

Justification for Extension of Construction Permit

Connecticut Public Broadcasting, Inc. (“Licensee”), licensee of television station WEDW(TV), Bridgeport, Connecticut (Fac. ID 13594) (“Station”) hereby submits this request for an extension of its post-Incentive Auction facilities construction permit for a distributed transmission system, File No. 0000036047 (the “CP”), due to circumstances beyond Licensee’s control.¹

On April 13, 2017, the FCC released the Incentive Auction Closing and Channel Reassignment Public Notice, in which it reassigned WEDW from pre-auction DTV channel 49 to post-auction DTV channel 21. On June 26, 2017, Licensee filed its initial filing window application for a construction permit for WEDW to operate on the baseline channel 21 facility specified in the Closing and Channel Reassignment PN, which the FCC granted on June 29, 2017. File No. 000025204. On November 2, 2017, Licensee filed its application for an expanded facility, which proposed to utilize a single transmitter site located near Stamford, Connecticut (the “Stamford Facility”). File No. 0000034869. The Commission issued a construction permit for the Stamford Facility on December 1, 2017. On December 6, 2017, Licensee filed an application to implement a distributed transmission system (the “DTS Application”). File No. 0000036047. The DTS Application proposed to utilize WEDW’s existing tower in Bridgeport (the “Bridgeport Facility”) as DTS Site 1 and a new antenna on Empire State Building as DTS Site 2 (the “ESB Facility”). The FCC granted the DTS Application and issued the CP for the DTS facility on June 12, 2019 – less than two months before the Phase Four transition deadline.

Licensee seeks an extension of the CP to provide it with additional time to complete negotiations, engineering, and construction for the ESB Facility that will serve as DTS Site 2. Concurrently herewith, Licensee is filing an application for special temporary authority to transition to DTV channel 21 from the Bridgeport Facility.

The Commission has indicated that “[r]eassigned stations and band changing stations that are unable to complete construction of their post-auction channel facilities by their deadlines may seek a *single* extension of up to 180 days.”² Stations requesting an extension must demonstrate that “despite all reasonable efforts, the station is unable to complete construction of its new facility on time due to circumstances that were either unforeseeable or beyond its control.” The Commission may also waive any provision of its rules if it determines good cause has been shown.³

¹ Licensee is a party to channel sharing agreements with full power television station WZME(TV), Bridgeport, Connecticut (Fac. ID 70493) and low power television station WTXN-LD, New Haven, Connecticut (Fac. ID 31453).

² *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, DA 17-106 ¶ 40 (rel. Jan. 27, 2017) (citing *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd. 6567 ¶ 580 (2014); 47 CFR § 73.3700(b)(5)).

³ See 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular). In addition, the Commission may take into account considerations of

Licensee's delay in constructing the full DTS facility specified in the CP is due to circumstances beyond its control. Licensee promptly filed the DTS Application in December 2017. However, the DTS Application was subject to an informal objection and a supplemental pleading filed by PMCM TV LLC. The pleading cycle for the DTS Application was closed on March 9, 2018. The Commission did not grant the application until a year later – and less than two months before the Phase 4 transition deadline. The delay in granting the DTS Application was beyond the Licensee's control, and it would not have made sense for Licensee to expend resources to complete the engineering, negotiations, and equipment orders required to construct the ESB Facility while the informal objection was pending.

Providing Licensee with additional time to construct the full DTS facility specified in the CP is in the public interest. The Commission already recognized in granting the CP that allowing the Station to utilize a DTS is in the public interest. The DTS facility will preserve the Station's existing service while also expanding the reach of the Station and its channel sharing partners.

Upon grant of the extension request, Licensee will provide all required notices to MVPDs, medical facilities, and viewers as required under the Commission's rules.

For the foregoing reasons, Licensee respectfully requests tolling or an extension of its CP to construct the DTS facility.

hardship, equity, or more effective implementation of overall policy on an individual basis. *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. Waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.