



Federal Communications Commission
Washington, D.C. 20554

June 20, 2018

Gray Television Licensee, LLC
KKTV
520 E. Colorado
Colorado Springs, CO 80903

Re: Request for Extension of
Construction Permit
KKTV(TV), Colorado Springs, CO
Facility ID No. 35037
LMS File No. 0000074676

Dear Licensee,

On June 12, 2019, Gray Television Licensee, LLC (Gray), the licensee of Station KKTV(TV), Colorado Springs, Colorado, (KKTV or Station), filed the above captioned application seeking a 120-day extension of the Station's construction permit expiration date. For the reasons below, we grant Gray's request and extend KKTVT's construction permit expiration date to October 19, 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.¹ 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.² 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.³ 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.⁴

KKTV was assigned to transition Phase 3, which has a testing period start date of April 13, 2019,

¹ 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).

² 47 CFR § 73.3700(b)(5)(iv).

³ 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).

⁴ 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).

and a phase completion date of June 21, 2019. All repacked stations for Phase 3 were issued a construction permit with an expiration date of June 21, 2019. KKTV has ceased operation on its pre-auction channel and is now operating on its post-auction channel from a licensed auxiliary facility.⁵ According to the Gray, manufacture of its primary antenna has been delayed and it is now not estimated to ship until July 28, 2019. Once the antenna arrives on site, it will take two to four weeks for installation. In light of these facts, Gray states that it will be unable to complete its permanent post-auction facility by June 21, 2019 and requests a 120-day extension of its construction permit until October 19, 2019. Gray also requests waiver of the 90-day construction permit extension filing deadline because it was not aware until after the filing deadline for construction permit extensions (March 25, 2019) that it would require an extension of its construction permit.

Discussion. Upon review of the facts and circumstances presented, we find Gray's requests to extend the construction permit deadlines to construct the Stations' post-auction facilities meets the requirements for a construction permit extension. Gray has demonstrated that an extension is needed because of delays in manufacture and delivery of its post-auction antenna beyond its control. We also find that grant of the extension requests is not likely to negatively impact the overall transition schedule. The Station has ceased operations on their pre-auction channel and are operating from a licensed auxiliary facility on its post-auction channel. To the extent some viewers are unable to receive the Stations' signals while operating on their interim facilities, we believe that Gray has every incentive to ensure viewers are fully informed about the Stations' transition plans. 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.⁶

We remind Gray 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."⁷ Additional expenses incurred, such as expenses resulting from changes in a 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, Gray's application for extension of construction permit expiration date **IS GRANTED**. The construction permit (LMS File No. 0000067487) for KKTV, Colorado Springs, CO, **IS EXTENDED** for 120 days to **October 19, 2019**. Grant of this extension does not permit KKTV to recommence operation on its pre-auction channel. We also remind Gray that any subsequent requests

⁵ See LMS File No. 0000074678.

⁶ See *supra* note 4.

⁷ Media Bureau Finalizes Reimbursement Form for Submission to OMB and Adopts Catalog of Expenses, GN Docket No. 12-268, Public Notice, 30 FCC Rcd 11701, 11701-02 (MB 2015). 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.").

for extension of its construction permit deadline will be subject to the Commission's tolling provisions.⁸

Sincerely,

A handwritten signature in dark ink, appearing to read 'Barbara A. Kreisman', with a long horizontal flourish extending to the right.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Christine Burrow, Esq.

⁸ See 47 CFR § 73.3700(b)(5)(i) (referencing 47 § CFR 73.3598(b)).