



Federal Communications Commission
Washington, D.C. 20554

September 12, 2019

Waters & Brock Communications, Inc.
Gerald Waters, President
P.O. Box 1826
Smithfield, NC 27577

Re: Request for Extension of
Construction Permit
WARZ-CD, Smithfield-Selma, NC
Facility ID No. 71089
LMS File No. 0000081216

Dear Licensee,

On September 11, 2019, Waters & Brock Communications, Inc. (WBC), licensee of Station WARZ-CD, Smithfield-Selma, North Carolina (WARZ-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 WBC's requests and extend WARZ-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.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).

WARZ-CD was repacked from channel 34 to channel 23 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 ceased operation on its pre-auction channel by the phase competition date and will remain silent while it completes construction of its permanent post-auction facilities.

WBC planned to retune its pre-auction transmitter for use in its post-auction facility. WBC states that in late August 2019, it was advised that the Station's pre-auction channel transmitter could not be retuned and produce sufficient power for its post-auction channel operation. WBC is in the process of ordering a new transmitter, but it was not delivered or installed by the phase 5 completion date. WARZ-CD will remain silent while WBC awaits its new transmitter. Therefore, WBC requests a 180-day extension. WBC 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 WBC's request to extend the construction permit deadline to construct WARZ-CD's post-auction facility meets the requirements for a construction permit extension. WBC has demonstrated that an extension is needed because of a last-minute discovery that it could not retune existing equipment. We also find that grant of this extension request is not likely to negatively impact the overall transition schedule. WARZ-CD has ceased operations on its pre-auction channel and will remain silent while it completes construction of its permanent post-auction facility. To the extent viewers are unable to receive WARZ-CD's signal while it is silent, we believe that DTV 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 WBC was unaware at the time an extension request was due that an extension would be needed.⁶

We remind WBC 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."⁷ 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, Waters & Brock Communications, Inc.'s application for extension of construction permit expiration date **IS GRANTED**. The construction permit (LMS File No. 0000034835) for WARZ-CD, Smithfield-Selma, North Carolina, **IS EXTENDED 180 days to March 9, 2020**. Grant of this extension does not permit WARZ-CD to recommence operation on its pre-auction

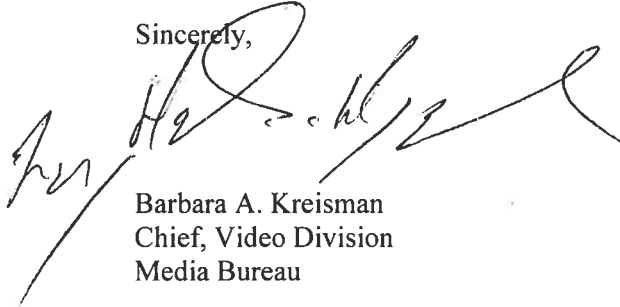
⁵ See *The Completion Date For Phase 5 of the Post-Incentive Auction Transition Is Extended To September 11, 2019 Because of Hurricane Dorian*, GN Docket No. 12-268 and MB Docket No. 16-306, Public Notice, DA 19-866, rel. September 3, 2019 (IATF/MB).

⁶ See *supra* note 4.

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.").

channel. We also remind WBC that any subsequent requests for extension of its construction permit deadline will be subject to the Commission's tolling provisions.⁸

Sincerely,

A handwritten signature in black ink, appearing to read 'Barbara A. Kreisman', is written over the typed name and title.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Jeffrey L. Timmons, Esq.

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