

Amended Request for Extension of Invoice Filing Deadline

West Virginia Educational Broadcasting Authority (“WVEBA”), licensee of low-power television translator station W17EF-D, Wheeling, West Virginia (“W17EF” or the “Station,” Facility ID No. 167354), respectfully requests a further extension of the deadline to submit invoices (“Invoice Deadline”) for the Station to the TV Broadcaster Relocation Fund. The Commission previously granted the Station an extension of the Invoice Deadline through April 30, 2023, but WVEBA has since encountered further unexpected delays beyond its control that have impacted its ability to complete construction on W17EF by this date.¹ Accordingly, WVEBA now requests a further extension of the Invoice Deadline for an additional two weeks, until **May 15, 2023**.

Good cause exists to extend the Station’s Invoice Deadline because WVEBA has been unable to complete construction of the Stations channel 17 displacement facilities as a result of special, rare, and extraordinary circumstances beyond its control. Further, granting the requested extension is unlikely to have a negative impact on the Commission staff’s ability to process the Station’s invoices or complete close-out procedures for all stations by the applicable deadline.

I. Background

W17EF historically operated on channel 30. After channel 30 was reallocated as part of the incentive auction, WVEBA submitted an application for authority to construct displacement facilities for W17EF on channel 17 during the FCC’s Special Displacement Window.² The FCC granted this application on January 29, 2019 and specified a three-year period for W17EF to construct the channel 17 displacement facility.

Since the Channel 17 Displacement CP was granted, WVEBA has worked diligently to complete construction on W17EF, but has encountered numerous delays beyond its control that have impaired its ability to complete construction by the relevant deadline. These have included delays in obtaining funding through the West Virginia state procurement office’s competitive bidding process,³ the loss of essential engineering staff while simultaneously trying to transition three full-power television stations and five television translator stations in connection with the repack process, equipment loss due to burglaries and weather-related damage, limited vendor availability, and issues obtaining documentation needed from the owner of W17EF’s tower site to perform a structural analysis. As a result, WVEBA previously sought a waiver of the Commission’s tolling standard⁴ on January 29, 2022 to extend the Channel 17 Displacement CP six months past its initial expiration date.⁵ The Video Division granted this request on March 25,

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² See LMS File No. 0000054635.

³ See W. Va. Code § 5A-1-10 (2019) (requiring that all spending units use competitive bidding process to purchase commodities wherever possible). As a state-funded entity, WVEBA is required to comply with West Virginia laws and procedures regarding the procurement of goods and services. These laws require that all equipment purchases in excess of \$25,000 be put out for competitive bidding, a process that is time and resource intensive, and is managed by the West Virginia procurement office.

⁴ 47 C.F.R. § 73.3598(b).

⁵ See LMS File No. 0000180610.

2022, finding that WVEBA had “demonstrated that it has been diligently making progress towards completion of the Station[’s] displacement facilities but was unable to complete construction due to delays outside of its control,” and that the public interest would be served by tolling the Channel 17 Displacement CP.⁶ WVEBA submitted a second application for waiver of the FCC’s tolling standard on July 18, 2022 (LMS File No. 0000195232), and was granted an extension through December 15, 2022.⁷ WVEBA applied again for waiver of the FCC’s tolling standard on December 15, 2022 (LMS File No. 0000205619), and is submitting an amendment to that application (“Tolling Waiver Amendment”) concurrently with the instant request at the direction of the FCC staff.

Unfortunately, WVEBA has encountered additional circumstances outside its control since the prior request that have further delayed construction. As explained in WVEBA’s Tolling Waiver Amendment, WVEBA experienced difficulties obtaining necessary background documentation needed from Nexstar, which owns the tower from which W17EF operates. This prevented WVEBA from moving forward with performing a structural analysis, which is typically a necessary step before a work crew can climb the tower to install equipment. Unfortunately, and despite repeated attempts by WVEBA’s staff to contact Nexstar, WVEBA was never able to obtain this documentation. To work around this issue, WVEBA decided to conduct a more abbreviated feasibility study. Although WVEBA had fully expected this feasibility study to return with a passing result, WVEBA learned on December 15, 2022 that the site had failed.

As a result, WVEBA was faced with the option of either performing further structural studies on the existing tower in order to determine whether it could be suitably modified to support the new equipment, or moving W17EF’s operations to another tower nearby that is owned by the West Virginia State Interoperable Network (“SIRN”), a state-owned entity with which WVEBA already shares many of its other tower sites. In the interest of time, WVEBA opted move W17EF’s operations to a new tower, since the process of performing further structural studies and modifying the existing tower could take a significant amount of time. WVEBA submitted a formal request to SIRN in early January, and was granted permission to move W17EF’s operations to a new tower nearby in Bethany, West Virginia on January 9.

