



## NARRATIVE

### In support of a request for MODIFICATION AND WAIVER OF PHASE ASSIGNMENT KWTV-DT CH 25

Oklahoma City, Oklahoma

Facility ID: 25382

## PURPOSE

Griffin Licensing, LLC (“Griffin”) seeks waiver of the post-incentive auction transition phase assignment, and corresponding testing dates and construction completion deadlines, for KWTV-DT, Oklahoma City, OK (Facility ID 25382) (“KWTV” or the “Station”). The Station is assigned to Transition Phase 2, for which the Phase Completion Date is April 12, 2019. Griffin seeks to transition the Station to its post-auction channel as part of Phase 1, with a transition completion date of November 30, 2018 and a testing period beginning on September 9, 2018.

Due to the construction coordination requirements on its shared candelabra tower structure and because the Station presently does not have an auxiliary system, there is a significant likelihood that without a waiver of the transition phase assignment, the Station will be unable to meet its assigned transition deadline without going dark. If granted, Griffin’s waiver request will allow KWTV to move to a new interim side-mounted auxiliary antenna on the same tower ahead of schedule—avoiding service loss for viewers during the construction on the top-mounted main antenna.

The *Transition Scheduling Public Notice* encourages stations to propose “alternative transition solutions that could create efficiencies,” and advises that a request to modify a station’s transition deadline — including by moving to an earlier phase — will be viewed favorably if the request is “otherwise compliant with [FCC] rules and [has] little or no impact on the phase assignments or transition schedule.”<sup>1</sup> As described below, Griffin’s request qualifies for such favorable treatment.

The FCC may grant a waiver for good cause shown.<sup>2</sup> A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.<sup>3</sup> In considering a waiver, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>4</sup> Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>5</sup> As demonstrated below, good cause exists for waiver of the Station’s assigned transition phase. The waiver serves the public interest by facilitating an orderly transition and keeping a valuable source of programming on air, with minimal impact on the transition plan.

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<sup>1</sup> *Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, Public Notice, MB Docket No. 16-306, GN Docket No. 12-268, ¶ 50, n.163 (rel. Jan. 27, 2017).

<sup>2</sup> 47 C.F.R. § 1.3.

<sup>3</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>4</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

<sup>5</sup> *Northeast Cellular*, 897 F.2d at 1166.

## DISCUSSION

*Necessity of Waiver.* The Station is currently on channel 39, but it is moving to channel 25. KWTV's only broadcast antenna is on a shared candelabra level tower structure leased from American Tower Corporation. There are multiple facilities transmitting from the candelabra level, including other stations that are being repacked. Due to the tower work involved on the shared candelabra, the Station will be unable to operate from its main antenna during the whole period of construction leading up to the phase two deadline.

KWTV does not have an auxiliary system from which it can operate during construction on the top-mounted antenna, and its tower cannot support an additional side-mounted antenna with additional transmission line to use as an auxiliary.<sup>6</sup> However, another station on the tower, Griffin's co-owned station KSBI (Facility ID: 38214) operates on channel 23. Because KWTV's post-auction channel is 25, it is feasible to replace KSBI's side mounted antenna with a two-channel antenna that will support both KSBI and KWTV's post-auction channel—allowing KWTV to use the two-channel antenna as an interim auxiliary facility while construction is completed on the main antenna. Using a shared antenna as auxiliary facility to broadcast from the post-auction channel is a necessary solution to keep KWTV on-air throughout its transition.

Griffin will file an STA to provide post-auction channel service on new interim side mounted auxiliary antenna. If the waiver and the STA request are granted, Griffin will cease transmitting the Station from channel 39 (from the top mounted antenna) and will begin transmitting from channel 25 (from the auxiliary antenna) no later than the Phase 1 transition deadline. In coordination with the other market tenants, during Transition Phase 2, Griffin plans to replace the current top-mounted main antenna and line so that it can resume broadcasting on its post-transition channel from its main antenna elevation.

A grant of this request will serve the public interest because it is a more cost-effective solution and will help expedite the repacking process. While KSBI is not a repacked station, and will continue to use the combined antenna once KWTV deploys its top-mounted post-auction facilities, KWTV is eligible for necessary expenses related to an auxiliary facility and this is the most cost-efficient method for deploying an auxiliary facility for KWTV. Moreover, the public interest considerations of allowing KWTV -- the top-ranked source for news and weather in the Oklahoma City market -- to avoid going dark by sharing an antenna with KSBI clearly outweigh any residual potential benefits that may accrue to KSBI. This is particularly the case because Transition Phase 2 is scheduled to occur during Spring 2019, when severe weather (including tornadoes) routinely affect the Oklahoma City DMA, and viewers rely heavily on KWTV's severe weather coverage to remain safe. Allowing KWTV to transition during Transition Phase 1 thus will have significant public safety benefits as well.

*Impact to Transition Plan.* The Station is not part of a linked station set, nor will it create a new linked station set upon approval of this waiver request. As described in the accompanying engineering statement, the early transition to channel 25 will not cause any impermissible interference to any other station during the transition.<sup>7</sup> Moving from Transition Phase 2 to Transition Phase 1 is likely to have little impact on resource constraints, because the Station is already slotted to use resources at the very beginning of the transition.<sup>8</sup> Therefore, Griffin's waiver request has minimal, if any, impact on the overall transition schedule, and may in fact better utilize resources early in the transition.

*Impact on Viewers.* The Oklahoma City DMA has six repacked stations, all of which are assigned to Transition Phase 2. Griffin acknowledges that by moving to Transition Phase 1, it will cause viewers in the DMA to undergo an additional rescan. However, two rescans is within the constraints adopted in the *Transition Scheduling Plan*.<sup>9</sup> Furthermore, if the Station goes dark during the transition, viewers will lose

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<sup>6</sup> See Engineering Statement.

<sup>7</sup> See Engineering Statement.

<sup>8</sup> See *Transition Scheduling Public Notice* at ¶ 52.

<sup>9</sup> See *Transition Scheduling Public Notice* at ¶ 20.

access to CBS programming along with critical local content such as severe weather coverage during tornado season. The public interest benefits of keeping the Station on-air during the post-auction transition outweigh the small cost to viewers of conducting a second rescan. Nonetheless, in a good faith effort to help minimize any viewer confusion, the Station commits to engaging in additional outreach to viewers during the transition.

## **CONCLUSION**

This waiver request is consistent with the transition plan and is in the public interest. Griffin respectfully requests that the Commission grant this request for modification and waiver of its phase assignment for KWTV.