



Federal Communications Commission
Washington, D.C. 20554

September 26, 2019

New Age Media of Pennsylvania License, LLC
1181 Highway 315
Wilkes-Barre, PA 18702

Re: Request for Modification and
Waiver of Phase Assignment
WOLF-TV, Hazelton, PA
Facility ID No. 73375
LMS File No. 0000081580

Dear Licensee,

On September 17, 2019, New Age Media of Pennsylvania License, LLC (New Age), the licensee of WOLF-TV, Hazelton, Pennsylvania (WOLF-TV 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 7 to Phase 6.¹ New Age also requests waiver of the post-incentive auction consumer education requirements.² For the reasons below, we grant New Age's requests for waiver and modify the Station's phase assignment to Phase 6, as conditioned herein.

Background. Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waiver and modification of their phase assignment.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 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

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*, GN Docket No. 12-268 et al., Public Notice, 32 FCC Rcd 2786 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*). See LMS File No. 0000081580, Narrative WOLF-TV Phase Change Request 7 to 6 (Waiver Request).

² 47 CFR § 73.3700(c)(3).

³ 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, Public Notice, 32 FCC Rcd 890, 912-14, paras. 47-52 (MB 2017) (*Transition Scheduling Adoption Public Notice*).

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*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 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.*; see *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, 33 FCC Rcd 8240, 8244-45, para. 14 (IATF & MB 2018) (*Transition Reminder Public Notice*).

Furthermore, pursuant to section 73.3700(c)(3) of the Commission's rules (Rules), repacked stations must air sixty (60) seconds per day of on-air crawls or public service announcements (PSAs) beginning 30-days prior to discontinuing operations on their pre-auction channel.⁷ The Media Bureau has stated that to the extent a station is not able to comply with its consumer education requirements, it must file a request for waiver. All waiver requests will be evaluated on a case-by-case basis in accordance with the Commission waiver standard and must include the following information: (1) an explanation describing why the station is unable to comply with the existing consumer education requirements; (2) an alternative but comparable means the station will use to notify viewers of the station's new channel; and (3) why grant of the waiver request complies with the Commission's general waiver standard.⁸

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.⁹

WOLF-TV is currently licensed to operate on channel 45. It was reassigned to channel 22 in the *Closing and Channel Reassignment Public Notice* and is currently assigned to transition Phase 7, which has a phase testing period start date of October 19, 2019, and a phase completion date of January 17, 2020. The Station is located in the Wilkes Barre-Scranton, Pennsylvania, Designated Market Area (Wilkes Barre DMA). A total of eight stations were repacked in the Wilkes Barre DMA, with four stations having transitioned to their post auction channel, two stations, including WOLF-TV, being assigned to Phase 7, and two assigned to Phase 9. New Age states that due to a problem with the Station's high voltage power supply, the station has been operating at reduced power since September 6, 2019.¹⁰ The Station's post-repack antenna has already been installed and installation of its permanent transmitter is underway.¹¹ The Station plans to complete construction and be ready to commence operation on its post-auction channel prior to the Phase 7 testing period start date – October 19, 2019.¹² In order to expeditiously resume full power operations, New Age requests that WOLF-TV's transition phase assignment be modified from Phase 7 to Phase 6, which had a testing period start date of September 7, 2019, and a phase completion date of October 18, 2019.

New Age also requests waiver of the post-incentive auction consumer education requirements. Pursuant to section 73.3700(c) of the Commission's rules, WOLF-TV is required to provide consumer notifications beginning 30-days prior to discontinuing operations on its pre-auction channel.¹³ Because WOLF-TV has not run such notifications because it's deadlines do not permit it to transition prior to October 19, 2019, if this waiver is granted the Station would transition prior to completion of the required

⁷ *Id.*

⁸ *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, 33 FCC Rcd 8240, 8245, para. 15, n.41 (IATF & MB 2018).

⁹ 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.

