

Request for Tolling of Construction Permit

Pursuant to Section 73.3598(b) of the rules of the Federal Communications Commission (“FCC” or “Commission”), West Virginia Educational Broadcast Authority (“WVEBA”), licensee of digital TV translator station W41DK-D, Keyser, West Virginia, Facility ID 167356 (“W41DK-D” or “Station”), respectfully requests a waiver of the Commission’s tolling provisions as applied to W41DK-D’s outstanding construction permit for facilities on Channel 16 (“Channel 16 Displacement CP”).¹ The Channel 16 Displacement CP is presently scheduled to expire on July 6, 2021. Based upon the unusual, rare, and extraordinary circumstances described below, WVEBA seeks tolling of the Channel 16 Displacement CP for an additional six months, until January 6, 2022.

On September 27, 2017, a 120 day advance notification letter was issued to WVEBA stating that T-Mobile was preparing to commence operations on its 600 MHz spectrum in the Partial Economic Area (“PEA”) #114 by February 4, 2018, and that W41DK-D was likely to cause harmful interference to T-Mobile’s operations. WVEBA subsequently filed a request for the Channel 16 Displacement CP and an engineering STA to operate on Channel 16 to allow W41DK-D to continue providing service to viewers with minimal disruption.² The Channel 16 Displacement CP was subsequently granted on July 6, 2018.

A station, like W41DK-D, may seek additional time to construct its facility pursuant to a request to waive the tolling standard as set forth in Section 73.3598(b) of the FCC’s rules upon a showing of rare and exceptional circumstances.³ The Commission may waive a rule where the particular facts make strict compliance inconsistent with the public interest, special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁴ As explained below, such special, rare, and extraordinary circumstances are present in the case of W41DK-D.⁵

¹ See LMS File No. 0000035614.

² See LMS File No. 0000053654 (as extended by 0000074837, 0000093779, 0000116720, 0000130385). The engineering STA was scheduled to expire July 5, 2021. The Station filed an application to extend the engineering STA on July 2, 2021 (LMS File No. 0000151590).

³ See Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines, Public Notice, DA 18-884 (rel. Aug. 27, 2018) at ¶ 13 and n. 34. (“Stations may also seek a waiver of the tolling rule to receive additional time to construct in the case where “rare or exceptional circumstances” prevent construction.” (citing 1998 Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17536, para. 42 (1999)).

⁴ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁵ As set forth in detail herein, WVEBA is requesting tolling of the Channel 16 Displacement CP based upon the fact that it has encountered construction delays due to harsh winter weather and a catastrophic equipment failure that necessitated repairs. WVEBA anticipates that construction will be further delayed due to the fact that it is required to go through a lengthy, state-mandated, competitive bidding process to procure the necessary antenna and transmitter, and due to delivery delays that are expected as a result of the current semiconductor chip shortage. To the extent the Commission determines that these circumstances qualify as an “act of God” under Section 73.3598(b)(1) of the tolling standard, WVEBA respectfully requests that its Channel 16 Displacement CP be tolled accordingly.

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Since receiving the Channel 16 Displacement CP, W41DK-D has been working diligently to complete construction of the Channel 16 Displacement CP facility, but has encountered delays outside its control. Specifically, during this past winter, construction on W41DK-D had to stop for an extended period of time due to harsh winter weather conditions that produced a buildup of ice. Subsequently, on April 6, 2021, the Station experienced a catastrophic transmitter failure during an attempt to retune, which required the Station to go silent for nearly one month while it located and installed a suitable replacement.⁶ WVEBA is now in the process of procuring the necessary antenna and transmitter, but, as a state-funded governmental entity, WVEBA is required to comply with certain state laws and procedures regarding the 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 Further, WVEBA has been informed by its vendors that, once the competitive bidding process is complete, it should expect significant delays in the delivery of the necessary equipment due to the current global semiconductor chip shortage. Accordingly, WVEBA requires additional time in order to complete construction of its Channel 16 Displacement CP facility.

Because construction of the Channel 16 Displacement CP facility cannot be completed by July 6, 2021 due to reasons beyond the Station's control, WVEBA is filing the instant request to toll the expiration date of the Channel 16 Displacement CP for six months due to special, rare, and extraordinary circumstances. Grant of this request will not harm the public interest because W41DK-D has ceased broadcasts on channel 41, and is presently serving its viewers on Channel 16 using its current equipment.

⁶ The Station requested a silent STA on April 9, 2021, which was subsequently granted on April 16, 2021 (see LMS File No. 0000143272). The Station filed a request to resume operations on May 5, 2021, which was granted on May 11, 2021 (see LMS File No. 0000145033).

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.