



(REFERENCE COPY - Not for submission)

## Extension of a Construction Permit

File Number: **0000072226** | Submit Date: **04/30/2019** | Call Sign: **WNPB-TV** | Facility ID: **71676** | FRN: **0002017572**  
State: **West Virginia** | City: **MORGANTOWN**  
Service: **DTV** | Purpose: **Extension of CP** | Status: **Pending** | Status Date: **04/30/2019** | Filing Status: **Active**

### General Information

Section	Question	Response
Attachments	Are attachments (other than associated schedules) being filed with this application?	Yes

### Applicant Information

#### Applicant Name, Type, and Contact Information

Applicant	Address	Phone	Email	Applicant Type
<b>West Virginia Educational Broadcasting Authority</b>	Chuck Roberts 600 Capitol Street Charleston, WV 25301 United States	+1 (304) 556- 4939	croberts@wvpublic. org	Government Entity

#### Authorization Holder Name

Check box if the Authorization Holder name is being updated because of the sale (or transfer of control) of the Authorization(s) to another party and for which proper Commission approval has not been received or proper notification provided.

**Contact  
Representatives  
(2)**

Contact Name	Address	Phone	Email	Contact Type
<b>Tom W Davidson</b> Akin Gump Strauss Hauer & Feld LLP	1333 New Hampshire Ave., NW Washington, DC 20036 United States	+1 (202) 887- 4011	tdavidson@akingump. com	Legal Representative
<b>Ryan C Wilhour</b> <i>Consulting Engineer</i> Kessler and Gehman Associates, Inc.	507 NW 60 Street Ste C Gainesville, FL 32607 United States	+1 (352) 332- 3157	ryan@kesslerandgehman. com	Technical Representative

**Tolling Questions**

Section	Question	Response
<b>Applicant certifies that construction cannot be completed due to:</b>	Legal reasons beyond station's control (e.g., litigation, international coordination):	Yes
	Severe financial hardship (e.g., bankruptcy, negative cash flow):	
	other reasons (e.g., natural disasters):	
	Has the construction period for this station been previously extended?	No
	Applicant requests that the time within which to complete construction be extended until:	01/29 /2020

**Certification**

Section	Question	Response
<p><b>General Certification Statements</b></p>	<p>The Applicant waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by authorization or otherwise, and requests an Authorization in accordance with this application (See Section 304 of the Communications Act of 1934, as amended.).</p>	
	<p>The Applicant certifies that neither the Applicant nor any other party to the application is subject to a denial of Federal benefits pursuant to §5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. §862, because of a conviction for possession or distribution of a controlled substance. This certification does not apply to applications filed in services exempted under §1.2002(c) of the rules, 47 CFR . See §1.2002(b) of the rules, 47 CFR §1.2002(b), for the definition of "party to the application" as used in this certification §1.2002 (c). The Applicant certifies that all statements made in this application and in the exhibits, attachments, or documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.</p>	
<p><b>Authorized Party to Sign</b></p>	<p><b>FAILURE TO SIGN THIS APPLICATION MAY RESULT IN DISMISSAL OF THE APPLICATION AND FORFEITURE OF ANY FEES PAID</b></p> <p>Upon grant of this application, the Authorization Holder may be subject to certain construction or coverage requirements. Failure to meet the construction or coverage requirements will result in automatic cancellation of the Authorization. Consult appropriate FCC regulations to determine the construction or coverage requirements that apply to the type of Authorization requested in this application.</p> <p>WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND /OR IMPRISONMENT (U.S. Code, Title 18, §1001) AND/OR REVOCATION OF ANY STATION AUTHORIZATION (U.S. Code, Title 47, §312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, §503).</p>	
	<p>I certify that this application includes all required and relevant attachments.</p>	<p>Yes</p>
	<p>I declare, under penalty of perjury, that I am an authorized representative of the above-named applicant for the Authorization(s) specified above.</p>	<p><b>Chuck Roberts</b>  <i>CEO and Executive Director</i></p> <p>04/30/2019</p>

## Attachments

File Name	Uploaded By	Attachment Type	Description
<a href="#">WNPB Post-Auction CP Extension Request.pdf</a>	Applicant	All Purpose	WNPB CP Extension Request

**Statement in Support of Request for Extension of Post-Auction Construction Permit**

Pursuant to Section 73.3700(b)(5) of the rules of the Federal Communications Commission (“FCC”), West Virginia Educational Broadcasting Authority (“WVEBA”), licensee of non-commercial educational television station WNPB-TV, Facility ID No. 71676, Morgantown, West Virginia (“WNPB”), respectfully requests a six-month extension of the construction deadline set forth in WNPB’s post-auction construction permit, FCC File No. 0000034624 (“Channel 34 CP”). Presently, WNPB is required to complete construction of the facility specified in the Channel 34 CP by August 2, 2019. As explained herein, due to delays in WVEBA’s ability to initiate the state-mandated competitive bidding and procurement process for WNPB’s channel 34 antenna, it is unlikely that the channel 34 antenna will be available for installation prior to November or December 2019. Importantly, however, although WVEBA will not be able to complete construction of the facility specified in the Channel 34 CP by August 2, WNPB plans to transition from channel 33 to channel 34 by August 2 using a temporary facility. Accordingly, grant of the instant request is in the public interest because it will not delay or disrupt the post-auction transition schedule.

