



Federal Communications Commission
Washington, D.C. 20554

June 19, 2020

WSET Licensee, LLC
KGBT Licensee, LLC
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Cockeysville, MD 21030
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Re: Requests for Extension of
Construction Permit

WSET-TV, Lynchburg, VA
Facility ID No. 73988
LMS File No. 0000116193

KGBT-TV, Harlingen, TX
Facility ID No. 34457
LMS File No. 0000116213

Dear Licensees,

On June 15 and 16, 2020, WSET Licensee, LLC, the licensee of Station WSET-TV, Lynchburg, Virginia (WSET); and KGBT Licensee, LLC, the licensee of Station KGBT-TV, Harlingen, Texas (KGBT) (collectively "Licensees" and "Stations") filed the above captioned application, as amended, seeking an extension of the Stations' construction permit expiration dates and waiver of the 90-day construction permit extension filing deadline. For the reasons below, we grant Licensees' requests and extend the Stations' construction permit expiration dates to October 31, 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.¹ 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.² 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.³

¹ 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).

² 47 CFR § 73.3700(b)(5)(iv).

³ 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.⁴

WCET was repacked from channel 13 to channel 7 and KGBT from channel 31 to channel 18 and the Stations were assigned to transition Phase 10 which has a phase completion date of July 3, 2020. All repacked stations for Phase 10 were issued a construction permit with an expiration date of July 3, 2020. The Stations pledged to cease operation on their pre-auction channels by the phase completion date and operate interim facilities on their post-auction channels while they complete construction of their permanent post-auction facilities.⁵

Licensees state that they have made significant progress in constructing the Stations' post-auction channel facilities. However, due to scheduling and tower crew delays brought on by the global COVID-19 pandemic,⁶ the Stations' permanent post-auction channel antennas have yet to be installed. Licensees do not expect work to be completed until after the Phase 10 completion date of July 3, 2020. In light of these facts, Licensees request extensions of their construction permits to October 31, 2020.

Licensees also request a waiver of the 90-day construction permit extension filing deadline because they did not know for certain they would require an extension at the time of the deadline.

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 facility meet the requirements for a construction permit extension. Licensees have demonstrated that an extension is 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 interim facilities on their post-auction channels. To the extent some viewers are unable to receive the Stations' signals while they operate their interim 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 Licensees were unaware at the time an extension request was due that an extension of the Stations' construction permits would be needed.⁷

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."⁸ Additional expenses

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).

⁴ 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).

⁵ See LMS File Nos. 0000116194 and 00001162214.

⁶ The World Health Organization has classified COVID-19 as a pandemic and the President declared it a national emergency.

⁷ See *supra* note 4.

⁸ 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.").

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, WSET Licensee, LLC and KGBT Licensee, LLC's applications for extension of construction permit expiration date **ARE GRANTED**. The construction permits (LMS File Nos. 0000106070 and 0000105747, respectively) for WSET-TV, Lynchburg, Virginia and KGBT-TV, Harlingen, Texas, **ARE EXTENDED to October 31, 2020**. Grant of these extensions 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.⁹

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Paul Cicelski, Esq.

⁹ See 47 CFR § 73.3700(b)(5)(i) (referencing 47 § CFR 73.3598(b)).