

**Exhibit in Support of Request for Waiver of
Phase Assignment, Testing Period, and Phase Completion Date**

WLS Television, Inc. (“WLS Television”), licensee of digital television station WLS-TV, Chicago, Illinois (“WLS”), respectfully requests that the Federal Communications Commission (“FCC” or “Commission”) modify WLS’s phase assignment, testing period and phase completion date to enable WLS to transition to its post-auction channel approximately five months earlier than scheduled. WLS presently is assigned to transition to its post-auction channel in Phase 8, which is scheduled to begin on January 18, 2020 and end on March 13, 2020. By the instant application, WLS Television seeks the FCC’s consent to transition in Phase 6, which is scheduled to begin on September 7, 2019 and end on October 18, 2019.

The FCC has authority to grant a waiver of its rules for good cause shown.¹ Specifically, the Commission has discretion to waive any rule where “particular facts would make strict compliance with the rule inconsistent with the public interest” and “special circumstances warrant a deviation from the general rule.”² In evaluating a request for waiver, the Commission takes “into account considerations of hardship, equity, or more effective implementation of overall policy.”³ In addition, the Commission should consider whether “application of the rule would be inequitable, unduly burdensome or contrary to the public interest”⁴ With respect to the post-auction transition process, the Media Bureau (“Bureau”) evaluates waiver requests based upon the impact of the request upon viewers, as well as the effect of the proposed change on the overall transition schedule, including whether implementation would interfere with other stations’ transition efforts.⁵ A waiver request that is unlikely to “delay or disrupt the transition, such as by causing pairwise interference above two percent to another station, creating additional linked-station sets, necessitating another station move to a different transition phase, or that is likely to cause a drain on limited transition resources required by other stations” will be viewed favorably by the Bureau.⁶ To the extent a waiver request may have an adverse impact on the transition process, the Bureau will view the request “more favorably if the requesting station

¹ 47 C.F.R. § 1.3.

² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁴ 47 C.F.R. § 1.925(b)(3).

⁵ See, e.g., *Incentive Auction Task Force and Media Bureau Announces Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, GN Docket No. 12-268 and MB Docket No. 16-306, DA 17-106, at para. 73. (rel. Jan. 27, 2017) (“*Transition Procedures PN*”).

⁶ See *Incentive Auction Task Force and Media Bureau Adopt Post-Incentive Auction Transition Scheduling Plan*, Public Notice, DA 17-107, at n. 63 (rel. January 27, 2017) (“*Transition Scheduling PN*”).

demonstrates that it has the approval of all the stations that would be affected if the request were granted”.⁷

As explained herein, grant of the instant request to modify WLS’s phase assignment is in the public interest and satisfies the requirements for waiver. First, grant of this request, which is supported by T-Mobile USA, Inc. (“T-Mobile”),⁸ furthers the FCC’s goal of freeing up broadcast spectrum for broadband use as expeditiously as possible because, under the instant proposal, WLS will transition 5 months earlier than scheduled. Second, a Phase 6 transition for WLS will benefit viewers by enabling them to scan for all repacked top-four network affiliates (and most if not all of the other repacked stations in Chicago) within the same time period, rather than requiring viewers to scan WLS five months after they have done the same for the other repacked top-four network affiliates. Third, WLS’s proposal to transition early complies with the FCC’s technical rules, and does not create impermissible interference or linked station sets. Fourth, WLS’s transition in Phase 6 will not result in equipment shortages or otherwise negatively impact other broadcasters’ ability to timely complete the post-auction transition.

