



Federal Communications Commission  
Washington, D.C. 20554

July 1, 2020

Nexstar Broadcasting, Inc.  
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Re: Requests for Extension of  
Construction Permit

KHPX-CD, Georgetown, TX  
Facility ID No. 35911  
LMS File No. 0000116613

KTMJ-CD, Topeka, KS  
Facility ID No. 43649  
LMS File No. 0000116624

WOWK-TV, Huntington, WV  
Facility ID No. 23342  
LMS File No. 0000116648

WFFF-TV, Burlington, VT  
Facility ID No. 10132  
LMS File No. 0000116653

WEHT, Evansville, IN  
Facility ID No. 24215  
LMS File No. 0000116656

KTAB-TV, Abilene, TX  
Facility ID No. 59988  
LMS File No. 0000116658

KHPZ-CD, Round Rock, TX  
Facility ID No. 35910  
LMS File No. 0000116718

Dear Licensees,

On June 26, 2020, Nexstar Broadcasting, Inc. (Licensee), the licensee of Stations KHPX-CD, Georgetown, Texas (KHPX-CD); KTMJ-CD, Topeka, Kansas (KTMJ-CD); WOWK-TV, Huntington, West Virginia (WOWK); WFFF-TV, Burlington, Vermont (WFFF); WEHT, Evansville, Indiana (WEHT); KTAB-TV, Abilene, Texas (KTAB); and KHPZ-CD, Round Rock, Texas (KHPZ-CD) (collectively "Stations") filed the above captioned applications seeking an extension of the Stations' construction permit expiration dates and waiver of the 90-day construction permit extension filing

deadline. For the reasons below, we grant Licensee's requests and extend the Stations' construction permit expiration dates 180 days to December 30, 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 10 stations, such application was due by April 6, 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.<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>

KHPX-CD was repacked from channel 28 to channel 29; KTMJ-CD from channel 43 to 20; WOWK from channel 13 to 10; WFFF from channel 43 to 16; WEHT from channel 7 to 12; KTAB from channel 24 to 30; and KHPZ-CD from channel 15 to 25 and the Stations were assigned to transition Phase 10 which has a phase completion date of July 3, 2020. All repacked stations for Phase 10 were issued a construction permit with an expiration date of July 3, 2020. Licensee pledges that all of the Stations will cease operation on their pre-auction channels by the phase completion date. KHPX-CD and KHPZ-CD will remain silent while they complete their post-auction channel facilities.<sup>5</sup> The remaining stations will operate interim facilities on their post-auction channels while they complete construction of their permanent post-auction facilities.<sup>6</sup>

Licensee states that the Stations' post-auction channel antennas have not been installed due to equipment and rigging delays. In light of these facts, and ongoing uncertainty with the construction schedule, Licensee requests 180-day extensions of the Stations' construction permits to December 30, 2020. 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.

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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).

<sup>5</sup> See LMS File No. 0000116612 and 0000116717. KHPX-CD and KHPZ-CD are CW affiliates. Licensee states that these two stations' CW programming will remain available on KNVA(TV), Austin, Texas.

<sup>6</sup> See LMS File Nos. 0000116619 and 0000116625, 0000116651, 0000616656 and 0000616657.

*Discussion.* Upon review of the facts and circumstances presented, we find Licensee's requests to extend the construction permit deadline to construct the Stations' post-auction facility meet 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 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 10 completion date and will either remain silent or operate interim facilities on their post-auction channels. To the extent some viewers are unable to receive the Stations' signals while they are either silent or operating their interim facilities, we believe that Licensee 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 Licensee was unaware at the time an extension request was due that an extension of the Stations' construction permits would be needed.<sup>7</sup>

We remind Licensee that pursuant to the Spectrum Act, the Stations are 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>8</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, Nexstar Broadcasting, Inc.'s applications for extension of construction permit expiration date **ARE GRANTED**. The construction permits (LMS File Nos. 0000027655, 0000072852, 0000034807, 0000029843, 0000028458, 0000029890 and 0000027658, respectively) for KHPX-CD, Georgetown, Texas; KTMJ-CD, Topeka, Kansas; WOWK-TV, Huntington, West Virginia; WFFF-TV, Burlington, Vermont; WEHT, Evansville, Indiana; KTAB-TV, Abilene, Texas; and KHPZ-CD, Round Rock, Texas, **ARE EXTENDED 180 days to December 30, 2020**. Grant of these extensions does not permit the Stations to recommence operation on their pre-auction channels after ceasing operation or after July 3, 2020, whichever occurs first. We also remind Licensee that any subsequent requests for extension of their construction permit deadline will be subject to the Commission's tolling provisions.<sup>9</sup>

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>7</sup> See *supra* note 4.

<sup>8</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>9</sup> See 47 CFR § 73.3700(b)(5)(i) (referencing 47 § CFR 73.3598(b)).