



Federal Communications Commission
Washington, D.C. 20554

April 19, 2023

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

Re: Request for Invoice Deadline Extension for
W41DK-D, Keyser, West Virginia
Facility ID No. 167356
LMS File No. 0000213891

Dear Licensee,

On April 14, 2023, West Virginia Educational Broadcasting Authority (WVEBA or Licensee), licensee of W41DK-D, Keyser, West Virginia (Station), filed an application requesting extension of the Station's current April 14, 2023, invoice filing deadline¹ for the TV Broadcaster Relocation Fund (the Reimbursement Fund or Fund) to May 15, 2023. For the reasons discussed below, we grant the Request and extend the date of the Station's invoice filing deadline to May 15, 2023. We caution Licensee that we do not anticipate granting any additional extension and remind WVEBA that it must complete the Reimbursement Fund close-out process prior to July 3, 2023, when unobligated funds will be rescinded to the U.S. Treasury and no longer available for reimbursement. To facilitate Licensee's timely close-out, WVEBA should therefore prepare to swiftly initiate close-out procedures, process all close-out instructions received from Fund Administrator expeditiously, and, when W41DK-D submits invoices for reimbursement on or after the date of this letter, also submit proof for each invoice that it has paid that vendor. This will expedite the ultimate close-out process.

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.² 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 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

¹ LMS File No. 0000213891 (filed Apr. 14, 2023).

² 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/IATF2020) (*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).

assignment deadline to the third and final invoice filing assignment deadline on September 6, 2022.³ 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.⁴ 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.⁵ 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.⁶

The Station requested and received two prior extensions of the September 2022 invoice filing assignment deadline, the first of which was to December 15, 2022, and the second to April 14, 2023.⁷ Those extensions were based on WVEBA's representations that it had 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.⁸ Licensee also recounted 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.⁹ Because of this, WVEBA arranged to have an independent vendor inspect the tower welds in early January, but winter weather and inspector unavailability further delayed that work until March 2023.¹⁰

Licensee now reports that the structural analysis of the tower, which was completed in March, revealed an additional problem requiring remediation.¹¹ The inspector determined that the tower foundation is cracked and corroded around the base anchor rods, which must be stabilized before WVEBA can install the new transmitter and antenna.¹² Licensee states that the necessary repairs involve injecting a concrete solution into the tower base, which it anticipates completing in mid-April.¹³ Licensee further states that once the injection is complete, the tower will need to be stress-tested to ensure that the repairs were successful. When the tower is cleared for installation, Licensee states it will schedule a

³ See *Invoice Filing Deadline PN*, 35 FCC Rcd at 11277-78, para 13.

⁴ *Id.*

⁵ *Id.*

⁶ *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).

⁷ See Letters from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to WVEBA, LMS File Nos. 0000199241 and 0000205629 (Oct. 27, 2022 and Mar. 17, 2023, respectively).

⁸ See Request at Attach., 1-2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 2.

¹² *Id.* at 2-3.

¹³ *Id.* at 3.

tower crew complete the installation of the antenna. WVEBA expects to complete the installation and submit remaining invoices by May 15, 2023.¹⁴

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to extend the Station’s current invoice filing deadline of April 14, 2023, to May 15, 2023. Licensee has provided evidence that circumstances beyond its control justify an extension. We also find that this final grant of Licensee’s request is not likely to negatively impact the staff’s ability to process the Station’s invoices or its ability to complete close-out procedures for all stations, particularly if WVEBA provides proof of payment for all invoices it submits as of the date of this letter. We therefore conclude that the public interest will be served by grant of the extension.

WVEBA should diligently pursue submission of all remaining invoices and any estimates as early as possible without waiting for the May 15, 2023, final invoice filing deadline, **and should submit proof of payment for each invoice that the Station submits on or after the date of this letter.** 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.”¹⁵ 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.

We caution WVEBA that we do not anticipate allowing further extensions of the final May 15, 2023, invoice filing deadline. 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, 2023.¹⁶

In consideration of the above facts, WVEBA’s Request for extension of the invoice filing deadline for the Station **IS GRANTED.** The invoice filing deadline for W41DK-D, Keyser, West Virginia, **IS EXTENDED through May 15, 2023.**

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

¹⁴ *Id.*

¹⁵ 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.”).

¹⁶ *See Invoice Filing Deadline PN*, 35 FCC Rcd at 11277-78, para 13.