



Federal Communications Commission
Washington, D.C. 20554

March 17, 2023

West Virginia Educational Broadcasting Authority
Mr. Carl Antolini
600 Capitol Street
Charleston, WV 25301
bantolini@wvpublic.org
(via electronic mail)

Re: Requests for Invoice Deadline Extensions
for W30CO-D, Wheeling, West Virginia
Facility ID No. 167354
LMS File No. 0000205616; and

W41DK-D, Keyser, West Virginia
Facility ID No. 167356
LMS File No. 0000205613

Dear Licensee,

On December 15, 2022, and as supplemented on February 13 and March 10, 2023, West Virginia Educational Broadcasting Authority (WVEBA or Licensee), licensee of the two above-captioned stations (collectively, Stations), filed applications requesting extensions of the invoice filing deadlines¹ for the TV Broadcaster Relocation Fund (the Reimbursement Fund or Fund) from their invoice filing deadline of December 15, 2022, to new invoice filing deadlines of April 14, 2023, for W41DK (Keyser Station) and May 15, 2023, for W30CO (Wheeling Station).² For the reasons discussed below, we grant the Requests and extend the dates of the Stations' invoice filing deadlines to April 14, 2023, and April 30, 2023, respectively.

Background. Pursuant to the Commission's direction, the Incentive Auction Task Force and Media Bureau set deadlines for final invoice submission to the Reimbursement Fund using a phased assignment approach.³ All repacked stations assigned to Phases 6 through 10 of the Transition Scheduling Plan were required to submit all remaining invoices and supporting documentation using the Reimbursement Form, and initiate interim close-out procedures, no later than March 22, 2022. We stated that we did not anticipate a need to grant extensions because the deadline was more than a year after the

¹ LMS File Nos. 0000205616 (filed Dec. 15, 2022) and as amended by 0000205613 (Feb. 13, 2023 for Keyser) and 0000205619 (Mar. 10, 2023) (collectively, Requests).

² See *TV Broadcaster Relocation Fund Invoice Filing Deadline Approaches In Sixty Days*, Public Notice, DA 22-72, para. 4 (MB/IATF Jan. 21, 2022).

³ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6815-16, 6819, paras. 607, 616-17 (2014) (*Incentive Auction R&O*), subsequent history omitted; *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, Public Notice, 35 FCC Rcd 11273, 11277, paras. 10-11 (MB/IATF 2020) (*Invoice Filing Deadline PN*) (setting three filing deadlines for submission of all remaining repack invoices: for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period, the deadline for submitting all remaining invoices is October 8, 2021; the deadline for entities assigned completion dates in the second half of the transition period is March 22, 2022; and the deadline for all other participants in the reimbursement program is September 6, 2022).

July 13, 2020, statutory end of the transition period, and more than a year after the announcement of the invoice filing assignment deadline. We noted, however, that if an entity faced circumstances beyond its control we could consider a limited extension by means of shifting an entity with the second invoice filing assignment deadline to the third and final invoice filing assignment deadline on September 6, 2022.⁴ An entity requesting such a shift was required to provide evidence that circumstances requiring the extension were outside of its control, such as local zoning or a force majeure event occurring proximate to the final submission deadline.⁵ We further stated that we would not grant extensions that do not provide the staff with sufficient processing time to complete close-out procedures for all stations.⁶ On August 4, 2022, we issued a final reminder to Fund entities that any outstanding invoices must be filed by the September 6 deadline and that we did not anticipate further extensions of the invoice filing deadline, barring limited extensions requested by entities that are able to provide evidence that circumstances outside of their control, such as local zoning or a force majeure event occurring proximate to the final submission, would necessitate a limited deadline extension.⁷

The Stations requested and received extensions of their September 2022 invoice filing assignment deadline to December 15, 2022, deadline.⁸ Those extensions were based on WVEBA's representations that it experienced a series of delays beyond its control, including the discovery of technical issues that required a new bidding process, staff turnover and shortages, and other emergency situations.⁹ Each Station also experienced delays unique to its transition which continue to delay completion of construction.

With respect to W41DK, the Keyser Station, Licensee states that AT&T, a co-tenant on the Keyser tower, did not respond to Licensee's requests for information regarding AT&T's welding on that tower.¹⁰ Because of this, WVEBA states it arranged to have an independent vendor inspect the tower welds in early January. But because WVEBA lost a key member of its finance department that month, vendor payments delayed scheduling of the inspector until January. Licensee then states that severe winter weather then made the Keyser transmitter site inaccessible for much of January, further delaying the inspection. Licensee states its efforts are back on track and that, "assuming the inspection reveals no issues and allows them to certify the tower welds, this will be the final step needed to complete the structural analysis, after which they can complete installation of the antenna and be done with construction at this site."¹¹

Once the structural analysis has been completed, WVEBA states it will schedule a work crew to complete the installation by April 14, 2023, as all necessary equipment has already been delivered.¹²

⁴ See *Invoice Filing Deadline PN*, 35 FCC Rcd at 11277-78, para 13.

