Federal Communications Commission
Washington, D.C. 20554

January 29, 2019

Hearst Properties, Inc.
P.O. Box 1800
Raleigh, NC 27602

Re: Request for Modification and
Waiver of Phase Assignment
WXII-TV, Winston-Salem, NC
Facility ID No. 53821
LMS File No. 0000063414

Dear Licensee,

On November 9, 2018, Hearst Properties, Inc. (Hearst), the licensee of WXII-TV, Winston-Salem, North Carolina (WXII-TV or Station), 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 9 to Phase 5.[1] For the reasons below, we grant Hearst's request for waiver and modify the Station's phase assignment to Phase 5, as conditioned herein.

Background. Pursuant to the *Transition Scheduling Adoption Public Notice,* individual stations may request waiver and modification of their phase assignment.[2] 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 overall policy on an individual basis.[3] 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.[4] The Bureau determined that it would view favorably requests that are compliant with the Commission's rules and

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[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. 0000063414, WXII-TV Waiver Request to Change from Phase 9 to Phase 5 (Waiver Request). We note that WXII-TV shares its channel with WCWG, Lexington, NC (WCWG), which is commonly owned by Hearst. We consider this waiver request as being filed on behalf of both stations. For purposes of simplicity, in this letter we will only reference WXII-TV, but our action also applies to WCWG.

[2] *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*).

[3] *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.

[4] *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).

have little or no impact on the transition schedule.[5] Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.[6]

WXII-TV is currently licensed to operate on channel 31. It was reassigned to channel 16 in the *Closing and Channel Reassignment Public Notice* and assigned to transition Phase 9, which has a testing period start date of March 14, 2020, and a phase completion date of May 1, 2020. WXII-TV is located in the Greensboro-High Point-Winston Salem, North Carolina, Designated Market Area (Greensboro DMA). A total of six stations, including WXII-TV, were repacked in the Greensboro DMA, with three stations being assigned to Phase 5 and three stations being assigned to Phase 9. Hearst states that phase change will accommodate the Station's tower crew, Coast to Coast Tower Service, Inc. (Coast to Coast).[7] Hearst submits a letter from Coast to Coast to Hearst, stating that Coast to Coast has other tower projects scheduled during Phase 5 in the same region as WXII-TV. As a result, modifying the Station's phase would "benefit Coast to Coast's scheduling and crew assignment" so that it can provide services efficiently and safely to all transitioning stations.[8] Hearst also points out that it has been informed by its antenna and transmission line vendor, Dielectric, that fabrication and delivery of its post-auction antenna is on schedule to be delivered by the start of Phase 5. Hearst notes that modification of WXII-TV's phase assignment would result in cost savings, by largely eliminating storage costs for the Station's antenna which are $30,500 per month.[9] As a result, Hearst requests permission to move WXII-TV from Phase 9 to Phase 5, which has a testing period start date of August 3, 2019, and phase completion date of September 6, 2019. Hearst has also consulted with and included letters from its other equipment manufacturers and vendors asserting that this phase change will not negatively impact other transitioning stations ability to access resources.[10]

Hearst has also provided an engineering analysis demonstrating that the Stations' early transition will not create any new linked-station sets or result in increased pairwise interference greater than two percent during the transition period.[11] Hearst also states that the phase change will maintain the current number of rescans in the Greensboro DMA since stations in the DMA are already assigned to Phase 5.[12] In order to ensure that viewers are well-informed about the Station's plans to transition ahead of its currently scheduled phase assignment, Hearst has agreed to provide additional consumer outreach beyond

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

[6] *Id; see Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, MB Docket No. 16-306 and GN Docket No. 12-268, DA 18-884, para. 14, 6-7 (IATF & MB, rel. Aug. 27, 2018) (*Transition Reminder Public Notice*).

[7] Waiver Request at 4-5 and Letter from Coast to Coast Tower Service, Inc.

[8] *Id.* at 5-6 and Letter from Coast to Coast Tower Service, Inc.

[9] *Id.* at 6.

[10] *Id.* at 4-5 and Letters from GatesAir and Dielectric, LLC.

[11] *Id.* at 3-4 and Engineering Statement. *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). Moving WXII-TV out of Phase 9 will also take the Station out of Linked-Station Set 66 (LSS 66) and allow Stations WGHP, High Point, NC to transition to its post-auction channel without needing to coordinate with WXII-TV. *See* Waiver Request at 7 and Engineering Statement.

[12] *Id.* at 7.

what is required by the Commission's rules by providing notice though the use of the Station's local news platforms, including newscasts and its social and digital media assets.[13]

Discussion. Upon review of the facts and circumstances presented, we find that Hearst's request to modify the phase assignment for WXII-TV to transition to its post-auction channels in Phase 5 satisfies the requirement for a waiver and is in the public interest. We agree that the change to the Station's transition phase should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. In fact, we find the phase change is likely to help free up transition resources by allowing WXII-TV's tower crew to conduct the necessary work while it is already deployed near the Station's tower site. Hearst has received letters from its vendors confirming that the phase change will not impact other transitioning stations' access to resources. A staff analysis confirms that the phase change will not result in new increased pairwise interference above the two percent permitted during the post-auction transition period.[14] We also find that the total number of rescan periods in the Greensboro DMA will remain at two.[15] Finally, Hearst has committed to put in place viewer outreach programs beyond those required by the Commission rules. Accordingly, we find that the benefit of modifying the Station's transition phase outweighs any viewer burden caused by the change in WXII-TV's transition schedule.

We caution Hearst that any additional expenses incurred as a result of the grant of the Station's voluntary phase change may not be reimbursable from the TV Broadcasters Relocation Fund. Such additional costs might include, but may not be limited to, additional legal or engineering expenses; filing fees; and interim or additional equipment that was not contemplated when the station filed its initial estimated expenses but was subsequently necessitated to complete the transition to its post-auction channel due to its phase change.

Accordingly, we **GRANT** Hearst's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WXII-TV **from Phase 9 to Phase 5**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.[16] Testing on the Station's post-auction channel **may not begin until 12:01 am local time on August 3, 2019**, and WXII-TV is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on September 6, 2019**.[17] The Station's construction permit expiration

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[13] *Id.*

[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 id.* at 898-99, paras. 20-21 (establishing a two rescan periods per DMA limitation when assigning stations to transition phases).

[16] *See generally* 47 CFR § 73.3700 and *Transition Reminder Public Notice*.

[17] 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 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.

date will also be modified to correspond to its new phase completion date.[18] Our action taken herein also applies to WXII-TV's channel sharing partner WCWG.[19]

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):
Stephen Hartzell, Esq.
Mark J. Prak, Esq.

[18] *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.

[19] *See* supra note 1.