

### **Request for Waiver**

Pursuant to Section 1.3 of the rules of the Federal Communications Commission (“FCC” or “Commission”), West Virginia Educational Broadcasting Authority (“WVEBA”), licensee of non-commercial educational television station WVPB-TV, Facility ID No. 71657, Huntington, West Virginia (“WVPB”), respectfully requests a waiver of Section 73.3700(b)(4)(iii) to enable WVPB to continue operation of its pre-auction channel 34 facilities set forth in WVPB’s post-auction construction permit, FCC File No. 0000034622 (“Channel 9 CP”)<sup>1</sup> until September 8, 2020. WVEBA also respectfully requests that WVPB’s phase completion date be modified from July 3, 2020 to September 8, 2020, and that, to the extent required, the FCC waive Section 73.616(d) to permit WVPB to receive interference in excess of 0.5% until it completes construction of its post-auction facilities. As explained herein, due to circumstances beyond its control, WVEBA requires additional time to construct the Channel 9 facility.<sup>2</sup>

Grant of the instant waiver request is in the public interest because it will enable WVPB to provide continuous service to its over-the-air viewers until such time as it completes its transition to channel 9. In the absence of the requested relief, WVPB will be required to cease broadcasts temporarily until the Channel 9 CP is fully constructed. Such a result is clearly contrary to the public interest, as WVPB’s over-the-air viewers would no longer have access to the many hours of quality public broadcast programming provided by the station, including at-home learning programming broadcast in partnership with the Department of Education to address student needs during COVID-19. This would be a particularly troublesome result in the midst of the COVID-19 pandemic, widespread economic distress, and ongoing civil unrest.

Not only is grant of the waiver in the public interest, enabling WVPB to remain on its pre-auction channel 34 will not interfere with completion of the post-auction transition because channel 34 has not been assigned to any other broadcast television station as part of the repack process. Nor will WVPB’s continued operation on channel 34 – a channel that has not been reallocated for wireless use – for a brief period after July 3, 2020 interfere with any 600 MHz wireless licensee’s ability to use repurposed television spectrum. Lastly, although WVPB will receive interference in excess of 0.5% if it continues to operate on channel 34 after July 3, 2020, WVPB’s channel 34 operation is not predicted to cause harmful interference to any full-power television station.

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<sup>1</sup> On June 3, 2020, WVEBA filed a request to extend the Channel 9 CP for an additional 180 days, to December 30, 2020 (“Channel 9 CP Extension Request”). See LMS File No. 0000115739. The Channel 9 CP Extension Request remains pending. To the extent necessary, WVEBA requests that the Bureau dismiss the Channel 9 CP Extension request without prejudice as moot if the Bureau grants the instant request and extends WVPB’s Channel 9 CP construction deadline to September 8, 2020.

<sup>2</sup> The instant request for waiver is supported by the Declarations of Ollin David McClanhan, WVEBA’s Director of Engineering, and Eddie Isom, WVEBA’s Director of Programming, both of which are attached as Exhibit A hereto.

## **I. BACKGROUND**

WVPB has served the Charleston-Huntington, West Virginia designated market area (“Charleston-Huntington DMA”) since it first went on the air in 1969. The station is affiliated with the PBS Television Network and is licensed to the WVEBA, a public benefit corporation established by the State of West Virginia (“State”) for the purpose of providing non-commercial educational radio and television broadcasting services to residents of West Virginia.<sup>3</sup> WVPB operates as part of the WVEBA television network, which also includes full-power television stations WSWP-TV and WNPB-TV, as well as several television translator stations. In addition, WVEBA holds the licenses for twelve full-power non-commercial educational radio stations and associated FM translator and FM booster stations.

In connection with the broadcast incentive auction, the FCC determined that WVPB should be repacked from channel 34, and assigned it to Phase 10 for its post-auction transition. The FCC initially assigned channel 20 for WVPB’s post-auction broadcasts.<sup>4</sup> Promptly thereafter, WVPB conducted an evaluation as to whether channel 20 was viable for its post-auction broadcasts. After undertaking studies of channel 20, WVEBA determined that a VHF channel assignment would better enable WVPB to serve its viewers given the terrain characteristics of the station’s coverage area. Accordingly, in November 2017, WVPB filed an application to modify its channel assignment from channel 20 to channel 9.<sup>5</sup> This application was granted in January 2018.

