

## **Request for Extension of Invoice Filing Deadline**

West Virginia Educational Broadcasting Authority (“WVEBA”), licensee of low-power television translator station W21DZ-D, Romney, West Virginia (“W21DZ” or the “Station,” Facility No. 167358), respectfully requests an extension of the deadline to submit invoices (“Invoice Deadline”) for the Station to the TV Broadcaster Relocation Fund. The Commission previously granted the Station an extension of the Invoice Deadline through December 15, 2022, but WVEBA has since encountered unexpected delays beyond its control that have impacted its ability to complete construction on W21DZ by this date.<sup>1</sup> Accordingly, WVEBA now requests a further extension of the Invoice Deadline for an additional 45 days, until **January 30, 2023**.

Good cause exists to extend the Station’s Invoice Deadline because WVEBA has been unable to complete construction of the Station’s channel 21 displacement facilities as a result of special, rare, and extraordinary circumstances beyond its control. Further, granting the requested extension is unlikely to have a negative impact on Federal Communications Commission (“FCC” or “Commission”) staff’s ability to process the Station’s invoices or complete close-out procedures for all stations by the applicable deadline.

### **I. Background**

W21DZ has historically operated on channel 23. After channel 23 was reallocated as part of the incentive auction, WVEBA submitted an application for authority to construct displacement facilities for W21DZ on channel 33 during the FCC’s Special Displacement Window.<sup>2</sup> Subsequent to the closing of the filing window, W21DZ was identified in the Settlement Window Public Notice as mutually exclusive with W40AS-D, owned by Valley TV Cooperative, Inc. To resolve this issue, WVEBA submitted on December 21, 2018 an amended application for authority to construct displacement facilities for the Station on channel 21 instead of channel 33 (“Channel 21 Displacement CP”). The FCC granted this application on January 29, 2019 and specified a three-year period for W21DZ to construct the channel 21 displacement facility.

Since the Channel 21 Displacement CP was granted, WVEBA has worked diligently to complete construction on W21DZ, but has encountered numerous delays beyond its control that have impaired its ability to complete construction by the relevant deadline. These have included delays in obtaining funding through the West Virginia state procurement office’s competitive bidding process,<sup>3</sup> the loss of essential engineering staff while simultaneously trying to transition three full-power television stations and five television translator stations in connection with the repack process, equipment loss due to burglaries and weather-related damage, and limited vendor availability. As a result, WVEBA sought a waiver of the Commission’s (“FCC” or “Commission”)

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<sup>1</sup> See Letter from Barbara A. Kreisman, Chief, Video Division, granting requests for invoice deadline extensions for W08EE-D, W23DR-D, W30CO-D, and W41DK-D (Oct. 27, 2022).

<sup>2</sup> See LMS File No. 0000054636.

<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). As a state-funded entity, WVEBA is required to comply with West Virginia laws and procedures regarding the procurement of goods and services. These laws require that all 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 West Virginia procurement office.

tolling standard<sup>4</sup> on January 29, 2022 to extend the Channel 21 Displacement CP six months past its initial expiration date.<sup>5</sup> The Video Division granted this request on March 25, 2022, finding that WVEBA had “demonstrated that it has been diligently making progress towards completion of the Station[’s] displacement facilities but was unable to complete construction due to delays outside of its control,” and that the public interest would be served by tolling the Channel 21 Displacement CP.<sup>6</sup> More recently, WVEBA submitted a second application for waiver of the tolling standard on July 18, 2022 (LMS File No. 0000195230), and was granted an extension through December 15, 2022.<sup>7</sup>

Unfortunately, WVEBA has encountered additional circumstances outside its control since the prior request that have further delayed construction. As explained in WVEBA’s third application for waiver of the FCC’s tolling standard for W21DZ (“Tolling Waiver Request”), which is being filed concurrently with this request, WVEBA completed an initial structural analysis on July 29, 2022, which came back with a failing result due to the tower being over its weight limit. Because WVEBA was leasing space on that tower from a third party and sharing it with several other entities, it was not possible for WVEBA to reconfigure the equipment on the tower in a way that would allow it to meet the weight requirements. As an alternative, WVEBA decided to move W21DZ’s operations to a separate tower nearby, which is situated on land belonging to a private landowner. WVEBA is in the final stages of executing a lease that will formally allow WVEBA to move its operations to this new site, but in the meantime, the landowner has given WVEBA permission to proceed with installing the necessary equipment for W21DZ on the tower in light of the urgent timeline.

