

Request for Extension of Invoice Filing Deadline

West Virginia Educational Broadcasting Authority (“WVEBA”), licensee of low-power television translator station W41DK-D, Keyser, West Virginia (“W41DK” or the “Station,” Facility ID No. 167356), respectfully requests a further 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 April 14, 2022, but WVEBA has since encountered unexpected delays beyond its control that have impacted its ability to complete construction on W41DK by this date.¹ Accordingly, WVEBA now requests a further extension of the Invoice Deadline for an additional 30 days, until **May 15, 2023**.

Good cause exists to extend the Station’s Invoice Deadline because WVEBA has been unable to complete construction of the Station’s channel 16 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 Commission staff’s ability to process the Station’s invoices or complete close-out procedures for all stations by the applicable deadline.

I. Background

W41DK historically operated on channel 41, which was reallocated as part of the incentive auction. On September 27, 2017, T-Mobile notified WVEBA that it intended to commence operations on its 600 MHz spectrum, and that W41DK would likely cause harmful interference to T-Mobile’s operations. As a result, WVEBA submitted an application on November 27, 2017 for authority to construct displacement facilities for the Station on channel 16 (“Channel 16 Displacement CP”).² The FCC granted this application on July 6, 2018 and specified a three-year period for W41DK to construct the channel 16 facilities.

Since the Channel 16 Displacement CP was granted, WVEBA has worked diligently to complete construction on W41DK, 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,³ 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, limited vendor availability, failing structural analyses, and problems caused by a wireless service provider’s equipment on W41DK’s tower site. As a result, WVEBA previously sought a waiver of the Commission’s tolling standard⁴ on July 6, 2021, and again on February 15, 2022 to extend the

¹ See LMS File No. 0000205629.

² See Channel 16 Displacement CP (LMS File No. 0000035614).

³ 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.

⁴ 47 C.F.R. § 73.3598(b).

Channel 16 Displacement CP beyond its initial expiration date.⁵ The Video Division granted these requests, 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 16 Displacement CP.⁶ Most recently, WVEBA submitted an application for further waiver of the FCC’s tolling standard December 15, 2022 (LMS File No. 0000205618).⁷ A request for a further waiver is being filed concurrently with this request.

Unfortunately, WVEBA has encountered additional circumstances outside its control since the prior request that have further delayed construction. As explained in WVEBA’s amended application for waiver of the FCC’s tolling standard for W41DK (“Tolling Waiver Request”), which is being filed concurrently with this request, WVEBA shares the tower from which W41DK operates with AT&T. AT&T performed a structural analysis of the site in 2018, the results of which it provided to WVEBA in October 2021. Unfortunately, this structural analysis revealed a number of technical issues that led to a failing result. After obtaining additional documentation from AT&T in early 2022, WVEBA determined that these issues could be remediated, and, in July 2022, WVEBA initiated a new structural analysis to determine whether the tower was now in suitable shape for construction to be completed. In order to complete this structural analysis, WVEBA requested additional documentation from AT&T regarding welding work AT&T had done on the tower. However, AT&T did not respond to these requests, which delayed WVEBA’s ability to move forward with the structural analysis.

To work around this issue, WVEBA opted to conduct an independent inspection of the tower welds for purposes of completing the structural analysis. WVEBA had initially hoped to conduct this inspection in early January 2023, but encountered several unforeseen circumstances that created further delays. Specifically, WVEBA unexpectedly lost a key member of its finance department in January, which temporarily stalled WVEBA’s ability to get payments out to its contractors, and, in turn, delayed WVEBA’s ability to schedule a tower specialist to come and conduct the necessary inspection. Once WVEBA was finally able to make arrangements for the tower inspection, it encountered additional delays due to winter weather, which rendered the transmitter site inaccessible for much of January and early February, and the fact that the tower inspector is currently running around three weeks behind schedule, with no suitable alternative available on a shorter timeline, as detailed in WVEBA’s prior filing.

The tower inspector was finally able to complete the structural analysis between February and March, and issued a report containing the results in mid-March. Unfortunately, one additional issue requiring remediation was discovered during the structural analysis, which led to a failing result. Specifically, the inspection revealed that the foundation of the tower contained cracks and corrosion around the base anchor rods, which need to be stabilized before WVEBA can be cleared to install the new transmitter and antenna equipment on the tower. Immediately upon receiving this news, WVEBA and Pillar began making arrangements to have the tower’s

⁵ See LMS File Nos. 0000151791 and 0000180610.

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

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

foundation repaired by their vendor, Reese Tower Services. After finalizing the quote for the repairs, Reese Tower Services advised that the soonest they could come out to the site would be April 12.

The necessary repairs involve injecting a concrete solution into the base of the tower at high pressure over the course of several days. On April 12, Reese Tower Services came to the site to conduct an ultrasound of the tower foundation to determine the proper amount of concrete solution to be injected, and the appropriate pressure level at which this must be done. Now that the ultrasound has been completed, Reese Tower Services is currently in the process of performing the injection into the tower base. Once the injection is complete, the site will need to be stress tested over the course of several days to ensure that the repairs were successful. In parallel, WVEBA's vendors are also working to provide modification drawings, which will serve as an instructional roadmap for the tower crew to install the new antenna and transmitter equipment on the tower. Once the tower has been cleared for installation and the drawings are complete, WVEBA will schedule a tower crew to come to the site and complete the installation. WVEBA anticipates that this process should be completed within one month, by May 15, 2023.

II. Extension of the Invoice Deadline for W41DK Would Serve the Public Interest, Convenience, and Necessity

As explained above and in the Tolling Waiver Request, WVEBA has been working diligently to complete construction and submit final invoices for W41DK, but cannot do so by April 14, 2023 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. A further 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 16 displacement facilities after April 14, 2023.

WVEBA recognizes that the Video Division previously indicated that it did not anticipate allowing any further extensions of the Invoice Deadline.⁸ 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 April 14, 2023, 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

⁸ 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).

costs “reasonably incurred” as part of the repack process and would be contrary to the public interest.⁹

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 May 15, 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 these reasons, grant of this request to extend the Invoice Deadline to **May 15, 2023** is warranted.

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