Construction of the Channel 9 CP facility involves four primary tasks: (i) removal of the existing transmitter from WVPB’s transmitter room; (ii) installation of the new channel 9 transmitter; (iii) replacement of the transmission line; and (iv) installation of the new channel 9 antenna. As explained below, WVEBA has been working diligently to complete these tasks and, until recently, had believed it would be positioned to complete construction of the Channel 9 CP facility by July 3, 2020. However, as a result of the COVID-19 pandemic and associated delays with the state procurement process and equipment delivery, WVEBA will not be able to fully construct the Channel 9 CP until at least August 2020, thereby necessitating the instant request.

## **II. WVPB HAS BEEN WORKING DILIGENTLY TO CONSTRUCT THE CHANNEL 9 CP FACILITIES**

WVEBA first learned in April 2017 that WVPB, along with its sister stations WSWP-TV and WNPB-TV, would be required to transition to new channels as part of the repacking process. Thus, WVEBA was tasked with balancing the transition of three full-power television stations, while simultaneously addressing the need to find displacement channels for five of its television translator stations.

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<sup>3</sup> See W. Va. Code § 10-5-1.

<sup>4</sup> WVPB-TV initially obtained a construction permit for channel 20. See LMS File No. 0000026241.

<sup>5</sup> See LMS File No. 0000034622.

WVEBA faced significant challenges in securing the funding necessary to order the equipment required for the post-auction facilities of WNPB and its sister stations. As a governmental entity, WVEBA is required to comply with the State's laws and procedures regarding procurement of goods and services.<sup>6</sup> These laws require, *inter alia*, that equipment purchases in excess of \$25,000 be put out for competitive bidding, a process that is time and resource intensive.<sup>7</sup> Under rules established by the State of West Virginia Purchasing Division, WVEBA could not start the lengthy procurement process for WVPB (or any of its sister stations) until it had adequate funds on hand to pay the winning vendor.<sup>8</sup> For WVEBA, this did not occur until March 14, 2019, when the Governor of West Virginia signed into law an appropriations bill providing WVEBA with \$7.36 million to implement the repack.<sup>9</sup>

When the funding for the post-auction transition for the WVEBA television stations was finally made available just over a year ago, WVEBA's efforts were necessarily focused on WNPB-TV's transition, which was assigned to transition to its post-auction channel at the end of Phase 4 on August 2, 2019.<sup>10</sup> Indeed, with a staff of only three engineers for the entire WVEBA television and radio network, WVEBA simply did not have the resources to initiate the complicated State procurement process for the equipment required for WVPB until such time as the WNPB-TV facility was fully constructed at the end of February 2020.<sup>11</sup> This is particularly the case given that WVEBA's small engineering team was tasked with balancing the repack

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<sup>6</sup> See W. Va. Code § 5A-1-10 (2019) (requiring that all spending units use competitive bidding process to purchase commodities wherever possible).

<sup>7</sup> See W. Va. Code § 5A-3-11.

<sup>8</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 <http://www.state.wv.us/admin/purchase/handbook/2020/handbook.pdf> (last visited June 23, 2020).

<sup>9</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.wvgazette.com/news/public-broadcasting-tech-upgrades-get-boost-with-million-appropriation/article\\_c136c53b-6938-5278-8d54-5f65f0640546.html](https://www.wvgazette.com/news/public-broadcasting-tech-upgrades-get-boost-with-million-appropriation/article_c136c53b-6938-5278-8d54-5f65f0640546.html).

<sup>10</sup> WNPB-TV timely transitioned to its post-auction channel using a reduced power facility until it complete construction of its authorized post-auction facility.

<sup>11</sup> See LMS File No. 0000106559. For example, in accordance with the State's procurement procedures, a separate technical specification must be submitted for the various equipment required for WVPB's Channel 9 CP facility. Drafting the required technical specifications is a resource-intensive project, such that WVEBA could not dedicate staff to writing multiple specifications concurrently while still managing its day-to-day engineering needs.

schedule for all three WVEBA full-power television stations while concurrently managing the day-to-day engineering tasks for WVEBA's statewide network of television and radio stations, addressing unforeseen repairs (e.g., replacing two failed radio transmitters), and finding vacant channels for its five television translator stations that were displaced by the repack.

