



Federal Communications Commission
Washington, D.C. 20554

November 6, 2017

Connecticut Public Broadcasting, Inc.
1049 Asylum Avenue
Hartford, CT 06105

Steven C. Schaffer
Garvey Shubert Barer
1000 Potomac Street, NW
Suite 200
Washington, DC 20007

Re: Request for Special Temporary and
Waivers of Deadlines To File
Application For Construction Permit
and Implement Shared Channel
Operations
WEDY, New Haven, CT
Facility ID No. 13595
LMS File No. 0000033572

Dear Licensee,

On October 11, 2017, Connecticut Public Broadcasting, Inc. (CPB), submitted the above-captioned request for special temporary authority (STA) concerning non-commercial educational television station WEDY(TV), New Haven, Connecticut (Station). CPB seeks to implement a three-way channel sharing arrangement with commonly-owned station WEDW, Bridgeport, Connecticut (WEDW), and its channel sharing partner WZME(TV), Bridgeport, Connecticut (WZME).¹ CPB requests special temporary authority in order to implement shared operations until the Commission's Licensing Management system (LMS) is able to accept for filing the applications necessary to license its channel sharing arrangement. For the reasons set forth below, we grant CPB's STA and instruct CPB to file a STA specifying the operational parameters of WEDW/WZME and the date it intends to commence shared operations. On our own motion, we also grant waivers of both the channel sharing application filing deadline and channel sharing implementation deadline and extend the deadlines to February 22, 2018 and April 23, 2018, respectively.

Background. The Commission instructed that channel sharee stations must file an application for construction permit for their shared channel operations by November 24, 2017 (channel sharing

¹ See LMS File Nos. 0000029677 and 0000029810 (commencing channel sharing between WEDW and WZME). WZME is licensed to a third-party, NRJ TV NY License Company, LLC.

application filing deadline).² A channel sharee station may request a waiver of the channel sharing application filing deadline specifying the date by which the sharee anticipates filing its construction permit application.³

The Commission also instructed that channel sharing stations must implement shared channel operations, and a sharee station must discontinue operations on its pre-auction channel by January 23, 2018 (channel sharing implementation deadline).⁴ A channel sharee may request an additional 90 days to discontinue operations on its pre-auction channel and commence shared operations by requesting a waiver pursuant to section 1.3 of the Commission's rules.⁵ All such requests for waiver of the deadline to commence shared operations will be evaluated to determine whether grant will delay or disrupt the post-auction transition schedule.⁶

A waiver 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.⁷

CPB seeks to have WEDY become a third station in a previously-licensed CSA between WEDW and WZME on channel 49,⁸ however LMS is not allowing the filing of a construction permit application because WEDW is part of a currently licensed channel sharing arrangement. While staff works to resolve this issue, CPB requests that the Commission grant it special temporary authority to commence shared operations on channel 49 with WEDY and WZME and file the necessary channel sharing applications once permitted to do so in LMS.⁹ CPB contends that permitting implementation of the

² See *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786, 2813, para. 76 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*); *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Broadcast Transition*, Public Notice, 32 FCC Rcd 858, 880, para. 64 (MB 2017) (*Broadcast Transition Procedures Public Notice*); 47 CFR §§ 73.3700(b)(1)(vii). Some of the post incentive auction transition-related deadlines set forth in the Commission's rules are referred to in months. For the sake of clarity and to provide greater ease of calculation, the Media Bureau refers to such deadlines in days. See *id.* at 862, n.18.

³ See *id.* at 879, para. 64.

⁴ See *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2813, para. 76; *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 879, para. 63; 47 CFR §§ 73.3700(b)(3), 73.3700(b)(4)(ii).

⁵ See *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2814, para. 81; *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 881, para. 69. Channel sharee stations may request an additional 90 days (for a total of 180 additional days) using the same procedure. *Id.*

⁶ *Id.*

⁷ 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).

⁸ See *infra* note 1. WEDW was reassigned to channel 21 in the post-incentive auction repack and has been assigned to transition Phase 4, with a phase testing period start date of June 22, 2019, and phase completion date of August 2, 2019. Once WEDW has completed construction of its post-auction facility and is ready to commence operation both WZME and WEDY will be required to file a license modification application specifying WEDW's new licensed parameters and channel. See *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 881, para. 69.

⁹ CPB states that special temporary authority is only requested "until the LMS issue is resolved and a regular application for channel sharing authorization can be granted." LMS File No. 0000033572, WEDY Legal STA at 1.

channel sharing arrangement now will allow WEDY to terminate operations on channel 41 and eliminate the cost of the operation of the WEDY facility, thereby allowing CPB to devote its resources to other activities that will serve the public interest.¹⁰ Attached to its STA is a draft copy of WEDY's channel sharing construction permit application including all necessary information that would otherwise be required to act on an application for channel sharing.¹¹

Discussion. Upon review of the facts and circumstances presented, we find that grant of CPB's STA is in the public interest. Furthermore, in light of the extraordinary circumstances presented we grant waiver and extend, on our own motion, the channel sharing application filing deadline and channel sharing implementation deadline until February 22, 2018 and April 23, 2018, respectively. We find that CPB's circumstance satisfies the requirements for a waiver and it would not be consistent with the public interest to require the Station to file its application for construction for shared channel operations by the November 24, 2017 deadline or relinquish its license by January 23, 2018.¹²

The above facts considered, CPB's request for special temporary authority for WEDY(TV), New Haven, Connecticut **IS GRANTED**. CPB is also instructed to file, no later than ten days prior to commencing shared operations, a technical request for special temporary authority specifying its new operational parameters on channel 49 and the date it intends to commence shared operations. Prior to commencing shared operations pursuant to special temporary authority CPB **IS REQUIRED** to comply with all applicable consumer education requirements and provide any required notice to MVPDs.¹³ Once WEDY commences shared operations pursuant to special temporary authority, CPB **MAY NOT CONTINUE** to operate on channel 41.

Furthermore, CPB's request for waiver **IS GRANTED** and the November 24, 2017 deadline to file an application for construction permit for shared channel operations for WEDY(TV), New Haven, Connecticut **IS EXTENDED** for 90 days to February 22, 2018; and its request for waiver of the January 23, 2018 deadline to implement its shared channel operations and to discontinue operations on its pre-auction channel for WEDY(TV), New Haven, Connecticut, **IS EXTENDED** for 90 days to April 23, 2018.

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁰ *Id.*

¹¹ WEDY's STA includes a joinder provision from the CSA entered into between WEDW and WZME by which some of the spectrum assigned to Station WEDW will be utilized by WEDY. *Id.* at 17-23.

¹² Absent any contrary information from the station, any station that indicated it had a pre-auction channel sharing agreement (CSA) and/or an intent to channel share on its reverse auction FCC Form 177 is considered a channel sharee station until the station fails to meet or obtain a waiver of the channel sharing application filing deadline. *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 881, n.141. We have, on our own motion and out of an abundance of caution, extended both WEDY's channel sharing application and implementation deadline to ensure that WEDY continues to be considered a "channel sharee station" until it is able to file in LMS the necessary channel sharing applications to become jointly licensed with WEDW and WZME on channel 49.

¹³ See 47 CFR § 73.3700(c), (d).