



Federal Communications Commission  
Washington, D.C. 20554

July 3, 2017

Tony Poole  
East Tennessee Public Communications Corp.  
1611 East Magnolia Avenue  
Knoxville, TN 37917

Aaron P. Shainis  
1850 M Street, NW  
Suite 240  
Washington, DC 20036

Re: Request for Waiver of Initial  
Construction Permit Filing Deadline  
WETP-TV, Sneedville, TN  
Facility ID No. 18252  
LMS File No. 0000024783

Dear Licensee,

On June 5, 2017, East Tennessee Public Communications Corporation (East Tennessee) submitted the above captioned request for waiver of the July 12, 2017, 90-day post-incentive auction construction permit and cost estimate filing deadline for full power television station WETP-TV, Sneedville, Tennessee (WETP-TV or Station), asserting that the station is “unable to construct” the specified facilities assigned to it in the *Closing and Channel Reassignment Public Notice* because the specified post-transition replication baseline facilities were inadvertently based on the unique technical parameters of another station.<sup>1</sup> East Tennessee also seeks permission to file an application for a construction permit during the first priority alternate channel/expanded facilities filing window (first priority window). For the reasons below, we grant the request for waiver and East Tennessee is permitted to file an application for construction permit during the first priority window.

*Background.* The Commission instructed that a reassigned station is eligible to receive a waiver of the July 12, 2017, filing deadline for its post-incentive auction construction permit if the station demonstrates that due to extraordinary technical or legal issues beyond the station’s control, it is “unable to construct” the post-auction facilities specified to it in the *Closing and Channel Reassignment Public Notice* or within the permissible contour coverage variance.<sup>2</sup> If the Media Bureau grants a station such a

---

<sup>1</sup> 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*, Public Notice, 32 FCC Rcd 2786 (MB & WTB 2017) (*Closing and Channel Reassignment Public Notice*). See LMS File No. 0000024783, Request for Waiver of the Construction Permit Application 3 Month Filing Deadline Pursuant to 47 CFR 73.3700(b)(1)(i) (Waiver Request).

<sup>2</sup> See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6794, para. 554 (2014), subsequent history omitted, (*Incentive Auction R&O*); 47 CFR § 73.3700(b)(1)(iv)(A). The Commission has stated that a station may be found to be “unable to construct” the facility specified in the *Closing and Channel Reassignment Public Notice*, for example, if a station is unable to construct a compliant facility on its current tower and a replacement tower cannot be constructed from which the station would be able to meet the specified technical parameters. *Incentive Auction R&O*, 29 FCC Rcd at 6791 n.1551.

waiver, the station is permitted to file a request for a construction permit in the first priority window, to seek an alternate channel and/or expanded facilities.<sup>3</sup> A station whose request to file its construction permit application in the first priority window is granted because it is “unable to construct” will also be granted additional time to submit its reimbursement cost estimate form (FCC Form 2100, Schedule 399) detailing its estimated relocation costs.<sup>4</sup> The station may, however, choose to file its cost estimate form by the July 12, 2017 filing deadline so that the Commission can use that information as the basis for the initial allocation for the station’s construction project. The Commission will assign a proxy estimate for stations filing in the first priority window that do not submit cost estimate information on FCC Form 2100, Schedule 399 by July 12, 2017.<sup>5</sup>

WEPT-TV currently operates on channel 41 and was reassigned to channel 24 in the *Closing and Channel Reassignment Public Notice*. East Tennessee provides information demonstrating that at the close of the incentive auction the post-transition replication baseline facilities specified in the *Closing and Channel Reassignment Public Notice* for the station were based on technical parameters derived from granted license FCC File No.: BLEDT-20050916AAX<sup>6</sup> and the underlying construction permit FCC File No.: BMPEDT-20041025ADA.<sup>7</sup> The construction permit specified an omni-directional antenna having the following make and model: Dielectric TFU-30GTH 04.<sup>8</sup> The licensee later modified the antenna specified in the construction permit to a similar omni-directional antenna having the following make and model: Dielectric TFU-30GTH 06.<sup>9</sup> At some point, the licensed antenna became associated with Antenna ID No.: 41583, which is a unique pattern associated only with station WJXT(DT) in Jacksonville, Florida, not WEPT-TV.<sup>10</sup> Antenna ID No.: 41583 is a directional antenna whereas WEPT-TV is licensed as a non-directional facility.<sup>11</sup> East Tennessee shows that requiring the Station be built as specified in the *Closing and Channel Reassignment Public Notice* would result in an inaccurate replication of the Station’s pre-auction coverage area.<sup>12</sup>

*Discussion.* A waiver 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

---

<sup>3</sup> See 47 CFR § 73.3700(b)(1)(iv)(A). Applications filed during the first priority window will be treated as filed on the last day of that window for purposes of determining mutual exclusivity and will be given a 90-day period to resolve the MX by proposing a technical solution or settlement in an amendment to their pending applications. See *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd 858, 870, para. 36 (MB 2017) (*Broadcast Transition Procedures Public Notice*).

