



Federal Communications Commission
Washington, D.C. 20554

September 10, 2019

University of North Carolina
PO Box 14900
Research Triangle Park, NC 27709

Re: Request for Extension of
Construction Permit
WUNF-TV, Asheville, NC
Facility ID No. 69300
LMS File No. 0000080929

Dear Licensee,

On September 5, 2019, the University of North Carolina (UNC) the licensee of Station, WUNF-TV, Asheville, North Carolina (WUNF 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 UNC's requests and extend WUNF's construction permit expiration date 180 days to March 9, 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 5 stations, such application was due by June 10, 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*, 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).

WUNF was repacked from channel 25 to channel 20 and assigned to transition Phase 5, which originally had a phase completion date of September 6, 2019. All repacked stations for Phase 5 were issued a construction permit with an expiration date of September 6, 2019. On September 3, 2019, the Incentive Auction Task Force and the Media Bureau extended the phase completion date and the construction permit expiration date for Phase 5 stations to September 11, 2019.⁵ The Station pledges to cease operation on its pre-auction channel by the phase completion date and operate an auxiliary facility on its post-auction channel while it completes construction of its permanent post-auction facilities.⁶

UNC has construction permit to build a two-site distributed transmission system (DTS). Although UNC does not anticipate any issues completing its transition to its final facilities at DTS Site #2, UNC states that it will be unable to complete construction of DTS site #1 due to equipment delivery delays and the unavailability of a tower crew. Therefore, UNC seeks a 180-day extension. UNC 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 UNC's request to extend the construction permit deadline to construct WUNF's post-auction facility meets the requirements for a construction permit extension. UNC has demonstrated that an extension is needed because of equipment delivery and tower crew delays. We also find that grant of this extension request is not likely to negatively impact the overall transition schedule. WUNF will cease operations on its pre-auction channel by the Phase 5 completion date and will operate an auxiliary facility on its post-auction channel. To the extent some viewers are unable to receive WUNF's signal while it operates its interim facility, we believe that UNC 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 UNC was unaware at the time an extension request was due that an extension would be needed.⁷

We remind UNC 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."⁸ 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 University of North Carolina's application for extension of construction permit expiration date **IS GRANTED**. The construction permit (LMS File No. 0000029742) for WUNF-TV, Asheville, North Carolina, **IS EXTENDED 180 days to March 9, 2020**. Grant of this extension does not permit WUNF to recommence operation on its pre-auction channel after ceasing operation or after September 11, 2019, whichever occurs first. We also remind UNC that any

⁵ See *The Completion Date For Phase 5 of the Post-Incentive Auction Transition Is Extended To September 11, 2019 Because of Hurricane Dorian*, GN Docket No. 12-268 and MB Docket No. 16-306, Public Notice, DA 19-866, rel. September 3, 2019 (IATF/MB).

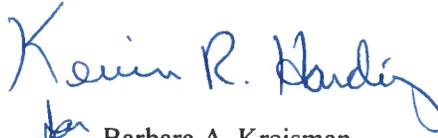
⁶ See LMS File No. 0000080997.

⁷ See *supra* note 4.

⁸ 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.").

subsequent requests for extension of its construction permit deadline will be subject to the Commission's tolling provisions.⁹

Sincerely,



 Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Stephen Hartzell, Esq.

⁹ See 47 CFR § 73.3700(b)(5)(i) (referencing 47 § CFR 73.3598(b)).