



Federal Communications Commission  
Washington, D.C. 20554

July 15, 2019

Morris Network of Mississippi  
Bobby Berry  
301 Poplar Street  
Macon, GA 31201

Re: Request for Modification and  
Waiver of Phase Assignment  
WXXV-TV, Gulfport, MS  
Facility ID No. 53517  
LMS File No. 0000069178

Dear Licensee,

On April 3, 2019, Morris Network of Mississippi (Morris Network), the licensee of WXXV-TV, Gulfport, Mississippi (WXXV-TV or Station) filed a *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 8 to Phase 5.<sup>1</sup> For the reasons below, we grant Morris Network's request for waiver and modify the Station's phase assignment to Phase 5, as conditioned herein.

*Background.* Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waiver and modification of their phase assignment.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> The Bureau determined that it would view favorably requests that are compliant with the Commission's rules and

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<sup>1</sup> 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. 0000069178, Request for Waiver and Change of Repack Phase Assignment and Testing Commencement Date (Waiver Request).

<sup>2</sup> 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*).

<sup>3</sup> 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.

<sup>4</sup> 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).

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

WXXV-TV is currently licensed to operate on channel 48. It was reassigned to channel 25 in the *Closing and Channel Reassignment Public Notice* and assigned to transition Phase 8, which has a testing period start date of January 18, 2020, and phase completion date of March 13, 2020. WXXV-TV is located in the Biloxi-Gulfport, Mississippi, Designated Market Area (Biloxi DMA). A total of two stations were repacked in the Biloxi DMA and the other station has already transitioned. Morris Network requests permission to move WXXV-TV from Phase 8 to Phase 5, which has a testing period start date of August 3, 2019, and a phase completion date of September 6, 2019.

According to Morris Network, a change in transition phase would “optimize scheduling” and allow the Station’s tower crew, Coast to Coast Tower Service, to coordinate the construction for WXXV-TV with tower work being done for another station in the region—WFNA, Gulf Shores, Alabama.<sup>7</sup> According to Morris Network “the completion of the overall construction process for WXXV-TV will be more efficient and less costly if it may be completed in Phase 5.”<sup>8</sup> If WXXV-TV were to wait until Phase 8 to transition to its post-auction channel, Coast to Coast would still conduct the necessary tower modifications while it is in the region working on WFNA’s tower, but it would have to return at a later date to complete the installation of WXXV-TV’s permanent post-auction antenna.<sup>9</sup> Therefore, allowing WXXV-TV to complete its transition in Phase 5 will not only prevent Coast to Coast from having to return later in the transition, but will reduce the amount of time the Station will need to operate from interim facilities with reduced coverage.<sup>10</sup> Morris Network has included with its waiver request a letter from Coast to Coast in support of the phase change request.<sup>11</sup> In addition to its tower crew, Morris Network has also consulted with its transmitter manufacturer, who has provided a letter stating that the phase change will not negatively impact their ability to provide other transitioning stations to access to resources.<sup>12</sup> Morris Network does not anticipate needing to operate on interim facilities past September 6, 2019.<sup>13</sup>

Morris Network has provided an engineering analysis demonstrating that the Station’s early transition will not create any new linked-station sets or will not create any new linked-station sets.<sup>14</sup> Following grant of the request, the total number of rescan periods for the Biloxi DMA would remain at

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

<sup>6</sup> *Id.*; see *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 33 FCC Rcd 8240, 8245, para. 14 (IATF & MB 2018) (*Transition Reminder Public Notice*).

<sup>7</sup> Waiver Request at 4-5.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> *Id.* at 5-6.

<sup>11</sup> *Id.* at 4-5 and Exhibit 2.

<sup>12</sup> *Id.* at 6, Exhibit 1. WXXV-TV is not purchasing a new full power antenna.

<sup>13</sup> *Id.* at 6.

<sup>14</sup> *Id.* at 7 and Exhibit 4. 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).

two, which is consistent with 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.<sup>15</sup> Morris Network also notes that if it is permitted to complete WXXV-TV's transition in Phase 5, it may allow T-Mobile, a winning 600 MHz wireless licensee, to deploy new wireless broadband service in Biloxi-Gulfport area up to six months earlier than under the current transition schedule.<sup>16</sup>

*Discussion.* Upon review of the facts and circumstances presented, we find that Morris Network's request to modify the phase assignment for WXXV-TV to transition to its post-auction channel in Phase 5 satisfies the requirement for a waiver and is in the public interest. We agree that the change to the Station's transition phase should not have an adverse impact on the overall transition schedule or any negative impact on other stations or viewers. Staff has confirmed that the phase change will not create any new linked station sets or direct dependencies. We agree that this phase change will not add to the total number of rescan periods in Biloxi DMA. We find the benefits of streamlining the Station's tower work with another repacked station in the region that are already assigned to Phase 5, statements of support from the Station's vendors, cost savings, potential early deployment of new 600 MHz wireless broadband services, and reduction in the amount of time that the Station will need to operate from its interim facility with reduced coverage, outweighs any viewer burden caused by a change in the Station's transition schedule. Nevertheless, in order to minimize viewer confusion about the change in phase we require that Morris Network, at a minimum, double the amount of on-air consumer education notifications required by the Rules.

We caution Morris Network that any additional expenses incurred as a result of the grant of the Station's voluntary phase change may not be reimbursable from the TV Broadcasters Relocation Fund.<sup>17</sup> Such additional costs might include, but may not be limited to, additional legal or engineering expenses; filing fees; and interim or additional equipment that was not contemplated when the station filed its initial estimated expenses but was subsequently necessitated to complete the transition to its post-auction channel due to changes in its transition plan caused by the voluntary phase change.

Accordingly, we **GRANT** Morris Network's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WXXV-TV **from Phase 8 to Phase 5**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.<sup>18</sup> Furthermore, **WXXV-TV IS REQUIRED** to air, at minimum, double the amount of consumer education notifications required by section 73.3700(c)(3) as set forth above.<sup>19</sup> Testing on the Station's post-auction channel **may not begin until 12:01 am local time on August 3, 2019**, and WXXV-TV is required to cease operating on its pre-auction channel **no later than 11:59 pm**

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<sup>15</sup> Waiver Request at 6. *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21.

<sup>16</sup> *Id.* at 7.

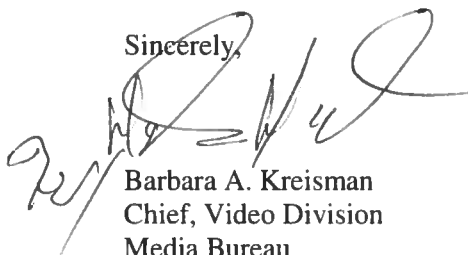
<sup>17</sup> The Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) for costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other." *Media Bureau Finalizes Reimbursement Form for Submission to OMB and Adopts Catalog of Expenses*, GN Docket No. 12-268, Public Notice, 30 FCC Rcd 11701, 11701-02 (MB 2015). 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.").

<sup>18</sup> See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*.

<sup>19</sup> 47 CFR § 73.3700(c)(3) (repacked stations must air sixty (60) seconds per day of on-air crawls or public service announcements (PSAs) beginning 30 days prior to discontinuing operations on their pre-auction channel).

**local time on September 6, 2019.**<sup>20</sup> The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.<sup>21</sup>

Sincerely,

A handwritten signature in black ink, appearing to read 'Barbara A. Kreisman', is written over the word 'Sincerely,'.

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

Cc: (via electronic mail):  
Anne Goodwin Crump, Esq.

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<sup>20</sup> 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.

<sup>21</sup> *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.