

Request for Extension of Construction Permit

Justification for Reinstatement and Extension of Construction Permit

VPM Media Corporation (“Licensee”), licensee of television station WVPT(TV), Staunton, VA (Fac. ID 60111) (the “Station”) hereby submits this request for an extension of the construction permit for its permanent post-Incentive Auction facilities, File No. 0000028448 (the “CP”), for a period of six months to allow the Station to modify and complete its transition to its post-Incentive Auction facility.¹

In the *Closing and Channel Reassignment Public Notice*, the Commission assigned the Station to transition from RF channel 11 to RF channel 12 in Phase 10 of the post-Incentive Auction transition. Licensee initially planned to retune its existing Axcera transmitters from channel 11 to channel 12. After Licensee placed its orders, however, Axcera declared bankruptcy, and after initially indicating that it would continue to support the rechanneling project, Axcera advised Licensee that the transmitters and exciters cannot be rechanneled. Moreover, MCI has advised Licensee that it no longer supports the existing antenna and cannot model the pattern using a new or retuned transmitter. As a result, Licensee will need to replace the antenna at Elliott Knob. However, the existing tower at Elliott Knob cannot support the replacement antenna, necessitating the construction of a new tower.

On June 30, 2020, the Station suspended operations on RF channel 11 and began operating on RF channel 12 on an interim basis using a new transmitter and its existing antenna. Licensee has already received complaints from viewers about a loss of reception due to the unpredictable changes in pattern using the existing antenna. Due to the changes in the Station’s pattern and for the reasons stated above, the Station will be unable to operate using these facilities on a permanent basis. Accordingly, Licensee is preparing to file an engineering STA for its existing interim site, which will allow it to modify the CP to specify new permanent facilities.

In its Public Notice adopting the post-Incentive Auction transition scheduling plan, the Media Bureau and the Incentive Auction Task Force declared that “[r]eassigned stations and band

¹ To the extent necessary, Licensees request a waiver of the deadline for filing a request to extend the CP. The Commission’s Rules specify that extension requests should be filed not less than ninety (90) days prior to the CP expiration date. 47 CFR § 73.3700(b)(5)(iv). The FCC may grant a waiver for good cause shown. The agency typically grants a waiver where the particular facts make strict compliance inconsistent with the public interest. *N.E. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 CFR § 1.3. Waiver of the deadline for extension of construction permit is in the public interest as it will allow the Commission to grant the requested Extension of a Construction Permit, which comports with the intent of the Commission to allow each repacked station a single extension of time where the delay is caused by circumstances beyond the Licensee’s control and where the extension will not delay or disrupt the overall transition. Therefore, good cause exists and this waiver should be granted.

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changing stations that are unable to complete construction of their post-auction channel facilities by their deadlines may seek a single extension of up to 180 days.”² Stations requesting an extension must demonstrate that “despite all reasonable efforts, the station is unable to complete construction of its new facility on time due to circumstances that were either unforeseeable or beyond its control.” The Commission may also waive any provision of its rules if it determines good cause has been shown.³

Here, extension of the CP is appropriate because Licensee’s inability to complete construction of the Station’s permanent facility was due to circumstances beyond its control. Upon learning that its original transition plan would not be possible, Licensee commenced efforts to redesign the Station’s post-transition facilities. These efforts were hampered by COVID-19 related delays, including a stay-at-home order was in place in Virginia for several months. Nevertheless, the Station timely vacated its pre-auction channel and transitioned to an interim facility. Accordingly, extension of the CP is consistent with the Commission’s policies and will facilitate an efficient transition.

² *Incentive Auction Task Force & Media Bureau Adopt A Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 32 FCC Rcd. 890 ¶ 40 (MB & IATF 2017); 47 CFR § 73.3700(b)(5).

³ See 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular). In addition, the Commission 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), cert. denied 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission’s rules is appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.