



Federal Communications Commission  
Washington, D.C. 20554

August 29, 2019

WHYY, Inc.  
150 North 6th Street  
Philadelphia, PA 19106

Re: Request for Extension of  
Construction Permit  
WDPB, Seaford, DE  
Facility ID No. 72335  
LMS File No. 0000079122

Dear Licensee,

On July 31, 2019, WHYY, Inc. (WHYY), licensee of Station WDPB, Seaford, Delaware (WDPB 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 WHYY's requests and extend WDPB's construction permit expiration date 180 days to January 29, 2020.

*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> For Phase 4 stations, such application was due by May 6, 2019. 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>

WDPB was repacked from channel 44 to channel 24 and assigned to transition Phase 4, which had a phase completion date of August 2, 2019. The Station ceased operation on its pre-auction channel

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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).

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*, GN Docket No. 12-268 et. al., 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).

by the August 2, 2019 deadline and is operating an interim facility from its licensed auxiliary site on its post-auction channel while it completes construction of its permanent post-auction facilities.<sup>5</sup> All repacked stations for Phase 4 were issued a construction permit with an expiration date of August 2, 2019.

WHYY states that delivery of the Station's antenna has been delayed without a specific new delivery date. WHYY requests a 180-day extension to complete its full, authorized post-auction channel facilities. WHYY also requests a waiver of the 90-day construction permit extension filing deadline because it did not realize it would need an extension until after the filing deadline.

*Discussion.* Upon review of the facts and circumstances presented, we find WHYY's request to extend the construction permit deadline to construct WDPB's post-auction facility meets the requirements for a construction permit extension. WHYY has demonstrated that an extension is needed because of unavoidable equipment delays. We also find that grant of this extension request is not likely to negatively impact the overall transition schedule. WDPB has ceased operations on its pre-auction channel and is operating an interim facility on its post-auction channel. To the extent some viewers are unable to receive WDPB's signal while it operates its interim facility, we believe that WHYY has every incentive to ensure viewers are fully informed about the Station's transition plan. Finally, we find that waiver of the 90-day construction permit extension filing deadline is in the public interest and consistent with the Commission's general waiver standard because WHYY didn't realize it needed an extension at the time of the filing deadline.<sup>6</sup>

We remind WHYY that pursuant to the Spectrum Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other."<sup>7</sup> Additional expenses incurred, for instance, as a result of the grant of changes in the Station's transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The above facts considered, WHYY, Inc.'s application for extension of construction permit expiration date **IS GRANTED**. The construction permit (LMS File No. 0000072089) for WDPB, Seaford, Delaware **IS EXTENDED 180 days to January 29, 2020**. Grant of this extension does not permit WDPB to recommence operation on its pre-auction channel. We also remind WHYY that any

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<sup>5</sup> See LMS File No. 0000078263.

<sup>6</sup> See *supra* note 4.

<sup>7</sup> See *Media Bureau Finalizes Reimbursement Form for Submission to OMB and Adopts Catalog of Expenses*, GN Docket No. 12-268, Public Notice, 30 FCC Rcd 11701, 11701-02 (MB 2015). See also Incentive Auction R&O, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

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 black ink, appearing to read 'Bara', followed by a long horizontal flourish.

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): Melodie A. Virtue, Esq.

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<sup>8</sup> See 47 CFR § 73.3700(b)(5)(i) (referencing 47 § CFR 73.3598(b)).