



Federal Communications Commission
Washington, D.C. 20554

July 10, 2017

Graham Media Group, Florida, Inc.
4 Broadcast Place
Jacksonville, FL 32207

Michael Beder
Covington & Burling, LLP
One City Center
850 10th Street NW
Washington, DC 20004

Re: Request for Waiver of Initial
Construction Permit Filing Deadline
WCWJ, Jacksonville, FL
Facility ID No. 29712
LMS File No. 0000024858

Dear Licensee,

On June 12, 2017, Graham Media Group, Florida, Inc. (Graham), submitted the above-captioned request for waiver of the July 12, 2017, 90-day post-incentive auction construction permit and cost estimate filing deadline for full power television station WCWJ(TV), Jacksonville, Florida (WCWJ or Station), asserting that the Station is "unable to construct" the specified facilities assigned to them in the *Closing and Channel Reassignment Public Notice* because the increased loading of the new antenna necessitated by its channel change would prevent construction on the existing tower.¹ Graham also seeks permission to file an application for construction permit during the first priority alternate channel/expanded facilities filing window (first priority window). For the reasons below, we grant the request for waiver of the July 12, 2017 filing deadline and permit Graham to file an application for construction permit for WCWJ during the first priority window.

Background. The Commission instructed that a reassigned station is eligible to receive a waiver of the July 12, 2017 filing deadline for its post-incentive auction construction permit if the station demonstrates that due to extraordinary technical or legal issues beyond the station's control, it is "unable to construct" the post-auction facilities specified to it in the *Closing and Channel Reassignment Public*

¹ See *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (MB & WTB 2017) (*Closing and Channel Reassignment Public Notice*). See LMS File Nos. 0000024858, GMG Florida Unable to Construct Waiver Request (GMG Waiver Requests). Graham also filed a request for waiver of the July 12, 2017 filing deadline for WJXT(TV), Jacksonville, Florida. On July 10, 2017, Graham filed a request for withdrawal of the waiver request and as requested the waiver request was dismissed. See LMS File No. 0000024859 (dismissed Jul. 10, 2017).

Notice or within the permissible contour coverage variance.² If the Media Bureau grants a station such a waiver, the station is permitted to file a request for a construction permit in the first priority window to seek an alternate channel and/or expanded facilities.³ A station whose request to file its construction permit application in the first priority window is granted because it is “unable to construct” will also be granted additional time to submit its reimbursement cost estimate form (FCC Form 2100, Schedule 399) detailing its estimated relocation costs.⁴ The station may, however, choose to file its cost estimate form by the July 12, 2017 filing deadline so that the Commission can use that information as the basis for the initial allocation for the station’s construction project. The Commission will assign a proxy estimate for stations filing in the first priority window that do not submit cost estimate information on FCC Form 2100, Schedule 399 by July 12, 2017.⁵

WCWJ is currently licensed to operate on channel 34 and was reassigned in the *Closing and Channel Reassignment Public Notice* to channel 20. Graham commissioned a third-party engineering firm to assess its tower. The engineering firm’s analysis concluded that WCWJ’s tower is not able to support the modifications necessary to facilitate WCWJ’s post-auction operation on channel 20 and that construction of a new tower at the existing site is not possible given the densely-populated area where the tower is located.⁶ Graham states that in order to construct a new tower it would need to install guy wires that are “well beyond the boundaries of the current site and any surrounding property Graham could feasibly obtain.”⁷ Given that WCWJ’s post-auction facility cannot be constructed at its existing site, Graham proposes to co-locate WCWJ with WJXT(TV), Jacksonville, Florida (WJXT), which is located on a tower approximately one-half mile away and also licensed to Graham.⁸ An engineering analysis submitted by Graham demonstrates that while such a modification to WJXT’s tower is feasible, Graham would not be able to replicate WCWJ’s coverage area from the new tower site.⁹ Graham also contends

² *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6794, para. 554 (2014), subsequent history omitted, (*Incentive Auction R&O*); 47 CFR § 73.3700(b)(1)(iv)(A). The Commission has stated that a station may be found to be “unable to construct” the facility specified in the *Closing and Channel Reassignment Public Notice*, for example, if a station is unable to construct a compliant facility on its current tower and a replacement tower cannot be constructed from which the station would be able to meet the specified technical parameters. *Incentive Auction R&O*, 29 FCC Rcd at 6791 n.1551.

³ See 47 CFR § 73.3700(b)(1)(iv)(A). Applications filed during the first priority window will be treated as filed on the last day of that window for purposes of determining mutual exclusivity and will be given a 90-day period to resolve the MX by proposing a technical solution or settlement in an amendment to their pending applications. See *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd 858, 870, para. 36 (MB 2017) (*Broadcast Transition Procedures Public Notice*).

