



Federal Communications Commission
Washington, D.C. 20554

October 27, 2022

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

Re: Requests for Invoice Deadline Extensions
for W08EE-D, Martinsburg, West Virginia
Facility ID No. 163357
LMS File No. 0000199227

W23DR-D, Romney, West Virginia
Facility ID No. 167358
LMS File No. 0000199230

W30CO-D, Wheeling, West Virginia
Facility ID No. 167354
LMS File No. 0000199231

W41DK-D, Keyser, West Virginia
Facility ID No. 167356
LMS File No. 0000199241

Dear Licensee,

On September 2, 2022, and as supplemented on October 14, 2022, West Virginia Educational Broadcasting Authority (WVEBA or Licensee), licensee of the four above-captioned stations (collectively, Stations), filed applications requesting extension of the invoice filing deadlines¹ 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 deadline of December 15, 2022.² For the reasons discussed below, we grant the Requests and extend the dates of the Stations' invoice filing deadlines to December 15, 2022.

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

¹ LMS File Nos. 0000199227, 0000199230, 0000199231, and 0000199241 and respective Attach. (collectively, Requests) (filed Sep. 2, 2022), and supplement filed by electronic mail from Virginia Hiner, counsel for WVEBA, to Shaun Maher, Attorney, Video Division, FCC Media Bureau (Oct. 14, 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 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 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

With respect to all four Stations, Licensee states that a series of setbacks beyond their control delayed construction. First, WVEBA states it discovered serious technical issues during the Stations' structural analyses, which necessitated additional expenditures, that, when combined with previous expenditures, caused WVEBA to reach the \$500,000 limit provided for in its turn-key construction contract earlier than anticipated.⁹ WVEBA states that because it is a publicly-funded entity, this served to delay construction for all four Stations because WVEBA had to engage in a new competitive bidding process and a new contract was not awarded until March 1, 2022.¹⁰ WVEBA states it also experienced a significant staff turnover, to include the loss of several full-time broadcast field engineers, and was unable to hire a new Director of Engineering until May 9, 2022.¹¹

Licensee states it experienced other emergency situations beyond its control during the second quarter of 2022 that further diverted resources and engineering staff away from constructing the Stations.¹² In May 2022, a tree fell on guy lines at WVEBA's Barkers Ridge site, which required emergency repairs; in May and July, WVEBA's Garfield site was burglarized and robbed of equipment

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 See *TV Broadcaster Relocation Fund Invoice Filing Deadline Approaches In Sixty Days*, Public Notice, DA 22-72, para. 4 (MB/IATF Jan. 21, 2022).

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 Attachs. at 4, 8

¹⁰ *Id.*

¹¹ See, e.g., W08EE Attach. at 8-9.

¹² *Id.* at 9.

on two separate occasions, which also required immediate attention; WVEBA states that site also catastrophic lightning strikes that damaged TV and ASI converters and an FM transmitter that are housed there, taking the central and northern parts of WVEBA's state TV network off line temporarily.¹³ Finally, WVEBA states that the ENG truck used by WVEBA's engineering team as its primary form of transportation blew an engine and was placed in the shop for repairs in June; as a result, WVEBA states it had to devote substantial time to finding a suitable replacement vehicle, which was obtained in early July. WVEBA recounts that the lack of transportation during this time period created a severe work backlog at WVEBA's 23 transmitter sites, including W08EE.¹⁴

With respect to W08EE-D, Martinsburg, WVEBA states that this station's original tower failed almost every criterion of the initial structural analysis performed in November 2021. WVEBA states it has arranged to transition its operations to a new tower located at North Mountain.¹⁵ WVEBA has filed concurrently with this request an application to modify the Channel 27 Displacement CP to reflect this change in tower sites. WVEBA states it has obtained foundation drawings and tower mapping for the North Mountain tower site, and is currently waiting for its contractor to complete a structural analysis on the tower.¹⁶ WVEBA relates that the transmitter¹⁷ and antenna have been delivered; it expects to complete construction by the end of October.¹⁸

With respect to W41DK, Keyser, Licensee states its contractor and an outside vendor conducted a structural analysis of the Keyser tower site but were unable to provide a study until July 15, 2022, due to delays encountered by a co-tenant on the tower providing required documentation;¹⁹ WVEBA states it expects the final report after a co-tenant provides information on welding work it did.²⁰ Licensee reports that all equipment has been delivered and is ready to be installed upon the final structural analysis which, assuming a positive result, will be completed by November 30.²¹

With respect to W23DR-D, Romney, WVEBA states that all equipment has been delivered; however, the structural analysis for the station's tower failed due to excessive weight on the tower.²² WVEBA advises it has access to another tower and is in the final stages of executing a lease that will allow WVEBA to move its operations to that site.²³ Licensee states it is confirming that a structural analysis has already been completed for this site and, assuming that is so, WVEBA will begin installation as soon as the lease is executed and expects to complete construction by November 30.²⁴

¹³ *Id.* at 8-9.

¹⁴ *Id.* at 9.

¹⁵ *Id.* at

¹⁶ *Id.* at 9-10.

¹⁷ *Id.*

¹⁸ *See* Supplement.

¹⁹ *See* W41DK Attach. at 9-10.

²⁰ *See* Supplement.

²¹ *See id.*

²² Supplement.

²³ *Id.*

²⁴ *Id.*

With respect to W30CO-D, Wheeling, WVEBA states it is awaiting the final structural analysis for W30CO's tower, which has been delayed due to a co-tenant's inability to locate structural drawings.²⁵ Licensee, however, reports that all equipment has been delivered hopes to complete construction by November 30.²⁶

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to extend the Stations' invoice filing assignment deadlines from September 6, 2022 to December 15, 2022. The Stations have demonstrated that circumstances beyond their control justify the extensions. We also find that grant of the Requests is not likely to negatively impact the staff's ability to process the Stations' invoices or complete close-out procedures for all stations. We therefore conclude that the public interest will be served by grant of the extensions. We strongly encourage the Stations to diligently pursue submission of all remaining invoices and initiate close-out procedures as early as possible without waiting for the December 15, 2022 deadline. We remind Licensee that, pursuant to the Spectrum Act, 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."²⁷ 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 Stations that we do not anticipate allowing further extensions of the final December 15, 2022 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, 2023.²⁸ The Fund Administrator will initiate close out procedures if the Stations fail to initiate interim close-out procedures by the December 15, 2022 invoice filing deadline, and any unused allocations made to the Stations' account will be returned to the Fund.

In consideration of the above facts, the Requests for extension of the invoice filing assignment deadline for West Virginia Stations W08EE-D, Martinsburg; W23DR-D, Romney; W30CO-D, Wheeling; and W41DK-D, Keyser, **ARE GRANTED**. The invoice filing assignment deadlines for the Stations **ARE MODIFIED TO December 15, 2022**.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

²⁵ See Attach. at 9-10; Supplement.

²⁶ See Supplement.

²⁷ 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.").

²⁸ See *Invoice Filing Deadline PN*, 35 FCC Rcd at 11277-78, para 13.