<sup>4</sup> See *id.* at 884 n.180 (citing *Incentive Auction R&O*, 29 FCC Rcd at 6823 n.1754).

<sup>5</sup> *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2815, para. 86 (“The Commission will assign a proxy estimate using, for instance, the cost estimates of similarly situated stations, in order to provide those stations with an initial allocation.”).

<sup>6</sup> Waiver Request at 1.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* See FCC File No. BLEDT-20050916AAX.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 3.

equity, or produce a more effective implementation of overall policy on an individual basis.<sup>13</sup> In this case, we find that it would not be consistent with the public interest to require East Tennessee to construct a facility using an assigned antenna pattern that is not actually associated with the Station. A staff analysis of the included technical exhibit confirms East Tennessee's assertion that the post-transition replication baseline facilities specified in the *Closing and Channel Reassignment Public Notice* were based on incorrect technical parameters.<sup>14</sup> Based on the foregoing, **we find that East Tennessee has demonstrated that it is unable to construct its post-auction facility as assigned to it in the *Closing and Channel Reassignment Public Notice* and conclude that it is in the public interest to allow East Tennessee to apply for an alternate facility for WETP-TV during the first priority window.**

We remind East Tennessee that, when filing in the first priority window, it must protect the construction permit facilities of reassigned stations and band changing stations filed in the initial 90-day period if those stations' applications have been granted or remain pending. Otherwise, applicants in the first priority window must protect the facilities specified in the *Closing and Channel Reassignment Public Notice*.<sup>15</sup> In addition, all applications filed in the first priority window must protect the facilities specified in applications filed before the April 2013 freeze with "cut-off" protection.<sup>16</sup> The facilities proposed in applications filed during the first priority window will be entitled to interference protection from subsequently-filed applications and amendments thereto.<sup>17</sup> We also remind East Tennessee that our action does not change the transition schedule, including the station's phase assignment, testing period, or phase completion date.<sup>18</sup>

The above facts considered, East Tennessee's request for waiver **IS GRANTED** and the July 12, 2017 deadline for submission of both its application for post-incentive auction construction permit (FCC Form 2100, Schedule A) and reimbursement cost estimate form (FCC Form 2100, Schedule 399) **IS WAIVED**. Furthermore, East Tennessee is instructed to submit an application for construction permit for WETP-TV in the first priority window, which will be announced by Public Notice and commence shortly

---

<sup>13</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); 47 CFR § 1.3 (waiver for good cause shown).

<sup>14</sup> See Waiver Request.

<sup>15</sup> See *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 867, para. 30.

<sup>16</sup> See *Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Station Modification Applications, Effective Immediately, and Reminds Stations of Spectrum Act Preservation Mandate*, Public Notice, 28 FCC Rcd 4364 (MB 2013).

<sup>17</sup> See *Incentive Auction R&O*, 29 FCC Rcd at 6794 n.1573 (citing *Commission Lifts Freeze on Filing of Maximization Applications and Petitions for Digital Channel Substitutions, Effective Immediately*, Public Notice, 23 FCC Rcd 8330 (2008)).

<sup>18</sup> See *Incentive Auction R&O*, 29 FCC Rcd at 6791 n.1551. To make a change to a station's phase assignment and corresponding transition deadlines, a licensee must file a Request for Modification and Waiver of its phase assignment by filing a Legal STA in LMS. See *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 887, Appx. A (providing instructions for filing a Legal STA in LMS). The Bureau will evaluate such requests on a case-by-case basis in order to facilitate a timely and orderly transition and assess the impact of such requests on the transition schedule, including the impact on other broadcasters as well as viewers. See *Incentive Auction Task Force and Media Bureau Adopt Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 32 FCC Rcd 890, 912-14, paras. 49-52 (MB 2017); see also *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 881-82, para. 73. No fee is required to file a Legal STA that contains a request for modification and waiver of a station's phase assignment.

after conclusion of the initial 90-day filing period.<sup>19</sup> East Tennessee is also instructed to submit its reimbursement cost estimate form for WETP-TV within 30 days of receiving a construction permit for an alternate channel or expanded facility.

Sincerely,



Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

---

<sup>19</sup> See *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 867, para. 30 and n.49 (citing *Incentive Auction R&O*, 29 FCC Rcd at 6795, para. 556 (delegating authority to the Bureau to issue public notices announcing filing opportunities for alternate channels and expanded facilities and stating that the staff will open the first priority window after it substantially completes its processing of initial minor change construction permits)).