



Federal Communications Commission
Washington, D.C. 20554

July 24, 2019

NBC Telemundo License, LLC
300 New Jersey Avenue, N.W.
Suite 700
Washington, DC 20001

Re: Request for Extension of
Construction Permit
WNEU, Merrimack, NH
Facility ID No. 51864
LMS File No. 0000074853

Dear Licensee,

On June 20, 2019, NBC Telemundo License, LLC (NBC), the licensee of Station WNEU, Merrimack, New Hampshire (WNEU 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 NBC's requests and extend WNEU's construction permit expiration date 180 days to January 29, 2020.

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 4 stations, such application was due by May 6, 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).

WNEU was repacked from channel 34 to channel 29 and assigned to transition Phase 4, which has a phase completion date of August 2, 2019. The Station pledges to cease operation on its pre-auction channel by the August 2, 2019 deadline and operate an interim facility on its post-auction channel while it completes construction of its permanent post-auction facilities.⁵ All repacked stations for Phase 4 were issued a construction permit with an expiration date of August 2, 2019.

NBC explains that the Station's tower owner needs to complete additional work on top of the tower in order to complete construction of the Station's full, authorized post-auction facilities. That work will not be completed by the tower owner until the end of 2019. In the interim, the Station will cease operations on its pre-auction channel by the August 2nd deadline and operate with interim facilities on its post-auction channel at a lower height on the tower. NBC requests a 180-day extension to complete its full, authorized post-auction channel facilities. NBC also requests a waiver of the 90-day construction permit extension filing deadline because it did not realize it would need an extension until after the filing deadline.

Discussion. Upon review of the facts and circumstances presented, we find NBC's request to extend the construction permit deadline to construct WNEU's post-auction facility meets the requirements for a construction permit extension. NBC has demonstrated that an extension is needed because of construction delays outside of its control related to work being done by the tower owner on the top of the tower. We also find that grant of this extension request is not likely to negatively impact the overall transition schedule. WNEU will cease operations on its pre-auction channel and will operate an interim facility on its post-auction channel. To the extent some viewers are unable to receive WNEU's signal while it operates its interim facility, we believe that NBC 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 NBC didn't realize it needed an extension at the time of the filing deadline.⁶

We remind NBC 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, 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, NBC Telemundo License, Inc.'s application for extension of construction permit expiration date **IS GRANTED**. The construction permit (LMS File No. 0000034700) for WNEU, Merrimack, New Hampshire **IS EXTENDED 180 days to January 29, 2020**. Grant of this extension does not permit WNEU to recommence operation on its pre-auction channel after ceasing operation on its pre-auction channel or August 2, 2019, whichever occurs first. We also remind

⁵ See LMS File No. 0000074854.

⁶ See *supra* note 4.

⁷ See *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.").

NBC that any subsequent requests for extension of its construction permit deadline will be subject to the Commission's tolling provisions.⁸

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): Margaret Tobey, Esq.

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