I. GRANT OF THE INSTANT REQUEST WILL ENSURE A PROMPT TRANSITION AND RELEASE OF SPECTRUM USED BY WLS

The Commission developed the transition schedule in order to facilitate a timely and orderly transition to post-auction channels, thereby ensuring the prompt recovery of broadcast spectrum for flexible use licenses. WLS’s request to modify its phase assignment to Phase 6 advances this objective and has the support of T-Mobile, which seeks to deploy new wireless broadband services in the 600 MHz spectrum in the Chicago market and is affirmatively working with the stations assigned to Phase 8 in Chicago to complete the transition in Phase 6 instead.⁹ Specifically, under the instant proposal, WLS will transition from channel 44 to channel 22 nearly five months earlier than would be the case if WLS were to transition in Phase 8.¹⁰ Under

⁷ *Transition Procedures PN* at para. 73; *Transition Scheduling PN* at n. 163.

⁸ See Letter to Mr. John Idler, General Manager, WLS-TV from Chris Wieczorek, Director, Spectrum Policy, T-Mobile USA, Inc. (dated January 15, 2019), attached hereto as Exhibit A (“*T-Mobile Letter of Support*”).

⁹ See *T-Mobile Letter of Support*.

¹⁰ WLS’s transition must be coordinated with Willis Tower, which is working to implement the repacking for the many television stations with main and auxiliary transmitting antennas located at Willis Tower. Presently, Willis Tower has told WLS that it intends to have completed construction of back-up broadcast facilities for all repacked television stations (including for WLS’s operations on channel 22) prior to the commencement of the Phase 6 testing period. Accordingly, assuming receipt of the necessary FCC approvals, WLS will be positioned to transition to channel 22 on a back-up antenna (“Back-Up Channel 22 Antenna”) in Phase 6. The Back-up Channel 22 Antenna will be co-located at Willis Tower with the main antenna authorized by WLS’s post-auction construction permit. WLS intends to submit a request for special temporary authority to permit use of the Back-Up Channel 22 Antenna in Phase 6 as

the current transition schedule, WLS is scheduled to commence post-equipment tests on January 18, 2020, in the midst of Chicago's harsh winter weather season. If, however, WLS is permitted to transition in Phase 6, the vast majority of construction for the channel 22 facility can be completed in the summer of 2019, which would thus expedite the recovery of the broadcast spectrum used by WLS. In short, a Phase 6 transition for WLS will ensure that the 600 MHz band spectrum presently used for WLS will be available for flexible use in a timely manner, whereas a Phase 8 transition deadline likely will delay the release of such 600 MHz spectrum for broadband services.¹¹

described herein and, once it has licensed its channel 22 main facility, will submit an application to license Back-Up Channel 22 Antenna as a permanent auxiliary for WLS.

WLS believes that it will be able to fully serve its existing viewers with the Back-Up Channel 22 Antenna, such that viewers will not be affected by its temporary use during the transition. Moreover, the transition to the channel 22 main antenna will be seamless from a viewer perspective, as it will not require any rescans or other action by viewers. Thus, WLS's proposed early transition to channel 22 using the Back-Up Channel 22 Antenna is consistent with the Commission's procedures governing the post-auction transition. *See, e.g.*, Incentive Auction Closing and Channel Reassignment Public Notice, DA 17-314, at para. 65 (2017) ("To facilitate the transition process, stations may also seek to . . . implement an interim or auxiliary facility, or seek to change their phase assignment."); *Transition Procedures PN*, at para. 39 (stating that "stations can explore a variety of options to assist with their post-auction transitions, including the use of temporary channels and interim or auxiliary facilities."); *Transition Scheduling PN*, at para. 62 (MB 2017) (stating that a station can seek special temporary authority to operate on its post-auction channel using an auxiliary facility prior to its phase completion date); DTV Engineering STA Application of WNWO-TV, LMS File No. 0000059568 (granted Sept. 9, 2018) (authorizing use of temporary antenna to complete transition to post-auction channel). While the cited FCC releases discuss the use of auxiliary facilities by stations that cannot meet their FCC-imposed deadlines, there is no reason that a station cannot use a temporary back-up antenna that will ultimately be licensed as an auxiliary antenna to accomplish an early transition where, as here, the proposed early transition is in the public interest and consistent with FCC rules and policies. Note that WLS is continuing to work with Willis Tower to determine when the new channel 22 main antenna will be installed and, based upon Willis Tower's current construction schedule, believes the channel 22 main antenna will be installed shortly after the Phase 6 completion date. At the latest, the channel 22 main antenna likely will be installed in the spring of 2020, such that, assuming the installation goes as planned, WLS would operate using the Back-Up Channel 22 Antenna for only approximately six months at the most.

