

Request for Extension of Construction Permit and Waiver Request

HME Equity Fund II, LLC (“Licensee”), licensee of Station WHPS-CD/W15EC-D, Detroit, MI, Fac. ID 25722 (“Station”), hereby requests an Extension of a Construction Permit (Schedule 2100, FCC Form 337) and waiver of the deadline for seeking such extension, for its post-Incentive Auction facilities.

Extension Request Justification

The Station was granted in 2017 a construction permit for post-Incentive Auction facilities on its current tower (File No. 0000026746). The Station subsequently filed an application to move to a different tower and maximize its facilities on the new channel. This application (the “Maximization Application”) remains pending.

Because the Maximization Application is still pending, Licensee is precluded from constructing those facilities. In the interim period, however, it has become clear that the current tower site is no longer tenable, even as a temporary site, for the new channel. Licensee discovered in 2018 that there is a dispute as to whether the purported tower owner (from whom Licensee leases its current tower space) is in fact the true owner of the tower. In light of that as-yet-unresolved dispute, Licensee is unable to obtain authority to alter anything on its current tower.

Further complicating the timeline for construction on the Maximization Application site is the fact that the Station has not yet finalized the lease with the tower owner, Vertical Bridge. This is expected to be finalized in the next two weeks, but the lack of lease combined with the still-pending application have forced Licensee to refrain from equipment orders (lest they have to seek alternate equipment if they need to find another site). Even in the best case scenario, in which both the Maximization Application is granted and the lease is executed immediately, construction of the post-Auction facilities will not be complete by the Phase 3 deadline. Ordering and delivery of equipment is expected to take a minimum of three months. Assuming cooperation with the tower owner and the weather, construction could be complete within 4-5 months. However, out of an abundance of caution, the allowable extension of six (6) months is requested.

As demonstrated in the attached Engineering statement, extension of the WHPS-CD/W15EC-D transition to Ch. 15 will not delay the repack nor will continuing to operate the station on its pre-auction channel (Ch. 33) have any negative impact on the overall transition. Thus, for the reasons set forth herein, an extension of the time in which to construct the Station’s post-Auction facilities is appropriate and in the public interest.

Waiver Request for Extension Request Deadline

The FCC may grant a waiver for good cause shown. The agency typically grants a waiver where the particular facts make strict compliance inconsistent with the public interest. *N.E. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 CFR § 1.3. Counsel to Licensee inquired of Commission staff on March 20, 2019 (five days before the extension request deadline), as to the status of the pending Maximization Application. Staff responded with an inquiry about how long expected construction would be. Counsel consulted with the contracted project engineer and is only now able to report the findings (see above regarding the 4-5 month timeline).

Waiver of the deadline for extension of construction permit is in the public interest as it will allow the Commission to grant the requested Extension of a Construction Permit, which comports with the intent of the Commission to allow each repacked station a single extension of time where the delay is caused by circumstances beyond the Licensee's control and where the extension will not delay or disrupt the overall transition. Therefore, good cause exists and this waiver should be granted.