



Federal Communications Commission
Washington, D.C. 20554

February 2, 2018

WLOX License Subsidiary, LLC
201 Monroe Street
RSA Tower, 20th Floor
Montgomery, AL 36104

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Re: Request for Modification and
Waiver of Phase Assignment
WLOX(TV), Biloxi, Mississippi
Facility ID No. 13995
LMS File No. 0000036169

Dear Licensee,

On December 11, 2017, WLOX License Subsidiary, LLC (Raycom), the licensee of Station WLOX(TV), Biloxi, Mississippi (WLOX), 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, and instead transition on or before August 31, 2018, with a testing period to commence immediately prior.¹ For the reasons below, we grant Raycom's request for waiver and modify WLOX's phase assignment to permit it to commence testing and transition to its post-auction channel on or before August 31, 2018, subject to completion of applicable consumer education requirements and any required notice to multichannel video programming distributors (MVPDs).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

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. 0000036169 (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). As discussed in greater detail below, Raycom has also committed to additional consumer education efforts beyond those required by the Commission's rules. See Waiver Request at 3.

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*).

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 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

WLOX is currently licensed to operate on channel 39. It was reassigned to channel 32 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. WLOX is located in the Biloxi-Gulfport, Mississippi, Designated Market Area (Biloxi DMA). A total of two stations, including WLOX, were repacked in the Biloxi DMA and both were assigned to Phase 8. Raycom requests permission to begin testing and commence operation on WLOX's post-auction channel on or before August 31, 2018. Raycom asserts that transitioning to its post-auction channel on or before August 31, 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 Biloxi DMA 18 months earlier than it would be able to under the current transition schedule.⁸ Raycom contends that its proposal will also "permit better utilization of resources by engaging vendors and service providers early in the process rather than have them potentially overloaded further in the overall transition."⁹ Raycom has consulted with its numerous vendors and provided letters from its antenna and transmitter manufacturer confirming that they will be able to support WLOX's early transition and such a change will not impact their ability to support other stations' transition efforts.¹⁰

Raycom 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.¹¹ Raycom notes that, while WLOX's proposed early transition will create an additional rescan period in the Biloxi DMA, there is currently only one rescan period for the DMA. Adding an additional rescan would continue to satisfy the two rescan periods per DMA limitation used in the tool adopted by the Bureau in *Transition Scheduling Adoption Public Notice* to assign stations to transition phases.¹² WLOX also states that it will conduct consumer education and outreach efforts beyond what is required by Commission

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.

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 Waiver Request at 2.

⁹ *Id.* at 3.

¹⁰ *Id.* at 3, WLOX Transmitter Manufacturer Letter, WLOX Antenna Manufacturer Letter.

¹¹ *Id.* at 2, Engineering Statement Supporting Request for Waiver.

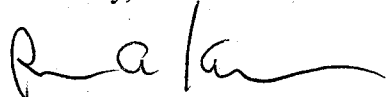
¹² *Id.* at 3; see *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21.

rules, including providing information to viewers through digital and social media, newscasts, and via notices with other local stations and print media.¹³

Discussion. Upon review of the facts and circumstances presented, we find Raycom's request to modify its phase assignment to permit WLOX to transition to its post-auction channel on or before August 31, 2018, satisfies the requirements for a waiver. We agree that the change to WLOX'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.¹⁴ While viewers in the Biloxi DMA will be subject to an additional rescan period, the total number of rescan periods will be limited to two. Raycom has also committed to put in place viewer outreach programs beyond those required by the Commission rules in order to ensure that viewers will be well-informed and can manage the additional rescan period. Raycom has also provided evidence that the resources necessary to support its early transition are available and will not delay other transitioning stations' access to resources. 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 WLOX's early transition, and additional consumer education and outreach efforts, outweighs the burden of an additional rescan period in this case.

Accordingly, we **GRANT** Raycom's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WLOX **from Phase 8 and permit the Station to commence testing and transition to its post-auction channel on or before August 31, 2018, subject to completion of applicable consumer education requirements and any required notice to MVPDs,¹⁵ as well as the additional consumer outreach commitments made in the waiver request.** Furthermore, WLOX must cease operation on its pre-auction channel on or before August 31, 2018, upon commencement of operation pursuant to program test authority, or upon the filing of an application for license to cover, whichever occurs first.

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹³ Waiver Request at 4.

¹⁴ 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).

¹⁵ See 47 CFR § 73.3700(c), (d).