



Federal Communications Commission
Washington, D.C. 20554

August 29, 2019

Mission Broadcasting, Inc.
30400 Detroit Road
Suite 304
Westlake, OH 44145

Re: Request for Extension of
Construction Permit
WFXP, Erie, PA
Facility ID No. 19707
LMS File No. 0000079145

Dear Licensee,

On July 31, 2019, Mission Broadcasting, Inc. (Mission), licensee of Station WFXP, Erie, Pennsylvania (WFXP 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 Mission's requests and extend WFXP'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.¹ 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.² 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.³ 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.⁴

¹ 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).

² 47 CFR § 73.3700(b)(5)(iv).

³ 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).

⁴ 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).

WFXP was repacked from channel 22 to channel 26 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 by the August 2, 2019 deadline and is operating an interim facility on its post-auction channel while it completes construction of its permanent post-auction facilities.⁵ All repacked stations for Phase 4 were issued a construction permit with an expiration date of August 2, 2019.

Mission states that the Station had intended to transition to its post-auction channel during Phase 4 using its permanent post-auction facilities, however, the Station's post-transition channel antenna has not yet been installed due to weather and rigging delays. Mission requests a 180-day extension to complete its full, authorized post-auction channel facilities. Mission 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 Mission's request to extend the construction permit deadline to construct WFXP's post-auction facility meets the requirements for a construction permit extension. Mission has demonstrated that an extension is needed because of unavoidable construction delays. We also find that grant of this extension request is not likely to negatively impact the overall transition schedule. WFXP 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 WFXP's signal while it operates its interim facility, we believe that Mission 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 Mission didn't realize it needed an extension at the time of the filing deadline.⁶

We remind Mission 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."⁷ 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, Mission Broadcasting, Inc.'s application for extension of construction permit expiration date **IS GRANTED**. The construction permit (LMS File No. 0000028342) for WFXP, Erie, Pennsylvania **IS EXTENDED 180 days to January 29, 2020**. Grant of this extension does not permit WFXP to recommence operation on its pre-auction channel. We also


⁵ See LMS File No. 0000079409.

⁶ See *supra* note 4.

⁷ 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.").

remind Mission that any subsequent requests for extension of its construction permit deadline will be subject to the Commission's tolling provisions.⁸

Sincerely,

A handwritten signature in dark ink, appearing to read 'B. Kreisman', with a long horizontal flourish extending to the right.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Gregory L. Masters, Esq.

⁸ See 47 CFR § 73.3700(b)(5)(i) (referencing 47 § CFR 73.3598(b)).