¹¹ As noted elsewhere herein, the instant request has the support of T-Mobile. *See T-Mobile Letter of Support*.

II. VIEWERS WILL BENEFIT FROM THE SIMULTANEOUS PHASE 6 TRANSITION OF ALL REPACKED TOP-4 STATIONS IN CHICAGO

WLS's proposed transition in Phase 6, rather than Phase 8, will benefit viewers in the Chicago market by consolidating the timeframe in which rescans for the repacked top-4 network affiliates must be performed, thereby mitigating the potential for consumer confusion or frustration. Presently, WLS is the only top-4 network affiliated station in Chicago that is scheduled to transition in Phase 8. WMAQ-TV, the NBC affiliate, and WFLD(DT), the FOX affiliate, have been assigned to transition in Phase 6.¹² Absent favorable action on this request, WLS will not be transitioning to its post-auction channel until Phase 8, nearly five months after the other repacked top-four network affiliates have notified viewers of the need to rescan. In other words, viewers in the Chicago market will receive information regarding the need to rescan for WMAQ and WFLD in Phase 6, and will be again advised of the need to rescan for WLS just a short time later in Phase 8. The need to perform multiple rescans within a five-month period in order to receive all of the repacked top-four network affiliated stations has the potential to result in viewer frustration and confusion. The FCC can easily reduce the impact of the transition on Chicago's viewers by authorizing WLS to transition in Phase 6, concurrently with the other top-four network affiliates.¹³

In addition to consolidating the timeframe to rescan for top-4 network affiliates in Chicago, grant of the proposed phase assignment change for WLS advances the FCC's goal of simultaneously transitioning as many stations in a given DMA as possible in order to facilitate consumer education on a market-wide basis.¹⁴ The Chicago market presently is scheduled to transition in two separate phases, with nine stations scheduled to transition in Phase 6 and five stations (including WLS) scheduled to transition in Phase 8.¹⁵ It is WLS's understanding that most of the Phase 8 stations have committed to completing the transition in Phase 6, such that

¹² WBBM, the CBS affiliate, is not being repacked and thus has not been assigned to a transition phase.

¹³ Importantly, grant of the instant request to assign WLS to Phase 6 will not increase the total number of rescans required in the Chicago market because the transition schedule adopted by the FCC already contemplates rescans in both Phase 6 and Phase 8. Moreover, as explained elsewhere herein, it is quite possible that all of the repacked Phase 8 stations may seek to transition in Phase 6, thereby eliminating the need for any rescans in Phase 8.

¹⁴ See *Transition Schedule PN*, at para. 52 ("we believe viewers will benefit from stations in a given DMA transitioning together. Not only does this limit the total number of channel rescans for viewers, but multiple stations' communications with the public about the timing of a rescan supports education effort.").

¹⁵ The following stations in Chicago are scheduled to transition in Phase 6: WMAQ-TV (NBC), WFLD (FOX), WTTW (PBS), WCIU-TV (IND), WJYS (IND), WEDE-CD (REL), WMEU-CD (IND), WPVN-CD (IND), and WLPD-CD (Yto). In addition to WLS-TV, the following stations in Chicago are scheduled to transition in Phase 8: WGBO-DT (UNI), WCPX-TV (ION), W40CN-D (IND), and WWME-D (Me).

together with WLS's proposed early transition, the post-auction transition in the Chicago market can occur on a consolidated basis in Phase 6.¹⁶ Thus, a Phase 6 transition for WLS would enable most, if not all, of the repacked stations in Chicago to implement concurrent consumer education efforts regarding the timing of rescans, to the direct benefit of viewers.¹⁷ To this end, WLS is dedicated to working with the repacked television stations in the Chicago market to develop a consistent, coherent message to viewers regarding the need to rescan as a result of the Phase 6 transition.