⁴ See *id.* at 884 n.180 (citing *Incentive Auction R&O*, 29 FCC Rcd at 6823 n.1754).

⁵ *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2815, para. 86 (“The Commission will assign a proxy estimate using, for instance, the cost estimates of similarly situated stations, in order to provide those stations with an initial allocation”).

⁶ GMG Waiver Request at 1-2 and Attachment A.

⁷ *Id.* at 2.

⁸ *Id.* at Attachment A.

⁹ *Id.*

that co-locating the stations would “dramatically reduce” the stations relocation costs and could save more than \$3.3 million.¹⁰

Discussion. A waiver 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.¹¹ In this case, we find that it would not be consistent with the public interest to require Graham to apply for a post-incentive auction facility for WCWJ that it knows it is unable to construct. WCWJ has demonstrated that its current tower is unable to support the new antenna required for its post-auction facility and that construction of a new tower at its current site is not feasible. A staff analysis of the waiver request also confirms that Graham would not be able to replicate its coverage area from its new tower site.¹² Based on the foregoing, we find that Graham has demonstrated that it is unable to construct the post-auction facility for WCWJ as assigned to it in the *Closing and Channel Reassignment Public Notice* and we conclude that it is in the public interest to allow Graham to apply for alternate facilities for WCWJ during the first priority window.

We remind Graham that, when filing in the first priority window, it must protect the construction permit facilities of reassigned stations and band changing stations filed in the initial 90-day period if those stations’ applications have been granted or remain pending. Otherwise, applicants in the first priority window must protect the facilities specified in the *Closing and Channel Reassignment Public Notice*.¹³ In addition, all applications filed in the first priority window must protect the facilities specified in applications filed before the April 2013 freeze with “cut-off” protection.¹⁴ The facilities proposed in applications filed during the first priority window will be entitled to interference protection from subsequently-filed applications and amendments thereto.¹⁵ We also remind Graham that our action does

¹⁰ *Id.* at 3.

¹¹ 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); 47 CFR § 1.3 (waiver for good cause shown).

¹² GMG Waiver Request at Attachment A.

¹³ See *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 867, para. 30.

¹⁴ See *Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Station Modification Applications, Effective Immediately, and Reminds Stations of Spectrum Act Preservation Mandate*, Public Notice, 28 FCC Rcd 4364 (MB 2013).

¹⁵ See *Incentive Auction R&O*, 29 FCC Rcd at 6794 n.1573 (citing *Commission Lifts Freeze on Filing of Maximization Applications and Petitions for Digital Channel Substitutions, Effective Immediately*, Public Notice, 23 FCC Rcd 8330 (2008)).

not change the transition schedule, including the station's phase assignment, testing period, or phase completion date.¹⁶

The above facts considered, Graham's request for waiver **IS GRANTED** and the July 12, 2017 deadline for submission of both its application for post-incentive auction construction permit (FCC Form 2100, Schedule A) and reimbursement cost estimate form (FCC Form 2100, Schedule 399) **IS WAIVED**. Furthermore, Graham is instructed to submit an application for construction permit for the WCWJ in the first priority window, which will be announced by Public Notice and commence shortly after conclusion of the initial 90-day filing period.¹⁷ Graham is also instructed to submit its reimbursement cost estimate form for WCWJ within 30 days of receiving a construction permit for an alternate channel or expanded facility.

Sincerely,

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

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁶ See *Incentive Auction R&O*, 29 FCC Rcd at 6791 n.1551. To make a change to the station's phase assignment and corresponding transition deadlines, a licensee must file a Request for Modification and Waiver of its phase assignment by filing a Legal STA in LMS. See *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 887, Appx. A (providing instructions for filing a Legal STA in LMS). The Bureau will evaluate such requests on a case-by-case basis in order to facilitate a timely and orderly transition and assess the impact of such requests on the transition schedule, including the impact on other broadcasters as well as viewers. See *Incentive Auction Task Force and Media Bureau Adopt Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 32 FCC Rcd 890, 912-14, paras. 49-52 (MB 2017); see also *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 881-82, para. 73. No fee is required to file a Legal STA that contains a request for modification and waiver of a station's phase assignment.

¹⁷ See *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 867, para. 30 and n.49 (citing *Incentive Auction R&O*, 29 FCC Rcd at 6795, para. 556 (delegating authority to the Bureau to issue public notices announcing filing opportunities for alternate channels and expanded facilities and stating that the staff will open the first priority window after it substantially completes its processing of initial minor change construction permits)).