



Federal Communications Commission  
Washington, D.C. 20554

March 30, 2020

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

Re: Request for Tolling Waiver  
WJWN-TV, San Sebastian, PR  
Facility ID No. 58342  
LMS File No. 0000108043

Dear Licensee,

On March 16, 2020, 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 September 28, 2020.<sup>1</sup>

*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.<sup>2</sup> All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of Section 73.3598(b) of the Rules.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

ACV requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities through September 28, 2020. WJWN was granted an extension and two

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<sup>1</sup> Because 180 days from the Station's current construction expiration date falls on Saturday, September 26, 2020, we will extend the construction permit to the next business day, which would be Monday, September 28, 2020. *See* 47 CFR 1.4.

<sup>2</sup> *See* 47 CFR § 73.3700(b)(5).

<sup>3</sup> *See* 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

<sup>4</sup> *Id.*

<sup>5</sup> *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).

previous waivers of the tolling rule and its construction permit was tolled to March 30, 2020.<sup>6</sup> WJWN is currently silent.<sup>7</sup>

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 had previously planned to complete construction of its post-auction facility by its current deadline. However, ACV now reports that it will be unable to do so due to the COVID-19 pandemic and associated outbreaks and government restrictions on business in Puerto Rico has hampered its efforts in scheduling the engineers and construction crews necessary to complete construction of WUJA's post-auction facility and recommence operations.<sup>8</sup> In the interest of the health and safety of its engineers and construction workers, ACV has suspended all work on WUJA's facilities for the time being. Accordingly, ACV seeks tolling of its construction permit to September 28, 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. Specifically, the COVID-19 pandemic has caused the Station to delay completion of its permanent post-auction facilities. 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."<sup>9</sup> 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 September 28, 2020**. Grant of this tolling waiver does not permit WJWN to

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<sup>6</sup> LMS File Nos. 0000056370, 0000066078 and 0000082011.

<sup>7</sup> LMS File No. 0000108042. WJWN was repacked from channel 39 to channel 33.

<sup>8</sup> The World Health Organization has classified the COVID-19 outbreak as a pandemic, and the President of the United States has declared it a national emergency.

<sup>9</sup> 47 U.S.C. § 1452(b)(4)(A)(i). *See also Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 et. al., Report and Order, 29 FCC Rcd 6567, 6821, para. 622 (2014) ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

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.<sup>10</sup>

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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

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<sup>10</sup> See 47 CFR § 73.3598(b).