Once WVEBA’s request to move to the new tower site was approved, its engineering team confirmed that W17EF would be able to receive signal at the new site, and engaged its outside engineering consultant to conduct propagation studies to ensure that W17EF’s operations at this new site would not overlap with another station’s coverage area. On February 10, WVEBA received the results of these studies, which revealed that the proposed move to the new tower site would cause prohibited interference to another station, WJMB-CD, in Butler, Pennsylvania. engineering team concluded that this issue could be mitigated by reconfiguring the antenna that had already been purchased and delivered for the Channel 17 facilities to switch it from an omnidirectional antenna to a directional antenna. WVEBA obtained approval from its executive

⁶ Letter from Barbara A. Kreisman, Video Division Chief, to West Virginia Educational Broadcasting Authority (March 25, 2022).

⁷ Letter from Barbara A. Kreisman, Video Division Chief, to West Virginia Educational Broadcasting Authority (Oct. 27, 2022).

board to proceed with this plan on Wednesday, March 8, and shipped the antenna back to the manufacturer for repairs the week of March 13.

In parallel, WVEBA made arrangements to have a structural analysis performed by Reese Tower Services on the new tower site. The structural analysis was completed in early April, and a report was issued on April 13 with a passing result. With this, WVEBA is cleared to proceed with completing the installation as soon as the reconfigured antenna has been shipped back.

WVEBA had hoped that it would only take a few weeks to retrofit the antenna; however, this process took longer than anticipated and was not completed until late April. As of the date of this request, the antenna has been shipped, and WVEBA's engineering staff is scheduled to pick it up before the close of business. Pillar has confirmed that it has a work crew available to install the reconfigured antenna and remaining equipment, and will be on site to begin that process on Monday, May 1, weather permitting. Assuming that the weather cooperates, WVEBA expects that the installation should be completed within a week. However, the current forecast reflects that it may rain at the tower site during the first half of next week, which could delay this process by a few days. Accordingly, WVEBA is requesting a two-week extension to account for possible weather-related delays out of an abundance of caution.

II. Extension of the Invoice Deadline for W17EF Would Serve the Public Interest, Convenience, and Necessity

As explained above and in the Tolling Waiver Amendment, WVEBA has been working diligently to complete construction and submit final invoices for W17EF, but will be unable to do so by April 30, 2023 due to circumstances outside its control. As the Commission is already aware, WVEBA is a state-funded entity that was established by the State of West Virginia to provide non-commercial educational radio and television broadcasting services to residents of West Virginia. An extension of the Invoice Deadline is necessary to allow WVEBA to obtain full reimbursement for the remaining work required to complete construction on its channel 17 displacement facilities after the April 30, 2023 Invoice Deadline.

WVEBA recognizes that the Video Division previously indicated that it did not anticipate allowing any further extensions of the Invoice Deadline.⁸ However, WVEBA now finds itself in a dire situation. If WVEBA is not permitted to submit the Station's invoices and related documentation for reimbursement after April 30, 2023, it will be forced to pay for fully-reimbursable repack expenses out-of-pocket, which would create a financial catastrophe for WVEBA. WVEBA's resources are already extremely limited, as the funding it receives from the State of West Virginia only covers the cost of WVEBA's staff; WVEBA relies on grants and donations to cover the rest of its expenses. The repack process has placed an enormous strain on WVEBA's already-limited finances, forcing WVEBA to reduce its broadcast network maintenance to the bare minimum in order to fund the repack work. As a result, WVEBA is now in desperate need of implementing tower repairs, replacing equipment, and conducting other maintenance at most of its sites in order to continue operating in a reliable manner. WVEBA is counting on reimbursement funds in order to help make these updates, which are needed to bring its network

⁸ See Letter from Barbara A. Kreisman, Chief, Video Division, granting requests for invoice deadline extensions for W08EE-D, W23DR-D, W30CO-D, and W41DK-D (Oct. 27, 2022).

back to standard operation. In light of these circumstances, strict application of the Invoice Deadline would be contrary to Congress's directive that the FCC reimburse broadcasters for all costs "reasonably incurred" as part of the repack process and would be contrary to the public interest.⁹

Further, grant of the requested extension is unlikely to have a negative impact on Commission staff's ability to process the Station's invoices or complete close-out procedures for all stations, because WVEBA has submitted all other expenses related to the Station, and plans to have all remaining invoices submitted by May 15, 2023, which is well before the July 3, 2023 deadline for unobligated amounts in the TV Broadcaster Relocation Fund to be rescinded to the U.S. Treasury. For all these reasons, grant of this request to extend the Invoice Deadline to May 15, 2023 is warranted.

⁹ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. Law 112-96 § 6403(b)(4).