

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 further waiver of Section 73.3700(b)(4)(iii) to enable WVPB to continue operation on its pre-auction channel 34 until September 30, 2020.¹ As explained herein WVEBA is requesting an additional twenty-two days beyond its current September 8, 2020 phase completion date in order to provide it with adequate time to complete negotiations and implement a channel sharing arrangement with WOWK-TV, Huntington, West Virginia, Facility ID No. 23342 (“WOWK”).

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 while it works to implement a channel sharing arrangement with WOWK pursuant to which WOWK will broadcast WVPB’s primary programming stream on a temporary basis until construction of WVPB’s post-auction channel 9 facility is completed.² WVEBA is diligently working to complete construction of its permanent channel 9 facility but is unlikely to be able to do so until mid-November 2020 primarily because WVPB’s main channel 9 antenna has not yet been fabricated. Recognizing the importance of ceasing broadcasts on its post-auction channel as expeditiously as possible, WVEBA has been actively exploring alternative approaches to transition, the only viable of which is a channel share with WOWK. As set forth in more detail below, WVEBA is optimistic that the temporary channel share can be implemented before construction of the permanent WVPB post-auction facility, but likely will not be able to do before September 8 for the reasons described herein.

In the absence of the requested relief, WVPB will be required to cease broadcasts as of its current phase completion date on September 8. Such a result is clearly contrary to the public interest, as WVPB’s over-the-air viewers would temporarily be without 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 that the school year is about to start up again. Requiring WVPB to go dark also would place its viewers in the untenable position of losing access to valuable programming in the midst of the ongoing pandemic, civil unrest, and a national election year.

Not only is grant of the waiver in the public interest, enabling WVPB to remain on its pre-auction channel 34 for a very brief period after September 8 will not interfere with

¹ WVEBA also respectfully requests that WVPB’s phase completion date be extended to September 30, 2020, and that, to the extent required, the FCC waive Section 73.616(d) to permit WVPB to receive interference in excess of the levels set forth in the FCC’s rules until it transitions to channel 9. The instant application was inadvertently submitted as a tolling request on August 26, 2020 (LMS File No. 0000120827), and, at the staff’s request, is being re-submitted as a request for legal STA.

² See FCC File No. 0000034622 (“Channel 9 CP”).

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, and because WVEBA understands that all other repacked stations have, or will have, transitioned to their post-auction channels on or before September 8. Nor will WVPB's continued operation on channel 34 – a channel that has not been reallocated for wireless use – as requested interfere with any 600 MHz wireless licensee's ability to use repurposed television spectrum. Lastly, although WVPB will receive inbound interference in excess of the levels set forth in the FCC's rules if it continues to operate on channel 34 as requested, WVPB's channel 34 operation is not predicted to cause harmful interference to any full-power television station.

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 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.³ 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.

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 and managing the day-to-day operations of its television and radio network. As described below, notwithstanding the challenges it faced, WVEBA successfully and timely transitioned both WNPB-TV and WSWP-TV to their respective post-auction channels.⁴ However, despite its ongoing and diligent efforts, WVEBA has been unable to transition WVPB to its post-auction channel, primarily due to equipment delays and delays with the state procurement office's competitive bidding processes.

The FCC initially assigned channel 20 for WVPB's post-auction broadcasts, and specified a construction deadline of July 3, 2020, i.e., the last date in the phased process to complete the nationwide repack of the television band.⁵ Promptly after learning that it would be

³ See W. Va. Code § 10-5-1.

⁴ WNPB-TV presently is operating using its permanent post-auction facility. See LMS File No. 0000106559. WVEBA transitioned WSWP-TV to its post-auction channel using a reduced power facility until such time as it can complete construction of its permanent post-auction facility. See LMS File Nos. 0000116284 (reduced power facility); 0000034625 (post-auction construction permit, as extended by LMS File No. 0000115741). See also *infra* at note 15 (discussing WSWP's transition in Phase 10, the same phase that was initially assigned to WVPB).

⁵ See LMS File No. 0000026241 (WVPB's channel 20 construction permit).

repacked, WVEBA conducted an evaluation as to whether channel 20 was viable for WVPB's 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 9.⁶ This application for the Channel 9 CP was granted in January 2018, and specified a July 3, 2020 construction deadline.

As a state-funded governmental entity, WVEBA faced significant challenges in securing the funding necessary to order the equipment required for the post-auction facilities of WVPB 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.⁷ 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, and is managed by the state procurement office.⁸ 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.⁹ 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 for all of its television stations.¹⁰

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, 2019.¹¹ Indeed, with a staff of only three engineers for the entire WVEBA television and radio network,¹² WVEBA simply did not have the resources to initiate the complicated State procurement process for the equipment required for WVPB until such time as

⁶ See LMS File No. 0000034622.

