



Federal Communications Commission
Washington, D.C. 20554

July 13, 2020

South Carolina Educational TV Commission
1041 George Rogers Blvd.
Columbia, SC 29201
mjahnke@scetv.org
(via electronic mail)

Re: Request for Waiver of Transition
Deadline
WITV, Charleston, SC
Facility ID No. 61005
LMS File No. 0000117627

Dear Licensee,

On July 13 2020, South Carolina Educational TV Commission (the Licensee), the licensee of WITV(TV), Charleston, South Carolina (WITV or Station), filed a *Request for Waiver of Transition Deadline*¹ requesting to waive the July 13, 2020, post-incentive auction transition deadline.² For the reasons below, we grant the Licensee's request for waiver and a brief extension of the Station's deadline to August 3, 2020, as conditioned herein.

Background. On June 18, 2020, the Commission issued the *WFOX-TV Order*³ extending the deadline for WFOX-TV, Jacksonville, Florida (WFOX-TV), to transition to its new channel as a result of the post-incentive auction repack from July 3 to September 8, 2020. Due to construction delays that were beyond the licensee's control, the *WFOX-TV Order* waived⁴ section 73.3700(b)(4)(iii) of the Commission's rules (Rules), which prohibits stations from operating on their pre-auction channel assignments after July 13, 2020.⁵ The Commission also waived section 73.616(d) of the Rules which prohibits stations from causing more than 0.5 percent pairwise interference of a station's population served and allowed WFOX-TV to cause temporary increased pairwise interference of up to two percent,

¹ South Carolina Educational TV Commission, Request for Waiver for station WITV(TV) Charleston, SC, LMS File No. 0000116479 (June 24, 2020) (WITV Request for Waiver).

² *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 et al., Report and Order, 29 FCC Rcd 6567, 6575, para. 19 (2014) (*Incentive Auction R&O*), *aff'd*, *Nat'l Assoc. of Broadcasters et al. v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) (*NAB v. FCC*) (subsequent citation omitted).

³ *Post-Incentive Auction Transition Request for Waiver of Cox Television Jacksonville LLC, Licensee of Station WFOX-TV, Jacksonville, Florida*, Order, FCC 20-82, paras. 12-14 (rel. Jun. 18, 2020) (*WFOX-TV Order*).

⁴ A waiver of our rules 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. 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). Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008).

⁵ *WFOX-TV Order* at paras. 12-14; 47 CFR § 73.3700(b)(4)(iii).

the transition period standard, during the extended period.⁶ The Commission also instructed the Media Bureau to consider future requests seeking such waivers consistent with the considerations included in the *WFOX-TV Order*.⁷

Waiver Request. The Station is currently licensed to operate on channel 7 and was reassigned to channel 24. It was previously assigned to transition phase 10, which had a phase completion date of July 3, 2020. The Station was subsequently granted an extension of its phase completion date to July 13, 2020.⁸ The Licensee states that it has diligently pursued the Station's construction project, as supported by the statements of the Station's project manager provided with its waiver request.⁹ However, due to weather delays, the Station will be unable to complete construction of its post-auction facility by July 13, 2020.¹⁰ To date, the tower crew has removed the Station's old main antenna, installed the new antenna, and all equipment is on-site.¹¹ The Station is currently operating on channel 7 on an interim facility. Removal of the Station's old transmission line and installation of its new transmission line is actively underway.¹² The facility being constructed is the Station's permanent post-auction facility. The Licensee anticipates just a brief additional delay before it will be able to commence operation on its post-auction channel.¹³

The Licensee asserts that it has evaluated the alternatives included in the Transition Scheduling Plan for a station to vacate its pre-auction channel by July 13 deadline, and that those options are not available to WITV.¹⁴ The Licensee states that given the last minute impacts on the Station's transition plan and the short additional period of time needed to complete construction, it is not feasible to find a vacant channel and build it out, or to negotiate and implement a temporary channel sharing arrangement.¹⁵ In addition, the Licensee asserts that an interim facility on its post-auction channel is not a feasible alternative. According to the Licensee, working with its tower owner, the Licensee had previously determined that an interim facility on its pre-auction channel was the best solution to meet its phase 10 deadline and to satisfy the tower owner's concerns about adding weight to the Station's tower to ensure the towers structural integrity.¹⁶ Use of a pre-transition interim antenna, however, precluded use of a post-transition interim antenna, since the available slot on the tower could not be used by both a pre-

⁶ See *WFOX-TV Order* at paras. 12-14; 47 CFR § 73.616(d); *Incentive Auction Task Force and Media Bureau Adopt Post-Incentive Auction Transition Scheduling Plan*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 32 FCC Rcd 890, 897, para. 16 (IATF/MB 2017) (*Transition Scheduling Adoption Public Notice*).

⁷ See *WFOX-TV Order* at para. 16.

⁸ See Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to South Carolina Educational TV Commission (Jul. 2, 2020), available at LMS File No. 00000116760.

⁹ WITV Request for Waiver at 2-3 and Statement of Leslie ("Hap") Griffin.

¹⁰ WITV STA Request at 1 and 2.

¹¹ *Id.* at 2.

¹² *Id.* at 2-3.

