



Federal Communications Commission
Washington, D.C. 20554

September 17, 2019

WSFX License Subsidiary, LLC
Thomas Henson
2131 Ayrley Town Boulevard, Suite E300
Charlotte, NC 28273

Re: Request for Modification and
Waiver of Phase Assignment
WSFX-TV, Wilmington, NC
Facility ID No. 72871
LMS File No. 0000081468

Dear Licensee,

WSFX License Subsidiary, LLC (Licensee), the licensee of WSFX-TV, Wilmington, North Carolina, (WSFX-TV or Station), filed the above captioned *Request for Modification and Waiver of Phase Assignment* requesting to modify the post-incentive auction transition phase assigned to the Station in the *Closing and Channel Reassignment Public Notice* from Phase 5 to Phase 7.¹ For the reasons below, we grant the Licensee's request for waiver and modify the Station's phase assignment to Phase 7, as conditioned herein.

Background. Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waiver and modification of their phase assignment.² 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.³ 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 other broadcasters as well as viewers, in order to facilitate a timely and orderly transition.⁴ The Bureau determined that it would view favorably requests that are compliant with the Commission's rules and

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*, GN Docket No. 12-268 et. al., Public Notice, 32 FCC Rcd 2786 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*). See LMS File No. 0000081468, WSFX Phase Change Waiver Request (Waiver Request).

² 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, Public Notice, 32 FCC Rcd 890, 912-14, paras. 47-52 (MB 2017) (*Transition Scheduling Adoption Public Notice*).

³ 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.

⁴ 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*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 32 FCC Rcd 858, 881-82, para 73 (MB 2017) (*Transition Procedures PN*).

have little or no impact on the transition schedule.⁵ Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.⁶

WSFX-TV is currently licensed to operate on channel 30. It was reassigned to channel 29 in the *Closing and Channel Reassignment Public Notice* and is currently assigned to transition Phase 5, which had a phase testing period start date of August 3, 2019, and phase completion date of September 11, 2019.⁷ The Station is located in the Wilmington, North Carolina, Designated Market Area (Wilmington DMA). A total of four stations were repacked in the Wilmington DMA, with all four stations, including WSFX-TV, being assigned to transition Phase 5. According to the Licensee, WSFX-TV shares a post-auction facility with repacked stations WECT(TV), Wilmington, NC (WECT) and WWAY(TV), Wilmington NC (WWAY). The Licensee states that during testing the stations shared combiner overheated and failed. ERI, the manufacturer, attempted to fix the combiner but was unsuccessful.⁸ As a result, a new combiner must be manufactured. ERI has informed the stations that this will take up to five weeks.⁹ Therefore, the Licensee, as well as the licensees of WWAY and WECT,¹⁰ have each filed a waiver request seeking to change their phase assignment from Phase 5 to Phase 7, which has a testing period start date of October 19, 2019, and a phase completion date of January 17, 2020.

The Licensee is part of Linked-Station Set 94 (LSS 94) and is directly linked with downstream station WUNU(TV), Lumberton, NC (WUNU).¹¹ The Licensee's has provided an analysis showing that a temporary increase in pairwise interference above two percent would result if WUNU transitioned to its post-auction channel prior to WSFX-TV completing its transition.¹² As a result, WUNU is simultaneously filing for and being granted a request for waiver to move from Phase 5 to Phase 7.¹³ The Licensee also recognizes that the total number of rescan periods in the Wilmington DMA will increase from one to two, which is still within the two rescan periods per DMA limitation used in the tool adopted by the Bureau in the *Transition Scheduling Adoption Public Notice* to assign stations to transition phases.¹⁴ In order to mitigate any viewer disruption caused by the change in phase, the Licensee commits to conduct additional

⁵ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-13, para. 49 and n.163.

⁶ *Id.*; see *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, 33 FCC Rcd 8240, 8244-45, para. 14 (IATF & MB 2018) (*Transition Reminder Public Notice*).

⁷ Originally, Phase 5 stations had phase completion date and construction permit expiration date of September 6, 2019. See, *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd 2786. On September 3, 2019, those dates were extended to September 11, 2019. See *The Completion Date For Phase 5 of the Post-Incentive Auction Transition Is Extended To September 11, 2019 Because of Hurricane Dorian*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, DA 19-866, rel. Sept. 3, 2019 (IATF & MB).

