Federal Communications Commission
Washington, D.C. 20554

February 2, 2018

WXOW-WQOW License, LLC
P.O. Box 909
Quincy, IL 62306

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150 Fayetteville Street
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Re: Request for Modification and
Waiver of Phase Assignment
WXOW(TV), La Crosse, Wisconsin
Facility ID No. 64549
LMS File No. 0000040297

Dear Licensee,

On January 17, 2018, WXOW-WQOW License, LLC (Quincy), the licensee of full power television station WXOW(TV), La Crosse, Wisconsin (WXOW), 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 2, and instead transition on or before August 1, 2018, with a testing period to commence immediately prior.[1] For the reasons below, we grant Quincy's request for waiver and modify WXOW's phase assignment to permit it to commence testing and transition to its post-auction channel on or before August 1, 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 general rule would relieve hardship, promote equity, or produce a more effective implementation of

[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. 0000040297, WXOW Transition Phase Waiver Request to Move to Earlier Transition Date (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, Quincy, with the support of T-Mobile, has also committed to additional consumer education efforts beyond those required by the Commission's rules. *See* Waiver Request at 3-4.

[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*).

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]

WXOW is currently licensed to operate on channel 48. It was reassigned to channel 28 in the *Closing and Channel Reassignment Public Notice* and assigned to transition Phase 2, which has a testing period start date of December 1, 2018, and phase completion date of April 12, 2019. WXOW is located in the La Crosse-Eau Claire, Wisconsin, Designated Market Area (La Crosse DMA). A total of six stations, including WXOW, were repacked in the La Crosse DMA, with four stations being assigned to Phase 2 and two assigned to Phase 9. Quincy requests permission to begin testing and commence operation on WXOW's post-auction channel on or before August 1, 2018. Quincy asserts that transitioning to its post-auction channel on or before August 1, 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 La Crosse DMA eight months earlier than it would be able to under the current transition schedule.[8] Quincy contends that its proposal "will serve the public interest by facilitating an orderly and efficient transition to more swiftly deliver new wireless broadband services to the public while minimizing impacts on broadcast television viewers and post-auction transition resources."[9] Quincy has consulted with its vendors and provided letters from its antenna and transmitter manufacturer confirming that they will be able to support WXOW's early transition and such a change will not impact their ability to support other stations' transition efforts.[10] Furthermore, the change in phase does not impact Quincy's tower contractor, who was already scheduled to commence the necessary tower work in March 2018.[11]

Quincy 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.[12] Quincy notes that, granting the waiver will create an additional rescan period in the La Crosse DMA, increasing the total number of rescan periods for the DMA to three. This would be 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.[13] However, to mitigate the burden on

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[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.*

[10] *Id.* at 3-4, GatesAir No Delay Letter, Dielectric No Delay Letter.

[11] *Id.* at 3.

[12] *Id.* at 2, Engineering Statement.

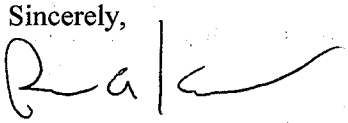
[13] *Id.* at 3; see *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21.

viewers, Quincy states that it will conduct consumer education and outreach efforts beyond what is required by Commission rules, including providing information to viewers through digital and social media, newscasts, and via notices with another local station to ensure that viewers will be well-informed.[14] Quincy has also submitted a letter from T-Mobile stating that T-Mobile will provide additional resources and support to ensure that viewers in the DMA are well-informed about the transition schedule of WXOW.[15]

Discussion. Upon review of the facts and circumstances presented, we find Quincy's request to modify its phase assignment to permit WXOW to transition to its post-auction channel on or before August 1, 2018, satisfies the requirements for a waiver. We agree that the change to WXOW'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.[16] Quincy 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. Although viewers in the La Crosse DMA will be subject to a third rescan period, Quincy, with the support of T-Mobile, has committed to put in place viewer outreach programs beyond those required by the Commission rules to ensure that viewers will be well-informed and can manage the additional rescan period. 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 WXOW's early transition, and additional consumer education and outreach efforts, outweigh the burden of an additional rescan period in this case.

Accordingly, we **GRANT** Quincy's R*equest for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WXOW **from Phase 2 and permit the Station to commence testing and transition to its post-auction channel on or before August 1, 2018, subject to completion of applicable consumer education requirements and any required notice to MVPDs,[17] as well as the additional consumer outreach commitments made in the waiver request.** Furthermore, WXOW must cease operation on its pre-auction channel on or before August 1, 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

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[14] Waiver Request at 3-4.

[15] *Id.* at 4 and T-Mobile Letter.

[16] *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).

[17] *See* 47 CFR § 73.3700(c), (d).