

DTV CONTRUCTION PERMIT EXTENSION

This is to notify you that your request to extend the time in which to construct your DTV station facilities 0000027665 was granted on 08/07/2017 and the construction period specified for permit 0000058994 is extended to 02/28/2019.

This authorization is for:

Station:	WISE-TV	WPTA LICENSE, LLC
Facility ID:	13960	P.O. BOX 909
Location:	FORT WAYNE,IN	QUINCY,IL,62306

This authorization should be include in your station's public inspection file.





Federal Communications Commission
Washington, D.C. 20554

September 4, 2018

WPT License, LLC
PO Box 909
Quincy, IL 62306

Re: Request for Extension of
Construction Permit
WISE-TV, Fort Wayne, IN
Facility ID No. 13690
LMS File No. 0000058994

Dear Licensee,

On August 20, 2018, WPTA License, LLC (WPTA), the licensee of Station WISE-TV, Fort Wayne, Indiana (WISE-TV or Station), filed the above captioned application seeking a 180-day extension of its construction permit expiration date and waiver of the 90-day construction permit extension filing deadline. For the reasons below, we grant WPTA's requests and extend its construction permit expiration date to February 28, 2019.

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 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*, 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).

On May 18, 2018, the Video Division granted WPTA's waiver to commence testing and transition to its new channel on or before September 4, 2018.⁵ In its pending application for an extension of its construction permit, WPTA states that wet, stormy, and snowy weather episodes in the Fort Wayne area (and in numerous other locations across the Midwestern United States) in the winter, spring, and summer of 2018 have delayed the completion of the construction of the necessary new tower for WISE-TV's repack project, WPTA has made arrangements to commence operations at variance to its authorized parameters pursuant to special temporary authority. WPTA also requests waiver of the 90-day extension filing deadline stating that it was unable to file its request by June 4, 2018 (the 90-day filing deadline), since it was unaware at that time that it would require an extension and be unable to complete construction of its post-auction facility by the newly assigned construction permit deadline.

Discussion. Upon review of the facts and circumstances presented, we find WPTA's request to extend the construction permit deadline to construct WISE-TV's post-auction facility meets the requirements for a 180-day extension. WPTA has demonstrated that an extension is needed to complete construction of its post-auction facility because of weather related delays. We find based on the facts and circumstances grant of the request is not likely to negatively impact the overall transition schedule or viewers and will not cause interference to other stations. WISE-TV will still commence operation on its post-auction channel and cease operation on its pre-auction channel by 11:59 pm on September 1, 2018. To the extent some viewers are unable to receive WISE-TV's signal while it operates from its temporary facility, we believe that WPTA has every incentive to ensure viewers are fully informed about the station's transition plan. We remind WPTA that, in order to commence operation on its post-auction channel at variance from the parameters specified in its construction permit, the station must file a request for special temporary authority and receive grant of that request. Finally, we find that waiver of the 90-day CP extension filing deadline is in the public interest and consistent with the Commission's general waiver standard since the Station was unaware that it would not be able to complete construction of its post-auction facility until after the 90-day CP extension filing deadline.⁶

We caution stations that any additional expenses incurred as a result of the grant of the station's voluntary phase change or stemming from this construction permit extension may not be reimbursable from the TV Broadcasters Relocation Fund. Such additional costs might include, but may not be limited to, additional legal or engineering expenses; filing fees; and interim or additional equipment that was not contemplated when the station filed its initial estimated expenses but was subsequently necessitated to complete the transition to its post-auction channel due to its phase change. The station is responsible for paying for any expenses incurred as a result of voluntarily requested changes to the station's transition schedule.

The above facts considered, WPTA License, LLC's request for waiver of the construction permit extension deadline and application for extension of construction permit expiration date **ARE GRANTED**. The construction permit for WISE-TV, Fort Wayne, Indiana, **IS EXTENDED** for 180 days **to February 28, 2019**. Grant of this extension does not alter the deadline by which the Station must discontinue operations on its pre-auction channel – **11:59 pm (local time) on September 1, 2018**, nor permit it to recommence operations on its pre-auction channel. We also remind WPTA that any

⁵ See LMS File No. 0000053894.

⁶ A waiver of the rules 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. 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).

subsequent requests for extension of its construction permit deadline will be subject to the Commission's tolling provisions.⁷

Sincerely,

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

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

⁷ See 47 § CFR 73.3598(b).