

Extension of Construction Permit Deadline

Guenter Marksteiner (“Licensee”), licensee of WHDT, Stuart, FL (Fac. ID No. 83929) respectfully requests an extension of its construction permit expiration deadline<sup>1</sup> by which it must complete construction of its post-auction channel facilities. WHDT has been assigned to Phase 2, which has a completion deadline of April 12, 2019. Due to the unusual technical challenges involving the facility’s antenna and inability to access the site and equipment necessary for the Licensee to complete its transition, Licensee seeks an extension pursuant to 47 C.F.R. 73.3700(b)(5).<sup>2</sup>

WHDT is continuing to prepare to transition to its post-auction facilities. However, as a result of the diplexed nature of its current facilities and the other diplexed station’s ongoing transition, WHDT anticipates that it may not be able to timely complete its transition.

“A Construction Permit Extension application must include an exhibit demonstrating 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 following circumstances might justify grant of an extension of a station’s construction deadline: (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.”<sup>3</sup>

WFLX, West Palm Beach, FL (Fac. ID No. 39736) is temporarily transmitting from facilities diplexed with WHDT that were formerly used by WXEL-TV (Fac. ID No. 61084) when it was diplexed with WHDT.<sup>4</sup> The FCC has granted WFLX special temporary authority to operate on these facilities through April 12, 2019.<sup>5</sup> Because WHDT and WFLX are diplexed, it is not possible to remove the current antenna and install WHDT’s permanent facilities without disrupting WFLX’s service until WFLX has completed its own transition. At that point, Licensee intends to swiftly complete its transition. However, it appears that WFLX’s transition will force this process to carry on past WHDT’s current construction permit expiration deadline. WHDT will need to go dark thereafter until its facilities are completed.

These circumstances are beyond the Licensee’s control despite its efforts to timely complete its transition. Moreover, the use of the former WXEL facilities to transition WFLX to its post-

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<sup>1</sup> See FCC File No. 0000034671.

<sup>2</sup> See *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines* Public Notice, DA 18-884 (rel. August 27, 2018) (“August 2018 Repack PN”) (“Reassigned stations and band 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.”)

<sup>3</sup> August 2018 Repack PN at ¶ 12.

<sup>4</sup> See FCC File Nos. 0000054446, 0000063666.

<sup>5</sup> *Id.*

auction channel has benefited the transition of the market as a whole, the delay in WHDT's transition notwithstanding.

#### Unavailability of Equipment

Licensee is closely monitoring WFLX's transition to the best of its ability. Direct communications between WHDT and WFLX were disjointed owing to the recent merger of Gray Television Inc. and Raycom Media Inc., however, until WFLX's transition away from the diplexed facilities is complete, Licensee's own transition process is hampered by its lack of access to the facilities for construction and preparations. Though Licensee has arranged for all necessary plans and equipment for its eventual transition, subject to timely disbursement of repack funds, a significant portion of the equipment necessary for the transition is effectively unavailable to the Licensee.

#### Unusual Technical Challenges

As stated above, the diplexed nature of the two stations on the same facilities presents unique challenges for the Licensee that are beyond its control. Regardless of Licensee's proximity, preparations, and engineering plan to transition to its post-auction facilities, the unique nature of the current facilities and WFLX's apparent need to occupy them through the end of the Phase 2 transition period present unusual technical challenges that require an extension of the Licensee's construction permit.

Licensee regrets that the timely filing date for such an extension request has already passed, but submits that granting of this request will ultimately lead to a more efficient transition that will serve the public interest. For the foregoing reasons, Licensee respectfully requests the Commission grant this application.