Once construction of the WNPB-TV post-auction facility was completed, WVEBA turned its focus to the construction of the WVPB (and WSWP-TV) post-auction facility. To this end, in February 2020, WVEBA worked with the state procurement office to initiate the competitive bidding process for the channel 9 transmitter. After several months, in approximately April 2020, the transmitter was put out to bid and, in early June 2020, WVEBA ordered the channel 9 transmitter. WVEBA presently is awaiting shipment of the channel 9 transmitter. WVEBA has substantially completed removal of the analog transmitter used for WVPB, thereby readying the site for installation of the new channel 9 transmitter upon delivery. In addition, WVEBA ordered the mask filter for WVPB's Channel 9 facility. However, GatesAir ("Gates") notified WVEBA that, due to delays relating to COVID-19, Gates is unable to deliver the mask filter for the Station's Channel 9 CP facility in time to enable installation of the same by the July 3 deadline.<sup>12</sup>

Although the transmitter and mask filter have been ordered and are awaiting delivery, WVEBA has not yet procured the post-auction channel 9 antenna and associated transmission line required for WVPB. After the competitive bidding process for the channel 9 transmitter was initiated, WVEBA submitted a requisition request to the State to purchase the antenna and transmission line in April 2020.<sup>13</sup> However, due to its focus on procuring personal protective equipment to address the COVID-19 pandemic, processing of this request was significantly delayed. The State recently notified WVEBA that it has now processed the requisition request, such that the requisition request can be put out for competitive bidding. WVEBA cannot order the channel 9 antenna until the competitive bidding process has been completed. Also pending before the State procurement office is the contract for the provision of tower services, which is expected to be open for bids on June 26, 2020. Once awarded, the winning vendor will work to schedule the tower crew and helicopter lift required to install WVPB's channel 9 antenna. Based upon currently available information, WVEBA believes that the procurement process for WVPB's antenna and associated equipment and services will be completed such that the channel 9 antenna can be delivered in late July or early August 2020, and installed thereafter.

Assuming no further delays with the procurement process, delivery of equipment, scheduling of tower crews, adverse weather conditions or other unanticipated events, WVEBA anticipates that construction of the WVPB Channel 9 facility will be complete by the end of August. Accordingly, WVEBA requests that WVPB be permitted to remain on its pre-auction channel 34 until September 8, 2020.

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<sup>12</sup> Based upon information provided by Gates, WVEBA anticipates that it should receive delivery of the mask filter by August 2020.

<sup>13</sup> See *infra* note 11.

### **III. GRANT OF THE REQUESTED WAIVERS TO PERMIT WVPB TO REMAIN ON CHANNEL 34 FOR A SHORT PERIOD BEYOND JULY 3, 2020 IS IN THE PUBLIC INTEREST**

Section 73.3700(b)(4)(iii) states that a repacked station, such as WVPB, must cease operating on its pre-auction channel on the earlier of the deadline specified in its construction permit for its post-auction channel or by the end of the post-auction transition period, i.e., July 13, 2020.<sup>14</sup> WVEBA seeks a waiver of this rule so WVPB can remain on the air on channel 34 through September 8, 2020 in order to complete construction of its permanent Channel 9 CP facilities.

Section 73.616(d) states that digital television stations may cause interference to no more than 0.5% of the service population of another station.<sup>15</sup> The Commission adopted an increased 2% interference threshold during the repack, but that allowance will end on July 3, 2020.<sup>16</sup> Although WVPB's post-auction operations on channel 34 are not predicted to cause interference to any full-power television station, the channel 34 operations will result in WVPB's receipt of 2.49% interference, which exceeds the 0.5% post-auction standard. Thus, to the extent required, WVEBA requests a waiver of the interference threshold set forth in 73.616(d).

