



Federal Communications Commission
Washington, D.C. 20554

October 21, 2019

HC2 Station Group, Inc.
Renee Ilhardt
450 Park Avenue
30th Floor
New York, NY 10022

Re: Request for Extension of
Construction Permit
WPVN-CD, Chicago, IL
WJFB, Lebanon, TN
Facility ID No. 7651 and 168237
LMS File No. 0000086918 and
0000086919

Dear Licensee,

On October 18, 2019, HC2 Station Group, Inc. (HC2) the licensee of Stations WPVN-CD, Chicago, Illinois (WPVN-CD) and WJFB, Lebanon, Tennessee (WJFB) (collectively Stations), filed the above captioned applications seeking an extension of the Stations' construction permit expiration date and waiver of the 90-day construction permit extension filing deadline. For the reasons below, we grant HC2's requests and extend the Stations' construction permit expiration date 90 days to January 16, 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 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

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).

relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis.⁴

WPVN-CD was repacked from channel 20 to channel 26 and WJFB was repacked from channel 44 to channel 25. The Stations were reassigned to phase 6, which had 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 ceased operations on their pre-auction channels by the phase completion date and are operating interim facilities on their post-auction channels while they complete construction of their permanent post-auction facilities.⁵

HC2 states that the post-auction channel antenna for WPVN-CD was not delivered in time to complete construction by the Phase 6 completion date. HC2 also states that WJFB received a damaged filter from the vendor and is awaiting a new filter before it can complete construction. HC2 requests 90-day extensions of time. HC2 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 HC2's requests to extend the construction permit deadline to construct the Stations' post-auction facilities meet the requirements for a construction permit extension. HC2 has demonstrated that an extension is needed due to equipment failure and delivery delays. We also find that grant of these extension requests is not likely to negatively impact the overall transition schedule. The Stations ceased operations on their pre-auction channels by the Phase 6 completion date and are operating interim facilities on their post-auction channels. To the extent some viewers are unable to receive the Stations' signals while they operate their interim facilities, we believe that HC2 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 HC2 was unaware at the time an extension request was due that an extension of Stations' construction permits would be needed.⁶

We remind HC2 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 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, HC2 Station Group, Inc.'s applications for extension of construction permit expiration date **ARE GRANTED**. The construction permits (LMS File Nos. 0000080446 and 0000034895) for WPVN-CD, Chicago, Illinois and WJFB, Lebanon, Tennessee, **ARE EXTENDED 90 days to January 17, 2020**. Grant of these extensions does not permit the Stations to recommence

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 Nos. 0000086477 and 0000086917.

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.").

operation on their pre-auction channels. We also remind HC2 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 black ink, appearing to read 'B a k', with a stylized flourish at the end.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

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