



Federal Communications Commission
Washington, D.C. 20554

July 2, 2020

South Carolina Educational TV Commission
1041 George Rogers Blvd.
Columbia, SC 29201
mjahnke@scetv.org
(via electronic mail)

Re: Request for Special Temporary
Authority to Continue Pre-Auction
Operations
WITV(TV), Charleston, SC
Facility ID No. 61005
LMS File No. 0000116760

Dear Licensee,

On June 30, 2020, South Carolina Educational TV Commission (Licensee), the licensee of WITV(TV), Charleston, South Carolina (WITV or Station), filed a *Request for Special Temporary Authority* (STA) requesting permission to continue to operate on the Station's pre-auction channel until July 13, 2020.¹ For the reasons below, we grant the Licensee's STA and modify the Station's phase completion date and construction permit expiration date to July 13, 2020, as conditioned herein.

Background. Under the Commission's Transition Scheduling Plan, each repacked station was assigned a phase completion date, which is the date by which that station must vacate its pre-auction channel. Repacked stations are permitted to request an STA to continue to operate on their pre-auction channel beyond their assigned phase completion deadline.² However, pursuant to section 73.3700(b)(4)(iii) of the Commission's rules (Rules),³ repacked stations are not permitted to operate on their pre-auction channel after July 13, 2020 (post-incentive auction transition deadline).⁴ The Media

¹ South Carolina Educational TV Commission, Request for Special Temporary Authority for station WITV(TV), Charleston, SC, LMS File No. 0000116760 (June 30, 2020) (WITV STA Request). *See also 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*).

² *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, 873, para. 47 (IATF & MB 2017) (*Broadcast Transition Procedures Public Notice*).

³ 47 CFR § 73.3700(b)(4)(iii).

⁴ *Id.*; *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 et al., Report and Order, 29 FCC Rcd 6567, 6797-802, paras. 563-573 (2014) (*Incentive Auction R&O*), *aff'd*, *Nat'l Assoc. of Broadcasters et al. v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) (*NAB v. FCC*) (subsequent citation omitted). The post-auction transition period, as defined under 47 CFR § 27.4, consisted of a 39-month period that commenced upon release of the *Closing and Channel Reassignment Public Notice* announcing the end of the auction and included a three-month window for stations to file their initial construction permit application and a 36-month period for reassigned stations to transition to their post-auction channel. *Incentive Auction R&O*, 29 FCC Rcd at 6796, para. 559; 47 CFR § 73.3700(b)(1)(i).

Bureau (Bureau) has stated it will evaluate such requests to modify a station's phase transition date 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.⁵ The Bureau determined that it would view favorably requests that are compliant with the Rules and have little or no impact on the transition schedule.⁶ Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.⁷ In the *Transition Reminder Public Notice*, the Bureau went on to state that it "envision[ed] such requests would be filed when a station discovers at the last-minute that, due to unforeseen circumstances beyond its control, it will be unable to commence operation on its post-auction channel by its phase completion date and is left with no reasonable alternative other than going silent."⁸

WITV is currently licensed to operate on channel 7. It was reassigned to channel 24 and is assigned to transition Phase 10, which has a phase completion date of July 3, 2020.⁹ According to the Licensee, the Station will be unable to complete construction of its post-auction facility by July 3, 2020, due to construction delays caused by insurance negotiations with the Station's tower landlord and by weather delays.¹⁰ To date, the tower crew has removed the Station's old main antenna and installed the new antenna.¹¹ Removal of the Station's old transmission line and installation of its new transmission line is actively underway.¹² All equipment and work crews are on site.¹³ The facility being constructed is the Licensee's permanent post-auction facility. As a result of these delays, the Licensee anticipates a

⁵ See *Incentive Auction Task Force and Media Bureau Adopt 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. 49-52 (IATF & MB 2017) (*Transition Scheduling Adoption Public Notice*). See also *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 881-82, para. 73.

⁶ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-13, para. 49 and n.163. A waiver of our rules 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. 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). Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008); see also *Post-Incentive Auction Transition Request for Waiver of Cox Television Jacksonville LLC, Licensee of Station WFOX-TV, Jacksonville, Florida*, Order, FCC 20-82, paras. 12-14 (rel. Jun. 18, 2020) (*WFOX-TV Order*).

⁷ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-13, para. 49, n.163; 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*).

⁸ *Id.* at 8242-43, para. 7, n.18.

⁹ See *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2806, para. 64 (assigning each repacked station to one of 10 transition phases, each with specific dates on which the station, subject to any required coordination, can commence testing and operation on its post-auction channel (testing period start date) and must cease operating on its pre-auction channel (phase completion date)).

