



Federal Communications Commission
Washington, D.C. 20554

September 3, 2019

Birmingham (WABM-TV) Licensee, Inc.
WPDE Licensee, LLC
WMMP Licensee, L.P.
WLFL Licensee, LLC
WTTO Licensee, LLC
WUPN Licensee, LLC
10706 Beaver Dam Road
Cockeysville, MD 21030

Re: Requests for Extension of
Construction Permit
WABM-TV, Birmingham, AL
WPDE-TV, Florence, SC
WCIV, Charleston, SC
WLFL, Raleigh, NC
WTTO, Homewood, AL
WMYV, Greensboro, NC
Facility ID Nos. 9015, 16820, 17012,
25554, 73205 and 74138
LMS File Nos. 0000080553,
0000080555, 0000080556, 0000080557,
0000080558 and 0000080562

Dear Licensee,

On August 23, 2019, Birmingham (WABM-TV) Licensee, Inc., licensee of Station WABM-TV, Birmingham, Alabama (WABM); WPDE Licensee, LLC, licensee of Station WPDE-TV, Florence, South Carolina (WPDE); WMMP Licensee, L.P., licensee of Station WCIV, Charleston, South Carolina (WCIV); WLFL Licensee, LLC, licensee of Station WLFL, Raleigh, North Carolina (WLFL); WTTO Licensee, LLC, licensee of Station WTTO, Homewood, Alabama (WTTO) and WUPN Licensee, LLC, licensee of Station WMYV, Greensboro, North Carolina (collectively Sinclair and 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 Sinclair's requests and extend the Stations' construction permit expiration date 180 days to March 4, 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 5 stations, such application was due by June 10, 2019. The application must demonstrate that the station is unable to complete

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).

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

WABM was repacked from channel 36 to channel 20; WPDE from channel 16 to 27; WCIV from channel 36 to channel 25; WLFL from channel 27 to channel 18; WTTO from channel 28 to channel 21; and WMYV from channel 33 to channel 28. All of the Stations were assigned to transition Phase 5, which has a phase completion date of September 6, 2019. The Stations pledge to cease operations on their pre-auction channels by the Phase 5 deadline and will operate interim facilities⁵ while they complete construction of their post-auction channel facilities. All repacked stations for Phase 5 were issued a construction permit with an expiration date of September 6, 2019.

Sinclair states that these stations are experiencing delays in construction of the permanent facilities. According to Sinclair, WABM and WTTO were informed of a delay in the availability of a helicopter which had been scheduled to install the antenna for those facilities. Sinclair states that WABM, WMYV and WPDE are delayed due to the unavailability of transmitter installation crews.

Sinclair explains that station WCIV additional equipment must be installed and tested after station WTAT transitions on the same tower which will not be completed until after the Phase 5 deadline on September 6, 2019.

Sinclair states that WLFL has not received all required new broadcast equipment necessary for construction and all necessary tower work has not been completed at the Station's shared transmitter site.

Sinclair that each Station will cease operations on its pre-auction channel and operate interim facilities while it completes construction of the Stations' permanent post-auction channel facilities. Therefore, due to these construction delays, Sinclair requests a 180-day extension for each of the Stations. Sinclair 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 Sinclair's requests to extend the construction permit deadline to construct the Stations' post-auction facilities meet the requirements for a construction permit extension. Sinclair has demonstrated that extensions are needed because of delays in constructing the Station's post-auction channel facilities that were outside of its control. We also find that grant of these extension requests is not likely to negatively impact the overall

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).

⁵ Although it has yet to file for STAs for the Stations' interim operations, Sinclair has pledged to do so.

transition schedule. The Stations will cease operations by the Phase 5 deadline and operate interim facilities. To the extent some viewers are unable to receive the Stations' signals while they operate interim facilities, we believe that Sinclair 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 Sinclair was unaware at the time an extension request was due that extensions would be needed.⁶

We remind Sinclair 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 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, Birmingham (WABM-TV) Licensee, Inc.; WPDE Licensee, LLC; WMMP Licensee, L.P.; WLFL Licensee, LLC; WTOO Licensee, LLC; and WUPN Licensee, LLC applications for extension of construction permit expiration dates **ARE GRANTED**. The construction permits (LMS File No. 0000034382, 0000034379, 0000034046, 0000027767, 0000029999 and 0000034498) for WABM-TV, Birmingham, Alabama; WPDE-TV, Florence, South Carolina; WCIV, Charleston, South Carolina; WLFL, Raleigh, North Carolina; WTOO, Homewood, Alabama and WMYV, Greensboro, North Carolina **ARE EXTENDED 180 days to March 4, 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 Sinclair that any subsequent requests for extension of its construction permit deadlines will be subject to the Commission's tolling provisions.⁸

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Paul Cicelski, Esq.

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.").

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