



Federal Communications Commission  
Washington, D.C. 20554

September 11, 2019

Free Life Ministries, Inc.  
Terry Johnson  
P.O. Box 282  
Goldsboro, NC 27530

Re: Request for Extension of  
Construction Permit  
WHFL-CD, Goldsboro, NC  
Facility ID No. 22485  
LMS File No. 0000081173

Dear Licensee,

On September 10, 2019, Free Life Ministries, Inc. (FLM), the licensee of Station WHFL-CD, Goldsboro, North Carolina (WHFL-CD 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 FLM's requests and extend WHFL-CD'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.<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 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.<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*, 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).

WHFL-CD was a successful “band changing” station in the incentive auction and was repacked from channel 43 to channel 7 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.<sup>5</sup> The Station reports that it will cease operations on its pre-auction channel by the phase completion date and operate an interim facility on its post-auction channel while it completes construction of its permanent post-auction facilities.<sup>6</sup>

FLM states the antenna for the Station’s post-auction channel facilities arrived late and damaged. FLM is working to replace the damaged antenna and will operate an interim facility on its post-auction channel while it awaits its arrival and installation. Therefore, FLM requests a 180-day extension. FLM also requests a waiver of the 90-day construction permit extension filing deadline because it did not know for certain it would require an extension at the time the deadline passed.

*Discussion.* Upon review of the facts and circumstances presented, we find FLM’s request to extend the construction permit deadline to construct WHFL-CD’s post-auction facility meets the requirements for a construction permit extension. FLM has demonstrated that an extension is needed because of a delay in the delivery of and damage to equipment necessary for operation of its post-auction channel facilities. We also find that grant of this extension request is not likely to negatively impact the overall transition schedule. WHFL-CD will cease operations on its pre-auction channel by the Phase 5 completion date and operate an interim facility on its post-auction channel. To the extent some viewers are unable to receive WHFL-CD’s signal while it operates its interim facility, we believe that FLM 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 FLM was unaware at the time an extension request was due that an extension would be needed.<sup>7</sup>

We remind FLM 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, Free Life Ministries, Inc.’s application for extension of construction permit expiration date **IS GRANTED**. The construction permit (LMS File No. 0000034561) for WHFL-CD, Goldsboro, North Carolina, **IS EXTENDED 180 days to March 9, 2020**. Grant of this extension does not permit WHFL-CD to recommence operation on its pre-auction channel. We also remind FLM

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<sup>5</sup> 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).

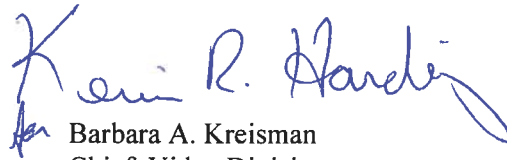
<sup>6</sup> See LMS File No. 000081174.

<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.”).

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, appearing to read "Barbara A. Kreisman". The signature is stylized with a large initial "B" and a long, sweeping underline.

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): David G. O'Neil, Esq.

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