



Federal Communications Commission  
Washington, D.C. 20554

September 3, 2019

Gray Television Licensee, LLC  
999 Second Street, S.E.  
Charlottesville, VA22902

Gray Television Licensee, LLC  
WITN-TV  
275 E. Arlington Blvd  
Greenville, NC 27858

Gray Television Licensee, LLC  
4370 Peachtree Road, NE  
Atlanta, GA30319

Re: Requests for Extension of  
Construction Permit  
WAHU-CD, Charlottesville, VA  
WITN-TV, Washington, NC,  
WDBJ, Roanoke, VA  
Facility ID No. 594, 47705 and 71329  
LMS File No. 0000078581, 0000080256  
and 0000080261

Dear Licensee,

On July 24, 2019 and August 12, 2019, Gray Television Licensee, LLC (Gray) the licensee of Station WAHU-CD, Charlottesville, Virginia (WAHU); WITN-TV, Washington, North Carolina (WITN); and WDBJ, Roanoke, Virginia (WDBJ) (collectively Stations), filed the above captioned applications seeking extensions of the Stations' construction permit expiration dates and waivers of the 90-day construction permit extension filing deadline. For the reasons below, we grant Gray's requests and extend the WAHU construction permit expiration date 180 days to March 4, 2020 and the WITN and WDBJ construction permit expiration dates 120 days to January 6, 2020.<sup>1</sup>

*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>2</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>3</sup> For Phase 5 stations, such application was due by June 10, 2019. The application must demonstrate that the station is unable to complete

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<sup>1</sup> Because 120 days from the Station's current construction expiration date falls on Saturday, January 4, 2020, we will extend the construction permit to the next business day, which would be Monday, January 6, 2020. See 47 CFR 1.4.

<sup>2</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>3</sup> 47 CFR § 73.3700(b)(5)(iv).

construction on time due to circumstances that were either unforeseeable or beyond the station's control.<sup>4</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>5</sup>

WAHU was repacked from channel 40 to channel 35; WITN from channel 32 to 34; and WDBJ from channel 18 to 30.<sup>6</sup> All of the Stations were assigned to transition Phase 5, which has a phase completion date of September 6, 2019. WITN and WDBJ pledge to cease operations on their pre-auction channels by the Phase 5 deadline and will operate interim facilities<sup>7</sup> while they complete construction of their post-auction channel facilities. WAHU has already ceased operations on its pre-auction channel and is currently silent and plans to remain silent while it completes construction of an interim facility.<sup>8</sup> All repacked stations for Phase 5 were issued construction permits with an expiration date of September 6, 2019.

Gray states that the WAHU's tower site is being sold as part of a large transaction involving other Gray stations in the area and completion of the sale is delayed due to legal challenges. As a result, Gray states that construction on the site has also been delayed. WAHU plans to remain silent on its pre-auction channel and to operate with an interim facility at another site until the issues involving its permanent tower site are resolved. Gray therefore requests a 180-day extension.

Gray states that station WITN cannot install its replacement top-mount antenna until another station—WNCT(TV), Greenville, North Carolina, co-located on the same tower, completes construction of its auxiliary facility. Gray notes that WNCT is assigned to transition Phase 10 and is scheduled to complete construction of its auxiliary facility during the month of September. WITN will cease operations on its pre-auction channel and operate an interim facility on its post-auction channel during this time. Gray requests a 120-day extension of time to be able to complete its final facility.

Gray states that station WDBJ must replace its tower and the local planning commission approval is expected for the project on October 22, 2019. Thereafter, Gray predicts the tower build and final construction should be completed within two months. WDBJ will cease operations on its pre-auction channel and operate an interim facility on its post-auction channel during this time. Gray requests a 120-day extension of time to be able to complete the new facility.

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<sup>4</sup> 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>5</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).

<sup>6</sup> WDBJ shares its channel with WFFP-TV, Danville, VA.

<sup>7</sup> Although it has yet to file for an STA for interim operations, Gray has pledged to do so.

<sup>8</sup> See LMS File No. 0000078185.

Gray also requests waivers of the 90-day construction permit extension filing deadline because it did not know for certain it would require extensions at the time the deadline passed.

*Discussion.* Upon review of the facts and circumstances presented, we find Gray's requests to extend the construction permit deadline to construct the Stations' post-auction facilities meet the requirements for a construction permit extension. Gray has demonstrated that extensions are needed because of issues concerning the sale of the WAHU tower site, construction by another station at the WITN tower site, and permitting delays for WDBJ. We also find that grant of these extension requests is not likely to negatively impact the overall transition schedule. WAHU has already ceased operations on its pre-auction channel and will remain silent while an interim facility is constructed and WITN and WDBJ will cease operations by the Phase 5 deadline and operate an interim facility. To the extent some viewers are unable to receive the Stations' signals while WAHU constructs its interim facility and WITN and WDBJ operate with interim facilities, we believe that Gray has every incentive to ensure viewers are fully informed about the Stations' transition plans. 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 Gray was unaware at the time an extension request was due that extensions would be needed.<sup>9</sup>

We remind Gray 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>10</sup> Additional expenses incurred, for instance, as a result of the grant of changes in the Stations' transition plans that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The above facts considered, Gray Television Licensee, LLC's applications for extension of construction permit expiration dates **ARE GRANTED**. The construction permit (LMS File No. 0000073282) for WAHU-CD, Charlottesville, Virginia, **IS EXTENDED 180 days to March 4, 2020** and the construction permits (LMS File No. 0000034101 and 0000029919) for WITN-TV, Washington, North Carolina and WDBJ, Roanoke, Virginia **ARE EXTENDED 120 days to January 6, 2020**. Grant of these extensions does not permit the Stations to recommence operation on their pre-auction channels after ceasing operation or after September 6, 2019, whichever occurs first. We also remind Gray that any

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<sup>9</sup> See *supra* note 4.

<sup>10</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 deadlines will be subject to the Commission's tolling provisions.<sup>11</sup>

Sincerely,

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

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): Joan Stewart, Esq.

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<sup>11</sup> See 47 CFR § 73.3700(b)(5)(i) (referencing 47 § CFR 73.3598(b)).