



Federal Communications Commission
Washington, D.C. 20554

September 18, 2019

Gray Television Licensee, LLC
WVLT
6450 Papermill Drive
Knoxville, TN 37919

Gray Television Licensee, LLC
4370 Peachtree Road, NE
Atlanta, GA 30319

Re: Requests for Extension of
Construction Permit
WVLT-TV, Knoxville, TN
WZBJ-CD, Lynchburg, VA
Facility ID No. 35908 and 168095
LMS File No. 0000081546 and
0000081547

Dear Licensee,

On September 17, 2019, Gray Television Licensee, LLC (Gray), licensee of Stations WVLT-TV, Knoxville, Tennessee (WVLT) and WZBJ-CD, Lynchburg, Virginia (WZBJ) (collectively Stations), filed the above captioned applications seeking extensions of the Stations' construction permit expiration dates and waivers of the 90-day construction permit extension filing deadline. For the reasons below, we grant Gray's requests and extend the Stations' construction permit expiration date 180 days to March 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.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

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).

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

WVLT was repacked from channel 30 to channel 34 and WZBJ-CD from channel 43 to channel 19 and the Stations were 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 WVLT ceased operation on its pre-auction channel by the phase competition date and will operate interim facilities while it completes construction of its permanent post-auction facilities.⁶ WZBJ-CD went silent on its pre-auction channel by the Phase 5 completion date and will remain silent until its post-auction channel facilities are complete.

Gray states that shortly after WVLT began operating on its post-auction channel, the Station experienced an equipment failure that has left it unable to operate at full power. Further, Gray states that WZBJ-CD's post-auction channel facility includes a new antenna. Gray reports that the crew scheduled to perform the installation work was delayed due to Hurricane Dorian. Therefore, Gray states that due to circumstances outside of its control, the Stations were not able to complete construction of their final authorized facilities by the Phase 5 completion date. Therefore, Gray requests 180-day extensions. Gray also requests waivers of the 90-day construction permit extension filing deadline because it did not know for certain it would require extensions at the time the deadline passed.

Discussion. Upon review of the facts and circumstances presented, we find Gray's request to extend the construction permit deadline to construct the Stations' post-auction facilities meets the requirements for a construction permit extension. Gray has demonstrated that extensions are needed because of a last-minute equipment failure and unavailability of a tower crew. We also find that grant of these extension requests is not likely to negatively impact the overall transition schedule. The Stations have ceased operations on their pre-auction channels and will operate interim facilities while they complete construction of their permanent post-auction facilities. To the extent viewers are unable to receive the Stations' signals while they are silent, we believe that Gray has every incentive to ensure viewers are fully informed about the Stations' transition plans. Finally, we find that waivers of the 90-day construction permit extension filing deadline is in the public interest and consistent with the Commission's general waiver standard because Gray was unaware at the time an extension request was due that extensions would be needed.⁷

We remind Gray 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

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).

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. 0000081285.

⁷ See *supra* note 4.

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 Stations’ transition plans that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The above facts considered, Gray Television Licensee, LLC’s applications for extension of construction permit expiration date **ARE GRANTED**. The construction permits (LMS File Nos. 0000025085 and 0000034402) for WVLT-TV, Knoxville, Tennessee and WZBJ-CD, Lynchburg, Virginia, **ARE REINSTATED AND EXTENDED 180 days to March 9, 2020**. Grant of these extensions does not permit the Stations to recommence operation on their pre-auction channels. We also remind Gray that any subsequent requests for extension of its construction permit deadline will be subject to the Commission’s tolling provisions.⁹

Sincerely,

A handwritten signature in blue ink that reads "Kevin R. Hardy". To the left of the signature, there is a small blue mark that appears to be the initials "ka".

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Joan Stewart, Esq.

⁸ 47 U.S.C. § 1452(b)(4)(A)(i). *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.”).

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