



Federal Communications Commission  
Washington, D.C. 20554

July 1, 2020

West Virginia Educational Broadcasting Authority  
600 Capitol Street  
Charleston, WV 25301  
[croberts@wvpublic.org](mailto:croberts@wvpublic.org)  
(via electronic mail)

Re: Request for Waiver of Transition  
Deadline  
WVPB-TV, Huntington, WV  
Facility ID No. 71657  
LMS File No. 0000116479

Dear Licensee,

On June 24, 2020, West Virginia Educational Broadcasting Authority (the Licensee), the licensee of WVPB-TV, Huntington, West Virginia (WVPB-TV or Station), filed a *Request for Waiver of Transition Deadline*<sup>1</sup> requesting to waive the July 13, 2020, post-incentive auction transition deadline<sup>2</sup> and to modify the Station's July 3, 2020, phase 10 phase completion date.<sup>3</sup> We grant the Licensee's request for waiver and a brief extension of the Station's deadline to September 8, 2020, as conditioned herein.

*Background.* On June 18, 2020, the Commission issued the *WFOX-TV Order*<sup>4</sup> extending the deadline for WFOX-TV, Jacksonville, Florida (WFOX-TV), to transition to its new channel as a result of the post-incentive auction repack from July 3 to September 8, 2020. Due to construction delays that were beyond the licensee's control, the *WFOX-TV Order* waived<sup>5</sup> section 73.3700(b)(4)(iii) of the Commission's rules (Rules), which prohibits stations from operating on their pre-auction channel

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<sup>1</sup> West Virginia Educational Broadcasting Authority, Request for Waiver for station WVPB-TV, Huntington, WV, LMS File No. 0000116479 (June 24, 2020) (WVPB-TV Request for Waiver).

<sup>2</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 et al., Report and Order, 29 FCC Rcd 6567, 6575, para. 19 (2014) (*Incentive Auction R&O*), *aff'd*, *Nat'l Assoc. of Broadcasters et al. v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) (*NAB v. FCC*) (subsequent citation omitted).

<sup>3</sup> See *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, GN Docket No. 12-268 et al., Public Notice, 32 FCC Rcd 2786 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*).

<sup>4</sup> *Post-Incentive Auction Transition Request for Waiver of Cox Television Jacksonville LLC, Licensee of Station WFOX-TV, Jacksonville, Florida*, Order, FCC 20-82, paras. 12-14 (rel. Jun. 18, 2020) (*WFOX-TV Order*).

<sup>5</sup> A waiver of our rules is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis. See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 CFR § 1.3 (waiver for good cause shown). Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008).

assignments after July 13, 2020.<sup>6</sup> The Commission also waived section 73.616(d) of the Rules which prohibits stations from causing more than 0.5 percent pairwise interference of a station's population served and allowed WFOX-TV to cause temporary increased pairwise interference of up to two percent, the transition period standard, during the extended period.<sup>7</sup> The Commission also instructed the Media Bureau to consider future requests seeking such waivers consistent with the considerations included in the *WFOX-TV Order*.<sup>8</sup>

*Waiver Request.* The Station is currently licensed to operate on channel 34 and was reassigned to channel 20 in the *Closing and Channel Reassignment Public Notice* and is currently assigned to transition phase 10, which has a phase completion date of July 3, 2020. After undertaking a channel study, the Licensee filed an application in a 2017 filing window requesting reassignment to channel 9 in order to better serve its viewers. That application was granted in January 2018.<sup>9</sup> The Licensee states that it has diligently pursued the Station's construction project, but as a state governmental entity, it has faced significant challenges because it needed to obtain public funding approval prior to making expenditures related to its project. A state appropriations act providing the Licensee with \$7.36 million was signed into law by the Governor of West Virginia on March 14, 2019.<sup>10</sup> Thereafter, the Licensee had to engage in required competitive bidding processes for specific purchases.<sup>11</sup> The Licensee states that it has substantially completed removal of the analog transmitter and ordered both the transmitter and mask filters, but delivery of the filters was delayed due to the COVID-19 pandemic. The Licensee also states that it initiated procedures for funding additional purchases, but those requests were delayed due to the state's focus on purchases related to COVID-19.<sup>12</sup> The Licensee states that it must still complete competitive bidding procedures for the necessary antenna, transmission line, and tower crew services and that it expects to be able to complete the project in August 2020.<sup>13</sup>

The Licensee asserts that it has evaluated the alternatives included in the Transition Scheduling Plan for a station to vacate its pre-auction channel, and that those options are not available to WVPB-TV.<sup>14</sup> The Licensee states that it has been unable to identify a tower with sufficient space to host an interim antenna. In addition, an interim facility or construction of facilities on a vacant channel would require the Station to engage in the competitive bidding process which would require time beyond the deadline.<sup>15</sup> The Licensee also states that other stations in the area do not have bandwidth to engage in temporary channel sharing and there is insufficient time to negotiate such an arrangement.<sup>16</sup> The Licensee

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<sup>6</sup> *WFOX-TV Order* at paras. 12-14; 47 CFR § 73.3700(b)(4)(iii).

