



Federal Communications Commission
Washington, D.C. 20554

May 22, 2020

Maxair Media, LLC
Dan Modisset
101 Lauren Lane
Clinton, MS 39056
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Re: Request for Extension of
Construction Permit
KNVN, Chico, CA
Facility ID No. 33745
LMS File No. 0000113821

Dear Licensee,

On May 15, 2020, Maxair Media, LLC (Licensee), the licensee of Station KNVN, Chico, California (Station), filed the above captioned application, as amended, seeking reinstatement and 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 Licensee's requests and extend the Station's construction permit expiration date 180 days to October 28, 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 9 stations, such application was due by February 3, 2020. 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 relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis.⁴

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).

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).

The Station was repacked from channel 24 to channel 20 and assigned to transition Phase 9, which had a phase completion date of May 1, 2020. All repacked stations for Phase 9 were issued a construction permit with an expiration date of May 1, 2020. The Station ceased operations on its pre-auction channel and is operating an auxiliary facility while it completes construction of its permanent post-auction facilities.⁵

Licensee states that, due in part to complications arising from the COVID-19 pandemic, the supplier of the Station's post-auction channel antenna was unable to deliver the antenna to the Station's transmitter site prior to the Phase 9 completion date.⁶ Although the antenna has been delivered to a nearby access road, Licensee states that it must still be moved approximately 1.5 miles uphill to the tower site, and then mounted on the tower. Therefore, Licensee requests a 180-day extension. Licensee 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 of the deadline.

Discussion. Upon review of the facts and circumstances presented, we find Licensee's request to extend the construction permit deadline to construct the Station's post-auction facility meets the requirements for a construction permit extension. Licensee has demonstrated that an extension is needed because of construction delays. We also find that grant of this extension request is not likely to negatively impact the overall transition schedule. The Station has ceased operations on its pre-auction channel and is operating an auxiliary facility on its post-auction channel. To the extent viewers are unable to receive the Station's signal while it operates its temporary facility, we believe that Licensee 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 Licensee was unaware at the time an extension request was due that an extension of the Station's construction permit would be needed.⁷

We remind Licensee 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."⁸ 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, Maxair Media, LLC's application for extension of construction permit expiration date **IS GRANTED**. The construction permit (LMS File No. 0000033745) for KNVN, Chico, California **IS REINSTATED AND EXTENDED 180 days to October 28, 2020**. Grant of this extension does not permit the Station to recommence operation on its pre-auction channel. We also

⁵ See LMS File No. 0000114160.

⁶ The World Health Organization has classified COVID-19 as a pandemic and the President declared it a national emergency.

⁷ See *supra* note 4.

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.").

remind Licensee that any subsequent requests for extension of its construction permit deadline will be subject to the Commission's tolling provisions.⁹

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Daniel Kirkpatrick, Esq.

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