



Federal Communications Commission
Washington, D.C. 20554

September 4, 2019

Mr. Joseph V. Earley
1 South Main
Sylacauga, AL 35150

Re: Request for Extension of
Construction Permit
WOIL-CD, Talladega, AL
Facility ID No. 31649
LMS File No. 0000079990

Dear Licensee,

On August 5, 2019, Mr. Joseph V. Earley (Earley), the licensee of Station WOIL-CD, Talladega, Alabama (WOIL 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 Earley's requests and extend's 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 relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis.⁴

WOIL was repacked from channel 47 to channel 23 and assigned to transition Phase 5, which originally had a phase completion date of September 6, 2019. All repacked stations for Phase 5 were

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).

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 Station pledges to cease operation on its pre-auction channel by the phase completion date and operate an interim facility on its post-auction channel while it completes construction of its permanent post-auction facilities.⁶

Earley states that the Station's transmitter and antenna have been ordered but there has been a delay in their receipt. Earley maintains that a tower crew will be required to hang the antenna, and a crew cannot be scheduled until the antenna and other equipment has been received. Earley requests a 180-day extension. Earley also requests a waiver of the 90-day construction permit extension filing deadline because he did not know for certain he would require an extension at the time the deadline passed.

Discussion. Upon review of the facts and circumstances presented, we find Earley's request to extend the construction permit deadline to construct WOIL's post-auction facility meets the requirements for a construction permit extension. Earley has demonstrated that an extension is needed because of a delay with the delivery of equipment. We also find that grant of this extension request is not likely to negatively impact the overall transition schedule. WOIL will cease operations on its pre-auction channel by the Phase 5 completion date and will operate an interim facility on its post-auction channel. To the extent some viewers are unable to receive WOIL's signal while it operates its interim facility, we believe that Earley 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 Earley was unaware at the time an extension request was due that an extension would be needed.⁷

We remind Earley 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 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, Joseph V. Earley's application for extension of construction permit expiration date **IS GRANTED**. The construction permit (LMS File No. 0000034660) for WOIL-CD, Talladega, Alabama, **IS EXTENDED 180 days to March 9, 2020**. Grant of this extension does not permit WOIL to recommence operation on its pre-auction channel after ceasing operation or after

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 See LMS File No. 0000080047.

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.").

September 11, 2019, whichever occurs first. We also remind Earley that any subsequent requests for extension of his construction permit deadline will be subject to the Commission's tolling provisions.⁹

Sincerely,

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

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Lee J. Peltzman, Esq.

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