III. WLS'S EARLY TRANSITION, WHICH HAS BEEN COORDINATED WITH OTHER AFFECTED STATIONS, COMPLIES WITH THE COMMISSION'S TECHNICAL RULES

The proposed early transition of WLS to channel 22 will not result in new interference exceeding 0.5% to any station, and will not result in any new pairwise interference cases or linked station sets, other than with respect to WSBT-TV, South Bend, Indiana ("WSBT").¹⁸ WSBT presently broadcasts on channel 22 (the channel assigned to WLS for its post-auction broadcasts) and is scheduled to transition to channel 29 in Phase 6. As described below, WLS

¹⁶ Even if all of the Phase 8 stations do not ultimately seek to transition in Phase 6, assuming favorable action on the instant request, the overwhelming majority of the repacked Chicago stations would transition in Phase 6. To this end, WLS understands that all but two of the Phase 8 Chicago stations have committed to transitioning in Phase 6, rather than Phase 8. Assuming these stations receive the required FCC approvals to transition early, thirteen of the fifteen Chicago stations would transition in Phase 6. However, even assuming that the Phase 8 stations remain in Phase 8, favorable action on the instant request would enable two-thirds of the repacked stations in Chicago to cease pre-auction broadcasts by the end of Phase 6.

¹⁷ To the extent any stations assigned to Phase 8 have not yet committed to transitioning in Phase 6, favorable action on the instant request might induce those remaining Phase 8 stations to obtain authority for an early transition, so as to transition at the same time as the majority of the market. *See supra*, at n. 17.

¹⁸ *See* Engineering Statement at 2-3. As explained *supra* at n. 10, WLS anticipates that it will seek special temporary authority to operate on channel 22 for a short period of time with the Back-up Channel 22 Antenna, which will be co-located at Willis Tower with the main antenna authorized by WLS's post-auction construction permit. The Back-up Channel 22 Antenna will comply with the FCC's interference rules and, as is the case with the main channel 22 antenna that is the subject of the attached Engineering Statement, will not result in any new pairwise interference cases or linked station sets, other than with respect to WSBT. *See* Engineering Statement at n. 1.

In addition, note that the Engineering Statement includes study results for WVCY-TV's channel 22 operations pursuant to FCC File No. BMLEDT-20091116ABD. However, the foregoing file number is no longer relevant, as WVCY-TV has relinquished channel 22 and is now broadcasting on channel 33 pursuant to a shared license, such that WLS's transition to channel 22 in Phase 6 will have no impact on WVCY-TV's licensed channel 33 facility. *See* LMS File No. 0000040248.

has coordinated with WBST to eliminate potential interference to WBST. Accordingly, because WLS's proposed Phase 6 transition has the approval of all affected stations and otherwise complies with the FCC's rules, the Bureau should review this request favorably.¹⁹

In order to enable WLS to transition to channel 22 in Phase 6 without causing interference to WSBT's pre-auction operations on channel 22, WLS Television has worked with WSBT to develop a modified transition schedule for the South Bend-Elkhart, Indiana television market ("South Bend Market"). Under the modified transition schedule, the television stations in the South Bend Market²⁰ would begin post-auction channel equipment tests on September 7, 2019 pursuant to the FCC's transition schedule for Phase 6. However, instead of conducting equipment tests over a six-week period, WLS anticipates that most, if not all, of the stations in the South Bend Market will complete equipment tests in three weeks, i.e., by September 28, 2019. These stations would also discontinue using their pre-auction channels, and commence broadcasts on their post-auction channel assignments, on September 28, 2019 (rather than the October 18, 2019 Phase 6 completion date). WLS, in turn, would commence its post-auction equipment tests on channel 22 beginning September 29, 2019, and fully transition to channel 22 by October 18, 2019. By implementing this "staged" testing and transition approach, WSBT will have fully transitioned from channel 22, its pre-auction channel, to channel 29, its post-auction channel prior to the date on which WLS begins its post-auction equipment tests on channel 22, thereby eliminating the risk that WLS's early transition will cause impermissible interference to WSBT's pre-auction facility. WSBT and the other television stations in the South Bend Market have consented to the modified transition schedule described herein,²¹ such that, consistent with the *Procedures PN*, the Bureau should view the instant request favorably.²² In short, as a result of the foregoing coordination efforts, the instant proposal complies with the FCC's 0.5% interference standard (and thus complies with the temporary 2% permitted interference benchmark established in connection with the repacking) and does not result in any unresolved new linked station sets.

