



Federal Communications Commission  
Washington, D.C. 20554

October 9, 2019

Hearst Properties, Inc.  
c/o Brooks, Pierce, et. al  
P.O. Box 1800  
Raleigh, NC 27602

Re: Request for Extension of  
Construction Permit  
WLKY, Louisville, KY  
Facility ID No. 53939  
LMS File No. 0000083618

Dear Licensee,

On October 2, 2019, Hearst Properties, Inc. (Hearst), the licensee of Station WLKY, Louisville, Kentucky (WLKY 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 Hearst's requests and extend WLKY's construction permit expiration date 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.<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 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.<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).

WLKY was repacked from channel 26 to channel 14 and 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 Station pledges to cease operation 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>5</sup>

Hearst states that the Station operates with a shared antenna with WAVE, Louisville, Kentucky, that owns the antenna. Hearst states that there is a delay in the installation of the antenna and the Station will operate with interim facilities until the problem is resolved. Therefore, Hearst requests a 180-day extension of time. Hearst 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 Hearst's request to extend the construction permit deadline to construct WLKY's post-auction facility meets the requirements for a construction permit extension. Hearst has demonstrated that an extension is needed because of construction delays outside of its control. We also find that grant of this extension request is not likely to negatively impact the overall transition schedule. WLKY will cease operations on its pre-auction channel by the Phase 6 completion date and will operate an interim facility on its post-auction channel. To the extent some viewers are unable to receive WLKY's signal while it operates its interim facility, we believe that Hearst 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 Hearst was unaware at the time an extension request was due that an extension of WLKY's construction permit would be needed.<sup>6</sup>

We remind Hearst 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>7</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, Hearst Properties, Inc.'s application for extension of construction permit expiration date **IS GRANTED**. The construction permit (LMS File No. 0000034546) for WLKY, Louisville, Kentucky, **IS EXTENDED 180 days to April 15, 2020**. Grant of these extensions does not permit the Station to recommence operation on its pre-auction channel after ceasing operation or after

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<sup>5</sup> Although it has yet to file for Special Temporary Authority to operate the Station with interim facilities, Hearst has pledged to do so.

<sup>6</sup> See *supra* note 4.

<sup>7</sup> 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.").

October 18, 2019, whichever occurs first. We also remind Hearst that any subsequent requests for extension of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>8</sup>

Sincerely,

Handwritten signature of Kevin R. Hardy in blue ink.

for Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): Stephen Hartzell, Esq.

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<sup>8</sup> See 47 CFR § 73.3700(b)(5)(i) (referencing 47 § CFR 73.3598(b)).