¹³ *Id.* at 4. While out of an abundance of caution in order to account additional weather delays the Licensee has requested for an extension to August 3, the Licensee expects that construction will be complete by July 22, 2020.

¹⁴ *Id.* at 3.

¹⁵ The Licensee notes that the Station broadcasts four different channel streams and it may not be reasonable to share a channel with another station. *Id.*

¹⁶ *Id.*

transition channel and a post-transition channel antenna.¹⁷ The Licensee has negotiated the terms of its current transition plan with both its tower owner and insurance provider and believes that changing course based on the limited amount of work that remains is not a “prudent or workable option.”¹⁸

WITV is part of Linked-Station Set 110 and is directly linked with station WOLO-TV, Columbia, South Carolina (WOLO-TV).¹⁹ WOLO-TV has transitioned to its post-auction channel.²⁰ In order to prevent increased temporary pairwise interference greater than two percent,²¹ WITV needed to have transitioned at the same time as or prior to WOLO-TV. By delaying WITV’s transition until after July 3, it has been causing approximately 2.13 percent temporary pairwise interference to WOLO-TV. The Licensee states that it had “received an interference consent from Station WOLO for WITV to operate on its pre-transition channel from July 3-13, 2020 and [] will seek to extend that consent; if such interference consent is not received, WITV will reduce power to meet the baseline interference standard.”²²

Discussion. The Licensee’s request to waive the July 13, 2020, post-incentive auction transition deadline due to circumstances beyond the Licensee’s control satisfies the requirement for a waiver pursuant to the considerations in the *WFOX-TV Order* and is in the public interest. We find that the Licensee has presented information demonstrating that during the course of the post-auction transition period it pursued and scheduled work sufficient to timely complete the Station’s construction project. The Licensee has established that there are no facilities available to the Station, or that could reasonably be made available to the Station pursuant to the flexibility available under the Transition Scheduling Plan, that would permit it to vacate its pre-auction channel without going dark.²³ Allowing WITV to continue operating on its pre-auction channel until August 3, 2020, will ensure that the Station is able to continue to serve its viewers without interruption. We also view the request favorably because it will not delay or disrupt other transitioning stations, except for minimal impact on WOLO-TV, which has already transitioned to its post-auction channel and with whom the Licensee has an interference agreement and is in the process of extending its agreement for this short period of time.²⁴ To the extent that the Licensee is

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ WOLO-TV is licensed to South Carolina Broadcasters Partners.

²⁰ South Carolina Broadcasters Partners, Application for License to Cover for station WITV, Columbia, SC, LMS File No. 0000117301 (Jul. 13, 2020).

²¹ 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).

²² WITV STA Request at 1.

²³ See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 915-17, paras. 54-59 (providing alternative means for a station to meet its phase completion date including moving to interim facilities on a station’s post-auction channel, operating at reduced power on a vacant channel, and temporary channel sharing); 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, 872-73, para. 46-47 (IATF & MB 2017).

²⁴ See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16. Consistent with prior actions taken during the post-incentive auction transition period, increased levels of temporary pairwise interference above two percent have been permitted so long as the impacted station(s) agree to accept such increased interference. See e.g., *WFOX-TV Order* at para. 13; WAND(TV) Partnership, Request for Waiver and Modification of Phase Assignment for station WAND(TV), Decatur, IL, LMS File No. 0000097698 (granted Jan. 17, 2020). After July 13, 2020, absent waiver of 47 CFR § 73.616(d), stations are not permitted to cause greater than 0.5 percent pairwise (station-to-station) interference.

unable to extend its agreement with WOLO-TV, it agrees to operate WITV at reduced power to meet the Commission's "baseline interference standard,"²⁵ of 0.5 percent pairwise.²⁶ Because the Station's pre-auction channel is located in the new TV Band, grant of the Licensee's request will not delay any wireless licensee that purchased 600 MHz wireless licenses in the forward auction from accessing its spectrum when promised. In order to minimize potential viewer confusion caused by the short delay in the Station's transition, we require the Licensee to continue to conduct consumer outreach, as is required by section 73.3700(c)(3) of the Rules,²⁷ until the Station completes its transition to its post-auction channel.

Accordingly, we **GRANT** the Licensee's *Request for Waiver of Transition Deadline* and modify the phase transition deadline for WITV(TV), Charleston, South Carolina, **from July 13, 2020 to August 3, 2020**, subject to all the commitments made in its waiver request, including completion of and compliance with the terms of the Station's interference agreement with WOLO-TV, and compliance with all Rules applicable to transitioning stations.²⁸ Testing on the Station's post-auction channel **may begin immediately**. The Station is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on August 3, 2020**.²⁹ The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.³⁰

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc (via electronic mail): Margaret L. Miller, Esq. and Todd Gray, Esq. (Counsel for Licensee)

²⁵ WITV STA Request at 3.

²⁶ 47 CFR § 73.616(d).

²⁷ See 47 CFR § 73.3700(c)(3) (requiring repacked stations to 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).

²⁸ See generally 47 CFR § 73.3700 and *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, 8244-45, para. 14 (IATF & MB 2018).

²⁹ Each transition phase has a testing period during which a station in that phase may begin testing equipment on its new channel and a phase completion date on which 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.

³⁰ 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). 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)(i) citing 47 CFR 73.3598(b). 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.