



Federal Communications Commission  
Washington, D.C. 20554

July 1, 2020

WHYY, Inc.  
Kyra G. McGrath  
150 N 6<sup>th</sup> Street  
Philadelphia, PA 19106  
[kmcgrath@whyy.org](mailto:kmcgrath@whyy.org)

Re: Request for Extension of  
Construction Permit  
WHYY-TV, Wilmington, DE  
Facility ID No.72338  
LMS File No. 0000116803

Dear Licensee,

On July 1, 2020, WHYY, Inc. (Licensee), the licensee of Station WHYY-TV, Wilmington, Delaware (the 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 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>

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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 repacked from channel 12 to channel 13 and was assigned 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 Station pledges to cease operation on its pre-auction channel by the phase completion date and operate an interim facility while it completes construction of its permanent post-auction facilities.<sup>6</sup>

Licensee states that it was recently informed by its antenna manufacturer that it will be late in manufacturing and delivering the Station's post-auction channel antenna. As a result, Licensee states that it is not possible to complete construction before the phase 10 completion date. In light of these facts, Licensee requests a 180-day extension.

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 due to equipment delays. We also find that grant of this extension request is not likely to negatively impact the overall transition schedule. The Station will cease operations on its pre-auction channel by the Phase 10 completion date and operate an interim facility on its post-auction channel. To the extent some viewers are unable to receive the Station's signal while it operates its interim 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>7</sup>

We remind Licensee that pursuant to the Spectrum Act, the Station is 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>8</sup> Additional expenses incurred, for instance, as a result of the grant of changes in the Station's transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The above facts considered, WHYY's application for extension of construction permit expiration date **IS GRANTED**. The construction permit (LMS File No. 0000113088) for WHYY-TV, Wilmington, Delaware, **IS EXTENDED 180 days to December 30, 2020**. Grant of this extension does not permit the Station to recommence operation on its pre-auction channel after ceasing operation or after July 3, 2020,

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<sup>5</sup> The Station operates on channel 13 on a shared basis with WMCN-TV, Princeton, New Jersey.

<sup>6</sup> See LMS File No. 0000116784.

<sup>7</sup> See *supra* note 4.

<sup>8</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.").

whichever occurs first. We also remind Licensee that any subsequent requests for extension of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>9</sup>

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): Melodie Virtue, Esq.

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<sup>9</sup> See 47 CFR § 73.3700(b)(5)(i) (referencing 47 § CFR 73.3598(b)).