The FCC has authority to grant a waiver of its rules for good cause shown. Specifically, the Commission has discretion to waive any rule where "particular facts would make strict compliance with the rule inconsistent with the public interest" and "special circumstances warrant a deviation from the general rule."<sup>17</sup> In evaluating a request for waiver, the Commission takes "into account considerations of hardship, equity, or more effective implementation of overall policy."<sup>18</sup> In addition, the Commission should consider whether waiver would result in a "more effective implementation of overall policy".<sup>19</sup>

With respect to the post-auction transition, the Media Bureau ("Bureau") is authorized to consider waivers of the phase 10 completion date and the post-auction transition period end date.<sup>20</sup> Such requests are evaluated based upon a showing that (i) the licensee cannot timely

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<sup>14</sup> 47 C.F.R. § 73.3700(b)(4)(iii).

<sup>15</sup> 47 C.F.R. §73.616(d).

<sup>16</sup> See *Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, Public Notice, DA 17-107, ¶ 16 (rel. January 27, 2017) ("*Transition Scheduling PN*") ("During the post-incentive auction transition, we will allow temporary increased pairwise (station-to-station) interference of up to two percent.").

<sup>17</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>18</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

<sup>19</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>20</sup> See *In the Matter of Request for Waiver of Cox Television Jacksonville LLC*, LMS File No. 0000115905, Order, FCC 20-82, at ¶ 16 (rel. June 18, 2020) ("*WFOX Waiver Order*").

complete construction of its post-auction facility due to delays that are beyond the station's control, including delays due in part to COVID-19 and (ii) there are no facilities available to the station, or that could reasonably be made available to the station pursuant to the flexibility available under the Transition Scheduling Plan, that would permit it to vacate its pre-auction channel without going dark.<sup>21</sup> A waiver request that is unlikely to “delay or disrupt the transition, such as by causing pairwise interference above two percent to another station, creating additional linked-station sets, necessitating another station move to a different transition phase, or that is likely to cause a drain on limited transition resources required by other stations” will be viewed favorably by the Bureau.<sup>22</sup>

Grant of the instant request to waive Sections 73.3700(b)(4)(iii) and 73.616(d) to enable WVPB to continue operation of its pre-auction channel 34 facilities beyond July 3, 2020 is in the public interest, satisfies the requirements for waiver, and is consistent with precedent. First, there is good cause for grant of the requested waivers in light of the unique circumstances of this case. As explained above, WVEBA is a non-commercial station that has faced a steady stream of complications with respect to construction of WVPB's post-auction facilities, including: (i) the need to await legislative intervention in order to obtain the significant funds required for the construction of the post-auction facilities for WVPB and its sister stations; (ii) the need for WVEBA's small engineering team to balance three repack projects on a concurrent basis while simultaneously managing the day-to-day engineering tasks for WVEBA's statewide network of television and radio stations, address unforeseen repairs (e.g., replacing two failed radio transmitters), and locate channels for WVEBA's displaced television translators; and (iii) the onset of the COVID-19 pandemic, which interjected unforeseen delays into the timeline to initiate the State-required competitive bidding process for post-auction equipment and services, and also resulted in unanticipated delays in the delivery of equipment necessary for WVPB's Channel 9 CP facility.<sup>23</sup> The cumulative effect of all these problems is that, despite WVEBA's diligent, good-faith efforts, WVPB's Channel 9 CP facility cannot be timely constructed by July 3, 2020.

Importantly, the Bureau can waive WVPB's pre-auction cessation date and extend its phase transition deadline without impact on the post-auction transition. As an initial matter, WVPB's continued operation on channel 34 after July 3, 2020 will not have a negative impact on any other television station.<sup>24</sup> Moreover, because channel 34 is located in the new TV Band,

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<sup>21</sup> *Id.* at ¶ 13.

<sup>22</sup> *See Transition Schedule PN*, at n. 63; *see also WFOX Waiver Order* at ¶ 13.

<sup>23</sup> *See WFOX Waiver Order* at ¶ 13 (granting waiver of Phase 10 completion date where station encountered construction delays due to a variety of factors, including delayed delivery of filters as a result of COVID-19 work stoppages).

<sup>24</sup> *See Engineering Statement* at 1 (stating that “the most significant outbound interference is 0.05% to WSLs-TV which is well below the 0.5% rounding tolerance used for interference determination”). WVPB will receive interference in excess of 0.5% but is not predicted to cause interference in excess of this threshold. *Id.* To the extent required, WVEBA requests a waiver of Section 73.616(d) to enable it to receive 2.49% inbound interference on

WVPB's channel 34 operations will not inhibit the ability of any 600 MHz licensee to access licensed spectrum.

