

## REQUEST FOR WAIVER OF PHASE ASSIGNMENT

Liberty Communications, Inc. ("LBC"), licensee of W50CH-D, Alton, IL, Facility ID 37238 and permittee of W36EX-D ( the "Station"), seeks a waiver of the Station's Post-Incentive Auction Transition Phase assignment, and corresponding testing dates and construction completion deadlines, for W50CH. Pursuant to the *Closing and Reassignment Public Notice*, the Station has been assigned to Transition Phase 8, for which the Phase Completion Date immediately impends on March 13,2020. LBC seeks modification of its current transition phase assignment to Transition Phase 10, with a Phase Completion Date of July 3,2020, which would extend the current construction period by approximately sixteen (16) weeks.

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 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."<sup>2</sup> As demonstrated below, LBC's request here qualifies for such favorable treatment. The FCC may grant a waiver for good cause shown.<sup>3</sup> A waiver is appropriate where

<sup>1</sup> *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*).

<sup>2</sup> *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 Red 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 Red 10802 (MB 2016) (*Transition Scheduling Proposal Public Notice*).

<sup>3</sup>47C.F.R. § 1.3.

the particular facts make strict compliance inconsistent with the public interest.<sup>4</sup> 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.<sup>5</sup> Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>6</sup>

Good cause exists for waiver of the assigned Transition Phase and its attendant testing and completion dates because it will serve the public interest by facilitating an orderly and efficient transition, avoid inefficient use of already scarce rigging and installation resources and eliminate the need to have the Station go dark unnecessarily for any length of time.

As a consequence of the Commission's Incentive Auction, the Station is required to transition from its current, pre-transition channel 50 to its post-auction Channel 36 by or before the conclusion of Phase 8, which is slated for March 13, 2020. The original transition proposal stipulated that the Station's new antenna, required by the FCC mandated channel change, would be positioned on the station's existing tower. Normally this would be a simpler matter than have to move to a new tower or new site. However, it was determined that, given the age of the tower and the nature of the new installation, a structural integrity test would be necessary before the installation could go ahead. The test has only now been completed, and while satisfactory, it backed up the equipment orders and deliveries, and the confirmation of available personnel to do the actual construction.

<sup>4</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>5</sup> *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.

<sup>6</sup> *Northeast Cellular*, 897 F.2d at 1166.

Initially it was hoped that the work could be completed by the conclusion of Phase 9 on 5/01/2020. But the equipment vendors are not willing to guarantee this date, and the better course appears to be to make a single reassignment to Phase 10 with the associated completion no later than 07/03/2020. All the delays so far have been were beyond LBC's control.

Accordingly, LBC respectfully requests that the station be reassigned to Phase 10. Modifying LBC's transition phase will ensure that the Station can continue to serve its community of license without interruptions. Absent grant of the instant waiver, W50CH may be required to go dark next week.

LBC will continue efforts to see if it can complete work by 05/01/2020, in which case no additional phase of consumer scan will be required in this metro. But with Phase 10, as realistically expected, only one re-scan periods would be added in the greater St. Louis market. The licensee will work to mitigate any potential viewer disruption by increasing outreach education, including early education, beyond the requisite minimum consumer outreach announcements and crawls, and proposes to expand its educational and informative outreach to include digital and social media campaigns. LBC will maintain a link on the station's website regarding when and how to rescan. Additionally, transition and rescanning information will be posted to the station's social media pages.

No objectionable interference is anticipated from the licensee's brief continued use of Channel 50.

For the reasons stated, grant of the requested waiver to modify the W50CH transition phase conserves resources and averts a significant disruption of service to its community of license. It thus serves the public interest.