A structural analysis is typically required before a work crew can climb the tower to install equipment. However, given the need to finish construction quickly, WVEBA decided to conduct a more abbreviated feasibility study on the new tower for W21DZ – this feasibility study is nearly identical to a structural analysis but without a ground study component. The feasibility study was recently completed with a passing result. WVEBA has determined that this feasibility study provides sufficient clearance for a work crew to climb the tower and complete installation. As described more fully in the Tolling Waiver Request, WVEBA had originally anticipated that this would occur on December 14, leaving just enough time to meet the December 15 deadline. However, WVEBA was forced to postpone the installation due to weather reports of a storm system that was predicted to hit the Romney, WV area beginning on December 14. WVEBA therefore requires additional time to schedule a work crew to complete this work and must take account of the upcoming holidays and likely weather-related delays.

## **II. Extension of the Invoice Deadline for W21DZ Would Serve the Public Interest, Convenience, and Necessity**

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<sup>4</sup> 47 C.F.R. § 73.3598(b).

<sup>5</sup> See LMS File No. 0000184888.

<sup>6</sup> Letter from Barbara A. Kreisman, Video Division Chief, to West Virginia Educational Broadcasting Authority (March 25, 2022).

<sup>7</sup> See Letter from Barbara A. Kreisman, Video Division Chief, to West Virginia Educational Broadcasting Authority (Oct. 27, 2022).

As explained above and in the Tolling Waiver Request, WVEBA has been working diligently to complete construction and submit final invoices for W21DZ, but cannot do so by December 15, 2022 due to reasons wholly outside its control. As the Commission is already aware, WVEBA is a state-funded entity that was established by the State of West Virginia to provide non-commercial educational radio and television broadcasting services to residents of West Virginia. An extension of the Invoice Deadline is necessary to allow WVEBA to obtain full reimbursement for the remaining work required to complete construction on its channel 21 displacement facilities after the Invoice Deadline.

WVEBA recognizes that the Video Division previously indicated that it did not anticipate allowing any further extensions of the Invoice Deadline.<sup>8</sup> However, WVEBA now finds itself in a dire situation. If WVEBA is not permitted to submit the Station's invoices and related documentation for reimbursement after December 15, 2022, it will be forced to pay for fully-reimbursable repack expenses out-of-pocket, which would create a financial catastrophe for WVEBA. WVEBA's resources are already extremely limited, as the funding it receives from the State of West Virginia only covers the cost of WVEBA's staff; WVEBA relies on grants and donations to cover the rest of its expenses. The repack process has placed an enormous strain on WVEBA's already-limited finances, forcing WVEBA to reduce its broadcast network maintenance to the bare minimum in order to fund the repack work. As a result, WVEBA is now in desperate need of implementing tower repairs, replacing equipment, and conducting other maintenance at most of its sites in order to continue operating in a reliable manner. WVEBA is counting on reimbursement funds in order to help make these updates, which are needed to bring its network back to standard operation. In light of these circumstances, strict application of the Invoice Deadline would be contrary to Congress's directive that the FCC reimburse broadcasters for all costs "reasonably incurred" as part of the repack process and would be contrary to the public interest.<sup>9</sup>

Further, grant of the requested extension is unlikely to have a negative impact on Commission staff's ability to process the Station's invoices or complete close-out procedures for all stations, because WVEBA has submitted all other expenses related to the Station, and plans to have all remaining invoices submitted by January 30, 2023, which is well before the July 3, 2023 deadline for unobligated amounts in the TV Broadcaster Relocation Fund to be rescinded to the U.S. Treasury. For all of these reasons, grant of this request to extend the Invoice Deadline to January 30, 2023 is warranted.

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<sup>8</sup> See Letter from Barbara A. Kreisman, Chief, Video Division, granting requests for invoice deadline extensions for W08EE-D, W23DR-D, W30CO-D, and W41DK-D (Oct. 27, 2022).

<sup>9</sup> See Middle Class Tax Relief and Job Creation Act of 2012, Pub. Law 112-96 § 6403(b)(4).