

REQUEST FOR WAIVER OF DEADLINE TO CEASE OPERATIONS ON PRE-TRANSITION CHANNEL

South Carolina Educational Television Commission (“SCETV”), licensee of noncommercial educational PBS-member television station WITV, Charleston, South Carolina (“WITV”) submits this request for a waiver of the requirement in Section 73.3700(b)(4)(iii) of the Commission’s Rules to avoid forcing WITV off-air after July 13, 2020 and related rules, including Section 73.616(d). SCETV has been and continues to work diligently to vacate its pre-transition channel. As shown herein, SCETV has good cause for the waiver under the rule waiver standard recently established by the Commission for continuing to operate on pre-transition channels and the rule waiver standard articulated by the D.C. Circuit. SCETV’s requested waiver is consistent with other waivers recently granted by the FCC for repacked television stations. Grant of the waiver will best serve the public interest and will not frustrate any FCC rule or policy.

Introduction. SCETV is a state entity with the mission of providing educational and public television service to the entire State of South Carolina. SCETV is the licensee of eleven (11) noncommercial educational television stations across the State of South Carolina, ten (10) of which (including WITV) were subjected to repacking. This state-wide repacking has been an enormous undertaking for a statewide public television system, and SCETV began planning for its phased transitions immediately after receiving its new channel assignments back in 2017. SCETV carefully planned out its multi-station repack, which spanned three years, by developing a repack queue for its stations, based on the assigned repack phases. Over the 39-month repacking period, SCETV has worked diligently and successfully transitioned nine (9) stations to their post-transition channels. However, SCETV needs approximately 12-14 days – or perhaps up to one month of additional time -- to be assured of completing its transition for the last remaining station, WITV, in a way that does not deprive some 1.377 million citizens of the State of South Carolina of their educational public television service during this challenging time for our country. (It is quite possible that the WITV transition can be completed more quickly than in a month, but it is also impossible to predict with any accuracy what the summer coastal weather situation in Charleston will be on any given day, especially given the NWS predictions for an “active” Atlantic hurricane season.)

When planning and implementing a 10-station repack, SCETV did not (and could not) foresee COVID delays and unexpected, last-minute requirements imposed on it and its repack vendors for repack plan changes, new structural studies and out of the ordinary insurance. See attached Statement of Hap Griffin.

The Commission has already granted a rule waiver for Station WFOX to remain on its pre-transition channel and acknowledged that “some limited number of additional stations may also need to seek waivers of the phase 10 phase completion date and the post-auction transition period end date.”¹ The Commission stated that it would “work diligently with stations to ensure that service disruptions are minimized to the fullest extent possible.”² SCETV notes that some four (4) other television stations

¹ Post-Incentive Auction Transition Request for Waiver of Cox Television Jacksonville LLC, FCC 20-82, para. 16 (WFOX Order).

² Id.

have now been granted similar waivers, including noncommercial educational PBS-member station WVPB-TV, in West Virginia, also licensed to a statewide public television network.

Summary. SCETV has worked diligently over the course of the entire 39-month repack period to transition its multiple stations across the State of South Carolina, using the same tower crew for each transition. Until COVID-19 hit, SCETV was on track and on time with all of its repack phase deadlines to move to post-transition channels. Then COVID-19 hit. The SCETV station immediately prior to WITV in SCETV's repack queue, WHMC, was forced to move from Phase 9 to Phase 10 due to COVID-related delays and this move/delay in the queue resulted in a spillover effect on WITV, making the transition work at WITV's tower site start later than planned. Moreover, when SCETV was ready to start work on the WITV tower, the WITV transition plan that had been discussed and agreed upon with the prior tower owner at the start of the repack process was not acceptable to the new tower owner and required changes to the WITV transition plan, which changes had to be negotiated with the new tower owner in May 2020. In addition, WITV then encountered last minute issues with its tower owner and new structural study/insurance requirements, which pushed WITV's repack tower work from May 2020 into the late June/July 2020 time frame and, therefore, into the tender mercies of summer thunderstorms and the unpredictable summer weather patterns in coastal South Carolina. If COVID-19 had not occurred, if the new tower owner had not required changes to the WITV transition plan, if the issues with the new tower owner's structural study/insurance requirements had been brought forward sooner or resolved sooner, or if the summer coastal weather had cooperated, SCETV would not be seeking this rule waiver. See attached Statement of Hap Griffin detailing SCETV's transition plans and transition implementation for WITV.

WITV Construction Status. WITV is presently operating on an interim (lightweight) antenna on its pretransition channel mounted at approximately 1800 feet using an existing transmission line that is owned by the tower owner (and was used previously with the tower owner's standby antenna). This interim facility for WITV was not part of WITV's original transition plan; instead, this interim facility was negotiated with the tower owner in the May/early June time frame when the tower owner expressed concern with the WITV transition plan that the prior tower owner had agreed to. See attached Statement of Hap Griffin.

The WITV new main repack antenna and new main repack transmitter have been installed. This is a tall tower (2000 feet) and WITV's repack requires replacement of approximately 1850 feet of transmission line. Approximately 1350 feet of WITV's old transmission line has been removed from the tower, leaving 500 feet still to be removed. Approximately 740 feet of WITV's new transmission line has been installed on the tower, leaving 1,110 feet still to be installed. The remaining repack work is the continued removal of WITV's old transmission line, the continued installation of WITV's new transmission line and related final work on the new transmission line. See attached work schedule from Tower and Communications Services, Inc. The tower crew was first at the WITV site to start work on June 4, 2020 and, after on has been working at the WITV site since the tower owner gave notice to proceed on June 11, 2020. The tower crew is available to continuing working at the site until the WITV transition to its new channel is complete. See attached Statement of Hap Griffin and see attached work schedule from Tower and Communications Services, Inc.