⁷ See W. Va. Code § 5A-1-10 (2019) (requiring that all spending units use competitive bidding process to purchase commodities wherever possible).

⁸ See W. Va. Code § 5A-3-11.

⁹ 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).

¹⁰ 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.

¹¹ WNPB-TV initially transitioned to its post-auction channel using a reduced power facility.

¹² WVEBA's engineering staff has been further reduced since January 2019. Today, there are effectively 1 ½ engineers to support the entire statewide radio and television network.

the WNPB-TV facility was fully constructed.¹³ The WNPB-TV construction project was quite challenging, as it involved installing the station's new post-auction main antenna via a gin pole in the midst of a West Virginia winter, including heavy ice that stalled the installation efforts more than once. Despite these challenges, WVEBA's successfully completed construction of WNPB-TV's post-auction facility in February 2020.¹⁴

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 facilities, both of which were scheduled to transition in Phase 10.¹⁵ After several months of working with the State procurement office on a requisition request that met the office's requirements for competitive bidding, in approximately April 2020, the channel 9 transmitter was put out to bid. The bidding process took several weeks, and, in early June 2020, WVEBA ordered the channel 9 transmitter. Promptly after the competitive bidding process for the channel 9 transmitter was initiated, WVEBA submitted a requisition request to the State to purchase the WVPB antenna and transmission line.¹⁶ However, due to its focus on procuring personal protective equipment to address the COVID-19 pandemic, the procurement office's processing of this request was significantly delayed such that, it was not until mid-June 2020 that the procurement office placed the antenna and transmission line out for competitive bidding. Similarly, the State procurement office did not place the contract for the provision of tower services out for bids until the end of

¹³ In most cases, the State's procurement office required WVEBA to submit separate technical specifications for the various equipment required for WNPB-TV, WSWP-TV and WVPB's post-auction facilities. Drafting the necessary technical specifications as required by the procurement office 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 and implementing the WNPB-TV repack. Indeed, WVEBA's small engineering team was tasked with balancing the repack 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.

¹⁴ See LMS File No. 0000106559.

¹⁵ Although WSWP timely transitioned to its post-auction channel, WVEBA was not able to complete construction of the permanent post-auction facility for WSWP due to equipment delays like those faced by WVPB. See LMS File No. 0000115741 (seeking a 180-day extension of WSWP's construction permit because GatesAir ("Gates") had notified the station that it would be unable to ship its channel 8 transmitter due to a delay in receipt of the required mask filters, and explaining that, as of July 3, 2020, the state procurement office had not yet processed WSWP's requisition request for the station's main antenna). Unlike WVPB, WSWP was linked to other transitioning stations, such that it was critical that WVEBA develop a means for WSWP to transition to its post-auction channel by the Phase 10 deadline, so as not to disrupt the transition of other stations. WVEBA ultimately determined that WSWP could timely vacate its pre-auction channel using a reduced power pursuant to special temporary authority. See LMS File No. 0000116284 (as subsequently amended). Since timely ceasing pre-auction channel broadcasts, WSWP has been broadcasting on its post-auction channel with its reduced power facility.

¹⁶ See *infra* note 13.

June 2020. Given these delays with equipment procurement, WVEBA sought and obtained an extension of its Phase 10 construction deadline, from July 3 to September 8, 2020.¹⁷ At that time, WVEBA believed that all required equipment would be onsite by August 2020, which would have provided ample time for it to complete construction of WVPB's Channel 9 CP facility before September 8. However, WVEBA has experienced additional days in the procurement and delivery of WVPB's channel 9 antenna and transmitter. Specifically, although Gates had told WVEBA that WVPB's channel 9 transmitter would be delivered in August 2020, Gates subsequently notified WVEBA that transmitter delivery would be further delayed because the necessary mask filter was not yet available. WVEBA worked with Gates to arrange for the transmitter to be delivered on an expedited basis but, on August 20, 2020, Gates notified WVEBA that such expedited delivery was not possible. As of August 20, Gates estimates delivery of the transmitter by the week of September 7 or the week of September 14, depending upon the availability of freight carriers. It will take approximately 1-2 weeks to install the transmitter once Gates delivers it.