¹⁹ See *Transition Procedures PN*, at para. 73 (stating that the Bureau will view waiver requests that impact other stations favorably "if the requesting station demonstrates that it has the approval of all the stations that would be affected").

²⁰ The television stations in the South Bend Market are WBST-TV, WNDU-TV, WNIT-TV, WHME-TV, WSJV-TV, WBND-LD, and WMYS-LD.

²¹ WLS and the South Bend stations have agreed to discuss possible changes to the modified transition schedule if it appears that there will be difficulties meeting the deadlines established thereby. See Letters from South Bend stations, attached as Exhibit B hereto.

²² See *supra* at n. 19.

IV. A PHASE 6 TRANSITION FOR WLS WILL NOT HAVE A NEGATIVE IMPACT ON OTHER BROADCASTERS' ABILITY TO COMPLETE THE POST-AUCTION TRANSITION

The Bureau evaluates requests to modify a phase assignment based upon, *inter alia*, whether the proposed change will “interfere with other stations’ transition efforts.”²³ As explained herein, WLS’ proposal to complete the transition in Phase 6 will not “cause a strain on limited transition resources required by other stations” and thus should be viewed favorably by the Bureau.²⁴ To this end, WLS has been working proactively to procure equipment and resources in a timely manner and has already arranged for much of its equipment to be delivered prior to the date on which Phase 6 equipment tests are scheduled to begin. Thus, as confirmed by the vendor letters attached hereto, WLS’s transition in Phase 6 will not adversely impact the ability of its vendors to provide equipment and services to other television stations seeking to transition to their post-auction channels.²⁵

V. CONCLUSION

For the reasons set forth herein, WLS’s request for a waiver to transition in Phase 6 qualifies for favorable treatment by the Media Bureau because it complies with the FCC’s rules, does not adversely impact the overall transition schedule, and furthers the Commission’s goal of releasing broadcast spectrum for flexible use as soon as practicable.²⁶ Indeed, grant of the instant application is warranted because WLS’s Phase 6 transition will enable a more efficient use of limited resources and will reduce the impact of the transition on viewers in the Chicago television market.

²³ *Procedures PN* at n. 169.

²⁴ *Procedures PN* at para. 73.

²⁵ See Exhibit C hereto (attaching copies of the following vendor letters: Letter to Craig Strom, WLS Television, Inc. from Christine Zuba, Dielectric, LLC re Impact of WLS Phase 6 Transition on Dielectric (dated Jan. 8, 2019); Letter to Craig Strom, WLS Television, Inc. from Bernard A. Borghei, Vertical Bridge Holdings, LLC re Impact of WLS Phase 6 Transition on Willis Tower (dated Jan. 4, 2019); Letter to Craig Strom, WLS Television, Inc. from Raymond Miklius, GatesAir, Inc. re Impact of WLS Phase 6 Transition on GatesAir, Inc. (dated Jan. 3, 2019)).

²⁶ A station’s request for waiver to modify its assigned transition deadline will be viewed “favorably” so long as the request is “compliant with [FCC] rules” and has “little or no impact on the phase assignments or transition schedule.” *Transition Services PN* at para. 73.