

WHDH-TV REQUEST FOR WAIVER OF PHASE ASSIGNMENT,
TESTING PERIOD, AND PHASE COMPLETION DATE FOR WHDH(TV)

WHDH-TV, the licensee of WHDH(TV), Boston, Massachusetts (FCC Facility ID No. 72145), (“WHDH”) seeks waiver of the post-Incentive Auction Transition Phase assignment, and corresponding testing dates and construction completion deadlines, so that WHDH may transition early. Pursuant to the *Closing and Reassignment Public Notice*, WHDH has been assigned to Transition Phase 8, for which the testing period starts on January 18, 2020 and the Phase Completion Date is 3/13/2020.¹ WHDH seeks to transition early to Transition Phase 7, with testing starting on October 19, 2019 and the expected transition completion on or before January 17, 2020.

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 assignments or transition schedule.”² As demonstrated below, WHDH’s instant request qualifies for such favorable treatment.

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 Rcd 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, 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*).

The FCC may grant a waiver for good cause shown.³ A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.⁴ In considering a waiver, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁵ Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁶

As demonstrated here, and in the attached engineering statement from Carl T. Jones Corporation, WHDH's consulting engineers, 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. As shown in the engineering statement, this more rapid transition will minimize the time during which WHDH must operate at reduced power, shortening disruption and the loss of broadcast service by over-the-air viewers.

The engineering statement establishes that WHDH is not in a linked station set now, and if WHDH transitions to Phase 7, that early transition will not create a new linked station set.

WHDH believes disruption to viewers will be minimized by this early transition. WHDH recognizes that its request for an early transition will not increase the total number of times a viewer may need to rescan equipment in order to receive all reassigned stations in the Boston market. Under the original FCC transition plan there is scheduled only one rescan for WHDH's DMA and the granting of the proposed early transition will not change the number of rescans (it will stay at one rescan). The one rescan is within the cap (two rescans) established by the

³ 47 C.F.R. § 1.3.

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

⁵ *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.

⁶ *Northeast Cellular*, 897 F.2d at 1166.

Transition Public Notice, therefore, grant of the instant waiver is appropriate. WHDH pledges to act to further mitigate any viewer disruption by effective outreach education above and beyond the required public service announcements and crawls, including using WHDH's digital and social media outreach, to notify its viewing audience of the proposed transition and provide detailed instructions on the rescanning process. This will ensure that viewers will be well informed of the transition.

Thus, 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, without causing any new, material interference or disruption. Indeed, it will shorten a time of reduced power operation of WHDH. Therefore, granting this request promptly would serve the public interest.

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