

**REQUEST FOR WAIVER OF REPACK PHASE ASSIGNMENT AND ADVANCEMENT  
OF CHANNEL TESTING PERIOD**

Michael A. Sleezer d/b/a CMS Broadcasting, licensee of Class A television station WFNY-CD, Facility ID No. 167948, Gloversville, New York, hereby respectfully requests that WFNY-CD be reassigned from post-incentive auction transition Phase 4 to Phase 2, and that its associated channel testing start date be moved from June 22, 2019, to December 1, 2018. Mr. Sleezer understands that Phase 2 has already begun, but he is confident of its ability to complete construction of his new facilities prior to the Phase 2 deadline of April 12, 2019.

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*"). Pursuant to the *Auction Closing/Channel Reassignment PN* and associated information, it was announced that WFNY-CD will be required to change from its current Channel 48 to Channel 16, and that it had been assigned to Phase 4 in the transition process.

At the same time, and in fact in advance of Phase 4, WFNY-CD is required to cease operation of its current Studio-Transmitter Link ("STL") on Channel 46 and find a new means of getting its programming from its studio to its transmitter. As a part of the spectrum auction and repack process, FCC ordered that affected broadcast auxiliary ("BAS") stations operating in the 600 MHz band must be relocated "no later than the end of the Post-Auction Transition Period," or during the Post-Auction Transition Period "if a new 600 MHz wireless licensee intends to

commence operating [on the BAS station's channel] and there is a likelihood of harmful interference from the fixed BAS station." *Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions*, 29 FCC Rcd. 6567, 6695-96 (2014).

T-Mobile has, in fact, notified Mr. Sleezer that it intends to begin operating in the Albany-Schenectady-Troy, New York, area in the immediate future, and that WFNY-CD's STL on Channel 46 must cease operation. Indeed, T-Mobile initially notified Mr. Sleezer on March 5, 2018 that WFNY-CD's STL would need to cease operations in 30 days. While T-Mobile graciously extended that deadline to July 2, 2018, a further formal extension has not been granted. At any time, T-Mobile could demand that the WFNY-CD STL must cease operation.

Such a development would leave WFNY-CD without a way to get its programming from its studio to its transmitter without constructing a new STL. The transmitter site's location in a rural area of New York makes an STL the only feasible way to continue delivering WFNY-CD's programming to its transmitter site. Mr. Sleezer applied for an authorization for a new STL in September and expects a grant in the immediate future. Under the Commission's Part 74 rules, he may proceed with construction now and he plans to move forward posthaste in order to avoid the worst of the winter weather in upstate New York. Without a new STL, WFNY-CD would be forced to go silent.

Construction of the new STL will, however, require that its current STL antenna be removed from the WFNY-CD tower and for a new antenna, operating in a completely different frequency band, to be mounted. Obviously, this work will require the services of a specialized tower company and climbing crew not only to remove the old equipment and add the new equipment but also to ensure the continued structural integrity of the tower. Furthermore, pursuant to WFNY-CD's repack construction permit and its transition plans, it will also be

necessary for the tower company to build on a new section to the tower to accommodate WFNY-CD's new main antenna.

Clearly, efficiency and cost reduction concerns demand that all of this construction work, as well as installation of both the new STL and the new station transmission facilities be done at the same time instead of piecemeal. It would be both impractical and would require additional work for the tower company to be forced to complete only the new STL installation, only to turn around and come back in a few months to undertake the rest of the project. Furthermore, the need to travel to the transmitter site more than once, plus the added work to be done to complete the project would add significantly to the expense of construction. Moreover, the fact that a tower crew would need to climb the tower multiple times instead of once would necessarily disrupt the operations of not only WFNY-CD, but also of WNGG(FM) and W231CF, which share the tower, as all of these stations would be required to reduce power to protect the tower workers. This added disruption, combined with the increased inefficiency and expense of the project, would be contrary to the public interest.

Indeed, the greater expense is a matter of considerable significance. At the current time, expenses in connection with replacement of STLs are not reimbursable. The amount of funds required to be expended if the STL and main antenna work had to be done separately would represent a substantial blow to this Class A television station's limited income. The Commission is considering that stations will in future be able to seek reimbursement for expenses in connection with replacement of STLs displaced by the spectrum auction. *LPTV, TV Translator, and FM Broadcast Station Reimbursement*, MB Docket No. 18-214, *Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions*, FCC 18-113 (rel. Aug. 3, 2018). For the time being, however, the expense must be borne by the licensee, who would be

required to divert funds that could otherwise be used to support station operation and service to the public. If reimbursement is ultimately approved, then the additional cost will represent an unnecessary expense to be paid by taxpayers. Both results are contrary to the public interest when the need for increased expenditure can easily be avoided.

Another factor is tower crew availability. As is widely known, only limited numbers of crews with the necessary skills to climb broadcast towers and replace television antennas are available throughout the nation. Efficiency of scheduling is therefore important to ensuring that the overall transition proceeds without disruption. Allowing all of the work needed for WFNY-CD would improve scheduling efficiency, while forcing the work to be done in two steps would detract from efficiency. It must be remembered that more than simply the time the crew spends on the tower must be considered. There is also time spent in travel to and from the site and in setting up and taking down necessary equipment for the climb and the work to be done on the tower. Forcing the tower company to repeat the travel, preparations, set up and take down instead of simply completing all necessary work at one time would disrupt overall work flow and have a negative impact on the transition as a whole.

In an ideal world, WFNY-CD would simply postpone the construction until the appointed time for Phase 4 and continue its current operation in the meantime, but WFNY-CD does not have that choice. T-Mobile has indicated that it cannot wait that long to begin using the spectrum which it purchased at auction and which would receive interference from continued operation of the WFNY-CD STL. As a practical matter, Mr. Sleezer is thus faced with two choices: either move up the WFNY-CD transition date to Phase 2, or go off the air and provide no service to the public for a number of months.

Mr. Sleezer has ordered all necessary equipment and has been assured of delivery in sufficient time to complete construction of WFNY-CD's new facilities during Phase 2. The tower company has been scheduled to complete its work during that timeframe as well, and all other installation work will be complete. It is, however, imperative that WFNY-CD be quickly authorized to move to Phase 2 so that Mr. Sleezer can both move forward with construction and be assured that WFNY-CD will not be forced to remain silent for a period of months.

Accordingly, Mr. Sleezer hereby respectfully requests that WFNY-CD be granted a change in transition phase to Phase 2 as quickly as possible. As set forth above, this change will conserve costs and improve the efficiency of the transition for both WFNY-CD and overall and thus will serve the public interest.