Not only is there good cause to grant the instant waiver request, strict enforcement of Sections 73.3700(b)(4)(iii) and 73.616(d) against WVPB in this case would be contrary to the public interest. WVPB is an affiliate of the PBS Television Network and, as such, broadcasts compelling, high-quality content, such as PBS NewsHour, Mister Rogers' Neighborhood, and Great Performances. WVPB also is the sole local broadcast station to air media updates from the Governor of West Virginia regarding the COVID-19 pandemic, and has partnered with the Department of Education to air at-home learning programming five days per week while students are unable to attend school physically due to the novel coronavirus. Thus, requiring WVPB to cease broadcasts on channel 34 and go dark at the end of the 39 month transition period would unquestionably harm WVPB's viewers, particularly given the acute need for information and education resources during the COVID-19 pandemic.<sup>25</sup>

In stark contrast to the inevitable harms that would occur should the Bureau strictly enforce Sections 73.3700(b)(4)(iii) and 73.616(d) against WVPB, there is no countervailing public interest benefit to be served by requiring WVPB to go dark on July 3, 2020. Indeed, neither of the FCC's policy goals for the adoption of a hard deadline for the post-auction transition will be advanced should WVPB go off the air. First, requiring WVPB to cease broadcasts on channel 34 does not impede the FCC's goal of clearing repacked stations by July 13, 2020 because WVPB's post-auction channel 34 is not on spectrum allocated for 5G use.<sup>26</sup> Second, the Commission's objective of reconciling the end date of the broadcast transition with the statutory limits on reimbursement will not be undermined by permitting WVPB to stay on channel 34 for an additional 90 days past July 3, 2020 because Congress has extended the deadline for reimbursement for an additional three years beyond the deadline initially established

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channel 34 until such time as it completes construction of its Channel 9 CP facility. This level of interference is only slight higher than the 2% interference threshold adopted by the Commission for the post-auction repack period. *See Transition Schedule PN*, at ¶ 16 ("During the post-incentive auction transition, we will allow temporary increased pairwise (station-to-station) interference of up to two percent.").

<sup>25</sup> *See* Request for Waiver of Cox Television Jacksonville, LLC, LMS File No. 0000115905 at 5 ("*WFOX Waiver Request*") (explaining that viewers would be deprived of valuable programming at a time where it is most needed if WFOX were required to go dark).

<sup>26</sup> *See Incentive Auction Report & Order*, 29 FCC Rcd 6567, 6573, ¶ 11 (2014) ("*Incentive Auction R&O*"). *See also*, *WFOX Waiver Order* at ¶ 14 (granting request for waiver of Phase 10 completion deadline and interference rules where the station's pre-auction channel is in the new TV Band, such that continued use of this channel "will not delay any wireless licensee that purchased 600 MHz wireless licenses in the forward auction from accessing its spectrum when promised.").

in 2014.<sup>27</sup> For these reasons, strict enforcement of the rules would harm the public interest, which strongly favors waiver of the rules necessary to permit WVPB an extended construction period.

#### **IV. THE ALTERNATE APPROACHES PROPOSED FOR REPACKED STATIONS ARE NOT FEASIBLE FOR WVPB**

In adopting the rules governing the post-auction repack, the Commission recognized that some television stations may require additional relief to facilitate their transitions. To this end, the Commission suggested that a station unable to complete construction of its post-auction CP facilities could move to interim facilities on the station's pre-auction channel, operate at reduced power on a vacant channel, or enter into a temporary channel sharing arrangement.<sup>28</sup> Unfortunately, none of these options are feasible for WVPB at this time and, in any event, would take more time to implement than construction of WVPB's Channel 9 CP facility.<sup>29</sup> Moreover, it is quite likely that a temporary solution would result in a decrease in the number of over-the-air viewers served by WVPB, such that an interim operation would not serve the public interest nearly as well as grant of the requested waiver and extended operation on channel 34.

