

In the Matter of)
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AMOR Radio Group Corp.)
)
FM Broadcast Station WXHD, Santa Isabel,) **BPH-20180904ABO**
Puerto Rico; Facility ID # 77881; Request for)
Determination of Tolling of Construction)
Permit Pursuant to Section 73.3598(b) of the)
Commission's Rules)

To: The Chief, Audio Division
Media Bureau
Via: Office of the Secretary

AMOR Radio Group Corp. (AMOR), the licensee of FM Broadcast Station WXHD, Santa Isabel, Puerto Rico, by counsel and pursuant to Section 73.3598(b)(1) of the Commission's Rules, hereby requests that the Audio Division, Media Bureau make a determination of tolling of the above-captioned Construction Permit, which is presently scheduled to expire on its face on October 9, 2021. AMOR requests that the term of the construction permit be tolled until June 30, 2022. As good cause for this request, AMOR states and affirms as follows:

1

2. AMOR has been frustrated in its efforts to complete construction at the CP site since the grant of the CP due to a series of events, stemming from and principally because of (1) Hurricane Maria, and (2) the COVID-19 pandemic and the effects of those events as explained below; and AMOR has been unable to construct the modified facilities authorized in the construction permit for reasons entirely beyond its control, consistently since the issuance of the CP. This CP was granted approximately one year after Category 5 Hurricane Maria devastated the entire island of Puerto Rico between September 16 and October 2, 2017. It was not anticipated that the length of time for rebuilding of infrastructure on the Island would be as protracted as it was. For the first year and a half of the term of this construction permit, AMOR was completely unable to either order or obtain delivery of a new tower, or to secure a tower crew to erect a new tower at the CP site. The available tower crews on the island were, during that entire time, prioritizing their work on Puerto Rico, to include cellular and broadband infrastructure, other common carrier facilities, and operational fixed microwave facilities. Broadcast facilities were of a lower priority, and among those, restoration of operation of stations that were off the air were prioritized. WXHD was a low priority project, and tower crews were absolutely unavailable at any time in 2018 and 2019. No tower crews from the mainland United States were willing to travel to Puerto Rico to undertake this task, so AMOR was at the mercy of local tower crews, which were overloaded. Anticipating the availability of tower crews in early 2020, AMOR applied for and received a local land use permit for the tower construction at the CP site. The local permit requires that construction be completed by June of 2022.

3. However, very early in 2020, the COVID-19 pandemic again brought tower construction in Puerto Rico to a halt. AMOR, despite best efforts, has not been able to schedule tower construction to date, but it has been informed that a crew should be available to work at

WXHD by early 2022. Anticipating this, AMOR prepared to order the new Rohn tower to be installed at the CP site. The price of the tower at the time the construction permit was issued was approximately \$55,000. That price has since jumped to \$100,000, and the timetable for delivery of the tower to Puerto Rico is 3 months. AMOR is making arrangements for the additional financing for the new tower now, though the economy in Puerto Rico at the moment, especially in the broadcasting industry, makes the extra expense difficult, to say the least,

4. In the meantime, there is presently a trucker's strike ongoing in Puerto Rico, which, AMOR is informed, will further delay the delivery of the new tower once ordered, and once it arrives in Puerto Rico. The combination of these unforeseeable circumstances, each and all of which are outside the control of the licensee, stands to delay the completion of construction of this otherwise rather simple minor change well beyond the construction permit expiration date on October 9 of this year. It is anticipated that construction can be completed on or prior to June 1, 2022.

5. Commission regulations currently dictate that all construction permits for broadcast stations expire three years from the date of the original permit. 47 C.F.R. §73.3598(a). There are three exceptions to that strict time limitation; one of which is when construction is delayed due to specific, delineated causes which have been deemed to be beyond the control of the permittee. That rule section specifies that the three-year period of construction for an original construction permit *shall toll* when construction is "prevented by the following causes not under the control of the permittee: (1) Construction is prevented due to an act of God, defined in terms of natural disasters (e.g., floods, tornados, hurricanes, or earthquakes)..." 47 C.F.R. §73.3598(b). In the case of those extraordinary events, FCC shall, upon documented request, "toll" the three year construction period for such permits. The language of the rule is mandatory, not permissive. In

terms of documentation, the Commission can take official notice of the well-established recovery efforts in Puerto Rico after Hurricane Maria (following which it has made numerous accommodations for numerous other broadcast stations in Puerto Rico adversely affected by the Hurricane) and the effects of the COVID-19 pandemic, which is sufficiently akin to a natural disaster such that no further documentation should be necessary. Finally, an ongoing trucker's strike and the doubling of the cost of the tower (caused by the Hurricane and the COVID-19 pandemic) necessary to complete construction are events completely outside the control of the permittee.

6. In the 1998 *Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules and Processes*, (Reconsideration granted in part) 14 FCC Rcd. 17525, 17541, the Commission stated:

We realize that there may be rare and exceptional circumstances other than those delineated here which would warrant the tolling of construction time, i.e., circumstances in which, for reasons not discussed here, a permittee is prevented from completing construction within three years for reasons beyond its control such that the permittee would be entitled to tolling of the construction time under Section 319(b). In these very limited circumstances, we will entertain requests for waiver of our strict tolling provisions.”¹

It is submitted that the circumstances delineated above should be considered, in the aggregate, rare and exceptional circumstances which would warrant the tolling of construction time for the short period requested herein, each and all of which are doubtless beyond the control of the permittee. The same is therefore respectfully requested. This Request is being filed in triplicate with the Office of the Secretary via U.S. Mail, as per the instruction at Section 73.3598(c) of the Commission's Rules.

¹ 1998 Biennial Regulatory Review-Streamlining of Mass Media Applications, Rules and Processes, 13 FCC Rcd 23056 (1998), recon. granted in part and denied, 14 FCC Rcd 17525, 17541 ¶41 (1999) ("Streamlining MO&O").

Therefore, the foregoing considered, AMOR Radio Group Corp. hereby respectfully requests that Construction Permit BPH-20180904ABO be considered tolled from the date hereof until June 1, 2022.

Respectfully submitted,

AMOR Radio Group Corp.

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