



Federal Communications Commission
Washington, D.C. 20554

July 24, 2019

Northeastern Educational Television of Ohio, Inc.
1750 Campus Center Drive
P.O. Box 5191
Kent, OH 44240

Re: Request for Extension of
Construction Permit
WEAO, Akron, OH
Facility ID No. 49421
LMS File No. 0000073154

Dear Licensee,

On May 23, 2019, Northeastern Educational Television of Ohio, Inc. (NETO), the licensee of Station WEAO, Akron, Ohio (WEAO 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 NETO's requests and extend WEAO'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).

WEAO was repacked from channel 50 to channel 24 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.

NETO explains that the Station's transition plan calls for replacement of its main antenna and transmitter as well as replacing almost 1000 feet of rigid transmission line. Despite its best efforts, NETO reports that it has not been able to confirm an installation date with its tower crew. As a result, NETO will cease operation on its pre-auction channel by its phase completion date and operate an interim side-mounted antenna facility while it completes construction of its permanent post-auction channel facility. NETO requests a 180-day extension to complete its full, authorized post-auction channel facilities. NETO 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 construction permit extension filing deadline.

Discussion. Upon review of the facts and circumstances presented, we find NETO's request to extend the construction permit deadline to construct WEAO's post-auction facility meets the requirements for a construction permit extension. NETO has demonstrated that an extension is needed because of circumstances beyond its control, specifically delays in construction due to the unavailability of its tower crew. We also find that grant of this extension request is not likely to negatively impact the overall transition schedule. WEAO 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 WEAO's signal while it operates its interim facility, we believe that NETO 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 NETO did not realize it needed an extension at the time of the construction permit extension filing deadline.⁶

We remind NETO 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, Northeastern Educational Television of Ohio, Inc.'s application for extension of construction permit expiration date **IS GRANTED**. The construction permit (LMS File No. 0000034293) for WEAO, Akron, Ohio **IS EXTENDED 180 days to January 29, 2020**. Grant of this extension does not permit WEAO 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 NETO

⁵ See LMS File No. 0000075969.

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.").

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): Derek Teslik, Esq.

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