



Federal Communications Commission
Washington, D.C. 20554

June 28, 2017

Mr. Rick Schneider
Greater Washington Educational
Telecommunications Association, Inc.
3939 Campbell Avenue
Arlington, Virginia 22206

Margaret Miller
Gray Miller Persh LLP
1200 New Hampshire Avenue, NW
Suite 410
Washington, DC 20036

Re: Request for Waiver of Initial
Construction Permit Filing Deadline
WETA-TV, Washington, DC
Facility ID No. 65670
LMS File No. 0000024862

Dear Licensee,

On June 9, 2017, the Greater Washington Educational Telecommunications Association, Inc. (GWETA) submitted the above captioned request for waiver of the July 12, 2017, 90-day post-incentive auction construction permit and cost estimate filing deadline for full power television station WETA-TV, Washington, DC (WETA-TV or Station), asserting that the Station is "unable to construct" the specified facilities assigned to it in the *Closing and Channel Reassignment Public Notice*¹ due to land mobile (LM) interference and other related technical reasons. GWETA also seeks permission to file an application for construction permit during the first priority alternate channel/expanded facilities filing window (first priority window). For the reasons below, we grant the request for waiver and GWETA is permitted to file an application for construction permit for WETA-TV during the first priority window.

Background. The Commission instructed that a reassigned station is eligible to receive a waiver of the July 12, 2017 filing deadline for its post-incentive auction construction permit if the station demonstrates that due to extraordinary technical or legal issues beyond the station's control, it is "unable to construct" the post-auction facilities specified to it in the *Closing and Channel Reassignment Public Notice* or within the permissible contour coverage variance.² If the Media Bureau grants a station such a

¹ 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 (MB & WTB 2017) (*Closing and Channel Reassignment Public Notice*). See LMS File No. 0000024862, WETA Unable to Construct Waiver Request (Waiver Request).

² See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6794, para. 554 (2014), subsequent history omitted (*Incentive Auction R&O*); 47 CFR § 73.3700(b)(1)(iv)(A). The Commission has stated that a station may be found to be "unable to construct" the facility specified in the *Closing and Channel Reassignment Public Notice*, for example, if a station is unable to construct a compliant facility on its current tower and a replacement tower cannot be constructed from which the

waiver, the station is permitted to file a request for a construction permit in the first priority window to seek an alternate channel and/or expanded facilities.³ A station whose request to file its construction permit application in the first priority window is granted because it is “unable to construct” will also be granted additional time to submit its reimbursement cost estimate form (FCC Form 2100, Schedule 399) detailing its estimated relocation costs.⁴ The station may, however, choose to file its cost estimate form by the July 12, 2017 filing deadline so that the Commission can use that information as the basis for the initial allocation for the station’s construction project. The Commission will assign a proxy estimate for stations filing in the first priority window that do not submit cost estimate information on FCC Form 2100, Schedule 399 by July 12, 2017.⁵

WETA-TV is currently licensed to operate on channel 27 and was reassigned to channel 14 in the *Closing and Channel Reassignment Public Notice*. TV channel 14 is adjacent to spectrum used for LM operations and, according to GWETA’s consulting engineers, over 1,000 of the over 2,000 land mobile licensees within 100 km of the WETA-TV transmitter site—with over 4,500 separate facilities—would be potentially impacted by interference from WETA-TV on channel 14.⁶ Under subsections 73.687(e)(3) and (4) of the Commission’s Rules, channel 14 permittees and licensees are required to undertake efforts to avoid and prevent interference to adjacent spectrum land mobile radio service facilities.⁷ According to the consulting engineers, in instances where interference cannot be mitigated, television stations on channel 14 have paid licensees of land mobile facilities to agree to move to new frequencies at the expense of the television station. Given the large number of potentially impacted LM facilities here, GWETA’s engineers estimate that a budget of \$30-\$40 million may be required to move land mobile facilities.⁸

WETA-TV also shares a combiner and antenna with two other stations which currently have a “small channel spread.” As a result of the repacking the new channel spread will range from channel 14 to channel 35.⁹ GWETA believes that because the potential for intermodulation products caused in the combiner and other components by the mixing of these channels is very high, channel 14 will not work in

station would be able to meet the specified technical parameters. *Incentive Auction R&O*, 29 FCC Rcd at 6791 n.1551.

³ See 47 CFR § 73.3700(b)(1)(iv)(A). Applications filed during the first priority window will be treated as filed on the last day of that window for purposes of determining mutual exclusivity and will be given a 90-day period to resolve the MX by proposing a technical solution or settlement in an amendment to their pending applications. See *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd 858, 870, para. 36 (MB 2017) (*Broadcast Transition Procedures Public Notice*)

⁴ See *id.* at 884 n.180 (citing *Incentive Auction R&O*, 29 FCC Rcd at 6823 n.1754).

⁵ *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2815, para. 86 (“The Commission will assign a proxy estimate using, for instance, the cost estimates of similarly situated stations, in order to provide those stations with an initial allocation.”).

