

Amendment to Construction Permit Extension Request

WPSD-TV, Paducah, KY (Facility ID 51991)

On March 12, 2020, WPSD-TV, LLC licensee of WPSD-TV, Paducah, KY, Facility ID: 51991 (the “Station”) filed a request to extend its construction permit (the “CP”) (File No. 0000027223) for its post-Incentive Auction facilities that initially was set to expire on the Phase 9 deadline of May 1, 2020. That extension request (File No. 0000107825) (the “CP Extension Request”) sought an additional 180 days after May 1, 2020, until October 28, 2020, to complete construction under the CP. The Station files this amendment to reiterate its extension request and to provide additional information in support of that request.¹ Based on circumstances outside of the Station’s control, including tower crew availability, the Station continues to respectfully request an extension of its CP until October 28, 2020, to ensure its permanent facilities are completed.²

The Station was originally assigned to transition from Channel 32 to Channel 19 in Phase 9 of the post-Incentive Auction repack. Because the Station’s tower company (Tower Consultants, Inc.) informed the Station in March that it anticipated weather-related scheduling delays in finalizing construction of the Station’s post-Incentive Auction permanent transmitter and antenna, the Station, on March 12, 2020, filed the CP Extension Request and a request for engineering special temporary authority (the “Engineering STA Request”) (File No. 0000107827) seeking, collectively, additional time to build its post-Incentive Auction permanent facilities and to operate on interim facilities during that process.

¹ Concurrently with this amendment, the Station is filing (1) an amendment to its Engineering Special Temporary Authorization Request (File No. 0000107827), and (2) a Request for Waiver of Viewer Notification Requirements.

² As part of the CP Extension Request, the Station additionally sought waiver of the deadline to seek an extension of its CP pursuant to 47 C.F.R. 73.3700(b)(5)(iv) because the Station was only notified of weather-related delays less than 90 days before the deadline for Phase 9. The Station continues to seek waiver of Section 73.3700(b)(5)(iv), as the Phase 10 deadline for extending a CP beyond July 3, 2020 was April 6, 2020—while the CP Extension Request was pending and before the Station was assigned to Phase 10.

The FCC may grant a waiver for good cause shown. 47 C.F.R. § 1.3. A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). 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. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166. Grant of the instant request for waiver of the deadline for seeking a CP extension would be squarely within the Commission’s policies. As detailed herein, unforeseen circumstances outside of the Station’s control made it impossible for it to seek the CP extension by the applicable deadline for such a filing (*i.e.*, the Phase 10 deadline for extending a CP beyond July 3, 2020 was April 6, 2020—while the CP Extension Request was pending and before the Station was assigned to Phase 10). Moreover, the proposed waiver will serve the public interest by enabling the Station to seek and obtain a CP extension—thereby avoiding unnecessary disruption to viewers in the market.

Following submission of the requests, the U.S. President declared a national emergency as a result of the novel coronavirus (COVID-19). Pursuant to Public Notice (DA 20-282) released by the Commission on March 17, 2020, the Station sought on April 6, 2020, and was granted on April 8, 2020, a request (File No. 0000111523) to move to Phase 10.³ As a result, the Station's construction deadline under the CP was moved to July 3, 2020. The Commission staff continued to hold the CP Extension Request (and the Engineering STA Request) in pending status.

With fast-changing developments in the COVID-19 pandemic and new relaxation of stay-at-home orders, the tower company requested, on short notice, to begin installation work for the Station in late May. The date most recently provided is May 21, 2020. In order to begin work on the permanent post-Incentive Auction facilities, the tower company will need to transition the Station to interim facilities.⁴ Completion of the Station's permanent post-Incentive Auction facility may take several weeks; as a result the construction of the permanent post-Incentive Auction facilities likely will not be completed by the Phase 10 deadline of July 3, 2020.

WPSD-TV thus amends the CP Extension Request. Under the FCC's rules, applications for a CP extension 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. Delay in construction due to the unavailability of equipment or a tower crew is a circumstance that may justify an extension of the construction deadline.⁵ Here, the construction of the permanent post-Incentive Auction facilities may take several weeks, but the tower crew intends to only begin in late May, due to COVID-19 scheduling. Furthermore, the Commission has acknowledged that unfolding and unforeseen developments from the COVID-19 pandemic may affect transition schedules.⁶ Such developments have had an impact on the Station's transition schedule.

Granting the CP Extension Request will not impact the repack efforts of other stations because there are no dependencies related to the Station's post-Incentive Auction transition and the Station would be operating on its post-Incentive Auction Channel without disruption to the overall repack.

³ *Guidance for Stations in Phase 9 of the Post-Incentive Auction Transition as a Result of the Novel Coronavirus (COVID-19) Pandemic*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, DA 20-282 (IATF & MB, Mar. 17, 2020) ("COVID-19 Guidance PN").

⁴ As noted in footnote 1, the Station is filing an amendment to its pending Engineering STA Request to authorize operation on these interim facilities.

⁵ 47 C.F.R. § 73.3700(b)(5)(ii).

⁶ COVID-19 Guidance PN.