



Federal Communications Commission
Washington, D.C. 20554

May 9, 2018

WatchTV, Inc.
Gregory J. Herman
855 Harbor Court
Southlake, TX 76092-2700

Re: Request for Modification and
Waiver of Phase Assignment
KOXO-CD, Portland, Oregon
Facility ID No. 71080
LMS File No. 0000037429

Dear Licensee,

On January 4, 2018, WatchTV, Inc. (WatchTV), the licensee of Class A television station KOXO-CD, Portland, Oregon (KOXO-CD or Station), filed a *Request for Modification and Waiver of Phase Assignment* to modify the post-incentive auction transition phase assigned to the Station in the *Closing and Channel Reassignment Public Notice* from Phase 2, and instead transition on or before June 1, 2018, with a testing period to commence immediately prior.¹ For the reasons below, we grant WatchTV's request for waiver and modify KOXO-CD's phase assignment to permit it to commence testing and transition to its post-auction channel on or before June 1, 2018, subject to completion of applicable consumer education requirements, any required notice to multichannel video programming distributors (MVPDs), and any additional commitments made in WatchTV's waiver request.²

Background. Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waiver and modification of their phase assignment.³ A waiver 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.⁴ The Media Bureau (Bureau) has stated it will evaluate such requests on a case-by-case basis to assess the impact on the transition schedule, including the impact on

¹ See *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*, Public Notice, 32 FCC Rcd 2786 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*). See LMS File No. 0000037429 (as amended Apr. 27, 2018), Amended Exhibit Supporting Transition Waiver (Waiver Request).

² Repacked stations are required to conduct consumer outreach efforts including providing on-air viewer notifications in the form of public service announcements as well as on-screen crawls at least thirty (30) days prior to transitioning to their post-auction channels. See 47 CFR § 73.3700(c). To the extent applicable, repack stations are also required to provide MVPDs with notice ninety (90) days prior to transitioning. See 47 CFR 73.3700(d).

³ See *Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, MB Docket No. 16-306 and GN Docket No. 12-268, 32 FCC Rcd 890, 912-14, paras. 47-52 (MB 2017) (*Transition Scheduling Adoption Public Notice*).

⁴ 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). See also *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 913-14, para. 51 and n.171.

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 Commission's 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

KOXO-CD is currently licensed to operate on channel 41. It was reassigned to channel 15 in the *Closing and Channel Reassignment Public Notice* and assigned to transition Phase 2, which has a testing period start date of December 1, 2018, and a phase completion date of April 12, 2019. KOXO-CD is located in the Portland, Oregon, Designated Market Area (Portland DMA). A total of five stations, including KOXO-CD, were repacked in the Portland DMA and all were assigned in the *Closing and Channel Reassignment Public Notice* to Phase 2. On February 2, 2018, KOIN, Portland, Oregon, which is licensed to Nexstar Broadcasting, Inc., was granted a waiver of the phase change schedule to transition to its post-auction channel on or before June 1, 2018.⁸ WatchTV requests permission to begin testing and commence operation on KOXO-CD's post-auction channel on or before June 1, 2018.⁹ WatchTV asserts that transitioning to its post-auction channel on or before June 1, 2018, is intended to promote the deployment of new wireless broadband services by enabling T-Mobile, a winning 600 MHz licensee, to deploy its new wireless broadband service in the Portland DMA 10 months earlier than it would be able to under the current transition schedule.¹⁰ WatchTV also states that its early transition will have no impact on vendors or installers ability to serve other stations. For example, WatchTV points out that transmitters are "readily available in the marketplace and can be acquired on short notice" and its current antenna is broadband and does not require replacement.¹¹ In addition, WatchTV has provided a letter from its engineering contractor, who is responsible for acquisition and installation of equipment, stating that "all other equipment required is either on-hand or can be readily obtained."¹²

WatchTV also provides an engineering analysis demonstrating that its early transition will not create any new linked station sets or result in impermissible interference during the transition period.¹³ WatchTV agrees that, if its request is granted, it will coordinate the timing of its early transition with KOIN.¹⁴ As a result of this coordination, the total number of rescans in the Portland DMA will remain the same and KOXO-CD will just be joining the transition period already taking place in the period prior to Phase 1.¹⁵ WatchTV also states that in order to mitigate any negative viewer impact, it will conduct

⁵ See *id.* at 912-14, paras. 49-52. See also *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Broadcast Transition*, 32 FCC Rcd 858, 881-82, para 73 (MB 2017).

⁶ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-13, para. 49 and n.163.

⁷ *Id.*

⁸ Watch TV has also filed a separate requesting seeking authority to transition KKEI-CD, Portland, Oregon to its post-auction channel on or before June 1, 2018. This request by WatchTV will be acted on separately. See LMS File No. 0000053608.

⁹ See LMS File No. 0000035024 (granted Feb. 2, 2018).

¹⁰ Waiver Request at 2.

¹¹ *Id.* at 3.

¹² *Id.* at 3 and Letter of Support from Broadcast Engineering Services.

¹³ *Id.* at 3 and Technical Statement of No Interference on Channel 15.

¹⁴ *Id.* at 2-3.

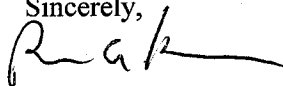
¹⁵ *Id.* at 3.

expanded consumer education and outreach efforts by doubling the amount of over-the-air viewer notifications that are required by the Commission's rules.¹⁶

Discussion. Upon review of the facts and circumstances presented, we find WatchTV's request to modify its phase assignment to permit KOXO-CD to transition to its post-auction channel on or before June 1, 2018, satisfies the requirements for a waiver and is in the public interest. We agree that the change to KOXO-CD's transition phase should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. A staff analysis confirms that the phase change does not create any new linked station sets and will not result in new interference above the two percent permitted during the transition.¹⁷ Prior to this phase change request, the transition schedule included two rescan periods in the Norfolk DMA, and that will remain the same following grant.¹⁸ In order to further limit any negative impact on viewers, WatchTV has agreed to coordinate its early transition with the transition of KOIN in the period before Phase 1. As a result, we find on balance that the benefit of early deployment in the 600 MHz band, the ability to vendors to support the KOIN's early transition, additional consumer education and outreach efforts, and coordination with KOIN, outweigh any negative impact that could result from modification of the transition schedule.

Accordingly, we **GRANT** WatchTV's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for KOXO-CD **from Phase 2** and permit the Station to commence testing and transition to its post-auction channel **on or before June 1, 2018**, subject to completion of all applicable consumer education and MVPD notice requirements under the Rules,¹⁹ the requirement that KOXO-CD's early transition be coordinated with KOIN, and the additional consumer education commitments made in the waiver request. Furthermore, KOXO-CD must cease operation on its pre-auction channel **no later than 11:59 pm local time on June 1, 2018**.

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via e-mail)
Kathleen Victory, Esq.
Peter Tannenwald, Esq.

¹⁶ *Id.* at 4.

¹⁷ 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).

¹⁸ A separate letter has been sent to Nexstar informing it of its obligation for both KOXO-CD and KOIN to coordinate their transition timing. Any obligation for WatchTV to coordinate an early transition involving KKEI-CD will be separately addressed as part of our decision regarding the waiver request for KKEI-CD. See LMS File No. 0000053608.

¹⁹ See 47 CFR §§ 73.3700(c), (d).