



Federal Communications Commission  
Washington, D.C. 20554

October 5, 2018

Griffin Licensing, LLC  
7401 N. Kelley Avenue  
Oklahoma City, OK 73111

Re: Request for Extension of  
Construction Permit  
KWTW-DT, Oklahoma City, OK  
Facility ID No. 25382  
LMS File No. 0000059780

Dear Licensee,

On September 21, 2018, Griffin Licensing LLC (Griffin), the licensee of Station KWTW-DT, Oklahoma City, Oklahoma (KWTW-DT 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 grant Griffin's requests and extend KWTW-DT's construction permit expiration date to May 29, 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.<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> 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*, 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).

On February 2, 2018, the Video Division granted Griffin's request to modify KWTV-DT's post-auction transition phase assignment from transition Phase 2 to transition Phase 1. Phase 1 has a testing period start date of September 14, 2018 and phase completion date of November 30, 2018.<sup>5</sup> Although Griffin anticipates being able to complete construction of KWTV-DT's auxiliary construction permit facility by November 30, 2018, it will be unable to complete construction of the KWTV-DT main facility until other repacked stations on the same tower, all of which are assigned to Phase 2, are able to complete their construction on the candelabra configuration at the top of the tower. Thus, for reasons beyond Griffin's control, KWTV-DT will not be able to complete construction of its main facility by November 30, 2018, however KWTV-DT will be operating on its post-auction channel (channel 25) and cease operations on its pre-auction channel (channel 39) by the Station's phase completion date. Griffin states that it intends to file a license application to cover its auxiliary construction permit on or about November 27, 2018.<sup>6</sup> Griffin requests a 180-day extension of KWTV-DT's construction permit until May 29, 2019. Griffin also requests waiver of the 90-day construction permit extension filing deadline.

*Discussion.* Upon review of the facts and circumstances presented, we find Griffin's request to extend the construction permit deadline to construct KWTV-DT's post-auction facility meets the requirements for a construction permit extension. Griffin has demonstrated that an extension of its construction permit is needed due to challenges related to the need to coordinate with other stations located on its tower. 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. KWTV-DT will still commence operation on its post-auction channel and cease operation on its pre-auction channel by 11:59 pm on November 30, 2018. To the extent some viewers are unable to receive KWTV-DT's signal while it operates from its auxiliary facility, we believe that Griffin has every incentive to ensure viewers are fully informed about the station's transition plan. 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.<sup>7</sup>

We caution Griffin 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. Griffin is responsible for paying for expenses incurred as a result of voluntarily requested changes to the Station's transition schedule.

The above facts considered, Griffin Licensing, 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 KWTV-DT, Oklahoma City, Oklahoma, **IS EXTENDED** for

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<sup>5</sup> See Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Griffin Licensing, LLC (Feb. 2, 2018) available at LMS File No. 0000034976.

<sup>6</sup> See LMS File No. 0000058526.

<sup>7</sup> 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).

180 days to **May 29, 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 November 30, 2018**. We also remind Griffin that any subsequent 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 blue ink, appearing to read 'H.A. Kreisman', with a long horizontal flourish extending to the right.

*for* Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail):  
David A. O'Connor, Esq.

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<sup>8</sup> See 47 § CFR 73.3598(b).