⁸ Waiver Request at 2. WECT, WWAY, and WSFX-TV have operated pursuant to an STA on their pre-auction channels since the Phase 5 transition deadline.

⁹ *Id.*

¹⁰ *Id.* See File Nos. 0000081472 and 0000081476, respectively.

¹¹ Waiver Request at 2. 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).

¹² Waiver Request at n.9 and 4-6.

¹³ See LMS File No. 0000081483.

¹⁴ Waiver Request 2-3. *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21 (establishing a two rescan periods per DMA limitation when assigning stations to transition phases).

consumer outreach beyond what is required by the Commission's rules through its digital and social media platforms.¹⁵

Discussion. Upon review of the facts and circumstances presented, we find that the Licensee's request to modify the phase assignment for WSFX-TV to transition to its post-auction channel satisfies the requirement for a waiver and is in the public interest. We agree that changing the Station's transition phase to Phase 7 should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. Staff has confirmed that the phase change will not create any new linked station sets, direct dependencies, or increased temporary pairwise interference so long as the Station coordinates its transition with WUNU. The total number of rescan periods in the Wilmington DMA will increase from one to two which is still within the two rescan periods per DMA limitation used in the tool adopted by the Bureau in the *Transition Scheduling Adoption Public Notice* to assign stations to transition phases. In addition, to mitigate any potential viewer confusion caused by the phase change, the Licensee has committed to undertake additional consumer outreach efforts beyond what is required by the Commission's rules. Modifying WSFX-TV's transition phase will ensure that the Station is able to continue to serve its viewers without interruption. As a result, we find the facts and circumstances discussed above outweigh any viewer burden caused by a change in the Station's transition phase and a short delay in access by wireless licensees to the Station's pre-auction channel.

We remind the Licensee that pursuant to the Spectrum Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other."¹⁶ Additional expenses incurred such as expenses resulting from changes in a Station's transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

Accordingly, we **GRANT** WSFX License Subsidiary, LLC's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WSFX-TV **from Phase 5 to Phase 7**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.¹⁷ Testing on the Station's post-auction channel **may not begin until 12:01 am local time on October 19, 2019**, and WSFX-TV is required to cease operating on its pre-

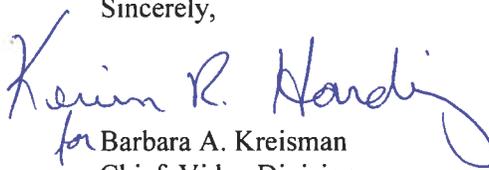
¹⁵ Waiver Request at 3.

¹⁶ 47 U.S.C. § 1452(b)(4)(A)(i). See also *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

¹⁷ See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*, 33 FCC Rcd 8240.

auction channel **no later than 11:59 pm local time on January 17, 2020**.¹⁸ The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.¹⁹

Sincerely,

A handwritten signature in blue ink that reads "Kevin R. Hardig". The signature is written in a cursive style with a large, sweeping flourish at the end.

for Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail): Dan Kirkpatrick, Esq.

¹⁸ Each transition phase has a designated testing period on which a station in that phase may begin testing equipment on its new channel and a designated phase completion date when a station must cease operation on its pre-auction channel. The phase completion date is the date that will be listed in that station's construction permit as its construction deadline and is the date the station must cease operation on its pre-auction channel. *See Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2806, para. 64. A station that commences testing on its post-auction channel before the beginning of its assigned testing period will be operating in violation of Commission rules.

¹⁹ *Id.* ("The phase completion date is...[also] the date listed in each station's construction permit as its construction deadline"). If a station must commence operations on its post-auction channel at variance from the parameters authorized in its construction permit, it must file for and be granted special temporary authority prior to commencing operations. *See* 47 CFR § 73.1635. A station that needs additional time to complete construction of its post-auction facility beyond its construction permit expiration date must file for a 180-day extension of its construction permit in accordance with section 73.3700(b)(5)(iv). Stations needing additional time to construct after a 180-day extension is granted, will be subject to the Commission's tolling provisions. 47 CFR § 73.3700(b)(5)(iv). Grant of an extension of time to construct does not relieve a station of the requirement that it ceases operation on its pre-auction channel by its assigned phase completion date.