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In re: WPRM-FM, San Juan, PR
Facility ID No. 2875
Arso Radio Corporation
Special Temporary Authority

WIDI(FM), Quebradillas, PR
Facility ID No. 32141
Idalia Arzuaga, et al, Executrix
Estate of Jose J. Arzuaga
File No. BLH-20090610AAN
Request for Deletion of Special Operating
Condition

WZOL(FM), Las Piedras, PR
Facility ID No. 8898
Radio Sol 92, WZOL, Inc.
File No. BLH-20120514ADR
Request for Deletion of Special Operating
Condition

Petition to Deny

WUKQ-FM, Mayaguez, PR
Facility ID No. 54818
WLII/WSUR License Partnership, G.P.
File No. BPH-20080208AEW

WQML(FM), Culebra, PR
Facility ID No. 183333
Western New Life, Inc
File No. BMPH-20101202ABW
Request for Deletion of Special Operating
Condition

NEW(FM), Santa Isabel, PR
Facility ID No. 77881
Amor Radio Group
File No. BPH-19950907MD

Dear Counsel:

This letter is in reference to: (1) the above captioned June 10, 2009 license application (“License”) and the December 27, 2011, Request for Order to Require Stations to Change Channels and Deletion of Condition on Construction Permit (“Request”) filed by Idalia Arzuaga, et al, Executrix, Estate of Jose J. Arzuaga (“Arzuaga”); (2) the February 2, 2012, Consolidated Opposition to Petition to Deny¹ and to “Request for Order to Require Stations to Change Channels and Deletion of Condition on Construction Permit “ (“Opposition”) filed by WLII/WSUR License Partnership, G.P. (“WLII/WSUR”); (3) the February 7, 2012, Consolidated Opposition to Petition to Deny and to “Request for Order to Require Stations to Change Channels and Deletion of Condition on Construction Permit” (“Opposition”) filed by Arso Radio Corporation (“Arso”); (4) the above captioned May 14, 2012 license application (“License”) containing a Request for Waiver of Special Operating Condition No. 9 (“Request”) filed by Radio Sol 92, WZOL, Inc. (“Radio Sol”); (5) the May 16, 2012, Extension of Special Temporary Authority (“Channel 253 STA Request”) filed by Arso; (6) the May 29, 2012, Request for Deletion of Special Operating Conditions 3 and 4 (“Deletion Request”) filed by Western New Life, Inc (“Western”); (7) the June 11,

¹ This Opposition was filed in response to a January 3, 2012, Petition to Deny filed by Arzuaga against the WPRM-FM and the WUKQ-FM renewal applications (BRH-20110926AEN and BRH-20110929AFO, respectively). This pleading will be addressed separately in the context of the renewal proceedings.

2012, Petition to Deny (“Petition”) filed against WZOL’s license application by Arso; (8) the June 28, 2012, Opposition to Request for Deletion of Special Operating Conditions 3 and 4 (“Opposition”) filed by Arso; and (9) all other related pleadings. For the reasons set forth below, we grant Arso’s STA Request but establish an expiration date for the STA 30 days from the date of this letter, grant the Requests and remove all Special Operating Conditions relating to WPRM-FM, San Juan, PR, from all affected parties effective with the expiration date of the WPRM-FM STA, and deny the Arso Petition and grant the WIDI and WZOL licenses effective that same date.

Background. In June 1995, the Audio Division issued a *Report and Order* modifying the licenses of: (1) Station WPRM-FM to specify Channel 256B at San Juan, PR, in lieu of Channel 253B; (2) Station WIDI to specify Channel 258B at Quebradillas, PR, in lieu of Channel 252A; (3) Station WZOL to specify Channel 252A at Las Piedras, PR, in lieu of Channel 255B at Vieques, PR.; and (4) Station WUKQ to specify Channel 254B at Mayaguez, PR, in lieu of Channel 256B.²

Arso, licensee of WPRM-FM, San Juan, PR, obtained a construction permit in August 2006 to implement its channel change (“WPRM Permit”).³ Arzuaga, licensee of WIDI(FM), Quebradillas, PR, received a construction permit in November 1997, to change channels and upgrade its class (“WIDI Permit”).⁴ Radio Sol, licensee of WZOL(FM), was granted a construction permit in January 1999 to modify its city of license and change channels (“WZOL Permit”).⁵ WLII/WSUR, licensee of WUKQ(FM), Mayaguez, PR, obtained a construction permit in August 2008, to implement its channel change (“WUKQ Permit”).⁶ Western, permittee of WQML(FM), Culebra, PR, received a construction permit in December 2009, to propose new service to Charlotte Amalie, VI (“WQML Permit”).⁷ Amor Radio Group (“Amor”), permittee of a new station to serve Santa Isabel, PR, was granted its initial construction permit in September 2011 (“Amor Permit”).⁸

