



Federal Communications Commission
Washington, D.C. 20554

August 16, 2019

Nexstar Broadcasting, Inc.
Elizabeth Ryder
545 E. John Carpenter Freeway
Suite 700
Irving, TX 75062

Re: Requests for Extension of
Construction Permit
WDVM-TV, Hagerstown, MD
WTEN, Albany, NY
WJET-TV, Erie, PA
WFXQ-CD, Springfield, MA
WIVT, Binghamton, NY
Facility ID Nos. 2650, 11260, 25045,
65749, and 74442
LMS File Nos. 0000079221,
0000079577, 0000079831, 0000079833
and 0000079834

Dear Licensee,

On August 1, 2019, Nexstar Broadcasting, Inc. (Nexstar), the licensee of Stations WDVM-TV, Hagerstown, Maryland (WDVM); WTEN, Albany, New York (WTEN); WJET-TV, Erie, Pennsylvania (WJET); WFXQ-CD, Springfield, Massachusetts (WFXQ-CD) and WIVT, Binghamton, New York (WIVT) (collectively Stations), filed the above captioned applications seeking extensions of the Stations' construction permit expiration dates and waivers of the 90-day construction permit extension filing deadline. For the reasons below, we grant Nexstar's requests and extend the Stations' construction permit expiration dates 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

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

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

WDVM was repacked from channel 26 to channel 23; WTEN from channel 26 to 24; WJET from channel 24 to 28; WFXQ-CD from channel 28 to channel 21; and WIVT from channel 34 to channel 27. All of the Stations were assigned to transition Phase 4, which had a phase completion date of August 2, 2019. The Stations ceased operation on their pre-auction channels by the August 2, 2019 deadline and are operating interim facilities on their post-auction channel while they complete construction of their permanent post-auction facilities—with the exception of WFXQ which went silent.⁵ All repacked stations for Phase 4 were issued a construction permit with an expiration date of August 2, 2019.

Nexstar explains that the Stations had intended to transition to their post-auction channels during Phase 4 using their permanent post-auction facilities, however the Stations' post-transition channel antennas have not yet been installed due to weather and rigging delays. Nexstar ceased operations on the Stations' pre-auction channels by the phase completion date deadline and is utilizing interim facilities, with the exception of WFXQ which is silent, while it completes the Stations' final post-auction channel facilities. Therefore, due to unanticipated construction delays, Nexstar seeks 180-day extensions. Nexstar also requests waivers of the 90-day construction permit extension filing deadline arguing that it did not realize it would need extensions until after the filing deadline.

Discussion. Upon review of the facts and circumstances presented, we find Nexstar's requests to extend the construction permit deadlines to construct the Stations' post-auction facilities meet the requirements for a construction permit extension. Nexstar has demonstrated that an extension is needed because of weather and construction related delays. We also find that grant of this extension request is not likely to negatively impact the overall transition schedule. The Stations have already ceased operations on their pre-auction channels and are operating interim facilities on their post-auction channels, with the exception of WFXQ which is silent, but its programming is available on WWLP. To the extent some viewers are unable to receive the Stations' signals while they operate an interim facility, we believe that Nexstar 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 Nexstar 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

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*, GN Docket No. 12-268 et. al., 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).

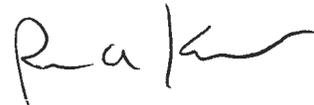
⁵ See LMS File Nos. 0000076921, 0000079222, 0000079778, and 0000079832. Although WFXQ, an NBC/CW affiliate, has gone silent (LMS File No. 0000079139), its NBC/CW programming will remain available to viewers in Springfield via co-owned full power station WWLP(TV), Springfield, Massachusetts.

⁶ See *supra* note 4.

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 Stations’ transition plans that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The above facts considered, Nexstar Broadcasting, Inc.’s applications for extension of construction permit expiration date **ARE GRANTED**. The construction permits (LMS File Nos. 0000027611, 0000028447, 0000029987, 0000034764, and 0000034757) for WDVM-TV, Hagerstown, Maryland; WTEN, Albany, New York; WJET-TV, Erie, Pennsylvania; WFXQ-CD, Springfield, Massachusetts; and WIVT, Binghamton, New York **ARE EXTENDED 180 days to January 29, 2020**. Grant of this extension does not permit the Stations to recommence operation on their pre-auction channels. We also remind Nexstar that any subsequent requests for extension of its construction permit deadline will be subject to the Commission’s tolling provisions.⁸

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc (via electronic mail)
Christine Reilly, Esq.

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.”).

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