

REQUEST TO WAIVE
PHASE ASSIGNMENT, TESTING PERIOD, AND PHASE COMPLETION DATE¹

Lilly Broadcasting of Pennsylvania License Subsidiary, LLC (“Lilly Broadcasting”) seeks waiver of the post-Incentive Auction Transition Phase assignment, and corresponding testing dates and construction completion deadlines, for WSEE-TV, Erie, PA (Facility ID No. 49711) (“WSEE”). Pursuant to the *Closing and Reassignment Public Notice*, WSEE has been assigned to Transition Phase 6.² Lilly Broadcasting seeks to transition WSEE early, in Phase 2, for which the testing period starts on December 1, 2018 and the Phase Completion Date is April 12, 2019.

The *Transition Scheduling Adoption Public Notice* permitted stations to propose “alternative transition solutions that could create efficiencies,” and held that a request to modify a station’s transition deadline — including by moving to an earlier phase — would be viewed favorably if the request is “otherwise compliant with [FCC] rules and [has] little or no impact on the phase assignments or transition schedule.”³ As demonstrated below, Lilly Broadcasting’s instant request qualifies for such favorable treatment.

Waiver Standard.

The FCC may grant a waiver for good cause shown.⁴ A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.⁵ In considering a waiver, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁶ Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁷

¹ This amended Request, filed on September 28, 2018, replaces and supersedes the Request originally filed on September 18, 2018.

² *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 Red 2786 (WTB & MB 2017) (“Closing and Channel Reassignment Public Notice”).

³ *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, 913 ¶ 51 (MB 2017) (“Transition Scheduling Adoption Public Notice”), citing *Incentive Auction Task Force and Media Bureau Seek Comment on Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 31 FCC Rcd 10802 (MB 2016) (“Transition Scheduling Proposal Public Notice”).

⁴ 47 C.F.R. § 1.3.

⁵ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

⁷ *Northeast Cellular*, 897 F.2d at 1166.

As demonstrated herein, good cause exists for waiver of the assigned Transition Phase and its attendant testing and completion dates. WSEE's early transition will serve the public interest by returning WSEE to full power service while facilitating an orderly and efficient transition and minimizing impacts on broadcast television viewers.

Interference.

The attached Engineering Statement prepared by Mid-State Consultants analyzes the potential new interference caused or received by WSEE's proposed early transition. The analysis shows no cases of outgoing or incoming interference exceeding the normal 0.5% rounding tolerance level to any protected full-power or Class A television stations now operating, and therefore no new pairwise (station-to-station) interference will be created by the proposed early transition of WSEE. Thus, the proposal complies with the applicable interference standard.

Return to Full Power Service.

WSEE has been experiencing significant issues with its existing Axcera transmitter for channel 16, which is now malfunctioning, causing WSEE to operate at 60% of its authorized power.⁸ The manufacturer of the channel 16 transmitter is no longer in business, making repair of the transmitter infeasible. Thus, WSEE is in need of a new transmitter in order to return to full power operations and better serve its viewers. In order to do as efficiently and expeditiously as possible, WSEE is seeking to transition early to the new channel 21 transmitter.

Impact to Transition Plan.

The proposed transition will further the overall transition plan, because it will facilitate better utilization of resources. By transitioning early, WSEE would be able to simplify the transition to a new transmitter by avoiding the need for two build outs in less than a year – One on existing channel 16 at WSEE's current tower; and one on post-transition channel 21 at WSEE's new tower. The single build out of channel 21 will eliminate additional work and strain on vendors and service providers during the transition. Moreover, the early transition engages vendors and service providers earlier in the process rather than have them potentially overloaded later in the transition. The primary vendors and service providers involved in the WSEE transition are: Alive Telecom and Rohde & Schwarz. These vendors have advised that the early transition of WSEE will not hinder their provision of equipment or services to other transitioning stations. Letters from Alive Telecom and Rohde & Schwarz are attached.

Impact to Viewers.

Under the Transition Plan, there is scheduled to be two rescans of WSEE's DMA. Grant of the proposed early transition of WSEE will result in one additional rescan in the DMA. Therefore, viewers in WSEE's DMA may need to rescan equipment up to three times. Although three rescans exceeds the two rescan objective established by the Incentive Auction Task Force

⁸ See DTV Engineering STA Application, File No. 0000059542.

and the Media Bureau,⁹ a waiver is warranted for the one additional scan because Lilly Broadcasting and WSEE will engage in a comprehensive consumer education campaign.

