

**REQUEST FOR WAIVER OF PHASE ASSIGNMENT AND
SPECIAL TEMPORARY AUTHORITY TO REMAIN ON PRE-AUCTION CHANNEL**

HME Equity Fund II, LLC (“Licensee”), licensee of WMJF-CD, Towson, MD (Facility ID No. 191262) (“WMJF”), hereby requests a waiver of WMJF’s post-incentive auction transition phase assignment and construction completion deadline. WMJF was informed on March 2, 2020, that its contracted tower crew would not perform the job. Efforts are underway to find a replacement crew to conduct the installation, but given that the phase completion date is less than two weeks away, it is expected that the deadline simply cannot be met.

Accordingly, Licensee hereby requests: (1) waiver of WMJF’s current phase assignment to reassign KGLA from Phase 8 to Phase 9; and (2) Special Temporary Authority (“STA”) for WMJF to continue operating on pre-auction channel 39 until the end of Phase 9, or such earlier date as the construction of the new channel 23 facilities can be completed.

I. WAIVER STANDARD

Individual stations are permitted to propose modifications to their phase assignments and transition schedules.¹ Such requests are viewed favorably if they are “otherwise compliant with [the Commission’s] rules and have little or no impact on the phase assignments or transition schedule.”² The Commission may grant a waiver for good cause shown.³ A waiver is appropriate where the particular facts make strict compliance inconsistent with the public

¹ *Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 32 FCC Rcd. 890, 913, ¶ 51 (MB 2017).

² *Incentive Auction Task Force and Media Bureau Seek Comment on Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 31 FCC Rcd 10802, 10814-15, ¶ 27 (MB 2016).

³ 47 C.F.R. § 1.3.

interest.⁴ In considering a waiver, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁵ Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁶

II. DISCUSSION

Good cause exists for waiver of WMJF's current assignment of Phase 8 and grant of STA to allow WMJF to remain on its pre-auction channel until the end of Phase 9. Despite undertaking all reasonable efforts to ensure on-time completion of WMJF's transition, Licensee could not control the last-minute cancellation of the tower crew. Grant of this phase waiver will permit WMJF the additional time needed to identify and contract a qualified replacement tower crew, as well as to re-submit for certain city permits that may be needed as a result of the altered construction schedule.

Grant of this waiver and STA also will serve the public interest by facilitating an orderly and efficient transition without forcing WMJF to go off the air. Because WMJF is not a part of a linked-station set, grant of this phase waiver will have no negative impact on other transitioning stations. Moreover, WMJF's continued operation on its pre-auction channel, 39, will have no immediate impact on the transition or the deployment of wireless services in the 600 MHz band, as there are several other television stations in the Baltimore DMA already assigned to phase Phase 9.

⁴ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁵ *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.

⁶ *Northeast Cellular*, 897 F.2d at 1166.

Licensee believes any disruption to viewers resulting from WMJF's delayed transition will be minimal. Licensee already has been running daily consumer education public service announcements and crawls throughout this period, so viewers are aware that a channel change is pending for Licensee. Upon grant of this waiver request, Licensee pledges to revise those PSAs and crawls to notify viewers of the revised transition date. As mentioned above, other stations in the market are already slated for Phase 9, so no additional rescan will be required.

CONCLUSION

In sum, because grant of this waiver will ensure the goals of the Incentive Auction are met while having only *de minimis* temporary impacts and ensuring uninterrupted programming, this request for waiver of WMJF's phase assignment and request for STA for WMJF to continue operating on its pre-auction channel is in the public interest and should be granted.