¹⁰ Waiver Request at 1. See LMS File No. 0000081474.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 1-2. See 47 CFR § 73.3700(c)(3) (repacked stations must air sixty (60) seconds per day of on-air crawls or public service announcements (PSAs) beginning 30 days prior to discontinuing operations on their pre-auction channel).

30-days of announcements. New Age has proposed to undertake alternative means of notifying its viewers of its channel change. Specifically, New Age proposes to provide notification of its channel change to viewers and consumers, both before and after the Station transitions through: (i) its website and social media outlets, (2) the Station's local newscasts, and (3) other in market full power stations WSWB(TV), Scranton, PA and WQMY(TV), Williamsport, PA.¹⁴

Discussion. Upon review of the facts and circumstances presented, we find that New Age's request satisfies the requirements for a waiver and is in the public interest. We agree that changing the Station's transition phase to Phase 6 should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. The Station is currently licensed to operate in the 600 MHz band. Staff has confirmed that the phase change will not create any new linked station sets or direct dependencies.¹⁵ Although the total number of rescan periods in the Wilkes Barre DMA will increase from three to four,¹⁶ we note that the Station will be transitioning approximately two weeks prior to its current phase assignment testing period.¹⁷ Modifying WOLF-TV's transition phase will ensure that the Station is able to recommence full power operations as expeditiously as possible. In order to minimize potential viewer confusion that may be caused by the change in the transition schedule and given that the Station will be unable to provide the full 30 days of viewer notifications required under the Commission's rules, New Age has committed to undertake alternative means of notification to ensure viewers are full informed and educated about the transition. As a result, we find the facts and circumstances discussed above outweigh any viewer burden caused by a change in the Station's transition phase.

We remind New Age that pursuant to the Spectrum Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other."¹⁸ 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.

Accordingly, we **GRANT** New Age's *Request for Modification and Waiver of Phase Assignment* to move the Station's phase assignment from Phase 7 to Phase 6 and its request for waiver of the post-incentive auction consumer education requirements, 47 CFR § 73.3700(c)(3). We take the aforementioned actions subject to all the commitments made in its waiver request. WOLF-TV **may immediately** begin testing on its post-auction channel and is required to cease operating on its pre-

¹⁴ Waiver Request at 2.

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).

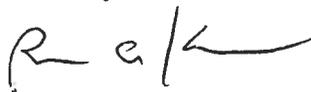
¹⁶ See *id.* at 898-99, paras. 20-21 (establishing a two rescan periods per DMA limitation when assigning stations to transition phases).

¹⁷ While in its request New Age was expecting to complete its transition on or about September 25, 2019, counsel for New Age has subsequently informed staff by phone that the expected transition timeframe is now early-October.

¹⁸ 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.").

auction channel **no later than 11:59 pm local time on October 18, 2019**.¹⁹ The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.²⁰

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):
Paul Cicelski, Esq.
Nancy Ory, Esq.
Dan A. Kirkpatrick, Esq.

¹⁹ Each transition phase has a designated testing period on which a station in that phase may begin testing equipment on its new channel and a designated phase completion date when a station must cease operation on its pre-auction channel. The phase completion date is the date that will be listed in that station's construction permit as its construction deadline and is the date the station must cease operation on its pre-auction channel. *See Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2806, para. 64. A station that commences testing on its post-auction channel before the beginning of its assigned testing period will be operating in violation of Commission rules.

²⁰ *Id.* ("The phase completion date is...[also] the date listed in each station's construction permit as its construction deadline"). If a station must commence operations on its post-auction channel at variance from the parameters authorized in its construction permit, it must file for and be granted special temporary authority prior to commencing operations. *See* 47 CFR § 73.1635. A station that needs additional time to complete construction of its post-auction facility beyond its construction permit expiration date must file for a 180-day extension of its construction permit in accordance with section 73.3700(b)(5)(iv). Stations needing additional time to construct after a 180-day extension is granted, will be subject to the Commission's tolling provisions. 47 CFR § 73.3700(b)(5)(iv). Grant of an extension of time to construct does not relieve a station of the requirement that it ceases operation on its pre-auction channel by its assigned phase completion date.