioned acts of God made construction within the CP period impossible, the Commission should find that, pursuant to Section 73.3598(b)(1) of its rules, the instant waiver is in the public interest. Moreover, throughout the aforementioned disasters, WVDO-LD provided a critical source of information to its communities. The station returned to air fewer than four months after Hurricane Maria destroyed critical parts of its pre-displacement facilities.²² Despite the challenges the Station faced during the subsequent earthquakes and public health emergency, it continued to serve its public during these crucial moments of public need for information. Hernandez respectfully submits that grant of this waiver is in the public interest.

²¹ Cristina Corujo, “Puerto Ricans fear blackouts during hurricane season” ABCNEWS (Jul. 17, 2021 10:09 AM) <https://abcnews.go.com/US/puerto-ricans-fear-blackouts-hurricane-season/story?id=78579976> (last visited June 16, 2022).

²² See Post-Hurricane Maria Resumption; Hurricane Maria Silence STA.

II. CONCLUSION

Therefore, for the foregoing reasons, Hernandez respectfully requests that the Commission grant the instant Legal STA requesting waiver of the above construction permit rules and any other rules the Commission finds necessary. Hernandez also respectfully requests reinstatement and tolling of its CP through the date on which the displacement facilities were constructed.

EXHIBIT A

Federal Communications Commission

LOW POWER TELEVISION BROADCAST STATION LICENSE

Licensee/Permittee

RAMON A HERNANDEZ
PO BOX 4956
PMB 2024
CAGUAS, PR, 00726

| Call Sign | File Number |
|-----------|-------------|
| WVDO-LD | 0000169647 |

Facility ID: 183026

NTSC TSID:

Digital TSID:

This License Covers Construction
Permit No.

0000053169

| | | |
|--|---------------------------------------|--------------------------------------|
| Grant Date 11/23/2021 | | Expiration Date 02/01/2029 |
| Hours of Operation Unlimited | | |
| Station Location City CAROLINA State PR | Frequency (MHz) 66.0 - 72.0 | Station Channel 4 |

| | |
|---|---|
| Antenna Structure Registration Number 1239464 | |
| Transmitter Type Accepted. See Sections 74.750 of the Commission's Rules. | Transmitter Output Power(kW) As required to achieve authorized ERP. |
| Antenna Coordinates Latitude 18-16-38.8 N Longitude 65-51-10.6 W | Antenna Type Directional |
| Description of Antenna Make Kathrein Model CL-46 | Major Lobe Directions 230.0 310.0 |
| Antenna Beam Tilt (Degrees Electrical) 1.0 | Antenna Beam Tilt (Degrees Mechanical @ Degrees Azimuth) Not Applicable |

| | |
|---|--|
| Maximum Effective Radiated Power (Average) 3.0 kW 4.77 DBK | |
| Height of Radiated Center Above Ground (Meters) 58 | Height of Radiated Center Above Mean Sea Level (Meters) 802.9 |
| Out-Of-Channel Emission Mask Full Service | Overall Height of Antenna Structure Above Ground (Meters) See the registration for this antenna structure. |

Waivers/Special Conditions

- Grant of this license application is conditioned on continuous operations of the licensed facility for the twelve-month period following grant. The failure to so operate will result in the rescission of this grant, dismissal of the license application and the forfeiture of the associated construction permit pursuant to 47 C.F.R. § 73.3598(e) unless the licensee rebuts the presumption that the authorized facilities were temporarily constructed.

Subject to the provisions of the Communications Act of 1934, as amended, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this permit, the permittee is hereby authorized to construct the radio transmitting apparatus herein described. Installation and adjustment of equipment not specifically set forth herein shall be in accordance with representations contained in the permittee's application for construction permit except for such modifications as are presently permitted, without application, by the Commission's Rules.

Equipment and program tests shall be conducted only pursuant to Sections 73.1610 and 73.1620 of the Commission's Rules.