The WPRM Permit included Special Operating Condition Nos. 4 and 5 which prohibits implementing operations until WUKQ and WZOL initiate broadcasts with their outstanding Permits. The WIDI Permit contained Special Operating Condition No. 1 which prohibits implementing operations until WUKQ initiates broadcasts with its outstanding Permit. The WZOL Permit, as modified, the WUKQ Permit, the WQML Permit, as last modified, and the Amor Permit, included Special Operating Conditions⁹

² *Amendments of Table of Allotments, FM Broadcast Stations in Puerto Rico and the Virgin Islands*, Report and Order, 10 FCC Rcd 6673 (1995) (“*Puerto Rico R&O*”). See also Memorandum Opinion and Order, 11 FCC 16392 (1996), Memorandum Opinion and Order, 12 FCC Rcd 10055 (1997), and Memorandum Opinion and Order, 64 FR 48307 (1999).

³ File No. BPH-20060330AAF

⁴ File No. BPH-19950807ID

⁵ File No. BPH-19980831IB. This permit was subsequently modified in BMPH-20080606AEW and granted in July 2008.

⁶ File No. BPH-20080208AEW

⁷ File No. BNPH-20091013ABF. This permit was subsequently modified in BMPH-20100618ANW and granted in July 2010. This permit was further modified to specify Culebra, PR as its community of license in BMPH-20101202ABW, which was granted in December 2011.

⁸ File No. BPH-19950907MD

⁹ Special Operating Condition No. 9 for the WZOL Permit; Special Operating Condition No. 2 for the WUKQ Permit; Special Operating Condition for the WQML Permit; and Special Operating Condition No. 6 for the Amor Permit.

that prohibit each station from implementing operations until WPRM initiates broadcasts with the its outstanding Permit.

In its Request, Arzuaga claims that Arso and WLII/WSUR have done nothing to effectuate the changes ordered by the Commission in 1995 and that Arso's failure to do so has prevented it from initiating WIDI operations with the facilities built in 2009. Therefore, Arzuaga requests that the Commission issue an order requiring WUKQ and WPRM to implement the channel changes listed in the *Puerto Rico R&O* within 30 days and allow WIDI to commence program test authority in accordance with its license application after this period. In its Opposition, WLII/WSUR states that it will complete construction of WUKQ's modified facilities as soon as the condition regarding the prior activation of WPRM is satisfied or waived.

In its Opposition, Arso states, that it must acquire a new antenna before WPRM can initiate operations on Channel 256. It also claims that the benefitting parties¹⁰ have stymied its acquisition of the needed antenna by their "inability" to pay Arso the expenses associated with MM Docket 91-259. In addition, Arso states that it has been unable to fully reconstruct WPRM's tower, which was destroyed by Hurricanes Hanna and Ike in 2008, because it is still awaiting the delivery of approximately 75 feet of steel for the top of the tower. In November 2008, Arso obtained a technical STA to operate with an emergency antenna on Channel 253B at its auxiliary transmitter site.¹¹ In November 2011, Arso was granted a technical STA to relocate to the new partially reconstructed tower but at a reduced height.¹² Arso believes that Arzuaga should be compelled to provide assurance of final payment to Arso and WLII/WSUR before implementing the channel change required by the *Puerto Rico R&O*.

In its Request, Radio Sol states that it is prepared to reimburse the appropriate share of all of Arso's reasonable out-of-pocket costs and commence operations immediately if the waiver is granted. Radio Sol cites the *Letter to Brian M. Madden, Esq.*,¹³ where the Audio Division deleted a special operating condition from a construction permit after four years where a licensee had failed to implement a facility change. Radio Sol asserts that it has waited over 15 years for Arso to change the WPRM channels and claims that Arso's "foot-dragging" has blocked the facility modifications of Stations WIDI, WUKQ, WQML, and the new Santa Isabel station.

In its Channel 253 STA Request, Arso asks for a 180-day extension of its Channel 253 STA. Arso states that it has made substantial progress towards restoration of its licensed facilities. Arso claims that, since the last STA extension, it has received confirmation of the order for the remaining steel from another manufacturer and has pursued a quote from antenna manufacturer ERI for a combined optimized tower structure element and antenna.

