



Federal Communications Commission  
Washington, D.C. 20554

July 25, 2019

WNET  
825 Eighth Avenue  
Attn: General Counsel  
New York 10019

Re: Request for Extension of  
Construction Permit  
WLIW, Garden City, NY  
Facility ID No. 38336  
LMS File No. 0000078238

Dear Licensee,

On July 18, 2019, WNET, the licensee of Station WLIW, Garden City, New York (WLIW 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 WNET's requests and extend WLIW'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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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<sup>1</sup> 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).

<sup>2</sup> 47 CFR § 73.3700(b)(5)(iv).

<sup>3</sup> 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).

<sup>4</sup> 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).

WLIW was repacked from channel 21 to channel 32 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.<sup>5</sup> All repacked stations for Phase 4 were issued a construction permit with an expiration date of August 2, 2019.

WNET explains that WLIW's transition plan calls for, among other things the use of two shared combiners. WNET reports that WLIW recently was informed that there will be a delay in the retuning of the second combiner until after the August 2, 2019 Phase 4 transition deadline. WLIW will need to operate at reduced power until the retuning is complete. WNET requests a 180-day extension to complete its full, authorized post-auction channel facilities. WNET 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 WNET's request to extend the construction permit deadline to construct WLIW's post-auction facility meets the requirements for a construction permit extension. WNET has demonstrated that an extension is needed because of construction delays outside of its control due to the need to retune a combiner. We also find that grant of this extension request is not likely to negatively impact the overall transition schedule. WLIW 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 WNET's signal while it operates its interim facility, we believe that WNET 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 WNET didn't realize it needed an extension at the time of the filing deadline.<sup>6</sup>

We remind WNET 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."<sup>7</sup> 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, WNET's application for extension of construction permit expiration date **IS GRANTED**. The construction permit (LMS File No. 0000074687) for WLIW, Garden City, New York **IS EXTENDED 180 days to January 29, 2020**. Grant of this extension does not permit WLIW to recommence operation on its pre-auction channel after ceasing operation on its pre-auction channel or

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<sup>5</sup> See LMS File No. 0000078240.

<sup>6</sup> See *supra* note 4.

<sup>7</sup> 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.").

August 2, 2019, whichever occurs first. We also remind WNET that any subsequent requests for extension of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>8</sup>

Sincerely,

A handwritten signature in black ink, appearing to read "Barbara A. Kreisman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): Sally A. Buckman, Esq.

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<sup>8</sup> See 47 CFR § 73.3700(b)(5)(i) (referencing 47 § CFR 73.3598(b)).