



Federal Communications Commission
Washington, D.C. 20554

July 2, 2020

Estrella Television License LLC
1845 Empire Avenue
Burbank, CA 91504
chrisb@lbimedia.com
(via electronic mail)

Re: Request for Waiver of Transition
Deadline
KETD(TV), Castle Rock, CO
Facility ID No. 37101
LMS File No. 0000116715

Dear Licensee,

On June 29, 2020, Estrella Television License LLC (the Licensee), the licensee of KETD(TV), Castle Rock, Colorado (KETD or Station), filed a *Request for Waiver of Transition Deadline*¹ requesting to waive the July 13, 2020, post-incentive auction transition deadline² and to modify the Station's July 3, 2020, phase 10 phase completion date.³ We grant the Licensee's request for waiver and a brief 30-day extension of the Station's deadline to August 3, 2020, as conditioned herein.

Background. On June 18, 2020, the Commission issued the *WFOX-TV Order*⁴ extending the deadline for WFOX-TV, Jacksonville, Florida (WFOX-TV), to transition to its new channel as a result of the post-incentive auction repack from July 3 to September 8, 2020. Due to construction delays that were beyond the licensee's control, the *WFOX-TV Order* waived⁵ section 73.3700(b)(4)(iii) of the Commission's rules (Rules) which prohibits stations from operating on their pre-auction channel assignments after July 13, 2020.⁶ The Commission also waived section 73.616(d) of the Rules which

¹ Estrella Television License LLC, Request for Waiver for station KETD, Castle Rock, CO, LMS File No. 0000116715 (June 29, 2020) (KETD Request for Waiver).

² *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, 6575, para. 19 (2014) (*Incentive Auction R&O*), *aff'd*, *Nat'l Assoc. of Broadcasters et al. v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) (*NAB v. FCC*) (subsequent citation omitted).

³ See *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, GN Docket No. 12-268 et al., Public Notice, 32 FCC Rcd 2786 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*).

⁴ *Post-Incentive Auction Transition Request for Waiver of Cox Television Jacksonville LLC, Licensee of Station WFOX-TV, Jacksonville, Florida*, Order, FCC 20-82, paras. 12-14 (rel. Jun. 18, 2020) (*WFOX-TV Order*).

⁵ A waiver of our rules 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. See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 CFR § 1.3 (waiver for good cause shown). Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008).

⁶ *WFOX-TV Order* at paras. 12-14; 47 CFR § 73.3700(b)(4)(iii).

prohibits stations from causing more than 0.5 percent pairwise interference of a station's population served and allowed WFOX-TV to cause temporary increased pairwise interference of up to two percent, the transition period standard, during the extended period.⁷ The Commission also instructed the Media Bureau to consider future requests seeking such waivers consistent with the considerations included in the *WFOX-TV Order*.⁸

Waiver Request. The Station is currently licensed to operate on channel 45 and was reassigned to channel 15 in the *Closing and Channel Reassignment Public Notice*. The station was originally assigned to phase 9, but on April 23, 2020, was reassigned to phase 10, which has a phase completion date of July 3, 2020.⁹ The Licensee states that it "worked diligently to complete" the Station's transition but due to factors beyond its control, the project will not be completed on time.¹⁰ The Licensee states that transmitter has been installed and its new antenna is on site, but the Station recently learned that the tower does not have the necessary steps for its tower riggers to install the antenna. The Licensee states it is working to promptly resolve this issue and requests an extension of time to operate on its pre-auction channel until August 3, 2020.

The Licensee states that it has evaluated the alternatives included in the Transition Scheduling Plan for a station to vacate its pre-auction channel, and that those options are not available to KETD.¹¹ The Station's current channel 45 is in the duplex gap. The Licensee states that remaining on the channel until August 3rd will not impede the transition of any other station and will not cause any outgoing or incoming interference. The Licensee states that Bluewater Wireless and Parker B hold adjacent 600 MHz wireless licenses and that each has confirmed to Station that it consents to the requested extension.¹² In order to mitigate any viewer confusion caused by KETD's continued operation on its pre-auction channel, the Licensee commits to "use reasonable efforts to notify viewers of the delay, including through additional over the air notifications as needed."¹³

⁷ See *WFOX-TV Order* at paras. 12-14; 47 CFR § 73.616(d); *Incentive Auction Task Force and Media Bureau Adopt Post-Incentive Auction Transition Scheduling Plan*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 32 FCC Rcd 890, 897, para. 16 (IATF/MB 2017) (*Transition Scheduling Adoption Public Notice*).