In its Deletion Request, Western states that the Commission's order directing WPRM to move to Channel 256 became final in 1999. Western claims that WPRM's continuing operations on Channel 253 are at best under an "implied STA" and are not protected in the same manner as licensed operations. Therefore,

¹⁰ Arso claims that Arzuaga, Radio Sol, Amor, and VI Stereo Communications Corp. are the benefitting parties. See also *Puerto Rico R&O*, 10 FCC Rcd at 6677 (listing parties required to share in the reimbursement of reasonable costs associated the with the channel changes of WPRM and WKJB (now WUKQ-FM)).

¹¹ See original STA request BSTA-20081003AEZ, granted November 17, 2008; and extension requests BESTA-20090514AAA, granted August 5, 2009; BESTA-20100120ABO, granted March 11, 2010; BESTA-20100823ABN, granted September 14, 2010; and BESTA-20110301AAM, granted May 11, 2011.

¹² See BSTA-20111102AEN and *Letter to Anthony T. Lepore, Esq.*, dated November 18, 2011.

¹³ *Letter to Brian M. Madden, Esq. and Lewis J. Paper, Esq.*, 25 FCC Rcd 4765 (2010)

Western asks that its Deletion Request be granted so that it can seek Program Test Authority at its new facilities immediately upon completion of construction.

In its Petition,¹⁴ Arso claims that it cannot complete construction of the facilities authorized in the WPRM Permit until the damage to its main broadcast tower is repaired. Furthermore, Arso cautions that the grant of Radio Sol's Request will result in multiple instances of significant cross-interference among multiple stations. Finally, Arso insists that all the parties should simultaneously transition to its new channels once the reimbursement issues are resolved with finality and all of the parties satisfy their obligations.

Discussion: In 1999, the Commission clarified the protection rights of stations which modify their channels. It stated that "[a]fter the allotment rule making has become final, the affected station has at best an 'implied STA' to remain on its old frequency until it is ready for operation on its new frequency."¹⁵ STAs are not within the scope of assignments and allotments which receive protection under the FM non-reserved band technical rules.¹⁶ That is, stations operating with STAs – expressed or implied – are entitled to no protection from operating stations, construction permits, pending applications or subsequently filed applications. Thus, the Audio Division has noted that a station operating with an implied STA "would be subject to established cut-off and application conflicts processing policies with regard to any facility application or rulemaking proposal filed on or after the effective date of the order."¹⁷ Each of the Channel 253 technical STAs granted to Arso since 2008 is predicated on the fact that it retains an "implied STA" to operate on its old channel.

Arso filed the application for the WPRM Permit on Channel 256 seven years after the *Puerto Rico R&O* became final in 1999. In addition, this Permit was issued over six years ago in 2006. Arso has had ample time to commence operation on the new channel and to repair facilities damaged in the 2007 and 2008 hurricanes. Furthermore, Arzuaga, Radio Sol, and WLII/WSUR, have indicated that they are ready to effectuate the rulemaking and operate on their new channels. Western has also filed its Request to do the same. Finally, Amor is also blocked from initiating new station operations by WPRM's continued transmissions on Channel 253B. Thus, we now conclude that deletion of each station's respective Special Operating Condition¹⁸ is in the public interest. Arso lost all protection rights for WPRM's formerly licensed channel when the *Puerto Rico R&O* became a final order. Accordingly, deletion of the special operating conditions does not constitute a modification of the WPRM license subject to the order to show cause procedures set forth in Section 316(a) of the Communications Act of 1934, as amended (the "Act").¹⁹

We find that Arso has had sufficient time to initiate operations on Channel 256B and we direct Arso to expeditiously complete construction of the facilities authorized in the WPRM Permit. We remind Arso

¹⁴ Arso filed a similar response in its June 28, 2012 Opposition.

¹⁵ *1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes*, Memorandum Opinion and Order, 14 FCC Rcd. 17525, 17540 n.55 (1999) (subsequent history omitted) (the "Streamlining Order").

¹⁶ See 47 C.F.R. §§ 73.207, 73.213 and 73.215.

¹⁷ *Gunnison, Crawford, and Olathe, Breckenridge, Eagle, Fort Morgan, Greenwood Village, Loveland and Strasburg, CO, and Laramie, WY*, Memorandum Opinion and Order, 20 FCC Rcd 5908, 5913 (MB 2005).

¹⁸ Special Operating Condition No. 9 for the WZOL Permit; Special Operating Condition No. 2 for the WUKQ Permit; Special Operating Condition No. 4 for the WQML Permit; and Special Operating Condition No. 6 for the Amor Permit.

