



Federal Communications Commission  
Washington, D.C. 20554

June 19, 2020

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Re: Requests for Extension of  
Construction Permit

WJZ-TV, Baltimore, MD  
Facility ID No. 25455  
LMS File No. 0000099867

WBAL-TV, Baltimore, MD  
Facility ID No. 65696  
LMS File No. 0000104748

WMAR-TV, Baltimore, MD  
Facility ID No. 59442  
LMS File No. 0000116261

Dear Licensees,

CBS Television Licenses, LLC (CBS), the licensee of Station WJZ-TV, Baltimore, Maryland (WJZ); WBAL Hearst Television Inc. (Hearst), the licensee of Station WBAL-TV, Baltimore, Maryland (WBAL); and Scripps Broadcasting Holdings, LLC (Scripps), the licensee of Station WMAR-TV, Baltimore, Maryland (WMAR) (collectively "Licensees" and "Stations") filed the above captioned applications, as amended, seeking extensions of the Stations' construction permit expiration dates. In addition, Scripps seeks a waiver of the 90-day construction permit extension filing deadline. For the reasons below, we grant Scripps' waiver request and the Licensees' applications and extend the Stations' construction permit expiration dates 180 days to December 30, 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 10 stations, such application was due by April 6, 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>

WJZ was repacked from channel 13 to channel 11, WBAL from channel 11 to channel 12 and WMAR from channel 38 to channel 27 and the Stations were originally assigned to transition Phase 9 but were granted a phase change to transition Phase 10, which has a phase completion date of July 3, 2020.<sup>5</sup> All repacked stations for Phase 10 were issued a construction permit with an expiration date of July 3, 2020. The Stations pledge to cease operation on their pre-auction channels by the phase completion date and operate auxiliary facilities on their post-auction channels while they complete construction of their permanent post-auction facilities.<sup>6</sup>

Licensees state that the Stations' post-auction channel facilities will be located on a shared tower. The Stations plan to use a helicopter to complete the installation of their post-auction channel facilities. Licensees state that tower construction delays related to the COVID-19 pandemic<sup>7</sup> have now ruled out a helicopter lift on the dates the Stations had previously scheduled. Licensees state that the helicopter itself is not available until after the Phase 10 completion date. Given the ongoing uncertainty surrounding the scheduling of the helicopter lift and in an abundance of caution, Licensees request a 180-day extension.

Scripps 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.

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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).

<sup>5</sup> See LMS File Nos. 0000108425, 0000108967, and 0000110202.

<sup>6</sup> See LMS File Nos. 0000107700 and 0000107224, and 0000116297.

<sup>7</sup> The World Health Organization has classified COVID-19 as a pandemic and the President declared it a national emergency.

*Discussion.* Upon review of the facts and circumstances presented, we find Licensees' requests to extend the construction permit deadline to construct the Stations' post-auction facilities meet the requirements for a construction permit extension. Licensees have demonstrated that extensions are needed because of construction delays. We also find that grant of these extension requests is not likely to negatively impact the overall transition schedule. The Stations will cease operations on their pre-auction channels by the Phase 10 completion date and will operate auxiliary facilities on their post-auction channels. To the extent some viewers are unable to receive the Stations' signals while they operate auxiliary facilities, we believe that Licensees have 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 Scripps was unaware at the time an extension request was due that an extension of the Station's construction permit would be needed.<sup>8</sup>

We remind Licensees that pursuant to the Spectrum Act, the Stations are 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>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 changes, may not be reimbursable from the Fund.

The above facts considered, CBS Television Licenses, LLC; WBAL Hearst Television Inc.; and Scripps Broadcasting Holdings, LLC's applications for extension of construction permit expiration date **ARE GRANTED**. The construction permits (LMS File No. 0000032917, 0000034523 and 0000027796, respectively) for WJZ-TV, Baltimore, Maryland; WBAL-TV, Baltimore, Maryland; and WMAR-TV, Baltimore, Maryland **ARE EXTENDED 180 days to December 30, 2020**. Grant of this extension does not permit the Stations to recommence operation on their pre-auction channels after ceasing operation or after July 3, 2020, whichever occurs first. We also remind Licensees that any subsequent requests for extension of their 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): Stephen Hartzell, Esq.  
Kenneth Howard, Esq.

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

<sup>9</sup> 47 U.S.C. § 1452(b)(4)(A)(i). 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)).