¹⁰ WITV STA Request at 1.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

brief delay before commencing operation on its post-auction channel.¹⁴ As a result, the Licensee requests authority for the Station to continue operating on its pre-auction channel until July 13, 2020.

WITV is part of Linked-Station Set 110 and is directly linked with station WOLO-TV, Columbia, South Carolina (WOLO-TV).¹⁵ WOLO-TV is also assigned to transition Phase 10. In order to prevent increased temporary pairwise interference greater than two percent,¹⁶ WITV must transition at the same time as or prior to WOLO-TV. According to the Licensee, by delaying WITV's transition until after July 3, it will cause approximately 2.13% temporary pairwise interference to WOLO-TV. The Licensee states that "WOLO-TV's licensee has agreed to accept this temporary interference, subject to execution of a simple agreement memorializing the parties' intent."¹⁷

Discussion. Upon review of the facts and circumstances presented, we find that the Licensee's request meets the requirements for an STA for a brief extension and is in the public interest. WITV plans to vacate its pre-auction channel by the July 13, 2020 post-incentive auction transition deadline.¹⁸ Permitting the Station to continue to operate on its pre-auction channel until July 13, 2020, will not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. Staff has confirmed that permitting the Station to remain on its pre-auction channel will not create any new linked-station sets or cause an increase in pairwise interference to any other station except WOLO-TV. The Licensee states that WOLO-TV has agreed to accept a temporary increase in pairwise interference and will enter into a formal written agreement with WOLO-TV allowing WITV to temporarily cause an increase in pairwise interference in excess of the two percent threshold permitted during the post-incentive auction transition period.¹⁹

Allowing WITV to continue operating on its pre-auction channel until July 13, 2020, will ensure that the Station is able to continue to serve its viewers without interruption. Given the status of the Station's construction and that this is only a brief extension, we find that there are no reasonable alternative options that could be reasonably undertaken at this time to permit the Station to vacate its pre-auction channel by July 3, 2020, without going dark.²⁰ In order to minimize potential viewer confusion

¹⁴ *Id.*

¹⁵ WOLO-TV is licensed to South Carolina Broadcasters Partners.

¹⁶ 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).

¹⁷ WITV STA Request at 1.

¹⁸ 47 CFR § 73.3700(b)(4)(iii).

¹⁹ See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16. Consistent with prior actions taken during the post-incentive auction transition period, increased levels of temporary pairwise interference above two percent have been permitted so long as the impacted station(s) agree to accept such increased interference. See e.g., *WFOX-TV Order* at para. 13; *WAND(TV) Partnership, Request for Waiver and Modification of Phase Assignment for station WAND(TV), Decatur, IL, LMS File No. 0000097698* (granted Jan. 17, 2020). After July 13, 2020, absent waiver of 47 CFR § 73.616(d), stations are not permitted to cause greater than 0.5 percent pairwise (station-to-station) interference.

²⁰ Under the Transition Schedule Plan, the Bureau provided several flexible alternatives to permit a station to meet its phase completion date, including by moving to interim facilities on a station's post-auction channel, operating at reduced power on a vacant channel, and temporary channel sharing. See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 915-17, paras. 54-59. Given the brief amount of time needed by WITV to complete its post-auction facility we find requiring WITV to explore each of these options would serve to only divert resources from

caused by the short delay in the Station's transition, we require the Licensee to continue to conduct consumer outreach, as is required by section 73.3700(c)(3) of the Rules,²¹ until the Station completes its transition to its post-auction channel. As a result, we find the facts and circumstances discussed above outweigh any viewer burden caused by the Station's change in transition plans.

We remind the Licensee 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."²² 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** South Carolina Educational TV Commission's *Request for Special Temporary Authority* and modify the phase completion date for WITV(TV), Charleston, South Carolina, to July 13, 2020, subject to all the commitments made in its STA, including completion of and compliance with the terms of the Station's interference agreement with WOLO-TV, and compliance with all Rules applicable to transitioning stations.²³ Testing on the Station's post-auction channel **may begin immediately**. WITV is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on July 13, 2020**.²⁴ The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.²⁵

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):
Derek Teslik, Esq.
(Attorney of Record)

completing the work that is actively underway to ensure the Station vacates its pre-auction channel by the post-incentive auction transition deadline – July 13, 2020.

²¹ See 47 CFR § 73.3700(c)(3) (requiring repacked stations to 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).

²² 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.").

²³ See generally 47 CFR § 73.3700 and Transition Reminder Public Notice, 33 FCC Rcd 8240.

²⁴ See *infra*, note 9.

²⁵ 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 47 CFR § 73.3700(b)(5). 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)(i) *citing* 47 CFR 73.3598(b). 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.