The Media Bureau is authorized to grant an extension of a repacked station’s post-auction construction permit for up to six months to enable the station to complete construction of its post-auction facility if such an extension is necessary due to circumstances beyond the licensee’s control.<sup>1</sup> Such circumstances include “delays faced by licensees that must obtain government approvals, such as land use or zoning approvals, or that are subject to competitive bidding requirements prior to purchasing equipment or services.”<sup>2</sup> The instant request to extend the construction deadline for WNPB falls squarely within these parameters. Specifically, as a public benefit corporation established by the State of West Virginia (“State”), WVEBA is required to comply with the State’s rules and procedures regarding procurement of goods and services.<sup>3</sup> These rules require, *inter alia*, that equipment purchases in excess of \$25,000 be put out for competitive bidding,<sup>4</sup> and also mandate that WVEBA designate in its requisition request the account that holds the funds necessary to pay the winning vendor.<sup>5</sup> Until recently, WVEBA

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<sup>1</sup> 47 C.F.R. § 73.3700(b)(5)(i).

<sup>2</sup> 47 C.F.R. § 73.3700(b)(5)(ii).

<sup>3</sup> See W. Va. Code § 5A-1-10 (2019) (requiring that all spending units use competitive bidding process to purchase commodities wherever possible).

<sup>4</sup> See W. Va. Code § 5A-3-11.

<sup>5</sup> See West Virginia Purchasing Division Procedures Handbook, § 6.6 (“Requisitions submitted to the Purchasing Division are to include proper encumbrance information for purchase orders to be encumbered by the Purchasing Division’s Communication and Technical Services Unit. Agencies must designate the appropriate account(s) from which funds to pay for a contract will be taken prior to a contract being awarded”), *available at* <https://www.state.wv.us/admin/purchase/Handbook/2019/handbook.pdf> (last visited Apr. 29, 2019).

could not comply with this requirement as it did not have the funds available to purchase the channel 34 antenna. As a result, WVEBA could not submit a requisition request to the State because it could not include in its request the account information required by the State to encumber the funds that will be available to the winning bidder in the State procurement process. However, on March 14, 2019, the Governor of West Virginia signed into law an appropriations bill providing WVEBA with \$7.36 million.<sup>6</sup> Following receipt of the appropriation into WVEBA's account, WVEBA promptly began the requisition process with the State. This process has been ongoing, and WVEBA anticipates that its requisition request will be put out for competitive bidding by the beginning of May. WVEBA cannot order the channel 34 antenna until the competitive bidding process has been completed. Thus, assuming the competitive bidding process is initiated at the beginning of May, WVEBA anticipates that it could order the channel 34 antenna in early to mid-June, though it is possible this may be delayed depending upon the time it takes for the competitive bidding process to be completed. At this time, WVEBA believes that the procurement process will be completed such that the channel 34 antenna can be delivered in November or December 2019. Assuming this to be the case, and depending upon the availability of tower crews, weather permitting, WNPB likely will complete installation of the channel 34 antenna by the end of 2019 or beginning of 2020 and file a license to cover application for the Channel 34 CP at that time.

Grant of the instant request to extend the construction deadline for the Channel 34 CP by six months will not disrupt or delay the post-auction transition because WNPB will cease operations on channel 33, and transition to channel 34 using a temporary facility, no later than August 2, 2019 (i.e., the Phase 4 completion deadline). The proposed temporary reduced power facility will utilize the new transmitter that WNPB has ordered for its post-auction channel 34 facility<sup>7</sup> and the existing channel 33 antenna, which WNPB will retune to operate on channel 34.<sup>8</sup> The temporary reduced power facility will operate at a power level commensurate to WNPB's licensed channel 33 facility, such that WNPB will fully serve its current viewers with an over-the-air signal when it transitions to channel 34 at the end of Phase 4.<sup>9</sup>

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<sup>6</sup> See S.B. 681, 84th Leg., Reg. Sess. (W. Va. 2019). See also, Phil Kabler, *Public Broadcasting Tech Upgrades Get Boost with \$7.36 Million Appropriation*, CHARLESTON GAZETTE-MAIL, available at [https://www.wvgazettemail.com/news/public-broadcasting-tech-upgrades-get-boost-with-million-appropriation/article\\_c136c53b-6938-5278-8d54-5f65f0640546.html](https://www.wvgazettemail.com/news/public-broadcasting-tech-upgrades-get-boost-with-million-appropriation/article_c136c53b-6938-5278-8d54-5f65f0640546.html).

<sup>7</sup> The channel 34 transmitter is scheduled for delivery in May. WVEBA anticipates that it will complete installation of this transmitter by early June 2019.

<sup>8</sup> WNPB's existing channel 33 antenna, retuned to channel 34, is incapable of operating at 660 kW ERP as set forth in the Channel 34 antenna. To make 660 kW ERP, WNPB must install the channel 34 antenna that is presently out for competitive bid pursuant to the State's procurement procedures.

<sup>9</sup> WNPB presently is operating at reduced power on channel 33 using a spare channel 33 transmitter that was installed after its main transmitter suffered a total loss due to a burst liquid coolant line. See LMS File No. 0000068432. As noted in the text, WNPB has ordered its post-

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auction channel 34 transmitter, such that, when it transitions to channel 34, WNPB will be able to operate at a power level commensurate to its licensed channel 33 facility until such time as it is able to install its channel 34 antenna.