

EXHIBIT SUPPORTING WAIVER
OF PHASE ASSIGNMENT, TESTING PERIOD, AND PHASE COMPLETION DATE

Fox Television Stations, LLC (“FTS”) seeks waiver of the post-Incentive Auction Transition Phase assignment, and corresponding testing dates and construction completion deadlines, for WWOR-TV, Facility ID No. 74197, Secaucus, New Jersey in the New York, NY designated market area (“Station”). Pursuant to the *Closing and Reassignment Public Notice*, Station has been assigned to Transition Phase 4, for which the Phase Completion Date is April 12, 2019.¹

FTS seeks to transition the Station early with the facilities identified in LMS File No.

0000030002² (which will include a move from the Empire State Building to One World Trade Center (“OWT”)), with expected transition completion on or before February 15, 2018, with a testing period to commence immediately preceding said date.

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

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 The facilities include a move from the Empire State Building to One World Trade Center (“OWT”).

assignments or transition schedule.”³ As demonstrated below, FTS’s instant request qualifies for such favorable treatment.

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

As demonstrated herein, 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 to more swiftly deliver new wireless broadband services to the public while minimizing impacts on broadcast television viewers and post-auction transition resources. Specifically, if Station is permitted to complete its transition early, T-Mobile a winning 600 MHz wireless licensee will be able to deploy new competitive wireless broadband service to people of New York City, a full 12 months earlier than scheduled.

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.

Interference

FTS has undertaken an engineering analysis which is included in the Stations' CP Minor Modification File No. 0000030002 which confirms that no new interference will be created by the proposed early transition of the Station beyond the permitted 2% transition period amount.⁸

The Station is not part of a linked station set, and this early transition will not create a new linked station set.

Impacts to Transition Plan

The proposed transition will further the overall transition plan this early out of phase move will allow WWOR-TV and WNYW⁹ to transition to OWT which will result in tens of millions of dollars in repack cost-savings. This move in fact permit better utilization of resources by engaging vendors and service providers early in the process rather than have them potentially overloaded further in the transition, including availing the newly constructed transmission facilities at One World Trade center.

Impact to Viewers

Under the Transition Plan, there are scheduled to be 2 rescans of the Station's DMA.

Additionally, numerous broadcasters in the DMA are exiting broadcasting using their own

⁸ This assumes WTVE, Reading, PA (Facility ID No. 55305), which sold in the auction is off-air as of January 23, 2018. If it becomes necessary, FTS will, at a later date, file a technical STA to operate temporarily with reduced power.

⁹ WNYW must relocate to OWT at the same time as WWOR-TV, but will not repack early. WNYW will be able to operate from OWT with a household coverage area nearly identical and with no more than a *de minimis* level of interference. WNYW will file an STA for operation from OWT on its pre-repack channel once a likely broadcast date from OWT is identified.

facilities and channel sharing with current broadcasters. Consumers may need to press the rescan button on their televisions to pick up these channel sharing broadcasters, meaning there likely will be more than 2 rescans for consumers in the DMA. Grant of the proposed early transition of Station will result in no change in the number of planned rescans. The Commission determined that up to two non-sequential rescans will serve the goals of efficiently clearing DMAs while minimizing viewer disruption.¹⁰ In addition, the Station will comply the notice to viewers and notice to MVPDs as required by the Commission.¹¹ Because the proposed early transition will result in no change in the number of rescans and the Station will alert viewers and MVPDs to the early channel change, grant of the instant waiver is appropriate.

In sum, grant of this waiver will facilitate a more effective and efficient implementation of the overall policy goals of the Incentive Auction and post-auction transition, and thus is in the public interest.

¹⁰ *Transition Scheduling Adoption Public Notice*, at ¶ 21.

¹¹ *Id.* at ¶¶ 50-51