⁶ See LMS File No. 0000024862, Ch14 Engineering Report at 1-4 (Engineering Report); Waiver Request at 2. Some of the potentially impacted licensees are Public Safety operations including Campus Police Departments at several large universities and colleges, as well as several large hospitals and medical centers. Engineering Report at 5.

⁷ 47 CFR §§ 73.687(e)(3),(4).

⁸ *Id.* at 8-9.

⁹ *Id.* at 6

WETA-TV's current combiner situation.¹⁰ Moreover, the required channel 14 filter is approximately 18 feet by 27 feet and the existing Northwest Washington, DC transmitter site that WETA-TV shares with four other television stations does not have adequate space for installation of the filter.¹¹ GWETA further asserts that relocating the Station to another nearby tower to resolve the combiner and filter issues is not feasible because the Station would need to move to a tower within a few miles of an adjacent channel station on channel 15 in order to avoid interference, and no such site is available.¹²

Discussion. A waiver is appropriate "where the particular facts make strict compliance inconsistent with the public interest" and a deviation from the general rule would relieve hardship or produce a "more effective implementation of overall policy on an individual basis."¹³ In this case, we find that it would not be consistent with the public interest to require GWETA to apply for its assigned post-incentive auction facilities in light of the circumstances GWETA has presented, including the widespread prohibited interference and determinantal impact that the channel change would likely have on existing LM facilities even if the Station were to apply mitigation techniques, building space limitations, and the negative impact on other co-located broadcasters. A staff analysis of the included technical exhibit confirms that unresolvable interference is likely.¹⁴ Based on the foregoing, we find that GWETA has demonstrated that it is unable to construct its post-auction facility as assigned to it in the *Closing and Channel Reassignment Public Notice* and conclude that it is in the public interest to allow GWETA to apply for an alternate facility for WETA-TV during the first priority window.

We remind GWETA that, when filing in the first priority window, it must protect the construction permit facilities of reassigned stations and band changing stations filed in the initial 90-day period if those stations' applications have been granted or remain pending. Otherwise, applicants in the first priority window must protect the facilities specified in the *Closing and Channel Reassignment Public Notice*.¹⁵ In addition, all applications filed in the first priority window must protect the facilities specified in applications filed before the April 2013 freeze with "cut-off" protection.¹⁶ The facilities proposed in applications filed during the first priority window will be entitled to interference protection from subsequently-filed applications and amendments thereto.¹⁷ We also remind GWETA that our action does not change the transition schedule, including the station's phase assignment, testing period, or phase completion date.¹⁸

¹⁰ *Id.*; Waiver Request at 2

¹¹ Engineering Report at 7-8.

¹² *Id.* at 8.

¹³ 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); 47 CFR § 1.3 (waiver for good cause shown).

¹⁴ See Engineering Report at 3-6.

¹⁵ See *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 867, para. 30.


¹⁶ See *Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Station Modification Applications, Effective Immediately, and Reminds Stations of Spectrum Act Preservation Mandate*, Public Notice, 28 FCC Rcd 4364 (MB 2013).

¹⁷ See *Incentive Auction R&O*, 29 FCC Rcd at 6794 n.1573 (citing *Commission Lifts Freeze on Filing of Maximization Applications and Petitions for Digital Channel Substitutions, Effective Immediately*, Public Notice, 23 FCC Rcd 8330 (2008)).

¹⁸ See *Incentive Auction R&O*, 29 FCC Rcd at n.1551. To make a change to a station's phase assignment and corresponding transition deadlines, a licensee must file a Request for Modification and Waiver of its phase

The above facts considered, GWETA's request for waiver **IS GRANTED** and the July 12, 2017, deadline for submission of both its application for post-incentive auction construction permit (FCC Form 2100, Schedule A) and reimbursement cost estimate form (FCC Form 2100, Schedule 399) **IS WAIVED**. Furthermore, GWETA is instructed to submit an application for construction permit for WETA-TV during the first priority window, which will be announced by Public Notice and commence shortly after conclusion of the initial 90-day filing period.¹⁹ GWETA is also instructed to submit its reimbursement cost estimate form for WETA-TV within 30 days of receiving a construction permit for an alternate channel or expanded facility.

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

assignment by filing a Legal STA in LMS. *See Broadcast Procedures Public Notice*, 32 FCC Rcd at 887, Appx. A (providing instructions for filing a Legal STA in LMS). The Bureau will evaluate such requests on a case-by-case basis in order to facilitate a timely and orderly transition and assess the impact of such requests on the transition schedule, including the impact on other broadcasters as well as viewers. *See Incentive Auction Task Force and Media Bureau Adopt Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 32 FCC Rcd 890, 912-14, paras. 49-52 (MB 2017); *see also Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 881-82, para. 73. No fee is required to file a Legal STA that contains a request for modification and waiver of a station's phase assignment.

¹⁹ *See Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 867, para. 30 and n.49 (citing *Incentive Auction R&O*, 29 FCC Rcd at 6795, para. 556 (delegating authority to the Bureau to issue public notices announcing filing opportunities for alternate channels and expanded facilities and stating that the staff will open the first priority window after it substantially completes its processing of initial minor change construction permits)).