



Federal Communications Commission
Washington, D.C. 20554

July 29, 2019

LOCAL TV PENNSYLVANIA LICENSE, LLC
100 Wilshire Blvd.
Santa Monica, CA 90401

Re: Modification of Phase Assignment
& Construction Permit Expiration Date
WNEP-TV, Scranton, PA
Facility ID No. 73318

Dear Licensee,

We hereby modify the phase assignment of station WNEP-TV (WNEP or Station), licensed to Local TV Pennsylvania Licensee, LLC (Licensee), from Phase 4 to Phase 7 and extend the Station's construction permit expiration date from August 2, 2019, to January 17, 2020.

Background. Pursuant to the *Transition Scheduling Adoption Public Notice*, the Media Bureau (Bureau) may modify individual station's phase assignments and construction permit expiration dates so long as no station is assigned to an earlier transition phase than it was originally assigned without its consent.¹ The Commission follows the waiver standard when considering phase assignments modifications, considering whether 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.² The Bureau has stated it will make modifications 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.³ The Bureau determined that it would view favorably modifications that are compliant with the Commission's rules and have little or no impact on the transition schedule. Modifications that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.⁴

In the *Closing and Channel Reassignment Public Notice*,⁵ WNEP was repacked from channel 50 to channel 16 and assigned to Phase 4, which has a testing period start date of June 22, 2019, and a phase

¹ 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*).

² 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.

³ See *Transition Scheduling Adoption Public Notice*, 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).

⁴ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-13, para. 49 and n.163.

⁵ 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*).

completion deadline of August 2, 2019. All repacked stations for Phase 4 were issued a construction permit with an expiration date of August 2, 2019. The Station is located in the Wilkes Barre-Scranton-Hazleton, Designated Market Area (Wilkes Barre DMA). A total of eight stations, including WNEP, were repacked in the Wilkes Barre DMA. Six of those stations were assigned to Phase 4 and two were assigned to Phase 9.

Licensee reports that it has endeavored to satisfy all of its post-auction transition obligations and is prepared to transition to its full, authorized post-auction channel facilities by the August 2, 2019, phase completion date and construction permit expiration date. According to Licensee, it has been airing notifications to viewers announcing the need for over-the-air viewers to rescan their television sets after its planned transition to its post-auction channel on August 1, 2019.

Licensee reports that on July 19, 2019, WNEP received a notification from the New York Police Department (NYPD).⁶ That notification stated in pertinent part:

[T]echnical staff has been monitoring your testing of the WNEP Channel 16 transmitter for the past several days. On several occasions during this time period, we have observed a rise in the noise floor across the entire Channel 16 band (482 – 488 MHz) when your transmitter is energized. By monitoring Channel 16 (482-488MHz) prior to, during and subsequent to the on air test that you are performing, we have determined that the noise floor rise that we have observed is in fact due to the testing that you are conducting. We have determined that this noise rise is interfering with critical uplink transmissions from NYPD and other NYC metropolitan area portable radios. The noise rise is interfering with public safety land mobile radio operations in the NYC metropolitan area, posing a threat to the safety and security of everyone in the NYC metropolitan area and presenting a danger to first responders and emergency operations.

The NYPD requests that you immediately cease and desist any further testing of the WNEP Channel 16 transmitter until this matter can be resolved.⁷

Licensee has not requested a modification of its phase assignment or extension of its construction permit expiration date.

Discussion. We find that the current situation warrants modification of the phase assignment and construction permit expiration date for WNEP and that such modification is in the public interest. Modifying WNEP's transition phase assignment and construction permit expiration date will provide time for additional discussion and testing by WNEP and NYPD in light of the July 19, 2019, communication. Changing the Station's transition phase assignment to Phase 7, which has a testing period start date of October 19, 2019 and phase completion date of January 17, 2020, should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. Staff has confirmed that

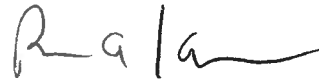
⁶ We understand from an attachment to a letter dated May 30, 2019, sent to Chairman Pai by the Police Commissioner of the NYPD, the City of New York had previously requested that WNEP seek an alternative channel other than channel 16 by letter dated October 5, 2017. Letter from Jack N. Goodman, Counsel to WNEP, to Steven Harte, Assistant Commissioner, NYPD, dated October 26, 2017 (responding to a letter from Mr. Harte dated October 5, 2017).

⁷ Email from Jim Hassett, Manager, Radio Repair Operations, New York City Police Department, to Jack N. Goodman, counsel to Licensee, Subject WNEP Testing, dated July 19, 2019.

the phase change will not create any new linked station sets or direct dependencies.⁸ The total number of rescan periods in the Wilkes Barre DMA will increase from two to three, which is one more than 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.⁹ Although we note that WNEP has already notified viewers of the need to rescan after its anticipated transition on August 1, 2019, we find the facts and circumstances discussed above outweigh any viewer burden caused by the change in transition date, the addition of a rescan period in the Wilkes Barre DMA, or a short delay in access by wireless licensees to the Station's pre-auction channel.

Accordingly, we **MODIFY** the transition phase assignment for WNEP **from Phase 4 to Phase 7**, subject to compliance with all Commission rules applicable to transitioning stations.¹⁰ Testing on the Station's post-auction channel **may begin at 12:01 am local time on October 19, 2019**, and WNEP is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on January 17, 2020**.¹¹ The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.¹²

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail):
Jack Goodman, Counsel for WNEP

⁸ 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).

⁹ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21.

¹⁰ See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*, 33 FCC Rcd 8240.

¹¹ 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.

¹² *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.