



Federal Communications Commission  
Washington, D.C. 20554

April 7, 2020

Associated Christian Television System, Inc.  
Claud Bowers  
123 E. Central Parkway  
Altamonte Springs, FL 32701

Re: Request for Extension of  
Construction Permit  
WACX, Leesburg, FL  
Facility ID No. 60018  
LMS File No. 0000106787

Dear Licensee,

On February 28, 2020, Associated Christian Television System, Inc. (Licensee), the licensee of Station WACX, Leesburg, Florida (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 Licensee's requests and extend the Station's construction permit expiration date 180 days to October 28, 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 9 stations, such application was due by February 3, 2020. 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).

The Station was a winning “band changing” bidder in the reverse auction and was repacked from channel 40 to channel 7 and assigned to transition Phase 9, which has a phase completion date of May 1, 2020. All repacked stations for Phase 9 were issued a construction permit with an expiration date of May 1, 2020. The Station has ceased operations on its pre-auction channel and while currently silent,<sup>5</sup> is planning to commence operation on its post-auction channel from an interim facility while it completes construction of its permanent post-auction facilities.<sup>6</sup>

Licensee states that Station is directly downstream of station WFLA, Tampa Bay, Florida, and WACX must therefore transition at the same time as or after WFLA in order to prevent any increased levels of temporary pairwise interference beyond two percent.<sup>7</sup> The stations were originally both assigned to transition Phase 9; however, due to delays related to the COVID-19 pandemic, WFLA requested and has been granted a modification of its phase assignment to Phase 10.<sup>8</sup> To accommodate this change, WACX has agreed to operate with reduced power and WFLA agreed to temporarily accept interference from WACX until WFLA’s transition is completed in phase 10. Accordingly, Licensee requests an extension of its construction permit to October 28, 2020. Licensee also requests a waiver of the 90-day construction permit extension filing deadline because it did not know for certain it would require an extension at the time of the deadline.

*Discussion.* Upon review of the facts and circumstances presented, we find Licensee’s request to extend the construction permit deadline to construct the Station’s post-auction facility meets the requirements for a construction permit extension. Licensee has demonstrated that an extension is needed in order to accommodate the transition of WFLA, which is upstream of WACX and now assigned to Phase 10. WACX has entered into an interference agreement with WFLA and agreed to operate at reduced power in order to minimize any interference caused to WFLA. We also find that grant of this extension request is not likely to negatively impact the overall transition schedule. The Station ceased operations on its pre-auction channel and is operating a temporary facility on its post-auction channel. To the extent viewers are unable to receive the Station’s signal while it operates its temporary facility, we believe that Licensee 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 Licensee was unaware at the time an extension request was due that an extension of the Station’s construction permit would be needed.<sup>9</sup>

The above facts considered, Associated Christian Television System, Inc.’s application for extension of construction permit expiration date **IS GRANTED**. The construction permit (LMS File No. 0000064381) for WACX, Leesburg, Florida **IS EXTENDED 180 days to October 28, 2020**. Grant of this extension does not permit the Station to recommence operation on its pre-auction channel. We also

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<sup>5</sup> LMS File No. 0000108827.

<sup>6</sup> LMS File No. 0000111341.

<sup>7</sup> See *Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 32 FCC Rcd 890, 897, para. 16 (IATF & MB 2017) (allowing temporary increased pairwise (station-to-station) interference of up to two percent during the transition period).

<sup>8</sup> LMS File No. 0000110264.

<sup>9</sup> See *supra* note 4.

remind Licensee that any subsequent requests for extension of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>10</sup>

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): James Koerner, Esq.

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