



Federal Communications Commission  
Washington, D.C. 20554

October 16, 2019

KBSI Licensee, LP  
WKEF Licensee, LP  
WVTV Licensee, Inc.  
WPBN Licensee, LLC  
WMSN Licensee, LLC  
WZTV Licensee, LLC  
Harvey Arnold  
10706 Beaver Dam Road  
Cockeysville, MD 21030

Re: Requests for Extension of  
Construction Permit  
KBSI, Cape Girardeau, MO  
WKEF, Dayton, OH  
WVTV, Milwaukee, WI  
WTOM-TV, Cheboygan, MI  
WPBN-TV, Traverse City, MI  
WMSN-TV, Madison, WI  
WZTV, Nashville, TN  
Facility ID Nos. 418, 10221, 19593,  
21253, 21254, 73155, and 74174  
LMS File Nos. 0000086503,  
0000086506, 0000086541, 0000086595,  
0000086601, 0000086602, and  
0000086603

Dear Licensee,

On October 15, 2019, KBSI Licensee, LP, the licensee of Station KBSI, Cape Girardeau, Missouri (KBSI); WKEF Licensee, LP, licensee of WKEF, Dayton, Ohio (WKEF); WVTV Licensee, Inc., licensee of WVTV, Milwaukee, Wisconsin (WVTV); WPBN Licensee, LLC, licensee of WTOM-TV, Cheboygan, Michigan (WTOM) and WPBN-TV, Traverse City, Michigan (WPBN); WMSN Licensee, LLC, licensee of WMSN-TV, Madison, Wisconsin (WMSN); and WZTV Licensee, LLC, licensee of WZTV, Nashville, Tennessee (WZTV) (collectively Sinclair 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 Sinclair'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.<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

<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).

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>

KBSI was repacked from channel 22 to channel 36; WKEF from channel 18 to channel 34; WVTV from channel 18 to channel 27; WTOM from channel 35 to channel 16; WPBN from channel 47 to channel 35; WMSN from channel 49 to channel 18; and WZTV from channel 15 to channel 20. 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 interim facilities on their post-auction channels while they complete construction of their permanent post-auction facilities.<sup>5</sup>

Sinclair states that construction of the Station's permanent post-auction channel facilities has been delayed due to equipment delivery delays. Therefore, Sinclair requests 180-day extensions. Sinclair 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 Sinclair's requests to extend the construction permit deadline to construct the Stations' post-auction facilities meet the requirements for a construction permit extension. Sinclair has demonstrated that an extension is needed due to 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 interim facilities on their post-auction channels. To the extent some viewers are unable to receive the Stations' signals while they operate an interim facility, we believe that Sinclair 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 Sinclair was unaware at the time an extension request was due that extensions of the Stations' construction permits would be needed.<sup>6</sup>

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<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).

<sup>5</sup> See LMS File Nos. 0000086498, 0000086535, 0000086541, 0000086594, 0000086617 and 0000086618 and CDBS File No. BDSTA-20110525AEK.

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

We remind Sinclair 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 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, KBSI Licensee, LP; WKEF Licensee, LP; WVTV Licensee, Inc.; and WPBN Licensee, LLC’s applications for extension of construction permit expiration date **ARE GRANTED**. The construction permits (LMS File No. 0000025127, 0000028847, 0000034373, 0000034522, 0000034381, 0000034387 and 0000034388) for KBSI, Cape Girardeau, Missouri; WKEF, Dayton, Ohio; WVTV, Milwaukee, Wisconsin; WTOM-TV, Cheboygan, Michigan; WPBN-TV, Traverse City, Michigan; WMSN-TV, Madison, Wisconsin; and WZTV, Nashville, Tennessee **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 Sinclair that any subsequent requests for extension of its construction permit deadline will be subject to the Commission’s tolling provisions.<sup>8</sup>

Sincerely,



Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): Paul A. Cicelski, Esq.

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<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.”).

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