



Federal Communications Commission
Washington, D.C. 20554

September 19, 2022
(Revised)

Spina & Company
Joseph Bernstein
2220 Fairmount Ave.
Philadelphia, PA 19130
jbernstein@spinacpa.com
(via electronic mail)

Re: Request for Invoice Deadline Extension for
WEFG-LD, Philadelphia, PA
Facility ID No. 167606
LMS File No. 0000197694

Dear Applicant/Licensee,

On August 8, 2022, counsel for Joseph Bernstein (Bernstein), former receiver and currently the named licensee of WEFG-LD, Philadelphia, PA (Station or WEFG), filed an application requesting extension of WEFG's invoice filing deadline¹ for the TV Broadcaster Relocation Fund (the Reimbursement Fund or Fund) from the third and final invoice filing assignment deadline of September 6, 2022, to a new invoice filing assignment deadline of January 6, 2023.² For the reasons discussed below, we grant the Request and extend the date of the Station's invoice filing assignment deadline to January 6, 2023.

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 low-power television and translator stations were directed to submit remaining invoices and supporting documentation using the Reimbursement Form, and initiate interim close-out procedures, no later than September 6, 2022.⁴ 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

¹ LMS File No. 0000197694 and Attach. (Request), as amended (Supplement filed Sept. 2, 2022).

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).

⁴ The third and final invoice filing deadline was set for September 5, 2022. However, because Labor Day, a federal holiday, falls on Monday, September 5, 2022, the third and last invoice filing deadline is Tuesday, September 6, 2022. See *TV Broadcaster Relocation Fund Invoice Filing Deadline Approaches In Sixty Days*, Public Notice, DA 22-72, para. 4 (MB/IATF Jan. 21, 2022).

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.⁵ An entity requesting such an extension 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.⁶ 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.⁷ On August 4, 2022, we issued a final reminder to Fund entities that 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.⁸

Counsel for Bernstein states that unusual circumstances related to the ownership and control of WFTG has resulted in multiple proceedings lasting for close to three years including matters still pending before the Commission and, previously, litigation before courts in Pennsylvania and California.⁹ Counsel further states that, because of the disputed control, construction of the station's repack facilities has not yet commenced.¹⁰ According to counsel, the Station was involved in receivership proceedings spanning the period since November 2018, during which the court-appointed receiver, Joseph Bernstein, by action of the Commission, became the named licensee of the station. The temporary receiver was later removed by the court but remains the licensee in Commission records. Counsel states that the receiver did not commence construction of the Station's repack facilities during the litigation and that Pennsylvania Television Network, Inc. (PTNI), which still is not the named licensee, has been unable to act on behalf of the Station to construct or seek reimbursement for the Station's displaced facilities.¹¹

Pending resolution by the Commission by designating PTNI as the lawful licensee, counsel states the Station will construct facilities on repack Channel 21 pursuant to construction permit (FCC LMS File No. 0000151021) and hopes to complete construction by the end of this year, pursuant to the timeline provided in its Supplement.¹² The Station will incur invoices after the September 6 deadline, however. Counsel contends that, due to these unusual circumstances, a limited extension of the invoice submission deadline — from September 6, 2022 to January 6, 2023 — is warranted.

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to extend the Station's invoice filing assignment deadline from September 6, 2022 to

⁵ See *Invoice Filing Deadline PN*, 35 FCC Rcd at 11277-78, para 13.

⁶ *Id.*

⁷ *Id.*

⁸ *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).

⁹ Request at Attach. at 1.

¹⁰ *Id.* We note that, due to the ownership litigation, the Media Bureau granted WFTG's request to toll completion of the displacement construction permit for 660 days from date of final action on the litigation concerning ownership of the Station. Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to Joseph Bernstein (Aug. 11, 2021) (on file in LMS File No. 0000150231).

¹¹ Request at 1.

¹² *Id.* at Supplement.

January 6, 2023. The Station has demonstrated that circumstances beyond its control justify the extension. We also find that grant of the Request is not likely to negatively impact the staff's ability to process the Station's invoices or complete close-out procedures for all stations. We therefore conclude that the public interest will be served by grant of the extension. We strongly encourage the Station to diligently pursue submission of all remaining invoices and initiate close-out procedures as early as possible without waiting for the January 6, 2023 deadline. We remind the Station that, pursuant to the Spectrum Act, the Stations are eligible for reimbursement for costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other."¹³ 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 the Station that we do not anticipate allowing further extensions of the final January 6, 2023 invoice filing deadline. A station's failure to complete any remaining construction in a timely manner and to make final submissions by the assigned invoice filing assignment 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, 2023.¹⁴ The Fund Administrator will initiate close out procedures for any entity that has failed to initiate interim close-out procedures by the January 6, 2023 invoice filing deadline. Any unused allocations made to that entity's account will be returned to the Fund and made available for allocation to other program participants or rescinded to Treasury.

In consideration of the above facts, the request for extension of the invoice filing assignment deadline for Station WEFB-LD **IS GRANTED**. The invoice filing assignment deadline for the Station **IS MODIFIED TO January 6, 2023**.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Kathleen Victory, Esq., Fletcher Heald & Hildreth, PLC, counsel for Joseph Bernstein
(victory@fhhlaw.com)

¹³ 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.").

¹⁴ *See Invoice Filing Deadline PN*, 35 FCC Rcd at 11277-78, para 13.