The best estimates of WITV's experienced project manager and experienced tower crew, who have been working on SCETV's 10 station repacks over the course of the past two years (including during last years

hurricane season), is that the necessary time to complete the WITV repack work is an additional 12-14 days, weather permitting. See attached Statement of Hap Griffin and attached work schedule from Tower and Communications Services, Inc.

Alternative Approaches. SCETV has reviewed and analyzed the flexibility included in the Transition Scheduling Plan, such as extending a construction permit deadline, temporary operation on an interim facility, temporary use of an alternative channel, or temporary joint use of a channel. There is no reasonable, available alternative for WITV to continue over the air public television service to the Charleston area absent the requested waiver. SCETV's WITV provides the sole public television service to approximately 1.377 million persons in and around Charleston, South Carolina. WITV has been on its present transmission site since September 1989. The transmission facility for WITV is on a 2,000-foot (i.e., "tall") tower that is literally a stone's throw from the Atlantic Ocean. There is no reasonable alternative transmission site that would provide equivalent coverage. It is not feasible at this point in the WITV repack process (or given the short additional period of time requested in this rule waiver) to find a vacant channel and build it out, or to negotiate and implement a temporary channel sharing arrangement – WITV broadcasts four different channel streams – the SCETV (PBS) stream, the South Carolina Channel, ETV World and SCETV PBS Kids and cannot reasonably share a channel with another station. SCETV has evaluated whether WITV could channel share with another SCETV station, but the SCETV station facilities were planned and sited across the State so as to provide statewide coverage (not duopoly-type coverage) and SCETV determined that any such self-sharing would essentially mean that there is no public television service in the Charleston market, depriving a very substantial South Carolina audience of its sole public television service (and educational service) during a time of COVID, racial justice/unrest issues, and during Atlantic hurricane season.

SCETV does not believe an interim facility on its post-auction channel was a reasonable alternative for WITV. In early June, 2020, as part of a compromise to allow work to start on the tower used by WITV, SCETV had determined that an interim facility on its pre-auction channel was the best solution to try to meet its Phase 10 deadline and satisfy the tower owner's concerns about adding weight to the tower. Use of a pre-transition interim antenna, however, precluded use of a post-transition interim antenna, since the same available slot on the tower --- using the existing transmission line of the tower owner -- could not be used by both a pre-transition channel and a post-transition channel antenna. Once SCETV had committed to this compromise plan with its tower owner, commissioned the tower structural study reflecting this plan, worked out the insurance coverage issues with the plan, and started to implement the plan (which occurred between mid-May and mid-June 2020), it made no sense to take time and effort away from meeting the repack deadline to explore whether the compromise plan could be re-negotiated with the tower owner such that a new plan, involving a new interim antenna on the post-transition channel, could be ordered, delivered, and installed on the tower. Given that WITV experienced well over a month of delay with structural studies and insurance when implementing its pre-transition interim antenna facility, WITV does not believe renegotiating the compromise for a different interim antenna (for its post-transition channel) is now (or was then) a prudent or workable option. Moreover, it is not helpful to second guess decisions made in good faith back in late May or early June before weather delays precluded significant progress on the WITV repack. Suffice it to say that, as of now, an interim antenna facility on WITV's post-transition channel cannot be implemented by July 13, 2020 in any event.

WITV can continue to operate on its pre-transition channel with minimal outgoing and incoming interference beyond the 2% pairwise interference. SCETV previously sought and received an interference consent from Station WOLO for WITV to operate on its pre-transition channel from July 3-13, 2020 and SCETV will seek to extend that consent; if such interference consent is not received, WITV will reduce power to meet the baseline interference standard. Thus, no station (and no 600 MHz auction winner or operator) will be adversely impacted by WITV additional month of operate on its pre-transition channel. There is no harm at all to FCC policy if WITV is given 12-14 days of additional time to complete its transition.

Summary. Under the *WAIT Radio* standard (and subsequent D.C. Circuit waiver decisions), a rule may be waived where the particular facts make strict compliance inconsistent with the public interest; the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis; and waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.³ SCETV submits that forcing WITV off air, under the set of circumstances described here, would be strict compliance inconsistent with the public interest (and without any public benefit). No Commission policy is harmed by allowing SCETV further time (as has already been granted to a handful of other similarly situation stations). The public is not harmed by waiver. Rule waiver for WITV to remain on its pre-transition channel for another month (while the WITV channel transition is completed) would best serve the public interest and best serve the 1.377 million citizens of the State of South Carolina residing within WITV's coverage area.

For all these reasons, SCETV respectfully requests rule waivers to permit Station WITV to remain on its pre-transition channel until its post-transition facility can be made operational, which is expected to be by July 22, 2020. Out of an abundance of caution (and in recognition of possible further weather delays in coastal Carolina), SCETV requests the rule waiver to be in effect until August 3, 2020.

³ *WAIT Radio v. FCC*, 418 F2d 1153, 1157, (DC Cir 1969), affirmed by *WAIT Radio v. FCC*, 459 F2d 1203 (DC Cir 1972); *Northeast Cellular Telephone Co. v. FCC*, 897 F2d 1164, 1166 (DC Cir 1990) (*Northeast Cellular*)