In addition to installing the new channel 9 transmitter, WVEBA also must remove its existing channel 34 antenna and replace it with the new channel 9 antenna. The State procurement office took much longer to complete the competitive bidding process for the new antenna than WVEBA had anticipated would be the case. The procurement office finally completed this process in early August, at which time Propagation Systems, Inc. ("PSI") was selected as the winning vendor. Although the State procurement office did not authorize the final contract until August 24, WVEBA and PSI were able to initiate work on the project as soon as possible after PSI was deemed the winning bidder, including a meeting on August 18 where WVPB's engineer met with a representative of PSI regarding antenna fabrication. At this meeting, PSI stated that it typically takes 90 days to complete fabrication of the antenna. WVEBA is actively working with PSI to accelerate this schedule but PSI's ability to do so depends upon its ability to obtain the required materials (e.g., the steel used in the antenna) from its vendors on an expedited basis.

Based on information available to it as of today, WVEBA anticipates that all required equipment, including the channel 9 antenna, will be delivered in time to enable construction of the Channel 9 CP facility around mid-November 2020. Because the Channel 9 CP facility cannot be constructed by September 8, WVEBA has been diligently pursuing a temporary channel sharing arrangement with WOWK to enable WVPB to cease channel 34 broadcasts as expeditiously as possible.

¹⁷ See LMS File No. 0000116479 (filed June 24, 2020) ("First Waiver Request"). The Bureau granted WVEBA's First Waiver Request on July 1, 2020. See Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, FCC (dated July 1, 2020) (granting WVEBA's request for waiver and extension of WVPB's deadline from July 3, 2020 to September 8, 2020 pursuant to delegated authority consistent with the *WFOX Waiver Order* (as defined herein)) ("WVPB Waiver Order").

II. WVEBA IS ACTIVELY PURSUING A CHANNEL SHARING ARRANGEMENT FOR WVPB TO TRANSITION TO CHANNEL 9 AS SOON AS PRACTICABLE

WVEBA fully recognizes and acknowledges the need for WVPB to vacate its pre-auction channel as expeditiously as possible. Accordingly, in addition to working towards constructing its main post-auction facility, WVEBA has been exploring alternative approaches to transition WVPB to channel 9 before the main channel 9 facility is constructed.¹⁸ After considering all of its options, WVEBA has determined that entry into a channel sharing arrangement is the quickest and only viable means of transitioning to channel 9 before WVPB's permanent post-auction is complete.¹⁹

When it became abundantly clear that WVEBA would not be able to meet its current buildout deadline, WVEBA began discussing a temporary channel share with WOWK, whereby WOWK would carry WVPB's primary programming stream in standard definition format. Although WOWK presently is using all of its licensed channel bandwidth very intensively, the station has agreed to work with WVPB to procure and install the equipment required to compress WOWK's bandwidth to accommodate WVPB's signal. The stations' engineers have determined that, once the required compression equipment is installed, there is no technical impediment to implementing the channel share. The engineers have been exchanging information regarding,

¹⁸ 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) (recognizing that some television stations may require additional relief to facilitate their transitions and suggesting 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).

¹⁹ In addition to the temporary channel sharing arrangement with WOWK, WVEBA evaluated other alternatives but none are feasible. First, WVEBA cannot construct a temporary channel 9 facility on its own or another tower. At the time it filed the First Waiver Request, WVEBA had believed that it might be possible to repurpose a bay from the antenna being used for WSWP's reduced power facility on channel 8. After further evaluation, WVEBA determined that this option is not achievable within a short timeframe as a technical matter. Thus, absent the purchase of a temporary channel 9 antenna, WVEBA cannot construct a reduced power facility on its current tower. Second, WVPB cannot operate on channel 9 with interim facilities because all of 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, WVPB could not realistically finalize the required contracts, procure the required equipment and construct an interim facility before September 8. Lastly, WVEBA cannot relocate to a vacant channel because, as WVEBA explained in the First Waiver Request, to its knowledge, there are no vacant channels available for a reduced power interim facility for WVPB (other than channel 20, which was initially assigned for WVPB's post-auction operations). Even if any of the foregoing options were feasible, each would likely take longer to implement than completing construction of WVPB's Channel 9 CP facility because WVPB would essentially be starting from ground zero to enter into any required contracts and to order the necessary equipment – a process that simply cannot be completed in the next three weeks (or even by mid-November, when construction of the permanent Channel 9 CP facility is currently expected to be complete).

inter alia, the minimum bandwidth required for WVPB's primary programming stream, the equipment necessary to implement the channel share, and other operational matters. In addition, Chuck Roberts (WVEBA's Executive Director) has been communicating regularly with WOWK's general manager regarding the channel share. On August 25, WOWK's general manager told Mr. Roberts that he has provided the station's corporate parent, Nexstar, with all relevant information regarding the channel share, and that he is awaiting approval from Nexstar to proceed with the channel share. WVEBA anticipates that the channel share can be implemented within 2-4 weeks from the date Nexstar approves the transaction. Accordingly, WVEBA is seeking an extension of time, until September 30, 2020, to remain on its pre-auction channel in the event there are delays in receiving Nextstar's corporate approval and finalizing the business terms for the channel share arrangement. Grant of the instant request to enable WVPB to operate on channel 34 for a very brief period after September 8 is in the public interest because it would enable WVPB to continue to broadcast while the parties work to negotiate and implement the channel sharing arrangement.

