

CONDITIONAL REQUEST FOR FIRST PRIORITY WINDOW PROCESSING

On June 30, 2017, WGBH Educational Foundation timely filed an application for a construction permit for the post-auction facility for WGBY-TV (the “WGBY CP Application”). Under Section 73.3700(b)(iii) of the FCC’s rules, the licensee of a UHF-to-VHF station or High-VHF-to-Low-VHF station was permitted “to propose transmission facilities in its construction permit application that will extend its coverage contour, as defined by the technical parameters specified in the *Channel Reassignment Public Notice*, if the proposed facility will not cause new interference, other than a rounding tolerance of 0.5 percent, to any other broadcast television station.” 47 C.F.R. § 73.3700(b)(iii). Consistent with this rule, the WGBY CP Application proposed an extended contour for WGBY-TV that would not cause new interference to any other broadcast television station.

Although the WGBY CP Application complied with the Commission’s rules, as of this date, it has not been granted. Media Bureau staff has indicated to the applicant that it cannot process the application due to the proposed extended contour. WGBH Educational Foundation believes this interpretation is inconsistent with the plain language of the Commission’s rule.

Nevertheless, WGBY-TV is predicted to experience population loss in excess of 1% on its channel assignment specified in the *Closing and Reassignment Public Notice*. See http://data.fcc.gov/download/incentive-auctions/Transition_Files/Pop_Loss_Indicator.csv. Accordingly, the WGBY CP Application is eligible to be filed in the First Priority Window. See *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, DA 17-106, MB docket No. 16-306, GN Docket No. 12-268 ¶ 32 (rel. Jan. 27, 2017). To the extent it will not prejudice the processing of the WGBY CP Application, WGBH Educational Foundation, reserving all rights, requests that the Media Bureau process the WGBY CP Application in the First Priority Window.