**Interim Facilities.** WVPB cannot operate on channel 9 with interim facilities because it cannot identify a location suitable to construct such facilities, as the towers that would enable WVPB to cover its community of license are fully occupied. Even if WVPB could find a suitable tower for interim facilities, the ability to construct an interim facility is further complicated by the fact that, depending upon the cost of the equipment required for the interim facility, WVEBA may be required to comply with the state procurement laws. In this case, WVPB certainly would not be able to purchase, order, accept delivery and install such equipment prior to July 3.<sup>30</sup>

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<sup>27</sup> See *Incentive Auction Task Force and Media Bureau Report on the Status of the Post-Incentive Auction Transition and Reimbursement Program*, Public Notice, ¶ 26 (rel. Feb. 11, 2019). See also, *WFOX Waiver Order* at 6.

<sup>28</sup> See *Incentive Auction R&O*, at ¶ 584; *Transition Schedule PN*, at ¶ 47; *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, DA 18-884, ¶ 7 (2018).

<sup>29</sup> WVPB is continuing to explore the potential of using a reduced power facility on channel 9 to enable it to begin channel 9 broadcasts as soon as possible in the event construction of the Channel 9 CP facility is further delayed. However, even assuming WVPB is successful in identifying a temporary engineering solution to mitigate the impact of future delays, any such solution cannot be implemented prior to July 13, 2020.

<sup>30</sup> To the extent the equipment required for an interim facility does not trigger the State-required procurement process, WVPB would nonetheless be unable to purchase, order, accept delivery and install such equipment prior to July 3. This is because WVEBA also is constructing the post-auction facility for WSWP-TV at this time, such that requiring WVPB to procure the equipment and harness the resources to construct an interim facility is simply not feasible at this late juncture. Moreover, until recently, WVEBA believed that it would be able to complete construction of WVPB timely, such that it could not have started the process of designing and

**Vacant Channel Facilities.** To WVEBA's knowledge, other than channel 20, which was initially assigned for WVPB's post-auction operations, there are no vacant channels available for a reduced power interim facility for WVPB. Regardless, even if a vacant channel were available, to operate on a vacant channel as of July 3, 2020 would require WVPB to engineer an interim facility and to order the required equipment for the new channel. As explained above, the purchase of equipment in excess of a certain amount must be put out for competitive bidding – a lengthy process that cannot be completed in time for a July 3, 2020 deadline. Even if competitive bidding were not required, WVPB would essentially be starting from ground zero to construct a vacant channel facility, which is not feasible within such a short period of time, particularly given ongoing delays and problems with obtaining equipment and crews in the COVID-19 environment.

**Temporary Channel Sharing.** A temporary channel share would be an inferior solution compared to the waivers requested herein. As an initial matter, there are only three television broadcast operations that could be potential channel sharing partners for WVPB. All of these operations, however, already are using their licensed channel bandwidth very intensively, such that there is unlikely to be any capacity to accommodate a channel share with WVPB. Until recently, WVEBA expected to timely construct WVPB's permanent facilities on channel 9, so it had no reason to pursue a channel share. Because successful channel shares require substantial planning and coordination, a channel share is not a practical solution to WVPB's inability to complete its facilities by July 3, 2020, particularly since, as a State agency, WVEBA would be required to comply with State procedures governing contracts to enter into a channel sharing agreement.

In short, there are no facilities available to WVPB, or that could reasonably be made available to WVPB under the flexibility provided in the *Transition Schedule PN*, that would enable WVPB to vacate channel 34 on July 3, 2020 without going dark.<sup>31</sup> Accordingly, grant of the requested waivers is warranted in this case.

## V. CONCLUSION

For the reasons set forth herein, expeditious grant of the requested waivers will serve the public interest. Not only will grant of the instant request preserve the valuable broadcast programming aired by WVPB (including at-home learning programs and coverage of the Governor's COVID-19 media updates) at a time when viewers need it most, it also will in no way slow the clearing of spectrum for 5G services. Importantly, viewers of other television

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implementing an interim facility at an earlier date. *See* Channel 9 CP Extension Request at note 1.

