



Federal Communications Commission  
Washington, D.C. 20554

September 10, 2019

Virgin Islands Public Broadcasting System  
P.O. Box 7879  
Charlotte Amalie, St. Thomas, VI 00801

Re: Request for Extension of  
Construction Permit  
WTJX-TV, Charlotte Amalie, VI  
Facility ID No. 70287  
LMS File No. 0000072190

Dear Licensee,

On April 26, 2019, the Virgin Islands Public Broadcasting System (VIPBS), the licensee of Station, WTJX-TV, Charlotte Amalie, VI (WTJX or Station), filed the above captioned application, as amended, 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 VIPBS' requests and extend WTJX's construction permit expiration date 180 days to October 12, 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.<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 2 stations, such application was due by January 14, 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>

---

<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*, 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).

<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).

WTJX was repacked from channel 44 to channel 36. While the Station was initially assigned to transition Phase 3, at the Station's request it was moved to transition Phase 2, which had a phase completion date of April 12, 2019.<sup>5</sup> All repacked stations for Phase 2 were issued a construction permit with an expiration date of April 12, 2019. The Station ceased operation on its pre-auction channel by the phase completion date and is operating an interim facility on its post-auction channel while it completes construction of its permanent post-auction facilities.<sup>6</sup>

VIPBS states that the Station's original tower was destroyed by Hurricane Marie and VIPBS is still working to not only rebuild that tower, but to also implement its post-auction channel facilities. Construction delays caused by availability of tower crews and permitting have prevented timely construction of the Station's post-auction channel facilities. When appropriate permits and materials are in place a tower crew will return to the island from the mainland United States. Therefore, VIPBS seeks a 180-day extension. VIPBS also requests a waiver of the 90-day construction permit extension filing deadline arguing that 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 VIPBS' request to extend the construction permit deadline to construct WTJX's post-auction facility meets the requirements for a construction permit extension. VIPBS has demonstrated that an extension is needed because of construction delays caused by permitting and the lack of availability of tower crews. We also find that grant of this extension request is not likely to negatively impact the overall transition schedule. WTJX ceased operations on its pre-auction channel by the Phase 2 completion date and is operating an interim facility on its post-auction channel. To the extent some viewers are unable to receive WTJX's signal while it operates its interim facility, we believe that VIPBS 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 VIPBS was unaware at the time an extension request was due that an extension would be needed.<sup>7</sup>

We remind VIPBS 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>8</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, the Virgin Islands Public Broadcasting System's application for extension of construction permit expiration date **IS GRANTED**. The construction permit (LMS File No. 0000025655) for WTJX-TV, Charlotte Amalie, VI **IS BOTH REINSTATED AND EXTENDED 180 days to October 12, 2019**. Grant of this extension does not permit WTJX to recommence operation on

---

<sup>5</sup> See LMS File No. 0000063732.

<sup>6</sup> See LMS File No. 0000072192.

<sup>7</sup> See *supra* note 4.

<sup>8</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.").

its pre-auction channel. We also remind VIPBS that any subsequent requests for extension of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>9</sup>

Sincerely,

A handwritten signature in blue ink that reads "Kevin R. Hardy".

for Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): Lawrence M. Miller, Esq.

---

<sup>9</sup> See 47 CFR § 73.3700(b)(5)(i) (referencing 47 § CFR 73.3598(b)).