



Federal Communications Commission
Washington, D.C. 20554

October 9, 2019

Gray Television, LLC
Robert Folliard
4370 Peachtree Road, NE
Atlanta, GA 30319

Gray Television Licensee, LLC
WNDU John O'Brien
54516 State Road 933
South Bend, IN 46637

Re: Requests for Extension of
Construction Permit
WAVE, Louisville, KY
WNDU-TV, South Bend, IN
Facility ID No. 13989 and 41674
LMS File No. 0000083262 and
0000084364

Dear Licensees,

Gray Television, LLC, the licensee of Station WAVE, Louisville, Kentucky (WAVE) and Gray Television Licensee, LLC, licensee of WNDU-TV, South Bend, Indiana (WNDU) (collectively Gray and Stations), filed the above captioned applications seeking extensions of the Stations' construction permit expiration dates and waiver 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 dates 180 days to April 15, 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 6 stations, such application was due by July 22, 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

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).

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

WAVE was repacked from channel 47 to channel 36 and WNDU was repacked from channel 42 to 27. The Stations were assigned to transition Phase 6, which has a phase completion date of October 18, 2019. All repacked stations for Phase 6 were issued a construction permit with an expiration date of October 18, 2019. The Stations pledge to cease operation on their pre-auction channels by the phase completion date and operate auxiliary facilities on their post-auction channels while they complete construction of their permanent post-auction facilities.⁵

Gray states that WAVE is unable to complete construction of its post-auction facility because of a problem with the installation of the shared antenna for its permanent facility. Also, Gray states that it is unable to complete construction of WNDU's post-auction facility because its tower crew has been repeatedly delayed. 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 requests to extend the construction permit deadline to construct the Stations' post-auction facilities meet the requirements for a construction permit extension. Gray has demonstrated that an extension is needed because of construction delays outside of its control. We also find that grant of these extension requests is not likely to negatively impact the overall transition schedule. The Stations will cease operations on their pre-auction channels by the Phase 6 completion date and will operate auxiliary facilities on their post-auction channels. To the extent some viewers are unable to receive the Stations' signals while they operate auxiliary facilities, we believe that Gray has every incentive to ensure viewers are fully informed about the Stations' transition plans. 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 Gray was unaware at the time an extension request was due that extensions of the Stations' construction permits would be needed.⁶

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 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 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, LLC and Gray Television Licensee, LLC's applications for extension of construction permit expiration date **ARE GRANTED**. The construction permits (LMS File No. 0000034345 and 0000025267) for WAVE, Louisville, Kentucky and WNDU-TV,

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).

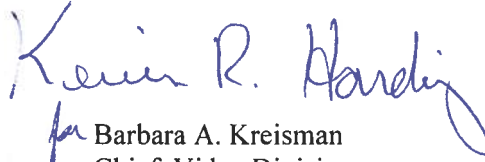
⁵ See LMS File No. 0000078720 and 0000063578.

⁶ See *supra* note 4.

⁷ 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.").

South Bend, Indiana **ARE EXTENDED 180 days to April 15, 2020.** Grant of these extensions does not permit the Stations to recommence operation on their pre-auction channel after ceasing operation or after October 18, 2019, whichever occurs first. We also remind Gray 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 blue ink that reads "Kevin R. Handley". The signature is fluid and cursive, with the first name "Kevin" and last name "Handley" clearly legible. The middle initial "R." is smaller and less distinct.

for Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

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