<sup>31</sup> *See WFOX Waiver Order*, at ¶ 13 (granting waivers to enable station to remain on its pre-auction channel until September 8, 2020 where the station had demonstrated that “moving to interim facilities on the Station's post-auction channel, operating at reduced power on a vacant channel, and temporary channel sharing are not feasible options for the Station.”).

stations will not be affected by grant of the instant application because WVPB's continued operation on channel 34 will not cause impermissible interference to any other full-power television station. In short, "any negative consequences of a short delay" in WVPB's transition are outweighed by the public interest benefits of permitting WVPB to remain on channel 34 for an additional 90 days, until September 8, 2020, while it completes construction of its Channel 9 CP facility.<sup>32</sup>

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<sup>32</sup> See *WFOX Waiver Order*, at ¶ 14. Assuming favorable action on the instant request, WVEBA will work to mitigate any viewer disruption caused by WVPB's continued operation of channel 34 by increasing viewer education and outreach by broadcasting additional viewer PSAs beyond what is required by the FCC's rules. *Id.*

## **Exhibit A: Declarations**

### Declaration of Ollin David McClanahan

1. My name is Ollin David McClanahan. I am the Director of Engineering for the West Virginia Educational Broadcasting Authority ("WVEBA").
2. I have reviewed the Request for Waiver seeking approval of the Federal Communications Commission ("FCC") for WVPB-TV, Facility ID No. 71657, Huntington, West Virginia ("WVPB") to continue operation of its pre-auction channel 34 facilities set forth in WVPB's post-auction construction permit, FCC File No. 0000034622, until September 8, 2020.
3. I have been the Director of Engineering for WVEBA since 02/2014. In that capacity, I am responsible for overseeing all of the engineering and technical issues for all of the radio and television stations licensed to WVEBA (collectively, the "WVEBA Broadcast Stations"), including WVPB and its sister television stations, WSWP-TV and WNPB-TV. In addition, I, along with the two engineers under my management, serve as field engineers for the WVEBA Broadcast Stations.
4. All three of the full-power television stations licensed to WVEBA have been assigned new channels as part of the repack. I have been working on the broadcast incentive auction channel change for these stations.
5. As part of the repack process, WVPB initially was assigned channel 20. Promptly thereafter, I worked with WVEBA's outside consulting engineer to conduct an evaluation as to whether channel 20 was viable for its post-auction broadcasts. Based upon this evaluation, WVEBA determined that a VHF channel assignment for WVPB would better enable it to serve its viewers given the terrain characteristics of the station's coverage area. Thus, WVEBA obtained authority for WVPB to transition to channel 9, rather than channel 20.
6. Until the State of West Virginia ("State") passed legislation in March 2019, I could not begin the process of procuring the equipment required to construct new facilities for WVPB-TV, WNPB-TV or WNPB-TV (e.g., new antennas, transmitters, etc.) because WVEBA did not have adequate funds on hand to pay the winning vendors. When funding was made available, I had to focus my efforts on constructing post-auction facilities for WNPB-TV, which was assigned to transition to its new channel by August 2, 2019 at the end of Phase 4. This was a complex undertaking because, not only did I need to engineer and oversee the construction of a reduced power facility to enable WNPB-TV to stay on the air after August 2, I also faced significant weather-related challenges when constructing the final post-auction facility for WNPB-TV in the winter of 2020.
7. Writing the technical specifications required to initiate the State-mandated competitive bidding process is time-intensive and, given WVEBA's limited engineering staff, my small team could not draft multiple specifications concurrently while still managing day-to-day engineering tasks, addressing unforeseen repairs (such as the need to replace two

radio transmitters), locating new channels for WVEBA's displaced television translator stations, and overseeing the transition of WNPB-TV.

