

## **Request for Extension of WSYT(DT) Construction Permit (File No. 0000034354)**

Bristlecone Broadcasting LLC (“Bristlecone”), licensee of digital television broadcast station WSYT, Syracuse, New York (the “Station”), hereby seeks a 180-day extension, to and including January 29, 2020, of its construction permit for modification of the Station facilities, File No. 0000034354 (the “CP”), granted on January 22, 2018 (the CP modified WSYT’s initial repack construction permit granted on August 3, 2017, File No. 0000027636). Because the Station is assigned to Phase 4 of the post-Incentive Auction “repack” of the television band, the CP currently carries an expiration date of August 2, 2019, the Phase 4 completion date. For a variety of reasons, Bristlecone seeks additional time to construct the Station facilities specified in the CP. *Bristlecone emphasizes that it is not seeking a repack phase change, only a Station CP extension.* That is because Bristlecone is planning to seek Special Temporary Authority in order to commence operation with interim facilities on its new Channel 14 by the August 2, 2019 Phase 4 deadline.

By Public Notice released August 27, 2018, DA 18-884, the Chief of the Commission’s Media Bureau reminded television licensees of, *inter alia*, the May 6, 2019 deadline for Phase 4 station construction permit extension requests. This application is being filed a little more than a week after that deadline due to inadvertent oversight. Bristlecone has been focused on accomplishing tasks essential to the Channel 14 buildout, including but not limited to ongoing current preparation of both an FCC application for approval of use of an auxiliary antenna that will enable the licensee to transition to its new RF channel 14 on or before August 2, 2019, and a related application for Special Temporary Authority to operate with parameters at variance from the CP. Indeed, Bristlecone has been working diligently over an extended period of time in a variety of arenas to meet the Phase 4 deadline. Despite those efforts, it has become apparent that

a CP extension and waiver of the May 6, 2019 deadline are necessary. Both are respectfully requested.

The repack of the Station from RF Channel 19 to RF Channel 14 is a project of broad scope and complexity. That is due in part to the fact that the Station will operate post-repack with an antenna that is shared with commonly owned Bristlecone station WNYS-TV, Syracuse, New York, assigned to repack Phase 8. The project is further complicated by the fact that WSYT is part of an extensive linked station set that entails additional coordination time and effort. The project also, of course, requires the ordering, delivery, and installation of multiple components, including the shared antenna and related transmission line, as well as the coordination of related tower work. Such factors have combined to place Bristlecone in a situation where it is confident that its efforts will allow the Station to accomplish the switch to interim Channel 14 facilities by August 2, 2019, but not complete by that same deadline installation of the permanent Station facilities authorized by the CP.

From the beginning, given the project's complexity, Station implementation of the government-mandated repack by the end of Phase 4 posed a difficult challenge, as Phase 4 does not afford the flexibility of the three-year construction period that is the Commission's long established historical norm. As the project has unfolded, those anticipated difficulties have become realities, necessitating this extension/waiver request.

Bristlecone notes that its request is entirely consistent with FCC rules and policies. That is, the FCC may grant a waiver for good cause shown.<sup>1</sup> A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.<sup>2</sup> In considering a waiver, the FCC may take into account considerations of hardship, equity, or more effective

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<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

implementation of overall policy on an individual basis.<sup>3</sup> Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>4</sup>

The facts and circumstance presented above clearly justify both grant of the CP extension and waiver of the filing deadline. Bristlecone has acted with diligence throughout in a good faith effort to meet the Phase 4 deadline. Those efforts have put the Station in position to transition on or before August 2 to interim facilities on new RF Channel 14, with permanent operations to follow in due course. Grant of these requests will therefore have no impact on the FCC's overall repack timelines, while allowing Bristlecone to complete the WSYT transition in an orderly fashion and continue to provide service to the public through continuous Station operation. In sum, grant of the requested waiver will serve the public interest and further the goals of the post-Incentive Auction repack by allowing WSYT to transition to its new channel in a timely fashion, with no cognizable detriment to the public interest.

For all of the foregoing reasons, a waiver of the extension request filing deadline and an extension of an additional 180 days to construct the Station's repacked facilities is amply justified, relief which is respectfully requested.

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<sup>3</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

<sup>4</sup> *Northeast Cellular*, 897 F.2d at 1166.