III. GRANT OF THE REQUESTED WAIVERS TO PERMIT WVPB TO REMAIN ON CHANNEL 34 UNTIL SEPTEMBER 30, 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, 2020.²⁰ On July 1, 2020, the Bureau waived this rule to enable WVPB to remain on the air on channel 34 until September 8, 2020.²¹ By this request, WVEBA seeks a further waiver of this rule to enable it to continue to broadcast on channel 34 until September 30, 2020 to afford it additional time to implement the channel share with WOWK described herein.

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.²² 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 1.72% pairwise interference from WKEF, which exceeds the 0.5% post-auction standard but is below the 2% threshold permitted during the repack.²³ Thus, to the extent required, WVEBA requests a waiver of the

²⁰ 47 C.F.R. § 73.3700(b)(4)(iii).

²¹ See *WVPB Waiver Order*.

²² 47 C.F.R. § 73.616(d).

²³ See Engineering Statement (attached to First Waiver Request). 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."). See also, *WVPB Waiver Order* at note 18 (stating that WVPB "is predicted to receive approximately 1.72% in temporary pairwise inference from WKEF, to which it consents and is still below the two percent pairwise interference threshold that has been permitted during the post-auction transition period").

interference threshold set forth in 73.616(d) to enable it to receive interference from WKEF that is below the 2% interference standard applied during the repack until September 30, 2020.²⁴

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.”²⁵ In evaluating a request for waiver, the Commission takes “into account considerations of hardship, equity, or more effective implementation of overall policy.”²⁶ In addition, the Commission should consider whether waiver would result in a “more effective implementation of overall policy.”²⁷

With respect to the post-auction transition, the Bureau is authorized to consider waivers to permit a station, like WVPB, to remain on its post-auction channel beyond the post-auction period.²⁸ Such requests are evaluated based upon a showing that (i) the licensee cannot timely complete construction of its post-auction facility due to delays that are beyond the station’s control, 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.²⁹ 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.³⁰

Grant of the instant request to waive Sections 73.3700(b)(4)(iii) and 73.616(d) to enable WVPB to remain on channel 34 until September 30, 2020 is in the public interest, satisfies the requirements for waiver, and is consistent with precedent. First, the unique circumstances of this case provide good cause for grant of the requested waivers. 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 go through the State procurement office to order certain equipment and services required for the post-auction facility, and a lack of financial and other resources; and (ii) 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

²⁴ *Id.*

²⁵ *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).

²⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

²⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²⁸ *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*”).

²⁹ *Id.* at ¶ 13.

³⁰ *See Transition Schedule PN*, at n. 63; *see also WFOX Waiver Order* at ¶ 13.

delivery of equipment necessary for WVPB's Channel 9 CP facility.³¹ 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 September 8, 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. WVPB's continued operation on channel 34 until September 30, 2020 will not have a negative impact on any other television station because it is the only station that will not have transitioned to its post-auction channel.³² Because channel 34 is located in the new television band, 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 on September 8 would unquestionably harm WVPB's viewers, particularly given the acute need for information and education resources as many children commence remote learning during the COVID-19 pandemic.³³

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 September 8, 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, permitting WVPB to operate on channel 34 has had no impact on the FCC's goal of clearing repacked stations by July 13, 2020

³¹ 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). See also, *First Waiver Order*.

³² 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 1.72% inbound interference from WKEF on channel 34 until such time as it completes construction of its Channel 9 CP facility. This level of interference is lower than the 2% interference threshold adopted by the Commission for the post-auction repack period. See *Transition Schedule PN*, at ¶ 16.

³³ 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).

because WVPB's post-auction channel 34 is not on spectrum allocated for 5G use.³⁴ 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 twenty two days past September 8, 2020 because Congress has extended the deadline for reimbursement for an additional three years beyond the deadline initially established in 2014.³⁵ For these reasons, strict enforcement of the rules to require WVPB to go dark on September 8 would harm the public interest, which strongly favors waiver of the rules necessary to permit WVPB an extended construction period.

IV. 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 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 far outweighed by the public interest benefits of permitting WVPB to remain on channel 34 for a very brief period until September 30, 2020 while it works to implement a channel sharing arrangement with WOWK.³⁶

³⁴ 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.").

³⁵ 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.

³⁶ 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.*