



Federal Communications Commission
Washington, D.C. 20554

September 8, 2020

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

Re: Request for Waiver of Transition
Deadline
WVPB-TV, Huntington, WV
Facility ID No. 71657
LMS File No. 0000121204

Dear Licensee,

On September 4, 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*¹ requesting to waive its September 8, 2020, post-incentive auction transition deadline.² For the reasons below, we grant the Licensee's request for waiver and brief extension of the Station's post-incentive auction transition deadline to September 30, 2020, as conditioned herein.

Background. On June 18, 2020, the Commission issued the *WFOX-TV Order*³ extending the deadline for WFOX-TV, Jacksonville, Florida (WFOX-TV), from July 3 to September 8, 2020, to transition to its new channel as a result of the post-incentive auction repack. Due to construction delays that were beyond the licensee's control, the *WFOX-TV Order* waived⁴ section 73.3700(b)(4)(iii) of the Commission's rules (Rules), which prohibits stations from operating on their pre-auction channel assignments after July 13, 2020.⁵ The Commission also instructed the Media Bureau to consider future

¹ West Virginia Educational Broadcasting Authority, Request for Waiver for station WVPB-TV, Huntington, WV, LMS File No. 0000121204 (Sept. 4, 2020) (WVPB-TV Request for Waiver).

² Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to West Virginia Educational Broadcasting Authority (July 1, 2020) available at LMS File No. 0000116479 (*WVPB-TV Transition Deadline Waiver Letter*).

³ *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*).

⁴ 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).

⁵ *WFOX-TV Order* at paras. 12-14; 47 CFR § 73.3700(b)(4)(iii). 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. See *id.* 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.

requests seeking such waivers consistent with the considerations included in the *WFOX-TV Order*.⁶

The Station is currently licensed to operate on channel 34 and was reassigned to channel 20 in the *Closing and Channel Reassignment Public Notice*. WVPB-TV was assigned to transition Phase 10, which had 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 2018.⁷ On July 1, 2020, we modified the Station's phase completion date and post-incentive auction transition deadline to September 8, 2020.⁸ The waiver granting that extension reflected the Licensee's argument that it had diligently pursued the Station's construction project, but as a state governmental entity, it faced significant challenges because it needed to obtain public funding approval prior to making expenditures related to its repack 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, 2019.⁹ Thereafter, the Licensee not only was required to engage in competitive bidding processes for all of its purchases,¹⁰ it also faced delivery delays due to the COVID-19 pandemic.¹¹

Waiver Request. Since grant of the Station's waiver request extending its post-incentive auction transition deadline to September 8, 2020, the Licensee has completed all competitive bidding procedures and placed orders for all of its post-incentive auction facilities equipment and installation services. According to the Licensee, due the COVID-19 pandemic the State procurement office took longer than expected to complete the competitive bidding process for the fabrication and installation of the Station's new equipment and it will not be able to meet its September 8, 2020 transition deadline.¹² The Station's transmitter is scheduled to be delivered the week of September 7th or September 14th and will take approximately one to two weeks to be installed.¹³ The Licensee expects that its new post-auction antenna will be fabricated, delivered, and installed by mid-November 2020.¹⁴ Because the Station's final post-auction facility will not be able to be constructed by September 8th, the Licensee has been diligently pursuing a temporary channel sharing arrangement with WOWK-TV, Huntington, WV (WOWK-TV),¹⁵ in order to enable the Station to vacate its pre-auction channel as expeditiously as possible.¹⁶ The

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*).

⁶ See *WFOX-TV Order* at para. 16.

⁷ WVPB-TV Request for Waiver at 2.

⁸ *WVPB-TV Transition Deadline Waiver Letter*.

⁹ *Id.* at 3.

¹⁰ *Id.* at 3-4.

¹¹ *Id.* at 5.

¹² *Id.* at 4-5.

¹³ *Id.* at 5.

¹⁴ *Id.*

¹⁵ WOWK-TV is licensed to Nexstar Broadcasting, Inc. WOWK-TV will carry a standard definition version of WVPB-TV's primary stream. *Id.* at 6.

¹⁶ 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 the aforementioned channel sharing arrangement is the most viable option for the Station to vacate its pre-auction channel as quickly as possible. The Licensee states that it has been unable

Licensee anticipates that the channel share can be implemented within two to four weeks from the date that Nexstar approves the arrangement.¹⁷ Based on recent conversations that occurred between counsel for both stations and Media Bureau staff, the parties expect that the temporary channel sharing arrangement will be finalized very soon.

The Licensee notes that extending the Station's post-incentive auction transition 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. According to the Licensee, remaining on channel 34 will not cause any outgoing interference above 0.5 percent pairwise interference limit and that the Station is willing to continue to accept the small amount of incoming interference in excess of the permitted threshold that it currently receives from WKEF(TV), Dayton, Ohio (WKEF).¹⁸ Furthermore, because the Station's pre-auction channel is located in the new TV Band, it will not have any impact on any new 600 MHz wireless licensees.¹⁹ 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.²⁰ The Licensee also notes that WVPB, an affiliate of the PBS Television Network, has partnered with the Department of Education in West Virginia to air at-home learning programming five days per week while students are unable to attend school physically due to COVID-19.²¹ Thus, according to the Licensee, the Station going dark on September 8th would "unquestionably harm WVPB's viewers, particularly given the acute need for information and education resources as many children commence remote learning during the COVID-19 pandemic."²²

Discussion. The Licensee's request to waive its September 8, 2020, post-incentive auction transition deadline and to modify it to September 30, 2020, 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-incentive 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

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. *Id.* at 6 and n.19.

¹⁷ *Id.* at 6-7 (describing efforts being undertaken to prepare to implement the temporary channel sharing arrangement).

¹⁸ *Id.* at 9 and n.32, 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. *See Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16; *see also WFOX-TV Order* at para. 13.

¹⁹ WVPB-TV Request for Waiver at 9.

²⁰ *Id.* at n.36. 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).

²¹ *Id.* at 9

²² *Id.*

channel by September 8, 2020, without going dark.²³ Its effort to undertake a temporary channel sharing arrangement with WOWK-TV by September 30, 2020, will mitigate the delay engendered by the delivery schedule for its permanent transmitter and antenna. We also view the instant 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 continue to accept the small amount of increased temporary pairwise interference it receives from WKEF. Because the Station's pre-auction channel is located in the new TV Band, grant of the Licensee's waiver request 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 September 8, 2020 to September 30, 2020**, subject to all the commitments made in its waiver request, including interference agreements and compliance with all Rules applicable to transitioning stations.²⁴ Testing on the Station's 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 30, 2020**. The Station's construction permit expiration date will also be modified to correspond to its new post-incentive auction transition deadline.²⁵

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

²³ 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).

²⁴ 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).

²⁵ 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.