

# Federal Communications Commission

## TELEVISION BROADCAST STATION CONSTRUCTION PERMIT

**Licensee/Permittee**

NEW YORK TELEVISION, INC.  
10706 Beaver Dam Road  
Cockeysville, MD, 21030

<b>Call Sign</b>	<b>File Number</b>
WNYO-TV	0000094474

**Facility ID:** 67784

**NTSC TSID:** 2140

**Digital TSID:** 2141

**This Permit Modifies License File No.** 0000034641

<b>Grant Date</b> 04/06/2020		<b>Expiration Date</b> 09/09/2020	
<b>Hours of Operation</b> Unlimited			
<b>Station Location</b> City BUFFALO State NY		<b>Frequency (MHz)</b> 482.0 - 488.0	<b>Station Channel</b> 16
<b>Facility Type</b> Commercial			

<b>Antenna Structure Registration Number</b> 1019110	
<b>Transmitter</b> Type Accepted. See Sections 73.1660, 73.1665 and 73.1670 of the Commission's Rules.	<b>Transmitter Output Power(kW)</b> As required to achieve authorized ERP.
<b>Antenna Coordinates</b> Latitude 43-1-32.2 N Longitude 78-55-42.1 W	<b>Antenna Type</b> Directional
<b>Description of Antenna</b> Make Dielectric Model TFU-18JTH/VP-R S380	

<b>Antenna Beam Tilt (Degrees Electrical)</b> 1.5	<b>Antenna Beam Tilt (Degrees Mechanical @ Degrees Azimuth)</b> Not Applicable
<b>Major Lobe Directions</b> 135.0	<b>Maximum Effective Radiated Power (Average)</b> 575 kW 27.60 DBK
<b>Height of Radiated Center Above Ground (Meters)</b> 328.5	<b>Height of Radiated Center Above Mean Sea Level (Meters)</b> 508.0
<b>Height of Radiated Center Above Average Terrain (Meters)</b> 329	<b>Overall Height of Antenna Structure Above Ground (Meters)</b> See the registration for this antenna structure.

### Waivers/Special Conditions

- This is to inform you that the FCC reserves the right to change the phase assignment of stations following the close of the second filing window and the planned refreeze of non-repacked full-power and Class A stations. Any such phase assignment change will be to a later phase.
- The grant of this construction permit is subject to the condition that, with ample time before commencing operation, you make a good faith effort to identify and notify health care facilities (e.g., hospitals, nursing homes, see 47 CFR 15.242(a)(1)) within your service area potentially affected by your DTV operations. Contact with state and/or local hospital associations and local governmental health care licensing authorities may prove helpful in this process. During this pre-broadcast period, you must provide all notified entities with relevant technical details of your operation, such as DTV channel, targeted on-air date, effective radiated power, antenna location, and antenna height. You are required to place in the stations public inspection file documentation of the notifications and contacts made and you may not commence operations until good faith efforts have been made to notify affected health care facilities. During this pre-broadcast period and for up to twenty (20) days after commencing operations, should you become aware of any instances of medical devices malfunctioning or that such devices are likely to malfunction due to your DTV operations, you must cooperate with the health care facility so that it is afforded a reasonable opportunity to resolve the interference problem. At such time as all provisions of this condition have been fulfilled, and either upon the expiration of twenty (20) days following commencement of operations or when all known interference problems have been resolved, whichever is later, this condition lapses.

Subject to the provisions of the Communications Act of 1934, as amended, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this permit, the permittee is hereby authorized to construct the radio transmitting apparatus herein described. Installation and adjustment of equipment not specifically set forth herein shall be in accordance with representations contained in the permittee's application for construction permit except for such modifications as are presently permitted, without application, by the Commission's Rules.

Equipment and program tests shall be conducted only pursuant to Sections 73.1610 and 73.1620 of the Commission's Rules.



Federal Communications Commission  
Washington, D.C. 20554

March 10, 2020

New York Television, Inc.  
Harvey Arnold  
10706 Beaver Dam Road  
Cockeysville, MD 21030

Re: Request for Extension of  
Construction Permit  
WNYO-TV, Buffalo, NY  
Facility ID No. 67784  
LMS File No. 0000107298

Dear Licensee,

On March 6, 2020, New York Television, Inc. (Licensee), the licensee of Station WNYO-TV, Buffalo, New York (the Station), filed the above captioned application seeking an extension of the Station's construction permit expiration date and waiver of the 90-day construction permit extension filing deadline. For the reasons below, we grant Licensee's requests and extend the Station's construction permit expiration date to September 9, 2020.

