

Request for Reinstatement and Extension of Construction Permit

Justification for Reinstatement and Extension of Construction Permit

Puget Sound Educational TV, Inc. ("Licensee"), licensee of television station KWDK(TV), Tacoma, WA (Fac. ID 35419) (the "Station") hereby submits this request for reinstatement and extension of the construction permit for its permanent post-Incentive Auction facilities, File No. 0000034490 (the "CP"), for a period of one month to allow the Station to complete its transition to its post-Incentive Auction facility.¹

In the *Closing and Channel Reassignment Public Notice*, the Commission assigned the Station to transition from RF channel 42 to RF channel 34 in Phase 7 of the post-Incentive Auction transition. On October 29, 2019, the Licensee timely filed a request for a Legal STA in which it explained:

Daystar has been actively working to complete its transition during the early part of Phase 7 to avoid potential weather-related delays at the Station's transmission site on Tiger Mountain. Daystar has received delivery of its transmitter and antenna for the Station's post-auction facility, and all that remains is for installation of the Station's post-auction facilities. KWDK is the last station in its linked station set to transition to its post auction channel. Indeed, because most stations in the Seattle-Tacoma Designated Market Area completed their transition at the start of Phase 7, Daystar has identified a tower crew that is already on site and can install KWDK's antenna in early November.

File No. 0000087603. The Station completed its transition to RF channel 34 in early November, but needed to operate at reduced power using a borrowed transmitter while it waited for the transmitter installer to arrive from overseas, which took longer than expected. Accordingly, the

¹ To the extent necessary, Licensees request a waiver of the deadline for filing a request to extend the CP. The Commission's Rules specify that extension requests should be filed not less than ninety (90) days prior to the CP expiration date. 47 CFR § 73.3700(b)(5)(iv). The FCC may grant a waiver for good cause shown. The agency typically grants a waiver where the particular facts make strict compliance inconsistent with the public interest. *N.E. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 CFR § 1.3. Waiver of the deadline for extension of construction permit is in the public interest as it will allow the Commission to grant the requested Extension of a Construction Permit, which comports with the intent of the Commission to allow each repacked station a single extension of time where the delay is caused by circumstances beyond the Licensee's control and where the extension will not delay or disrupt the overall transition. Therefore, good cause exists and this waiver should be granted.

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Licensee was unable to file its license application for the Station at the time.² Construction is now complete, and the Licensee is filing its license application concurrent with this request. However, the Station's construction permit expired on January 17, 2020 and must be reinstated.

In its Public Notice adopting the post-Incentive Auction transition scheduling plan, the Media Bureau and the Incentive Auction Task Force declared that "[r]eassigned stations and band changing stations that are unable to complete construction of their post-auction channel facilities by their deadlines may seek a single extension of up to 180 days."³ Stations requesting an extension must demonstrate that "despite all reasonable efforts, the station is unable to complete construction of its new facility on time due to circumstances that were either unforeseeable or beyond its control." The Commission may also waive any provision of its rules if it determines good cause has been shown.⁴

Here, reinstatement and extension of the CP are appropriate because Licensee's inability to complete construction of the Station's permanent facility was due to circumstances beyond its control. Nevertheless, the Station timely vacated its pre-auction channel and promptly restored full power operations. Accordingly, reinstatement and extension of the CP is consistent with the Commission's policies and will facilitate an efficient transition.

² Because the Licensee initially believed the Station would be at full power within 10 days, it did not file a reduced power notification. Due to a recordkeeping error, the Station failed to file a reduced power notification or a request for special temporary authority when it determined that it would take longer to resume full power operations.

³ *Incentive Auction Task Force & Media Bureau Adopt A Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 32 FCC Rcd. 890 ¶ 40 (MB & IATF 2017); 47 CFR § 73.3700(b)(5).

⁴ See 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.