



Federal Communications Commission
Washington, D.C. 20554

January 14, 2020

Nexstar Broadcasting, Inc.
Elizabeth Ryder
545 E. John Carpenter Freeway
Suite 700
Irving, TX 75062

Re: Requests for Extension of
Construction Permit
WNLO-CD, Norfolk, VA
WETM-TV, Elmira, NY
WAVY-TV, Portsmouth, VA
WVBT, Virginia Beach, VA
Facility ID Nos. 13060, 60653, 65387
and 71127
LMS File Nos. 0000096233,
0000096235, 00000968256 and
00000096826

Dear Licensee,

Nexstar Broadcasting, Inc., licensee of WNLO-CD, Norfolk, Virginia (WNLO-CD); WETM-TV, Elmira, New York (WETM); WAVY-TV, Portsmouth, Virginia (WAVY); and WVBT, Virginia Beach, Virginia (WVBT) (collectively "Licensee" and "Stations"), filed the above captioned applications seeking extensions of the Stations' construction permit expiration dates and waiver of the 90-day construction permit extension filing deadline. For the reasons below, we grant Licensee's requests and extend the Stations' construction permit expiration dates to July 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 7 stations, such application was due by October 21, 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

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).

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

WNLO-CD was repacked from channel 45 to channel 14; WETM from channel 18 to channel 23; WAVY from channel 31 to 19; and WVBT from channel 29 to channel 21. The Stations were assigned to transition Phase 7 which has a phase completion date of January 17, 2020. All repacked stations for Phase 7 were issued a construction permit with an expiration date of January 17, 2020. WNLO-CD has already ceased operations on its pre-auction channel and will remain silent while it completes its post-auction channel facilities.⁵ WAVY, WVBT and WETM will cease operations on their pre-auction channels by the phase completion date and operate temporary facilities while they complete their post-auction channel facilities.⁶

Licensee states that the Stations' post-auction channel antennas have not yet been installed due to equipment and rigging delays. Therefore, Licensee seeks 180-day extensions to July 15, 2020.

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

Discussion. Upon review of the facts and circumstances presented, we find Licensee's requests to extend the construction permit deadline to construct the Stations' post-auction facilities meets the requirements for a construction permit extension. Licensee has demonstrated that an extension is needed for each Station because of equipment and construction delays. We also find that grant of these extension requests is not likely to negatively impact the overall transition schedule. The Stations have or will cease operations on their pre-auction channels by the phase completion date. WNLO-CD will remain silent and WETM, WAVY and WVBT will operate temporary facilities on their post-auction channels. To the extent viewers are unable to receive the Stations' signal while they are either silent or operating temporary facilities, we believe that Licensee has every incentive to ensure viewers are fully informed about the Stations' transition plans. 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 Stations' construction permits would be needed.⁷

We remind Licensee that pursuant to the Spectrum Act, the Stations are 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."⁸ Additional expenses

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).

⁵ See LMS File No. 00000092879. WNLO-CD is a FOX affiliate. The FOX programming will remain available to viewers in Norfolk via co-owned WVBT.

⁶ See LMS File Nos. 0000093525, 0000096234 and 0000096656.

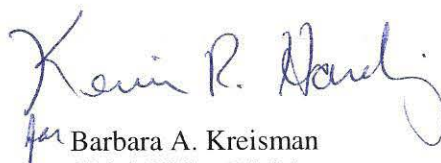
⁷ See *supra* note 4.

⁸ See *Media Bureau Finalizes Reimbursement Form for Submission to OMB and Adopts Catalog of Expenses*, GN Docket No. 12-268, Public Notice, 30 FCC Rcd 11701, 11701-02 (MB 2015). 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.").

incurred, for instance, as a result of the grant of changes in the Stations' transition plans that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The above facts considered, Nexstar Broadcasting, Inc.'s applications for extension of construction permit expiration date **ARE GRANTED**. The construction permits (LMS File Nos. 0000029984, 0000034800, 0000034803 and 0000072851) for WNLO-CD, Norfolk, Virginia; WETM-TV, Elmira, New York; WAVY-TV, Portsmouth, Virginia; and WVBT, Virginia Beach, Virginia **ARE EXTENDED to July 15, 2020**. Grant of these extensions does not permit the Stations to recommence operation on their pre-auction channels. We also remind Licensee that any subsequent requests for extension of its construction permit deadline will be subject to the Commission's tolling provisions.⁹

Sincerely,

A handwritten signature in blue ink that reads "Kevin R. Hardy". The signature is written in a cursive style with a large, sweeping "H" at the end.

per Barbara A. Kreisman
Chief, Video Division
Media Bureau

⁹ See 47 CFR § 73.3700(b)(5)(i) (referencing 47 § CFR 73.3598(b)).