



Federal Communications Commission
Washington, D.C. 20554

February 18, 2020

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

Re: Request for Tolling Waiver
WJWN-TV, San Sebastian, PR
Facility ID No. 58342
LMS File No. 0000082011

Dear Licensee,

On September 23, 2019, America-CV Station Group, Inc. (ACV), the licensee of WJWN-TV, San Sebastian, Puerto Rico (WJWN or Station), filed the above-referenced request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant ACV's request and toll the expiration date of WJWN's construction permit through March 30, 2020.

Background. Pursuant to Section 73.3700(b)(5) of the Commission's rules (Rules), a station that was assigned a new channel as a result of the Commission's incentive auction and repacking process may request a single extension of its construction permit deadline of up to 180 days to complete construction of its post-auction facility.¹ All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of Section 73.3598(b) of the Rules.² The Commission's tolling provisions provide that a construction permit deadline may be tolled under specific circumstances such as acts of God, delays due to administrative or judicial review, or construction that is delayed by any cause of action pending before a 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.³ If a station does not qualify for tolling under these criteria, good cause may exist to waive the Commission's tolling provisions and tolling may still be warranted where the licensee can demonstrate that "rare and exceptional circumstances" prevented construction by the station's construction permit expiration date.⁴

ACV requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities through March 30, 2020. On April 5, 2019, WJWN was granted a waiver of the

¹ See 47 CFR § 73.3700(b)(5).

² See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

³ *Id.*

⁴ See 1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17542, para. 42 (1999) (recognizing that there may be "rare and exceptional circumstances" beyond the control of the licensee that do not fall under the tolling provisions, but "which would warrant the tolling of construction time." The Commission concluded that in such "limited circumstances," it would entertain requests for waiver of its "strict tolling provisions"); *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).

tolling rule and its construction permit to October 2, 2019.⁵ WJWN is currently silent.⁶ WJWN-TV's antenna and transmitters were destroyed by Hurricane Maria in September 2017. Reconstruction of WJWN-TV's antenna and transmitters have been delayed by limited resources in Puerto Rico following Hurricane Maria and a lack of power at the transmitter site. ACV is working to commence operation at reduced power by March 20, 2020 and believes it will be able to complete construction of its post-auction facility by that date. ACV argues that based on these facts, "rare and exceptional" circumstances exist to support a grant of its waiver and to toll its construction permit to March 30, 2020.

Discussion. Upon review of the facts and circumstances presented, we find that rare and exceptional circumstances exist to waive Section 73.3598(b) of the Rules and to toll the expiration date of the Station's construction permit to March 30, 2020. Specifically, access to resources resulting from Hurricane Maria and a lack of power at the Station's transmitter site have caused the Station to be unable to complete construction of its permanent post-auction facility by its construction permit deadline. We also find that grant of ACV's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WJWN has already ceased operation on its pre-auction channel and is silent. We believe that ACV has every incentive to ensure viewers are fully informed about the Station's transition plan once it is ready to resume operations. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Station's construction permit.

We remind ACV that pursuant to the Spectrum Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other."⁷ Additional expenses incurred, such as expenses resulting from changes in a Station's transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The above facts considered, America-CV Station Group, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit for WJWN-TV, San Sebastian, Puerto Rico **IS TOLLED to March 30, 2020**. Grant of this tolling waiver does not permit WJWN to recommence operation on its pre-auction channel. We also remind ACV that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.⁸

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Francisco R. Montero, Esq.

⁵ LMS File No. 0000066078

⁶ LMS File No. 0000081786. WJWN was repacked from channel 39 to channel 33.

⁷ 47 U.S.C. § 1452(b)(4)(A)(i). *See also Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

⁸ *See* 47 § CFR 73.3598(b).