



Federal Communications Commission
Washington, D.C. 20554

August 22, 2018

Fort Wayne Public Television, Inc.
2501 East Coliseum Boulevard
Fort Wayne, IN 46805

Re: Request for Extension of
Construction Permit
WFWA(TV), Fort Wayne, IN
Facility ID No. 22108
LMS File No. 0000058601

Dear Licensee,

On July 27, 2018, Fort Wayne Public Television, Inc. (Fort Wayne PTV), the licensee of Station WFWA(TV), Fort Wayne, Indiana (WFWA or Station), filed the above captioned application seeking a 180-day extension of its construction permit expiration date and waiver of the 90-day construction permit extension filing deadline.¹ For the reasons below, we grant Fort Wayne PTV's requests and extent its construction permit expiration date to February 28, 2019.

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.² 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.³ 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.⁴ 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.⁵

¹ See File No. 0000058601 (amended Aug. 13, 2018) WFWA CP Extension Request (CP Extension Request).

² See 47 CFR § 73.3700(b)(5)(i). All subsequent requests for additional time to construct are subject to the Commission's tolling provisions, 47 CFR § 73.3598(b).

³ 47 CFR § 73.3700(b)(5)(iv).

⁴ 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*, 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).

⁵ 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).

On May 25, 2018, the Video Division granted Fort Wayne PTV's request to modify WFWA's post-auction transition phase deadline to permit the Station to transition to its post-auction channel prior to the start of Phase 1. The Station was assigned a new testing period start date and phase completion date of September 1, 2018.⁶ Today, the Division has also granted Fort Wayne PTV a brief two-day extension of its phase completion date to September 3, 2018.⁷ In its pending application for an extension of its construction permit, Fort Wayne PV states that while the tower crew has completed the necessary tower reinforcement work, the tower crew that will be used to perform the replacement of WFWA's top-mounted antenna is not able to do so until after WFWA's current construction permit expiration date.⁸ Fort Wayne PTV has made arrangements to commence operations at variance to its authorized parameters pursuant to special temporary authority.⁹ Fort Wayne TV also requests waiver of the 90-day extension filing deadline stating that it was unable to file its request by June 4, 2018 (the 90-day filing deadline), since it was unaware at that time that it would require an extension and be unable to complete construction of its post-auction facility by the newly assigned construction permit deadline.¹⁰

Discussion. Upon review of the facts and circumstances presented, we find Fort Wayne PTV's request to extend the construction permit deadline to construct WFWA's post-auction facility meets the requirements for a 180-day extension. WFWA has demonstrated that an extension is needed to complete construction of its post-auction facility because of the availability of its tower crew. We find based on the facts and circumstances grant of the request is not likely to negatively impact the overall transition schedule or viewers, and will not cause interference to other stations. Fort Wayne PTV has already scheduled the tower crew to conduct installation of its post-auction channel antenna and will still commence operation on its post-auction channel and cease operation on its pre-auction channel by 11:59 pm (local time) on September 3, 2018. To the extent some viewers are unable to receive WFWA's signal while it operates from its temporary facility, we believe that Fort Wayne PTV has every incentive to ensure viewers are fully informed about the station's transition plan. Finally, we find that waiver of the 90-day CP extension filing deadline is in the public interest and consistent with the Commission's general waiver standard since the Station was unaware that it would not be able to complete construction of its post-auction facility until after the 90-day CP extension filing deadline.¹¹

The above facts considered, Fort Wayne PTV's request for waiver of the construction permit extension deadline and application for extension of construction permit expiration date **ARE GRANTED**. The construction permit for WFWA(TV), Fort Wayne, Indiana, **IS EXTENDED** for 180 days **to February 28, 2019**. Grant of this extension does not alter the deadline by which the Station must discontinue operations on its pre-auction channel – 11:59 pm (local time) on September 3, 2018. We also

⁶ Letter from Barbara A. Kreisman to Fort Wayne Public Television, Inc. (May 25, 2018) available at LMS File No. 0000053894.

⁷ Letter from Barbara A. Kreisman to Fort Wayne Public Television, Inc. (Aug. 22, 2018) available at LMS File No. 0000058843. For purposes of the extension

⁸ CP Extension Request at 1.

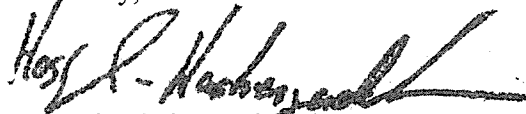
⁹ Request for Special Temporary Authority, LMS file No. 0000058312 (granted Jul. 31, 2018).

¹⁰ CP Extension Request at Amendment- Waiver Request for Timing of Extension Filing.

¹¹ A waiver of the 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) 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).

remind Fort Wayne PTV that any subsequent requests for extension of its construction permit deadline will be subject to the Commission's tolling provisions.¹²

Sincerely,

A handwritten signature in dark ink, appearing to read "Hossein Hashemzadeh", with a long, sweeping horizontal stroke at the end.

Hossein Hashemzadeh
Deputy Chief, Video Division
Media Bureau

Cc: (via electronic mail)
Margaret M. Miller, Esq.

¹² See 47 § CFR 73.3598(b).