

Construction Permit Extension Request and Waiver Request

CBS Television Licenses LLC

WSBK-TV Boston, Massachusetts

Facility ID 73982

CBS Television Licenses LLC (ViacomCBS), licensee of WSBK-TV Boston, MA (the “Station”), herein seeks a six-month extension of the Station’s main antenna construction permit expiration date pursuant to Section 73.3700(b)(5) of the Commission’s rules.¹ In addition, because this application is being filed within 90 days of the construction permit expiration date, a waiver of Section 73.3700(b)(5)(iv) is requested.

Background. WSBK-TV was initially assigned to repack Phase 8 (March 13, 2020) and subsequently filed and received a modified assignment to Phase 7. This change required the WSBK-TV Construction Permit expiration date to be altered to match the Phase 7 completion date, January 17, 2020. At the start of the Phase 7 Test Period, WSBK-TV successfully transitioned from channel 39 to channel 21 using the Station’s recently constructed and permanently licensed auxiliary antenna.²

Tower owner American Towers LLC (“ATC”), the general contractor for construction of the WSBK-TV main antenna site, has experienced a myriad of delays stemming from equipment unavailability, tower crew scheduling challenges, and harsh weather. Further, the town of Needham, MA, where the WSBK-TV tower is located, requires ATC to have a Special Permit before top-mounted antennas can be installed. Although such a permit was recently approved, it is not expected to be finalized until late December, 2019. Given this local government limitation on construction, currently lacking necessary approvals, and in anticipation of the harsh winter weather, ATC released its tower crew last month, preventing timely completion of the facility through no fault of *ViacomCBS*.

Extension Request. Even under ATC’s most optimistic estimate provided to *ViacomCBS*, construction will not resume until January 2020 and will not be completed until spring, months after the WSBK-TV Construction Permit expiration date. Grant of a 180-day extension will not impact the transition schedule and will not cause interference to other stations, as WSBK-TV has already ceased operation on its pre-auction channel. The Station has every incentive to complete construction of its technically

¹ See LMS file number 0000034574.

² See LMS file numbers 0000083917 and 0000086922.

Construction Permit Extension Request
CBS Television Licenses LLC

superior main antenna facility as soon as possible and will pursue the best-case scenario outlined above. However, considering recurring project delays and the fact that Section 73.3700(b)(5) limits authority to grant only a single extension, we respectfully seek an additional six-months to complete WSBK-TV construction.

Waiver Request. This application for additional construction time is being filed within 90 days of the January 17, 2020 construction permit expiration date. Therefore, *ViacomCBS* respectfully seeks a waiver of Section 73.3700(b)(5)(iv).

It is understood that the FCC may grant a waiver for good cause.³ A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.⁴ In considering a waiver, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁵ Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.

In this case, unexpected and ongoing construction delays are no fault and beyond the control of *ViacomCBS*. WSBK-TV Transition Progress Reports have consistently reported that necessary permits are the responsibility of the leased tower owner. The most recent Transition Progress Report, filed approximately 90 days before the construction permit expiration date, indicated our good faith belief that the WSBK-TV facility would be constructed on time. In short, the FCC's 90-day filing requirement could not be met because, at that point in time, we had every indication that the leased antenna system would be constructed by January 17, 2020.

WSBK-TV has already vacated its pre-auction channel and activated its post-auction channel. As a result, the Station is continuing to provide service to the public without causing interference, impacting the transition schedule, or delaying new 600 MHz band entrants. None of this would change if the

³ 47 C.F.R. § 1.3.

⁴ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

Construction Permit Extension Request
CBS Television Licenses LLC

Commission were to waive Section 73.3700(b)(5)(iv) of the Rules. It is therefore believed that approval of this waiver request would be appropriate in these circumstances and consistent with the public interest.