



Federal Communications Commission  
Washington, D.C. 20554

November 12, 2019

Capitol Broadcasting Company, Inc.  
Chrissy Cicuto  
2619 Western Blvd  
Raleigh, NC 27606

WRAZ-TV, Inc.  
Jennifer B. Venable  
2619 Western Boulevard  
Raleigh, NC 27606

Re: Requests for Extension of  
Construction Permit  
WRAL-TV, Raleigh, NC  
WRAZ, Raleigh, NC  
Facility ID Nos. 8688 and 64611  
LMS File Nos. 0000088422 and  
0000088423

Dear Licensee,

On November 7, 2019, Capitol Broadcasting Company, Inc. (CBC), licensee of Station WRAL-TV, Raleigh, North Carolina (WRAL); and WRAZ-TV, Inc., licensee of Station WRAZ, Raleigh, North Carolina (WRAZ) (collectively Stations) filed the above captioned applications seeking further 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 CBC's requests and extend the Stations' construction permit expiration date 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>

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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*

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>

WRAL was repacked from channel 48 to channel 17; and WRAZ from channel 49 to 15. 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.<sup>5</sup> CBC was granted extensions and the Stations' construction permits were extended to December 31, 2019.<sup>6</sup> The Stations ceased operations on their pre-auction channels by the Phase 5 phase completion date and are operating from auxiliary facilities<sup>7</sup> while they complete construction of their post-auction channel facilities.

CBC states that the Stations are collocated on a tower with other Raleigh area television stations. The Stations are unable to complete construction of their main facilities until construction of a top-mounted candelabra antenna configuration is completed. CBC explains that a helicopter is needed for this work and scheduling of the helicopter has been delayed due to limited availability. CBC requests an extension for each of the Stations to March 9, 2020. CBC 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 CBC's requests to extend the construction permit deadline to construct the Stations' post-auction facilities meet the requirements for a construction permit extension. CBC has demonstrated that extensions are needed because of delays in constructing the Station's post-auction channel facilities due to limited resources. We also find that grant of these extension requests is not likely to negatively impact the overall transition schedule. The Stations ceased operations by the Phase 5 deadline and are operating interim facilities. To the extent some viewers are unable to receive the Stations' signals while they operate interim facilities, we believe that CBC 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 CBC was unaware at the time an extension request was due that extensions would be needed.<sup>8</sup>

We remind CBC 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

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*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).

<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 Nos. 0000080708 and 0000080709.

<sup>7</sup> See LMS File Nos. 0000027670 and 0000027700.

<sup>8</sup> See *supra* note 4.

relocate its television service from one channel to the other.”<sup>9</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, Capitol Broadcasting Company, Inc. and WRAZ-TV, Inc. applications for extension of construction permit expiration dates **ARE GRANTED**. The construction permits (LMS File No. 0000075896 and 0000075888) for WRAL-TV, Raleigh, North Carolina and WRAZ, Raleigh, North Carolina **ARE FURTHER EXTENDED to March 9, 2020**. Grant of these extensions does not permit the Stations to recommence operation on their pre-auction channels. We also remind CBC that any subsequent requests for extension of its construction permit deadlines will be subject to the Commission’s tolling provisions.<sup>10</sup>

Sincerely,

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

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): David O’Connor, Esq.

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<sup>9</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.”).

<sup>10</sup> See 47 CFR § 73.3700(b)(5)(i) (referencing 47 § CFR 73.3598(b)).