



Federal Communications Commission
Washington, D.C. 20554

October 22, 2019

WISN Hearst Television Inc.
PO Box 1800
Raleigh, NC 27602

Re: Request for Extension of
Construction Permit
WISN-TV, Milwaukee, WI
Facility ID No. 65680
LMS File No. 0000086950

Dear Licensee,

WISN Hearst Television Inc. (WHT), the licensee of Station WISN-TV, Milwaukee, Wisconsin (WISN or 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 reinstate WISN's construction permit and we grant WHT's requests and extend WISN's construction permit expiration date 180 days to April 15, 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.¹ 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.² For Phase 6 stations, such application was due by July 22, 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.³ 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.⁴

¹ 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).

² 47 CFR § 73.3700(b)(5)(iv).

³ 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).

⁴ 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).

WISN was repacked from channel 34 to channel 28 and assigned to transition Phase 6, which had a phase completion date of October 18, 2019. All repacked stations for Phase 6 were issued a construction permit with an expiration date of October 18, 2019. The Station ceased operation on its pre-auction channel by the phase completion date and is operating an auxiliary facility on its post-auction channel while it completes construction of its permanent post-auction facilities.⁵

WHT states that construction of the Station's post-auction channel facilities was delayed because its tower crew arrived late and because of the onset of inclement weather. WHT requests a 180-day extension of time. WHT 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 the deadline passed.

Discussion. Upon review of the facts and circumstances presented, we find WHT's request to extend the construction permit deadline to construct WISN's post-auction facility meets the requirements for a construction permit extension. WHT has demonstrated that an extension is needed because of construction and weather delays outside of its control. We also find that grant of this extension request is not likely to negatively impact the overall transition schedule. WISN ceased operations on its pre-auction channel by the Phase 6 completion date and is operating an auxiliary facility on its post-auction channel. To the extent some viewers are unable to receive WISN's signal while it operates its auxiliary facility, we believe that WHT 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 WHT was unaware at the time an extension request was due that an extension of WISN's construction permit would be needed.⁶

We remind WHT 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, 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, WISN Hearst Television Inc.'s application for extension of construction permit expiration date **IS GRANTED**. The construction permit (LMS File No. 0000034528) for WISN-TV, Milwaukee, Wisconsin, **IS REINSTATED AND EXTENDED 180 days to April 15, 2020**. Grant of this extension does not permit the Station to recommence operation on its pre-

⁵ See LMS File No. 0000078403.

⁶ See *supra* note 4.

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.").

auction channel. We also remind WHT that any subsequent requests for extension of its construction permit deadline will be subject to the Commission's tolling provisions.⁸

Sincerely,

A handwritten signature in black ink, appearing to read 'B A Kreisman', with a long horizontal flourish extending to the right.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Stephen Hartzell, Esq.

⁸ See 47 CFR § 73.3700(b)(5)(i) (referencing 47 § CFR 73.3598(b)).