8. As soon as the WNPB-TV construction project was complete, I turned my attention to WSWP-TV and WNPB-TV, both of which are required to transition by July 3, 2020. For example, in February 2020, I worked with the state procurement office to initiate the competitive bidding for WNPB's channel 9 transmitter, which was ordered on 6/2,2020, and is awaiting delivery. I also have readied the WNPB transmitter room for installation of the channel 9 transmitter by removing an analog transmitter previously used for WNPB.
9. I have ordered the mask filter required for WVPB's channel 9 facility but was informed by GatesAir that it is unable to deliver the mask filter due to delays resulting from the COVID-19 pandemic. GatesAir has indicated that the mask filter should be delivered by August.
10. I worked with the State procurement office to submit a requisition request to purchase the WVPB channel 9 antenna and associated transmission line in April 2020. The process was delayed because the procurement office was focused on purchasing personal protective equipment to address the COVID-19 pandemic. I have now been notified that the requisition request has been processed so that the antenna and transmission line can be put out for competitive bidding.
11. I also worked with the State procurement office to submit a requisition request for a contract for the provision of tower services. This contract is scheduled to be open for bid on June 26, 2020. Once it is awarded, the winning bidder will schedule the tower crew and helicopter lift required to install WVPB's new channel 9 antenna.
12. Assuming no further delays due to the procurement process, delivery of equipment, scheduling of tower crews, adverse weather conditions or other unanticipated events, I believe that construction of the WVPB channel 9 facility can be complete by the end of August.
13. I am exploring the potential of using a reduced power facility on channel 9 to enable WVPB to begin channel 9 broadcasts as soon as possible in the event construction of the channel 9 CP facility is further delayed. However, even if I identify a temporary engineering solution to mitigate the impact of future delays, I cannot implement the solution prior to July 13, 2020.
14. I have considered alternatives to enable WVPB to change to channel 9 by July 3, 2020, but none of the alternatives are feasible and all of which would essentially require WVPB to start from scratch to design and construct a temporary facility. This would take longer than simply proceeding to construct the channel 9 CP facility because it is likely that at least some of the alternatives would require WVPB to purchase equipment through the state procurement process.

15. An interim facility is not feasible by July 3, 2020 because all of the towers that would enable WVPB to cover its community of license with an interim facility are fully occupied.
16. A reduced power operation on vacant channel is not feasible by July 3, 2020 because, other than channel 20, to my knowledge, there are no vacant channels available for a reduced power facility for WVPB.
17. A temporary channel share is not feasible by July 3, 2020 because there are only three television broadcast operations that could be potential channel sharing partners for WVPB but all of these operations are already using their channel bandwidth to provide at least two program streams. Even if there was a viable channel share partner, WVPB could not enter into a channel sharing agreement before July 3 because, as a state agency, WVPB must comply with state laws and regulations governing entry into agreements.

I, Ollin David McClanahan, hereby declare, under penalty of perjury, that the foregoing is true and correct, to the best of my knowledge, information, and belief.



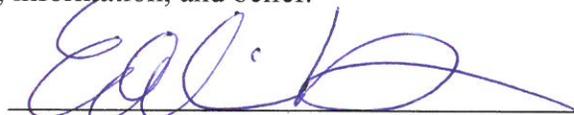
Ollin David McClanahan  
Director of Engineering  
West Virginia Educational Broadcasting Authority

June 24, 2020

### Declaration of Eddie Isom

1. My name is Eddie Isom. I am the Director of Programming for the West Virginia Educational Broadcasting Authority (“WVEBA”).
2. I have reviewed the Request for Waiver seeking approval of the Federal Communications Commission (“FCC”) for WVPB-TV, Facility ID No. 71657, Huntington, West Virginia (“WVPB”) to continue operation of its pre-auction channel 34 facilities set forth in WVPB’s post-auction construction permit, FCC File No. 0000034622, until September 8, 2020.
3. I have been the Director of Programming for WVEBA since July 2017. In that capacity, I am responsible for overseeing programming for all of the radio and television stations licensed to WVEBA, including WVPB.
4. WVPB is an affiliate of the PBS Television Network. WVPB regularly broadcasts PBS programming such as PBS NewsHour, Mister Rogers’ Neighborhood, and Great Performances.
5. WVPB is the sole local broadcast station to air media updates from the Governor of West Virginia regarding the COVID-19 pandemic, and has partnered with the Department of Education to air at-home learning programming five days per week while students are unable to attend school physically due to the novel coronavirus.
6. If WVPB goes off-air, this programming will be unavailable to viewers that rely on an over-the-air broadcast signal from WVPB.

I, Eddie Isom hereby declare, under penalty of perjury, that the foregoing is true and correct, to the best of my knowledge, information, and belief.



Eddie Isom  
Director of Programming  
West Virginia Educational Broadcasting Authority

June 23, 2020