



Federal Communications Commission
Washington, D.C. 20554

February 2, 2018

Griffin Licensing, L.L.C.
Trevor Wiseman
7401 N. Kelley Avenue
Oklahoma City, OK 73111

David A. O'Connor, Esq.
Wilkinson Barker Knauer, LLP
1800 M Street, N.W.
Suite 800N
Washington, DC 20036

Re: Request for Modification and
Waiver of Phase Assignment
KWTW-DT, Oklahoma City, Oklahoma
Facility ID No. 25382
LMS File No. 0000034976

Dear Licensee,

On November 6, 2017, Griffin Licensing L.L.C. (Griffin), the licensee of full power television station KWTW-DT, Oklahoma City, Oklahoma (KWTW-DT or Station), filed a *Request for Modification and Waiver of Phase Assignment*, requesting to modify the post-incentive auction transition phase assigned to the Station in the *Closing and Channel Reassignment Public Notice* from Phase 2 to Phase 1.¹ For the reasons below, we grant Griffin's waiver request and modify KWTW-DT's phase assignment to Phase 1.

Background. Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waiver and modification of their phase assignment.² A waiver 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.³ The Media Bureau (Bureau) has stated it will evaluate such requests on a case-by-case basis to assess the impact on the transition schedule, including the impact on

¹ See *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*). See LMS File No. 0000034976 (amended Jan. 24, 2018), Narrative - Request for Modification and Waiver of Phase Assignment (Waiver Request).

² See *Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, MB Docket No. 16-306 and GN Docket No. 12-268, 32 FCC Rcd 890, 912-14, paras. 47-52 (MB 2017) (*Transition Scheduling Adoption Public Notice*).

³ 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). See also *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 913-14, para. 51 and n.171.

other broadcasters as well as viewers, in order to facilitate a timely and orderly transition.⁴ The Bureau determined that it would view favorably requests that are compliant with the Commission's rules and have little or no impact on the transition schedule.⁵ Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.⁶

KWTV-DT is currently licensed to operate on channel 39. It was reassigned to channel 25 in the *Closing and Channel Reassignment Public Notice* and assigned to transition Phase 2, which has a testing period start date of December 1, 2018, and phase completion date of April 12, 2019. KWTV-DT is located in the Oklahoma City, Oklahoma, Designated Market Area (Oklahoma City DMA). A total of six stations, including KWTV-DT, were repacked in the Oklahoma City DMA, and all were assigned in the *Closing and Channel Reassignment Public Notice* to Phase 2. Griffin requests permission to modify KWTV-DT's transition phase to Phase 1, which has a testing period start date of September 14, 2018, and a phase completion date of November 30, 2018. According to Griffin, KWTV-DT's current broadcast antenna is located on a shared candelabra with other stations.⁷ As a result, it will be unable to operate from its main antenna "during the whole period of construction leading up to the phase two deadline."⁸ KWTV-DT currently does not have an auxiliary system and its tower is not able to support the addition of one. However, Griffin has determined that it is feasible to replace the side mounted antenna for commonly owned full power television station KSBI(TV), Oklahoma City, Oklahoma (KSBI), with a side mounted broadband antenna that would support both the licensed operations for KSBI and the auxiliary operations for KWTV-DT.⁹ Upon filing and grant of the requisite application for special temporary authority, Griffin would operate on KWTV-DT's post-auction channel from the side mounted broadband antenna until such time that its final post-auction facility is completed.¹⁰ Griffin states that grant of its waiver request will benefit the public interest by ensuring that KWTV-DT does not go dark. According to Griffin, viewers in the Oklahoma City DMA rely on KWTV-DT for severe weather coverage and use of a shared broadband antenna as proposed here is "a necessary solution to keep KWTV on-air throughout the transition" and "will have significant public safety benefits."¹¹

Griffin also provides an engineering analysis demonstrating that its early transition will not create any new linked station sets or result in impermissible interference during the transition period.¹² Griffin acknowledges that while grant of its phase change would create an additional rescan period in the Oklahoma City DMA, there is currently only one rescan period for the DMA. Adding an additional rescan would continue to satisfy the two rescan periods per DMA limitation used in the tool adopted by the Bureau in the *Transition Scheduling Adoption Public Notice* to assign stations to transition phases.¹³

⁴ See *id.* at 912-14, paras. 49-52. See also *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Broadcast Transition*, 32 FCC Rcd 858, 881-82, para 73 (MB 2017).

⁵ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-13, para. 49 and n.163.

⁶ *Id.*

⁷ Waiver Request at 2.

⁸ *Id.*

⁹ *Id.* KSBI was not repacked and operates on channel 23.

¹⁰ *Id.*

¹¹ *Id.* Griffin points out that the station is likely to be off-air will be during a time when severe weather, such as tornadoes, routinely affect the Oklahoma City DMA and viewers rely on the Station's coverage to remain safe. *Id.*

¹² *Id.* and KWTV Engineering Statement.

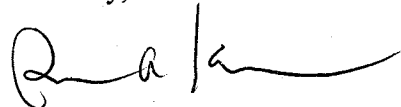
¹³ *Id.* at 2.; see *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21.

Nevertheless, in order to mitigate consumer impact Griffin agrees to engage in consumer education and outreach beyond the requirements of the Commission's rules, including through its social and digital media assets.¹⁴

Discussion. Upon review of the facts and circumstances presented, we find Griffin's request to modify its phase assignment to Phase 1 satisfies the requirements for a waiver. We agree that the change to KWTW-DT's transition phase should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. A staff analysis confirms that the phase change does not create any new linked station sets and will not result in new interference above the two percent permitted during the transition.¹⁵ While viewers in the Oklahoma City DMA will be subject to an additional rescan period, the total number of rescan periods will be limited to two. Griffin has also committed to put in place viewer outreach programs beyond those required by the Commission rules in order to ensure that viewers will be well-informed and can manage the additional rescan period. Furthermore, in the *Transition Scheduling Adoption Public Notice* the Bureau made clear that ensuring stations did not go dark during the transition was a priority.¹⁶ Grant of this request will ensure that KWTW-DT is able to continue to serve the public without interruption. As a result, we find on balance that the benefit of ensuring KWTW-DT, an important source of emergency information, does not go dark, along with the additional consumer education and outreach efforts Griffin commits to in its request, outweigh the burden of an additional rescan period in this case.

Accordingly, we **GRANT** Griffin's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for KWTW-DT **from Phase 2 to Phase 1. KWTW-DT may not commence testing on its post-auction channel until 12:01 a.m. on September 14, 2018, and must discontinue operation on its pre-auction channel by 11:59 p.m. on November 30, 2018.**

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁴ See Waviv Request at 3 and KWTW Additional Consumer Education Commitment.

¹⁵ See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16 (allowing temporary increased pairwise (station-to-station) interference of up to two percent during the transition period).

¹⁶ *Id.* at 913, para. 50 (“[O]ur aim is not to discourage stations from proposing alternative transition solutions that could create efficiencies or resolve unforeseen circumstances that could otherwise force a station to go dark.”).