Lilly Broadcasting pledges to act to mitigate any viewer disruption by increasing outreach education above and beyond the required public service announcements and crawls to notify WSEE audience of the proposed transition and provide detailed instructions on the rescanning process. Lilly Broadcasting has already initiated these outreach and education efforts for WSEE's early transition and will engage in the following specific outreach:

- Consumer Education PSAs
 - 8-week on-air schedule on WSEE
 - At least 1,800 PSAs to air
 - PSAs on all program streams
- Consumer Education Crawls
 - 8-week on-air schedule on WSEE
 - At least 1,800 crawls to air
 - Crawls aired on all program streams
- News Stories
 - Numerous news stories on WSEE during a variety of local newscasts to air to explain the relocation to a new channel, when, rescan process, and how viewers can get assistance if needed
- Website Resources
 - Stories about early transition and need to rescan to be posted on WSEE website
 - Links to NAB's TV Answers website (tvanswers.org)
 - "How To Rescan" video and narrative instructions from tvanswers.org
- Education on Other Digital Platforms
 - WSEE Facebook page featuring local stories and resources from tvanswers.org
 - WSEE Twitter account to provide rescan reminders and information
- Informational Text Messaging Campaign
 - SMS messages approximately one week in advance of transition date to WSEE viewers in database

Further, WSEE has already mailed notifications to the applicable MVPDs. The notices were sent to the MVPDs 90 days in advance of WSEE's early transition date.

Conclusion.

For the foregoing reasons, grant of this waiver to allow WSEE to transition in Phase 2 will serve the public interest by expediting WSEE's return to full power operations and facilitating a more effective and efficient implementation of the overall policy goals of the Incentive Auction and post-auction transition.

⁹ *Transition Scheduling Adoption Public Notice*, at ¶ 21.



ENGINEERING STATEMENT

**IN SUPPORT OF
REQUEST FOR WAIVER
WSEE-TV
ERIE, PA
(FACILITY ID No. 49711)**

Background

Lilly Broadcasting of Pennsylvania License Subsidiary, L.L.C. (Lilly) is the licensee of full-service television station WSEE located at Erie, PA. Lilly has commissioned this firm to prepare a statement in support of its request for a waiver of the FCC's Phase Assignment, Testing Period and Phase Completion Date for WSEE. The licensed WSEE facility currently operates on Ch. 16 with the following parameters:

Pre-Incentive Auction Facility (Ch. 16)

Coordinates: 42° 03' 52.2" N (NAD83)
80° 00' 18.2" W
ERP: 75.0 kW (DA)
RCAMSL: 614.0m

WSEE-TV has been assigned Ch. 21 for its post-incentive auction facility. It applied for and was granted its post-incentive auction construction permit for the Ch. 21 facility. It subsequently

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modified the construction permit (LMS File# 0000034791, granted 4/16/2018) to specify a new site for the post-incentive auction facility which has the following parameters:

Post-Incentive Auction Facility (Ch. 21)

Coordinates: 42° 02' 16.0" N (NAD83)
80° 03' 43.0" W
ERP: 105.0 kW (Omni)
RCAMSL: 628.7m

WSEE-TV has been assigned Phase 6 for completion of its post-repack facility (Phase Completion Date of 10/18/2019). Recently, the station has been experiencing significant issues with its existing Axcera transmitter. The original manufacturer is no longer in business which makes technical support a challenge and finding replacement parts nearly impossible. WSEE-TV plans to install the new, repack transmitter ahead of schedule to eliminate this issue; however, given that the current Ch. 16 facility is not at the same site that WSEE-TV intends to build its new Ch. 21 repack facility, there would be added expense and future downtime if it needed to first install the new transmitter at the Ch. 16 facility site and then later move it to the authorized Ch. 21 facility site. Therefore, WSEE-TV is seeking a waiver of the FCC's Phase Assignment, Testing Period and Phase Complete Date to allow WSEE-TV to make the transition to Ch. 21 earlier than its assigned phase transition date.

Interference Analysis

A review of the FCC Links Station Set (LSS) and Linked Station Neighbor (LSN) .csv files provided by the Commission for the incentive auction repack process indicates that WSEE-TV is not part of any LSSs or LSNs.

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An interference analysis was run for the authorized WSEE-TV Ch. 21 repack facility utilizing the FCC TVStudy software (Version 2.2.4) assuming the current allocation environment^{1/}. The summary results of the study show that the WSEE-TV Ch. 21 repack facility is not predicted to cause more than 0.5% new interference to any other surrounding co-channel or adjacent channel facilities from in the current allocation environment (see attached study results).

Furthermore, the study results also show that the WSEE-TV Ch. 21 facility is not predicted to receive unique interference exceeding 0.5% from any current co-channel or adjacent channel facility.

Conclusion

Based on the results of the interference analysis, the transition of WSEE-TV from Ch. 16 to Ch. 21 ahead of its assigned phase completion date will not create any new linked station sets. WSEE-TV can therefore transition to Ch. 21 before its assigned phase date without any disruption to the FCC's transition plans as the Ch. 21 facility will cause no new additional interference (above FCC limits) nor is it predicted to receive significant interfere in the pre-repack allocation environment.

August 23, 2018

Attached: TVStudy Interference Study Summary Results

^{1/} To ensure that this type of study considered only the current allocation environment, the "Exclude all post-transition CP, App and BL" checkbox was selected ("checked") under the "Additional Options" when the study was executed.