<sup>7</sup> See *WFOX-TV Order* at paras. 12-14; 47 CFR § 73.616(d); *Incentive Auction Task Force and Media Bureau Adopt Post-Incentive Auction Transition Scheduling Plan*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 32 FCC Rcd 890, 897, para. 16 (IATF/MB 2017) (*Transition Scheduling Adoption Public Notice*).

<sup>8</sup> See *WFOX-TV Order* at para. 16.

<sup>9</sup> WVPB-TV Request for Waiver at 2.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.* at 4.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 8-9.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 9.

also notes that extending the deadline will not have a negative impact on any other television station or delay any 600 MHz wireless licensee's access to its licensed spectrum because the Station's pre-auction channel is located in the new TV Band.<sup>17</sup> According to the Licensee, remaining on channel 34 will not cause any outgoing interference above .5 percent pairwise interference limit and that the Station is willing to accept the small amount of incoming interference in excess of the permitted threshold that it will receive from WKEF(TV), Dayton, Ohio (WKEF).<sup>18</sup> In order to mitigate any viewer confusion caused by WVPB-TV's continued operation on its pre-auction channel, the Licensee commits to broadcast additional viewer PSAs beyond what is required by section 73.3700(c)(3) of the Rules.<sup>19</sup>

*Discussion.* The Licensee's request to waive the July 13, 2020, post-incentive auction transition deadline and to modify the Station's July 3, 2020, phase 10 phase completion date due to circumstances beyond the Licensee's control satisfies the requirement for a waiver pursuant to the considerations in the *WFOX-TV Order* and is in the public interest. We find that the Licensee has presented information demonstrating that during the course of the post-auction transition period it pursued and scheduled work sufficient to timely complete the Station's construction project. The Licensee has established that there are no facilities available to the Station, or that could reasonably be made available to the Station pursuant to the flexibility available under the Transition Scheduling Plan, that would permit it to vacate its pre-auction channel without going dark.<sup>20</sup> We also view the request favorably because it will not delay or disrupt other transitioning stations. Staff has confirmed that modifying the Station's transition deadline will not cause any interference to other stations and WVPB-TV has confirmed that it is willing to accept the small amount of increased temporary pairwise interference it will receive from WKEF. Because the Station's pre-auction channel is located in the new TV Band, grant of the Licensee's requests will not delay any wireless licensee that purchased 600 MHz wireless licenses in the forward auction from accessing its spectrum when promised. In order to minimize potential viewer confusion caused by the short delay in the Station's transition, the Licensee commits to increased viewer education and outreach beyond what is required by the Rules.

Accordingly, we **GRANT** the Licensee's *Request for Waiver of Transition Deadline* and modify the phase transition deadline for WVPB-TV, Huntington, West Virginia, **from July 3, 2020 to September 8, 2020**, subject to all the commitments made in its waiver request, including interference agreements, and compliance with all Rules applicable to transitioning stations.<sup>21</sup> Testing on the Station's

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<sup>17</sup> *Id.* at 6-7.

<sup>18</sup> *Id.* at 1, 5, Engineering Statement. The Station is predicted to receive approximately 1.72% in temporary pairwise inference from WKEF, to which it consents and is still below the two percent pairwise interference threshold that has been permitted during the post-auction transition period. *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16; *see also WFOX-TV Order* at para. 13.

<sup>19</sup> WVPB-TV Request for Waiver at 10, n.32. 47 CFR § 73.3700(c)(3)(requiring repacked stations to air sixty (60) seconds per day of on-air crawls or public service announcements (PSAs) beginning 30-days prior to discontinuing operations on their pre-auction channel).

<sup>20</sup> *See Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 915-17, paras. 54-59 (providing alternative means for a station to meet its phase completion date including moving to interim facilities on a station's post-auction channel, operating at reduced power on a vacant channel, and temporary channel sharing); *See also Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Broadcast Transition*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 32 FCC Rcd 858, 872-73, para. 46-47 (IATF & MB 2017).

<sup>21</sup> *See generally* 47 CFR § 73.3700 and *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 33 FCC Rcd 8240, 8244-45, para. 14 (IATF & MB 2018).

post-auction channel **may begin immediately**. The Station is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on September 8, 2020**.<sup>22</sup> The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.<sup>23</sup>

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

Cc (via electronic mail):  
Karen Milne, Esq. ([kmilne@akingump.com](mailto:kmilne@akingump.com))  
Counsel for Licensee

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<sup>22</sup> Each transition phase has a testing period during which a station in that phase may begin testing equipment on its new channel and a phase completion date on which a station must cease operation on its pre-auction channel. The phase completion date is the date that will be listed in that station's construction permit as its construction deadline and is the date the station must cease operation on its pre-auction channel. *See Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2806, para. 64.

<sup>23</sup> If a station must commence operations on its post-auction channel at variance from the parameters authorized in its construction permit, it must file for and be granted special temporary authority prior to commencing operations. *See* 47 CFR § 73.1635. A station that needs additional time to complete construction of its post-auction facility beyond its construction permit expiration date must file for a 180-day extension of its construction permit in accordance with Section 73.3700(b)(5). Stations needing additional time to construct after a 180-day extension is granted, will be subject to the Commission's tolling provisions. 47 CFR § 73.3700(b)(5)(i) *citing* 47 CFR 73.3598(b). Grant of an extension of time to construct does not relieve a station of the requirement that it ceases operation on its pre-auction channel by its assigned phase completion date.