¹⁹ See 47 U.S.C. § 316(a) (Commission may not modify the license of a station without providing licensee written notice and a reasonable opportunity to protest).

that the Commission has stated that “implicit in the filing of any facility application is that the applicant stands ‘ready, willing, and able’ to construct and operate as proposed.”²⁰ Neither a difficult economic environment nor an inability to reach agreement with the other parties regarding reimbursement issues relieves Arso from its obligation to complete construction in a timely fashion. Arso accepted the construction and licensing obligations arising from the finality of the *Puerto Rico R&O*.

The Commission delegated authority to the staff to cancel implied STAs for any modifications made in the course of “allotment rule makings.”²¹ Moreover, pursuant to Section 73.1635(b) of the Commission’s Rules, the staff may modify or cancel a technical STA without prior notice or right to hearing.²² The staff has cancelled such STAs in the past when this action is necessary to accommodate the operation of an FM station pursuant to its authorization.²³ At this point, Arso’s refusal to complete the authorized modification of WPRM is thwarting five stations’ efforts to implement their facility modifications. Thus, Arso’s nonfeasance in the face of these many long-standing competing demands for limited spectrum is plainly contrary to the public interest.

Accordingly, in order to permit the orderly completion of the WPRM modifications, we will grant Arso’s Channel 253 STA Request to continue to operate on Channel 253B for a period not to exceed 30 days from the date of this letter. This action will provide Arso a final opportunity to implement facilities on Channel 256B. After this period, Arso will be required to cease operation on Channel 253. If Arso cannot commence operations in accordance with the WPRM Permit²⁴ within 30 days, it may seek a technical STA for temporary operations on Channel 256. This will eliminate the potential for cross interference and also provide sufficient time for the other stations in the *Puerto Rico R&O* to orderly transition to their new channels. We also will grant the Arzuaga Request, the Radio Sol Request, and the Western Deletion Request, effective upon the expiration of the Arso STA or the commencement of WPRM-FM operations on Channel 256, whichever occurs first. Moreover, we will grant the Arzuaga License and the Radio Sol License, and reissue the construction permits of Stations WUKQ, WQML, and the new Santa Isabel facility.

Conclusion: In light of the above, the May 16, 2012, Extension of Special Temporary Authority filed by Arso IS GRANTED TO THE EXTENT INDICATED HEREIN. This authority expires on **November 21, 2012**. Requests for additional time will not be entertained. Station WPRM may continue to operate with the following facilities:

²⁰ *Pathfinder Communications Corp.*, 18 FCC Rcd 9272, 9279 (2003).

²¹ *Streamlining Order*, 14 FCC Rcd at 17540 n.55.

²² See 47 C.F.R. § 73.1635(b).

²³ See *Corona de Tucson, Sierra Vista, Tanque Verde and Vail, AZ, and Animas, Lordsburg and Virden, NM*, Memorandum Opinion and Order, 23 FCC Rcd 4792, 4796 (MB 2008).

²⁴ File No. BPH-20060330AAF.

Geographic coordinates: 18° 6' 47" N, 66° 3' 6" W (NAD 1927)
Channel 253 (98.5 MHz)
Effective radiated power: 25 kilowatts (H&V)
Antenna height:
 above ground: 34 meters
 above mean sea level: 914 meters
 Above average terrain: 557 meters

Arso must use whatever means are necessary to protect workers and the public from exposure to radio frequency radiation in excess of the Commission's exposure guidelines.²⁵

Effective **November 21, 2012**, IT IS ORDERED, that the December 27, 2011, Request for Order to Require Stations to Change Channels and Deletion of Condition on Construction Permit IS GRANTED to the extent noted herein and IS DENIED in all other respects. IT IS FURTHER ORDERED, that the May 15, 2012, Waiver of Special Operating Condition No. 9 IS GRANTED to the extent noted herein and IS DENIED in all other respects. IT IS FURTHER ORDERED, that the May 29, 2012, Request for Deletion of Special Operating Conditions 3 and 4 IS GRANTED to the extent noted herein and IS DENIED in all other respects. Reissued WUKQ, WQML, and Amor construction permits will be mailed to each respective permittee under separate cover. IT IS FURTHER ORDERED, that the June 11, 2012, Petition to Deny filed by Arso against WZOL's license IS DENIED. Finally, a license will be granted for WIDI and WZOL on November 21, 2012.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁵ See 47 C.F.R. § 1.1310.