

**REQUEST FOR WAIVER OF REPACK PHASE ASSIGNMENT AND
CONSTRUCTION DEADLINE**

WWAY-TV, LLC, licensee of television station WWAY, Facility ID No. 12033, Wilmington, North Carolina, hereby respectfully requests that WWAY be reassigned from post-incentive auction transition Phase 7 to Phase 5, and that its construction deadline specified in the construction permit which will result from WWAY's soon to be filed application for modification of facilities to specify its new channel be changed from the date applicable to Phase 7 stations, January 17, 2020, to the completion date applicable to Phase 5 stations, September 6, 2019. With respect thereto, the following is stated:

The Commission's *Incentive Auction Closing and Channel Reassignment Public Notice*, DA 17-314, released April 13, 2017 ("*Auction Closing/Channel Reassignment PN*") made official and provided links to information concerning the results of the broadcast television spectrum incentive auction and the stations that are to be repacked to new channels in light of the results of the auction. In addition, a previous Public Notice, *Incentive Auction Task Force and Media Bureau Adopt Post-Incentive Auction Transition Scheduling Plan*, 32 FCC Rcd 890 (MB 2017) (the "*Transition Scheduling Adoption Public Notice*") laid out the timetable for transition and indicated that particular stations would be assigned to specified phases, which would govern the dates during which it would be able to test its new channel and the date by which the new facilities must be complete. Pursuant to the *Auction Closing/Channel Reassignment PN* and associated information, and pursuant to a letter dated April 13, 2017, and sent to WWAY-TV, LLC, it was announced that WWAY-DT will be required to change from its current Channel 46 to Channel 24, and that it has been assigned to Phase 7 in the transition process. At the same time, it was also announced that co-located WECT, Facility ID No. 48666, Wilmington, North Carolina, is being reassigned from Channel 44 to Channel 23, also in Phase 7, but a third co-

located station, WSFX-TV, Facility ID No. 72871, Wilmington, North Carolina, changing from Channel 30 to Channel 29 was placed in transition Phase 5.

This difference in Phase assignments will create substantial transition difficulties. In this instance, not only are WWAY, WECT and WSFX-TV all co-located on the same tower, but they have historically shared an antenna, transmission line, and a combiner, and will continue to share such equipment following transition. Pursuant to an agreement among the three licensees, the tower is owned by a company in which each of them has an interest, and each licensee company provides certain of the equipment and is responsible for its proportionate share of the costs of the installation and maintenance of such equipment. Because of this close relationship, and because the most basic transmission equipment for the three stations is shared among them, it is imperative that the three stations undertake transition activities together, in close co-ordination with each other, and at the same time. A separation between them of two phases is simply untenable. Accordingly, WWAY-TV, LLC is requesting that its transition phase be adjusted to Phase 5.

The *Transition Scheduling Adoption Public Notice* established that stations may seek alteration of their transition phases and waivers of transition deadlines. *Transition Scheduling Adoption Public Notice* at ¶¶49-50. That Public Notice acknowledged the importance of facilitating smooth transition, limiting adverse viewer impact, and providing broadcasters with necessary flexibility, but noted the need to balance these goals against possible disruption to the limited transition period. In this instance, the benefits of allowing three stations which must co-ordinate their transition to work within the same time parameters would more than outweigh any detriments that might result from the change in phase, particularly as WWAY has volunteered to

move to an earlier phase. As a result, WWAY's transition will be completed earlier than if it remains with its currently assigned phase.

First, it must be recognized that failure to grant the requested waiver will make the transition process much more complicated and difficult for three television stations. These stations, which must work in an extraordinarily co-operative manner, as they share the same pieces of transmission equipment, would be made literally out of phase with each other. While it might be suggested that WWAY and WECT could work with WSFX-TV voluntarily to construct the new facility sooner than the WSFX-TV's Phase 5 deadline, the first allowable date of testing for a Phase 7 station, which is October 19, 2019, falls approximately a month and a half after the deadline of September 6, 2019, by which a Phase 5 station must be operating with its new facility. Thus, for 43 days, one station would be *required* to operate on its new channel while the other two would be *precluded from* doing so, all while sharing the same antenna, transmission line, and combiner. Obviously, this situation is untenable, and if all three stations are to remain on the air, it appears that at least one station will be forced to use additional, temporary facilities which it would not otherwise be required to use. The need to add temporary facilities for relatively short use will necessarily add to the total of reimbursable costs, and the requirement to make engineering provisions for accommodation and construction of such temporary facilities will add extra steps to the transition process. In these ways, the need to provide for simultaneous operation of both pre-transition and post-transition facilities clearly will add to the complication and expense of the transition process.

Moving WWAY, along with WECT,¹ to the same transition phase as WSFX-TV, however, would have the benefit of reducing the expenses and resulting reimbursement costs for

¹ It is WWAY's understanding that the licensee of WECT is filing a similar request for change to Transition Phase 5.

this transition. WWAY believes that this change would result in a significant savings for the repack reimbursement fund. It also would assist viewers as they seek to find the new locations of the major network affiliates in the market. The change in phase would mean that all of the television stations in the Wilmington, N.C. market would transition in the same phase. Accordingly, viewers would be able to update the local channels with one pass at re-scanning rather than two.

Moreover, there would be no disruption to the overall transition. As noted above, the proposed change would speed up, rather than delay, the WWAY transition would. More importantly, however, WWAY is not linked to any other station, as is shown in both the April 13, 2017, channel reassignment letter and the Commission's Public Notice, *Incentive Auction Task Force and Media Bureau Announce Regional Coordinators to Facilitate Post-Auction Transition for Broadcast Stations*, DA 17-376, released April 20, 2017, at 8. Therefore, the proposed change would have no impact whatsoever on the ability of any other station to complete its transition. Indeed, the only likely effect would be to ease potential difficulties for WSFX-TV, which is linked to a number of other stations. There also would be no adverse impact on viewers in the market. Instead, the transition would be made more convenient for viewers who would not have to rescan their receivers a second time.

In sum, the requested waiver which would allow WWAY to transition in Phase 5 rather than Phase 7 would have the public interest advantages of reducing the reimbursable costs of the transition for WWAY, as well as WECT and WSFX-TV. A further benefit would be a reduction in the difficulty of accomplishing a transition which currently requires one-third of a trio of stations which share equipment to operate with post-transition facilities while the other two stations are required to operate with pre-transition facilities. Because WWAY is not a linked

station, there will be no delay or disruption to the overall transition process. Indeed, the requested change could even make it possible for all three stations to complete their transitions earlier, as they work in co-ordination with each other, and none of the stations is required to add another layer of temporary facilities. Therefore, the requested waiver should be granted.