



Federal Communications Commission
Washington, D.C. 20554

September 4, 2019

HSH Myrtle Beach (WWMB) Licensee, LLC
HSH Birmingham (WSES & WGWW) License, LLC
201 Massachusetts Avenue, NE
Suite C-1
Washington, DC 20002

Re: Requests for Extension of
Construction Permit
WWMB, Florence, SC
WSES, Tuscaloosa, AL
Facility ID Nos. 3133 and 21258
LMS File Nos. 0000080559 and
0000080563

Dear Licensee,

On August 23, 2019, HSH Myrtle Beach (WWMB) Licensee, LLC, licensee of Station WWMB, Florence, South Carolina(WWMB); and HSH Birmingham (WSES & WGWW) License, LLC, licensee of WSES, Tuscaloosa, Alabama (WSES) (collectively HSH 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 HSH's requests and extend the Stations' construction permit expiration date 180 days to March 9, 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 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

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).

relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis.⁴

WWMB was repacked from channel 21 to channel 26; and WSES from channel 33 to 36. The Stations were assigned to transition Phase 5, which originally had a phase completion date of September 6, 2019. All repacked stations for Phase 5 were issued a construction permit with an expiration date of September 6, 2019. On September 3, 2019, the Incentive Auction Task Force and the Media Bureau extended the phase completion date and the construction permit expiration date for Phase 5 stations to September 11, 2019.⁵ The Stations pledge to cease operations on their pre-auction channels by the Phase 5 phase completion date and will operate interim facilities⁶ while they complete construction of their post-auction channel facilities.

HSH states that the installation of the Stations' full post-auction channel facilities has been delayed by a shortage of installation crews. Therefore, due to these construction delays beyond its control, HSH requests a 180-day extension for each of the Stations. HSH 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 HSH's requests to extend the construction permit deadline to construct the Stations' post-auction facilities meet the requirements for a construction permit extension. HSH 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 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 HSH 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 HSH was unaware at the time an extension request was due that extensions would be needed.⁷

We remind HSH 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."⁸ 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.

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 See *The Completion Date For Phase 4 of the Post-Incentive Auction Transition Is Extended To September 11, 2019 Because of Hurricane Dorian*, Public Notice, DA 19-866, rel. September 3, 2019 (IATF/MB).

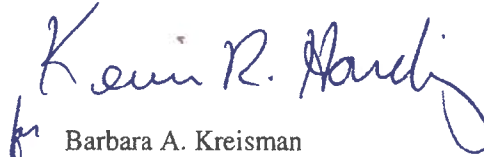
⁶ Although it has yet to file for STAs for the Stations' interim operations, HSH has pledged to do so.

⁷ See *supra* note 4.

⁸ 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.").

The above facts considered, HSH Myrtle Beach (WWMB) Licensee, LLC; and HSH Birmingham (WSES & WGWW) License, LLC's applications for extension of construction permit expiration dates **ARE GRANTED**. The construction permits (LMS File No. 0000034332 and 0000034330) for WWMB, Florence, South Carolina and WSES, Tuscaloosa, Alabama **ARE EXTENDED 180 days to March 9, 2020**. Grant of these extensions does not permit the Stations to recommence operation on their pre-auction channels after ceasing operation or after September 11, 2019, whichever occurs first. We also remind HSH that any subsequent requests for extension of its construction permit deadlines will be subject to the Commission's tolling provisions.⁹

Sincerely,

A handwritten signature in blue ink, appearing to read "Kevin R. Hardy", is written over the typed name of Barbara A. Kreisman.

for Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

⁹ See 47 CFR § 73.3700(b)(5)(i) (referencing 47 § CFR 73.3598(b)).