⁸ See *WFOX-TV Order* at para. 16.

⁹ Estrella Television License LLC, Request for Waiver and Modification of Phase Assignment, KETD(TV), Castle Rock, CO, LMS File No. 0000112376 (granted Apr. 23, 2020); see also *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, 35 FCC Rcd 2720 (IATF & MB 2020).

¹⁰ KETD Request for Waiver at 4-5.

¹¹ *Id.* at 3. The Licensee states that constructing an interim facility or a temporary facility on a vacant channel would take more time than remains before the deadline and that it was unable to identify a temporary channel sharing partner with enough bandwidth. *Id.*

¹² *Id.* at 4.

¹³ *Id.* at 6. See 47 CFR § 73.3700(c)(3) (requiring repacked stations to air sixty (60) seconds per day of on-air crawls or public service announcements (PSAs) beginning 30-days prior to discontinuing operations on their pre-auction channel).

Discussion. The Licensee's request to waive the July 13, 2020, post-incentive auction transition deadline and to modify the Station's July 3, 2020, phase 10 phase completion date due to circumstances beyond the Licensee's control satisfies the requirement for a waiver pursuant to the considerations in the *WFOX-TV Order* and is in the public interest. We find that the Licensee has presented information demonstrating that during the course of the post-auction transition period it pursued and scheduled work sufficient to timely complete the Station's construction project. The Licensee has established that there are no facilities available to the Station, or that could reasonably be made available to the Station pursuant to the flexibility available under the Transition Scheduling Plan, that would permit it to vacate its pre-auction channel without going dark.¹⁴ We also view the request favorably because it will not delay or disrupt other transitioning stations. Staff has confirmed that modifying the Station's transition deadline will not cause any interference to other stations as its pre-auction channel is in the 600 MHz band. Although the Station is operating in the duplex gap in the 600 MHz band, it has confirmed that adjacent 600 MHz wireless license holders' consent to the requested extension. In order to minimize potential viewer confusion caused by the short delay in the Station's transition, the Licensee commits to, at minimum, continuing to provide consumer notifications, as required by section 73.3700(c)(3), to the Station's viewers until the Station ceases operation on its pre-auction channel.¹⁵

Accordingly, we **GRANT** the Licensee's *Request for Waiver of Transition Deadline* and modify the phase transition deadline for KETD(TV), Castle Rock, Colorado, **from July 3, 2020 to August 3, 2020**, subject to all the commitments made in its waiver request and compliance with all Rules applicable to transitioning stations.¹⁶ Testing on the Station's post-auction channel **may begin immediately**. The Station is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on**

¹⁴ See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 915-17, paras. 54-59 (providing alternative means for a station to meet its phase completion date including moving to interim facilities on a station's post-auction channel, operating at reduced power on a vacant channel, and temporary channel sharing); See also *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Broadcast Transition*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 32 FCC Rcd 858, 872-73, para. 46-47 (IATF & MB 2017).

¹⁵ 47 CFR § 73.3700(c)(3).

¹⁶ See generally 47 CFR § 73.3700 and *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 33 FCC Rcd 8240, 8244-45, para. 14 (IATF & MB 2018).

August 3, 2020.¹⁷ The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.¹⁸

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):
Ari Meltzer, Esq (AMeltzer@wiley.law)
(Attorney of Record)

¹⁷ Each transition phase has a testing period during which a station in that phase may begin testing equipment on its new channel and a phase completion date on which a station must cease operation on its pre-auction channel. The phase completion date is the date that will be listed in that station's construction permit as its construction deadline and is the date the station must cease operation on its pre-auction channel. *See Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2806, para. 64.

¹⁸ If a station must commence operations on its post-auction channel at variance from the parameters authorized in its construction permit, it must file for and be granted special temporary authority prior to commencing operations. *See* 47 CFR § 73.1635. A station that needs additional time to complete construction of its post-auction facility beyond its construction permit expiration date must file for a 180-day extension of its construction permit in accordance with Section 73.3700(b)(5). Stations needing additional time to construct after a 180-day extension is granted, will be subject to the Commission's tolling provisions. 47 CFR § 73.3700(b)(5)(i) *citing* 47 CFR § 73.3598(b). Grant of an extension of time to construct does not relieve a station of the requirement that it ceases operation on its pre-auction channel by its assigned phase completion date.