*Background.* Pursuant to Section 73.3700(b)(5) of the Commission's rules, a station may request a single extension of its construction permit deadline of up to 180 days to complete construction of its post-auction facility.<sup>1</sup> Grant of an extension of the construction permit deadline does not alter the deadline by which a station must cease operating on its pre-auction channel. A station anticipating the need for an extension must submit an extension application using FCC Form 2100, Schedule 337, not less than 90 days before the assigned construction permit deadline.<sup>2</sup> For Phase 8 stations, such application was due by December 16, 2019. The application must demonstrate that the station is unable to complete construction on time due to circumstances that were either unforeseeable or beyond the station's control.<sup>3</sup> In addition, a waiver of the application filing deadline is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis.<sup>4</sup>

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<sup>1</sup> See 47 CFR § 73.3700(b)(5). All subsequent requests for additional time to construct are subject to the Commission's tolling provisions, 47 CFR § 73.3598(b).

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

<sup>3</sup> The *Incentive Auction R&O* provides examples of six circumstances that might justify an 180-day extension of a station's post-auction construction permit: (1) weather related delays; (2) delays in construction due to the unavailability of equipment or a tower crew; (3) tower lease disputes; (4) unusual technical challenges; or (5) delays caused by the need to obtain government approvals, such as land use or zoning approvals, or to observe competitive bidding requirements prior to purchasing equipment or services; and (6) financial hardship with sufficient supporting evidence. See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 et. al., Report and Order, 29 FCC Rcd 6567,6804-05, paras. 581-2 (2014) (*Incentive Auction R&O*); 47 CFR § 73.3700(b)(5)(ii) and (iii).

<sup>4</sup> See *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).

The Station was repacked from channel 49 to channel 16 and assigned to transition Phase 8, which has a phase completion date of March 13, 2020. All repacked stations for Phase 8 were issued a construction permit with an expiration date of March 13, 2020. The Station pledges to cease operation on its pre-auction channel by the phase transition date and will operate a temporary facility while it completes construction of its permanent post-auction facilities.<sup>5</sup>

Licensee states that the Station has made significant progress in constructing its post-auction channel facilities, including installation of the Station's transmitter. Due to scheduling and tower crew delays, the Station's post-auction channel antenna has yet to be installed. Licensee states that the helicopter installation of the station's permanent post repack antenna is scheduled for May 26, 2020. In light of this delay, Licensee requests a 180-day extension.

Licensee also requests a waiver of the 90-day construction permit extension filing deadline because it did not know for certain it would require an extension at the time of the deadline.

*Discussion.* Upon review of the facts and circumstances presented, we find Licensee's request to extend the construction permit deadline to construct the Station's post-auction facility meets the requirements for a construction permit extension. Licensee has demonstrated that an extension is needed because of construction delays. We also find that grant of this extension request is not likely to negatively impact the overall transition schedule. The Station pledges to cease operations on its pre-auction channel by the phase completion date and operate a temporary facility. To the extent viewers are unable to receive the Station's signal while it operates its temporary facility, we believe that Licensee has every incentive to ensure viewers are fully informed about the Station's transition plan. Finally, we find that waiver of the 90-day construction permit extension filing deadline is in the public interest and consistent with the Commission's general waiver standard because Licensee was unaware at the time an extension request was due that an extension of the Station's construction permit would be needed.<sup>6</sup>

We remind Licensee 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>7</sup> Additional expenses incurred, for instance, as a result of the grant of changes in the 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, New York Television, Inc.'s application for extension of construction permit expiration date **IS GRANTED**. The construction permit (LMS File No. 00000934641) for WNYO-TV, Buffalo, New York **IS EXTENDED to September 9, 2020**. Grant of this extension does not permit the Station to recommence operation on its pre-auction channel after ceasing operation or after March 13, 2020, whichever occurs first. We also remind Licensee that any subsequent

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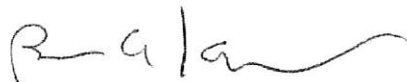
<sup>5</sup> See LMS File No. 00000107294.

<sup>6</sup> See *supra* note 4.

<sup>7</sup> 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.").

requests for extension of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>8</sup>

Sincerely,

A handwritten signature in black ink, appearing to read 'B. A. Kreisman', with a long, sweeping flourish at the end.

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): Paul A. Cicelski, Esq.

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<sup>8</sup> See 47 CFR § 73.3700(b)(5)(i) (referencing 47 § CFR 73.3598(b)).