

Waiver of Phase Assignment

NRJ TV Houston License Co., LLC (NRJ), licensee of KUBE-TV, Baytown, TX (FID 70492) (KUBE) files this request for waiver of the post-Incentive Auction Transition Phase assignment and corresponding testing dates and construction completion deadlines for KUBE. KUBE was assigned to Transition Phase 2 pursuant to the *Closing and Reassignment Public Notice*.¹ KUBE now requests re-assignment to Transition Phase 3 because construction of its post-transition facility has been delayed by circumstances outside of its control.

To complete its post-transition facility, KUBE must install a new antenna together with new 20 foot sections of transmission line compatible with KUBE's post-transition channel. Although the new antenna has been installed, the installation of the new transmission line has been delayed due to severe weather in the Houston area that has limited the crew's ability to access the tower. As of this writing, the tower crew estimates that it needs five working days to install the transmission line followed by two days to sweep and tune the line. The current weather forecast includes severe weather conditions over the next several days that are likely to prevent KUBE from meeting this tight timeline for completion of construction by the Transition Phase 2 deadline.

In the *Transition Scheduling Adoption Public Notice*,² the Commission anticipated that there would be circumstances where a station would need to seek a waiver of the phase construction deadline, including authority to continue operating on its current channel. The Commission indicated that it would consider these requests on a "case-by-case basis," by evaluating the impact to viewers and the transition schedule.³ Re-assigning KUBE to a later transition phase will allow it to stay on the air until it can move to its post-transition channel and ensure its viewers are not left without important entertainment and local sports programming.

The ability of the tower crew to access the tower is the sole barrier to completing construction of KUBE's post-transition facility. Therefore, NRJ requests that KUBE be re-assigned to Transition Phase 3, allowing it to continue operating on its current (pre-transition) Channel 41 until June 21, 2019 (although NRJ estimates that any delay will be a matter of days rather than weeks or months).

KUBE is not part of a linked set and does not require coordination with any other station to complete its transition. Because KUBE currently operates in the 600MHz band, a delay in its

¹ *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*).

² *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 (MB 2017) (*Transition Scheduling Adoption Public Notice*).

³ *Transition Scheduling Adoption Public Notice*, ¶ 49.

transition will not create a new linked station set. NRJ notified T-Mobile USA, Inc. (“TMO”) about the circumstances and TMO does not object and simply asked that NRJ keep it informed.

Eight stations in the Houston market must transition to post-repack facilities—all of which have been assigned to Transition Phase 2. At least one of those stations, NBC Telemundo License LLC’s KTMD, has already requested an extension due to the same uncontrollable weather delays. (See TMD STA, File No. 69112). Therefore, if KUBE moves to Phase 3, it will not result in any additional rescans.⁴

Accordingly, the grant of this request will serve the public interest by permitting KUBE to continue serving viewers while the station completes its transition to its post-repack channel.

⁴ 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, DA 17-107 at ¶¶ 20 and 21 (MB 2017) (*Transition Scheduling PN*).