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May 8, 2018

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554
VIA FEDEX

***RE: WIVA-FM – Facility ID#2876 – BPH-20141204AAQ (“Construction Permit”)
Status Report – Tolling Request***

Dear Ms. Dortch:

I am writing on behalf of Arso Radio Corporation (“Arso”), the licensee of WIVA-FM, Facility ID#2876, licensed to Aguadilla, PR, in connection with the above captioned Construction Permit which was granted on January 20, 2015 and which was scheduled to expire on January 20, 2018, but was “tolled” to June 6, 2018 pursuant to a request for tolling filed on December 6, 2017. The original tolling request of the Construction Permit was due to an “Act of God” as specified in 47 C.F.R. §73.3598(b)(i). As the Commission is aware, Hurricane Maria devastated the island of Puerto Rico on September 20, 2017 as a Category 5 storm which remained over the island for over 30 hours, reducing the island’s infrastructure to rubble. While the tower structure authorized in the Construction Permit (ASR#1011580) survived the storm, the electrical infrastructure to the site was completely destroyed and the ground facilities were inundated with debris and mud from the storm.

As a result, all work on the Construction Permit ceased as of September 20, 2017 and as of this date Arso has still been unable to resume work as the electrical grid remains only sporadically reliable in this remote location on the southwest side of the island and is expected to remain as such for some time. In addition, accessibility to the site remains difficult for vehicles. Further complicating matters is the unreliability of the electrical grid overall across the island. As recently as April 18, 2018 the entire island was again blacked out for over 24 hours because of human error during restoration processes.¹

Without reliable electricity service and the ability to bring in equipment, it remains

¹ <https://www.nytimes.com/2018/04/18/us/puerto-rico-power-outage.html>

impossible for Arso to complete the work contemplated by the Construction Permit at this time. Most importantly, there are currently no personnel, contractors, or vendors available to do this work at this time because they all remain focused and engaged in restoring licensed operations to the plethora of broadcast facilities on the island that were damaged or destroyed by Hurricane Maria, and have advised Arso that no other contract work of this scope could be undertaken for several more months. Chairman Pai recently had the opportunity to re-visit Puerto Rico to see the progress (and lack thereof) to the electrical and communications systems and acknowledged the challenges that still remain for the island.² Finally, the availability of even basic electronic parts and equipment necessary to complete the construction of the facility remain scarce throughout the island.³

Pursuant to Section 73.3598 of the Rules, the Commission has established procedures for tolling, which include natural disasters and zoning/permitting issues. In addition to the express circumstances described hereinabove that would qualify the instant Construction Permit for tolling, there are a myriad number of additional issues which while not specifically articulated in the Rule, further warrant grant of this tolling request (*See 1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes; Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, M,O & O, MM Docket 98-43, 14 FCC Rcd 17525, 17541 (1999)(“*Streamlining Order*”). As part of the adoption of the three-year construction period and associated tolling provisions, the Commission stated that:

“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 request for waiver of our strict tolling provisions.”

Streamlining Order at 17541. The Commission has waived the three-year construction period required by Section 73.3598 in acknowledgment of exceptional circumstances beyond a licensee’s control. *See Letter to Cary S. Tepper, Esq., In Re W216BI, Lexington, NC from Peter H. Doyle, Chief, Audio Division, Media Bureau*, dated April 8th, 2002 permitting tolling where transmitter site was lost due to circumstances beyond permittee’s control. Both the applicable provisions of Section 73.3598 described hereinabove together with the other circumstances described which fall within the penumbras of the tolling provisions, demonstrate circumstances beyond the control of Arso which current prevent completion of construction incident to the aforementioned Construction Permit.

² <https://www.reuters.com/article/us-usa-hurricane-communications/u-s-agency-proposes-nearly-1-billion-to-revamp-puerto-rico-virgin-islands-communications-idUSKCN1GI2EN>

³ Notably, vendors like Home Depot and Lowes are virtually without stock of many basic electronic components, many of which would be used in construction, and arranging for delivery from off-island locations is difficult and expensive. See <https://www.insurancejournal.com/news/national/2018/04/09/485685.htm> (“...recovery process has been slow in part because supplies ranging from construction equipment to power poles have been scarce in light of the natural disasters that hit the U.S. mainland, Puerto Rico and the U.S. Virgin Islands last year.”)

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Furthermore, 47 C.F.R. Section 1.3 permits waiver of any of the Commission's rules upon a showing of good cause and where the waiver will serve the public interest. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) *cert. denied*, 409 U.S. 1027 (1972)).

For all of the foregoing reasons, Arso respectfully requests the further tolling of BPH-20141204AAQ for a minimum of six (6) months from June 6, 2018 until such time that the site has received restoration of reliable electrical service and access and the necessary components and vendors are available to complete work on the Construction Permit and undertake the proof of performance required by same that is a necessary component to a Form 302-FM License to Cover Application.

Of course, Arso will notify the Commission as soon as conditions on the island permit resumption of the work necessary to complete the Construction Permit, to wit, re-establishment of electrical service to the site, restoration of full roadway access to the site, and restoration of physical access to the ground equipment and infrastructure necessary to complete the work with the remaining 76 days of the Construction Permit term.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anthony T. Lepore', with a long horizontal line extending to the right.

Anthony T. Lepore, Esq.

ATL:ms

Cc: Victoria McCauley, Esq. (via email)
Rodolfo Bonacci (via email)