



Federal Communications Commission  
Washington, D.C. 20554

September 18, 2019

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

Re: Request for Extension of  
Construction Permit  
KOIN, Portland, OR  
Facility ID No. 35380  
LMS File No. 0000069409

Dear Licensee,

Nexstar Broadcasting, Inc. (Nexstar) the licensee of Station KOIN, Portland, Oregon (KOIN 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 Nexstar's requests and extend KOIN's construction permit expiration date 180 days to October 9, 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> 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).

KOIN was repacked from channel 40 to channel 25. The Station ceased operations on its pre-auction channel and is operating an interim facility on its post-auction channel while it completes construction of its permanent post-auction facilities.<sup>5</sup>

Nexstar explains that while it has received all necessary local land use permits, delays in obtaining those necessary approvals resulted in the station being unable to complete construction of its post-auction facility by its construction permit deadline.<sup>6</sup> As a result, Nexstar seeks a 180-day extension. Nexstar also requests a waiver of the 90-day construction permit extension filing deadline because 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 Nexstar's request to extend the construction permit deadline to construct KOIN's post-auction facility meets the requirements for a construction permit extension. Nexstar has demonstrated that an extension is needed because of delays in the local permitting process. We also find that grant of this extension request is not likely to negatively impact the overall transition schedule. KOIN has ceased operations on its pre-auction channel and is operating an interim facility on its post-auction channel. To the extent some viewers are unable to receive KOIN's signal while it operates its interim facility, we believe that Nexstar 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 Nexstar was unaware at the time an extension request was due that an extension would be needed.<sup>7</sup>

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 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, Nexstar Broadcasting, Inc.'s application for extension of construction permit expiration date **IS GRANTED**. The construction permit (LMS File No. 0000034802) for KOIN, Portland, Oregon, **IS EXTENDED 180 days to October 12, 2019**. Grant of this extension does not permit KOIN to recommence operation on its pre-auction channel. We also remind Nexstar that any

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<sup>5</sup> See LMS File No. 0000069932.

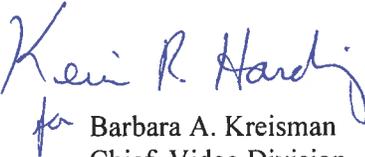
<sup>6</sup> On February 2, 2018, KOIN was granted authority to transition to its post-auction channel on or before June 1, 2018. See LMS File No. 0000035024. The station was originally assigned to transition Phase 2 and given a construction permit expiration date of April 12, 2019. Due to an administrative oversight the Station's construction permit was not modified to reflect the change in the Station's phase completion date, nor was this fact made sufficiently clear in the grant letter. Therefore, we will consider the Station's construction permit to not have expired until April 12, 2019 and will calculate the 180-day extension from that date.

<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.").

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 "Keir R. Hardy". The signature is written in a cursive style with a large initial "K".

for Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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