



Federal Communications Commission
Washington, D.C. 20554

June 20, 2019

Univision Bakersfield, LLC
Christopher Wood
5999 Center Drive
Los Angeles, CA 90045

Re: Request for Extension of
Construction Permit
KABE-CD, Bakersfield, CA
Facility ID No. 18747
LMS File No. 0000072971

Dear Licensee,

On May 20, 2019, Univision Bakersfield, LLC (Univision), the licensee of Station KABCE-CD, Bakersfield, California (KABE or Station), filed the above captioned application seeking an extension of the Station's construction permit expiration date and waiver of the 90-day construction permit extension filing deadline. For the reasons below, we grant Univision's requests and extend KABE's construction permit expiration date to September 6, 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 For Phase 3 stations, such application was due by March 25, 2019. 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

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).

KABE-CD was repacked from channel 39 to channel 35 and assigned to transition Phase 3, which had a phase completion date of June 21, 2019. Univision pledges to cease operation on its pre-auction channel by the June 21, 2019 deadline and to engage in temporary joint use of KUVI-DT's pre-auction channel while Univision completes construction of both Station's permanent post-auction facilities.⁵ All repacked stations for Phase 3 were issued a construction permit with an expiration date of June 21, 2019.

Univision explains that KABE-CD, along with its commonly owned and co-located station KUVI-DT, Bakersfield, California, have been diligent in attempting to construct the permanent replacement tower that is necessary to operate on their post-auction channels. After completing a lengthy local permitting process, Univision states that the licensees promptly ordered materials and entered into a binding contract for construction of the new tower. Despite repeated assurances from Univision's suppliers that construction would be completed by the June 21, 2019 phase transition deadline, Univision reports that after construction commenced in March of this year, the contractor encountered unexpected site conditions and began experiencing delays—culminating in a delay in the scheduled, April 22 date for pouring of the tower foundation. In light of these facts, Univision requests an extension of its construction permit to September 6, 2019, for its post-auction channel facilities. Univision also requests a waiver of the 90-day construction permit extension filing deadline because it did not know for certain it would require an extension at the time the deadline passed.

Discussion. Upon review of the facts and circumstances presented, we find Univision's request to extend the construction permit deadline to construct KABE-CD's post-auction facility meets the requirements for a construction permit extension. Univision has demonstrated that an extension is needed because of unavoidable construction delays outside of its control. We also find that grant of this extension request is not likely to negatively impact the overall transition schedule. KABE will cease operations on its pre-auction channel by the June 21, 2019 phase transition deadline and will operate using KUVI-DT's pre-auction channel. To the extent some viewers are unable to receive KABE-CD's signal while it operates from KUVI-DT's channel, we believe that Univision has every incentive to ensure viewers are fully informed about the Station's transition plan. 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 because Univision was unaware at the time an extension request was due that an extension of KABE-CD's construction permit would be needed.⁶

We remind Univision 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." Additional expenses incurred, for instance, as a result of the grant of changes in the 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, Univision Bakersfield, LLC's application for extension of construction permit expiration date **IS GRANTED**. The construction permit (LMS File No. 0000063353) for KABE-CD, Bakersfield, California, **IS EXTENDED to September 6, 2019**. Grant of this extension does not permit KABE to recommence operation on its pre-auction channel once it

⁵ See LMS File No. 0000073151. KUVI-DT was granted a phase change from Phase 3 to Phase 5 to accommodate this temporary joint use of KUVI-DT's pre-auction channel. See LMS File No. 0000072975.

⁶ See *supra* note 4.

commence operation on KUVI-DT's channel. We also remind Univision that any subsequent requests for extension of its construction permit deadline will be subject to the Commission's tolling provisions.⁷

Sincerely,

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

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Matthew DelNero, Esq.

⁷ See 47 CFR § 73.3700(b)(5)(i) (referencing 47 § CFR 73.3598(b)).