⁵ *Id.*

⁶ *Id.*

⁷ *TV Broadcaster Relocation Fund Third and Final Invoice Filing Deadline Approaches In Thirty Days*, Public Notice, DA 22-817, n.5 (MB/IATF Aug. 4, 2022).

⁸ See Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to WVEBA, LMS File Nos. 0000199241 and 0000199231 (Oct. 27, 2022).

⁹ See *id.* at 2-3.

¹⁰ See February Amendment.

¹¹ *Id.*

¹² March Amendment.

With respect to W30CO-D, Wheeling, WVEBA states that ongoing problems with the Wheeling Station's original tower site resulted in a decision to move to a new site operated and owned by the West Virginia State Interoperable Network (SIRN).¹³ Licensee states that on February 10, 2023, it learned that the proposed move to the new tower site would cause prohibited interference to another station, WJMB-CD, in Butler, Pennsylvania.¹⁴ WVEBA states it evaluated the situation and, in consultation with its engineering team, concluded that the Wheeling Station can mitigate this problem by reconfiguring the omnidirectional antenna that had already been purchased and delivered to a directional antenna.¹⁵

WVEBA further states that it obtained approval from its executive board to proceed with this plan on March 8 and has submitted a purchase order to cover this additional work and is preparing to ship the antenna back to the manufacturer on March 13 to be reconfigured.¹⁶ WVEBA states it has also been making arrangements to have a structural analysis performed on the new tower site and has submitted a purchase order for this work so that it can be completed while the antenna is being reconfigured. Since the new tower currently holds no other equipment besides gear that is used to operate one of WVEBA's radio stations, WVEBA does not anticipate that the tower will exceed its weight limit, and expects the site to pass the structural analysis. Assuming that this is the case, WVEBA states it will be in a position to begin installing all of the equipment as soon as the antenna is reconfigured and delivered and expects to complete installation by May 14, 2023.¹⁷

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to extend the Stations' invoice filing deadlines from the December 15, 2022 invoice filing deadline to April 14, 2023, for the Keyser Station, and April 30, 2023, for the Wheeling Station. Licensee has demonstrated that circumstances beyond its control require the extensions. We find that an extension to the end of April is not likely to negatively impact the staff's ability to process the Stations' invoices or its ability to complete close-out procedures for all stations, but that extensions beyond April 30, 2023, would negatively impact the staff's ability to complete close-out procedures prior to the July 3, 2023, deadline when funds are rescinded to the U.S. Treasury. We therefore conclude that the public interest will be served by grant of the extensions not to exceed April 30, 2023. We strongly encourage WVEBA to diligently pursue submission of all remaining invoices and any estimates as early as possible without waiting for the April 14, 2023, or April 30, 2023, final invoice filing deadlines. We remind WVEBA that pursuant to the Spectrum Act, the Stations are eligible for reimbursement of costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other."¹⁸ Additional expenses incurred, such as expenses resulting from changes in a station's transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

¹³ *Id.* at 2.

¹⁴ *Id.*

¹⁵ *See id.* at 2-3.

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 4.

¹⁸ 47 U.S.C. § 1452(b)(4)(A)(i). *See also Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

We caution the Stations that we do not anticipate allowing further extensions of the final April 14 and April 30, 2023, invoice filing deadlines. A station's failure to complete any remaining construction in a timely manner and to make final submissions by the revised invoice filing deadline could preclude that station from receiving full reimbursement. Unobligated amounts in the Fund must be rescinded to Treasury and the Commission staff (with the support of the Fund Administrator) must have sufficient time to fully process all reimbursement requests and complete close-out procedures prior to July 3, 2023.¹⁹

In consideration of the above facts, the Requests for extension of the invoice filing deadlines for Stations **ARE GRANTED**. The invoice filing deadline (LMS File No. 0000205629) for W41DK-D, Keyser, West Virginia, **IS EXTENDED through April 14, 2023**, and the invoice filing deadline (LMS File No.) for W30CO-D, Wheeling, West Virginia **IS EXTENDED through April 30, 2023**.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Virginia Hiner, Esq. at vhiner@akingump.com (via email)

¹⁹ See *Invoice Filing Deadline PN*, 35 FCC Rcd at 11277-78, para 13.