



Federal Communications Commission  
Washington, D.C. 20554

September 4, 2019

San-Lee Community Broadcasting, Inc.  
Kim Lilley  
204 St. Clair Court  
Sanford, NC 27330

Re: Request for Extension of  
Construction Permit  
WBFT-CD, Sanford, NC  
Facility ID No. 64400  
LMS File No. 0000078901

Dear Licensee,

On July 30, 2019, San-Lee Community Broadcasting, Inc. (San-Lee) the licensee of Station WBFT-CD, Sanford, North Carolina (WBFT-CD or Station), filed the above captioned application, as amended, seeking extension of construction permit expiration date and waiver of the 90-day construction permit extension filing deadline. For the reasons below, we grant San-Lee's requests and extend the WBFT-CD 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.<sup>1</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>2</sup> 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.<sup>3</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>4</sup>

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<sup>1</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>2</sup> 47 CFR § 73.3700(b)(5)(iv).

<sup>3</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>4</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).

WBFT-CD was repacked from channel 47 to channel 36 and was 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.<sup>5</sup> WBFT-CD has ceased operations on its pre-auction channel and will remain silent while it completes construction of its post-auction channel facilities.<sup>6</sup>

San-Lee states that in July 2019 it was informed by the owner of its transmitter site that ownership had changed and that the Station must vacate the premises. WBFT-CD went silent on its pre-auction channel on August 1, 2019 and San-Lee is currently seeking a new transmitter site. San-Lee requests a 180-day extension to secure a new transmitter site and complete construction of its post-auction channel facilities. San-Lee also requests a waiver of the 90-day construction permit extension filing deadline because it did not know it would require an extension at the time the deadline passed.

*Discussion.* Upon review of the facts and circumstances presented, we find San-Lee's request to extend the construction permit deadline to construct the WBFT-CD's post-auction facilities meet the requirements for a construction permit extension. San-Lee has demonstrated that extension is needed because of the unexpected loss of access to the Station's transmitter site. We also find that grant of the extension request is not likely to negatively impact the overall transition schedule. WBFT-CD has ceased operations on its pre-auction channel and will remain silent while San-Lee completes construction of its post-auction channel facilities. To the extent viewers are unable to receive WBFT-CD's signal while it is silent, we believe that San-Lee 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 San-Lee was unaware at the time an extension request was due that an extension of WBFT-CD's construction permit would be needed.<sup>7</sup>

We remind San-Lee 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>8</sup> 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, San-Lee Community Broadcasting, Inc.'s application for extension of construction permit expiration date **IS GRANTED**. The construction permit (LMS File No. 0000034838) for WBFT-CD, Sanford, North Carolina **IS EXTENDED 180 days to March 9, 2020**. Grant of the extension does not permit WBFT-CD to recommence operation on its pre-auction channel.

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<sup>5</sup> 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).

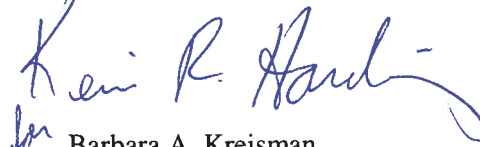
<sup>6</sup> See LMS File No. 0000078894.

<sup>7</sup> See *supra* note 4.

<sup>8</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.").

We also remind San-Lee that any subsequent requests for extension of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>9</sup>

Sincerely,

A handwritten signature in blue ink, appearing to read "Ken R. Hardin". The signature is fluid and cursive, with a long horizontal stroke at the end.

for  
Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>9</sup> See 47 CFR § 73.3700(b)(5)(i) (referencing 47 § CFR 73.3598(b)).