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WSEE Post-Repack Facility Interference Study Results

Study created: 2018.08.23 17:01:33

Study build station data: LMS TV 2018-08-16

Proposal: WSEE-TV D21 DT CP ERIE, PA
File number: BLANK0000034791
Facility ID: 49711
Station data: LMS TV 2018-08-16
Record ID: 25076ff35f58800d015f7068474f4266
Country: U.S.
Zone: I

Build options:
Protect pre-transition records not on baseline channel

Search options:
Non-U.S. records included
All post-transition APP, CP, and baseline records excluded

Stations potentially affected by proposal:

IX	Call	Chan	Svc	Status	City, State	File Number	Distance
Yes	WFMJ-TV	D20	DT	LIC	YOUNGSTOWN, OH	BLCDT20061013ABM	116.8 km
No	WWLM-CD	D20	DC	LIC	WASHINGTON, PA	BLANK000001454	205.9
No	WMPT	D21	DT	CP	ANNAPOLIS, MD	BLANK0000029874	445.3
Yes	WMYD	D21	DT	LIC	DETROIT, MI	BLCDT20040524AOG	260.0
No	WWTI	D21	DT	LIC	WATERTOWN, NY	BLCDT20040128AFQ	408.2
Yes	WBNS-TV	D21	DT	LIC	COLUMBUS, OH	BLCDT20021025ABK	338.6
Yes	WHP-TV	D21	DT	LIC	HARRISBURG, PA	BLANK0000058277	326.6
Yes	WFXP	D22	DT	LIC	ERIE, PA	BLCDT20081023ABA	0.6
No	CBLT-DT	D20	DT	LIC	TORONTO, ON	BLANKCANADA234	186.7
No	CICO-DT-92D21		DT	LIC	CLOYNE, ON	BLANKCANADA168	391.4
No	CFTO-TV-21D21		DT	LIC	ORILLIA, ON	BLANKCANADA195	316.8
Yes	CICO-DT-28D22		DT	LIC	KITCHENER, ON	BLANKCANADA183	139.6

No non-directional AM stations found within 0.8 km

Directional AM stations within 3.2 km:
WRIE 1260 L DA2 D ERIE, PA BL
WRIE 1260 L DA2 N ERIE, PA BL

Record parameters as studied:

Channel: D21
Latitude: 42 2 16.00 N (NAD83)
Longitude: 80 3 43.00 W
Height AMSL: 628.7 m
HAAT: 291.0 m
Peak ERP: 105 kW
Antenna: Omnidirectional
Elev Pattn: Generic
Elec Tilt: 1.00

39.5 dBu contour:

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Azimuth	ERP	HAAT	Distance
0.0 deg	105 kW	401.4 m	90.3 km
45.0	105	267.8	77.8
90.0	105	219.7	74.1
135.0	105	229.9	74.9
180.0	105	202.6	72.8
225.0	105	254.5	76.7
270.0	105	348.4	86.2
315.0	105	406.5	90.6

**Proposal is within coordination distance of Canadian border
Distance to Canadian border: 39.6 km

Distance to Mexican border: 2340.6 km

Conditions at FCC monitoring station: Canandaigua NY
Bearing: 66.1 degrees Distance: 249.0 km

Proposal is not within the West Virginia quiet zone area

Conditions at Table Mountain receiving zone:
Bearing: 272.8 degrees Distance: 2110.5 km

No land mobile station failures found

Study cell size: 2.00 km
Profile point spacing: 1.00 km

Maximum new IX to full-service and Class A: 0.50%
Maximum new IX to LPTV: 2.00%

No IX check failures found.

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September 10, 2018

Mr. Mike Kobyłka
WSEE – TV
Lilly Broadcasting of Pennsylvania License Subsidiary, LLC.
3514 State Street
Erie, PA 16508

RE: WSEE, Erie PA

Dear Mike:

In regard to the order that you placed for the WSEE antenna, the delivery and production of this antenna will have no effect on the manufacturing, delivery and installation of our other repack customers for Alive Telecom.

If you have any additional questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Barton".

Dan Barton
President, Alive Telecom

Rohde & Schwarz GmbH & Co. KG
P.O. Box 80 14 69 | 81614 Munich

WSEE-TV
Lilly Broadcasting of Pennsylvania
3514 State Street

Erie, PA 16508
USA

Contact
Fahrenkroog, Olaf
Phone +49 89 4129 11308
Fax +49 89 4129 12082
Olaf.Fahrenkroog@rohde-schwarz.com

Munich, September 17, 2018

Confirmation of Production Capacity

To Whom it May Concern:

This letter is intended to confirm that Rohde & Schwarz GmbH & Co. KG has the capacity to deliver the requested transmission equipment. The expected lead-time of the equipment is twelve weeks after receipt of order until the equipment leaves the factory in Teisnach, Germany, by airfreight to the customer site, subject to prior sale. Should a factory acceptance test be required prior to shipment, this lead-time increase by one week.

This will not prevent Rohde & Schwarz from fulfilling other customer commitments required for earlier Phases of the Repack. In fact, it may allow Rohde & Schwarz to utilize our manufacturing capacity more efficiently.

You and your employees of WSEE-TV are permitted to share this letter with the FCC, as required.

Sincerely,

Rohde & Schwarz GmbH & Co. KG



Olaf Fahrenkroog
Technical Sales Manager
Broadcast and Media Division

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