



Federal Communications Commission
Washington, D.C. 20554

November 30, 2018

HC2 Station Group, Inc.
Renee Ilhardt
450 Park Avenue, 30th Floor
New York, NY 10022

Entravision Holdings, LLC
Mark Boelke
2425 Olympic Blvd., Suite 6000 W
Santa Monica, CA 90404

Re: Request for Modification and
Waiver of Phase Assignment

KSBO-CD, San Luis Obispo, CA,
Facility ID No. 31354
LMS File No. 0000063141

K50LZ-D, San Luis Obispo, CA
Facility ID No. 29885
LMS File No. 0000063092

Dear Licensee,

HC2 Station Group, Inc. (HC2), and Entravision Holdings, LLC, (Entravision) (collectively, Licensees) have each filed a *Request for Modification and Waiver of Phase Assignment* requesting to modify the post-incentive auction transition phase assigned to the above captioned Stations in the *Closing and Channel Reassignment Public Notice* from Phase 8 to Phase 2.¹ Entravision is the licensee of KSBO-CD, San Luis Obispo, California (KSBO-CD) and HC2 is the licensee of K50LZ-D, San Luis Obispo, California (K50LZ-D) (collectively, Stations). For the reasons below, we grant the requests for waiver and modify the Stations' phase assignments to Phase 2, as conditioned herein.

Background. Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waiver and modification of their phase assignment.² A waiver is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of

¹ See *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*). See LMS File No. 0000063141, as amended, Exhibit Supporting Waiver of Phase Assignment, Testing Period, and Phase Completion Date (filed Oct. 29, 2018) (KSBO-CD Waiver Request); LMS File No. 0000063092, as amended, K50LZ Phase Waiver Request (filed Oct. 25, 2018) (K50LZ-D Waiver Request).

² 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, 32 FCC Rcd 890, 912-14, paras. 47-52 (MB 2017) (*Transition Scheduling Adoption Public Notice*).

overall policy on an individual basis.³ The Media Bureau (Bureau) has stated it will evaluate such requests on a case-by-case basis to assess the impact on the transition schedule, including the impact on other broadcasters as well as viewers, in order to facilitate a timely and orderly transition.⁴ The Bureau determined that it would view favorably requests that are compliant with the Commission's rules and have little or no impact on the transition schedule.⁵ Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.⁶

KSBO-CD is currently licensed to operate on channel 42 and was reassigned to channel 36 in the *Closing and Channel Reassignment Public Notice*. K50LZ-D is currently licensed to operate on channel 50 and was reassigned to channel 32. The Stations were assigned to transition Phase 8, which has a testing period start date of January 18, 2020, and phase completion date of March 13, 2020. Both are located in the Santa Barbara-Santa Maria-San Luis Obispo, California, Designated Market Area (Santa Barbara DMA). A total of three stations, including KSBO-CD and K50LZ-D, were repacked in the Santa Barbara DMA. The only other repacked station in the DMA completed its transition already. The Licensees request permission to move the Stations from Phase 8 to Phase 2, which has a testing period start date of December 1, 2018 and phase completion date of April 12, 2019. The Licensees assert that modifying the Stations transition phase is intended to promote the deployment of new wireless broadband services by enabling T-Mobile, a winning 600 MHz band licensee, to deploy its new wireless broadband service in and around the Santa Barbara DMA up to 11 months earlier than it would be able to under the current transition schedule.⁷ The Licensees also state that assigning the Stations in Phase 2 will place them in the same phase as repacked stations in nearby Los Angeles, CA and in the phase immediately before repacked stations in Bakersfield, CA. The Licensees represent this will better facilitate the use of resources throughout Southern California.⁸ Both Stations anticipate operating on the post-auction facility authorized in their construction permit by 11:59pm (local time) on April 12, 2019.⁹ Both Licensees have also consulted with and included letters from their equipment manufacturers and vendors, including their

³ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 CFR § 1.3 (waiver for good cause shown). See also *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 913-14, para. 51 and n.171.

⁴ See *id.* at 912-14, paras. 49-52. See also *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Broadcast Transition*, 32 FCC Rcd 858, 881-82, para 73 (MB 2017).

⁵ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-13, para. 49 and n.163.

⁶ *Id.*; see *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, MB docket No. 16-306 and GN Docket No. 12-268, DA 18-884, para. 14, 6-7 (IATF & MB, rel. Aug. 27, 2018) (*Transition Reminder Public Notice*).

⁷ KSBO-CD Waiver Request at 2 and K50LZ-D Waiver Requests at 2. Included with both waiver requests is also a study conducted by T-Mobile verifying that as a result of the Station's early transition, T-Mobile will be able to commence 600 MHz operations earlier than under the existing transition schedule. See KSBO-CD Waiver Request, T-Mobile Support Letter KSBO-CD and K50LZ-D. Pursuant to Sections 0.457 and 0.459 of the Rules, T-Mobile requests confidential treatment of the information pertaining to the precise timing and location of its deployment. T-Mobile contends such information is not routinely made publicly available and should be withheld from public inspection as trade secrets, or privileged or confidential commercial, financial or technical data. See 47 CFR §§ 0.457(d)(2) and 0.459.

⁸ KSBO-CD Waiver Request at 2-3; K50LZ-D Waiver Requests at 2-3.

⁹ KSBO-CD Waiver Request at 4; K50LZ-D Waiver Requests at 4.

tower crews, verifying that this phase change will not negatively impact other transitioning stations ability to access to resources.¹⁰

The Licensees have provided an engineering analysis demonstrating that the Stations' early transition will not create any new linked-station sets or result in increased pairwise interference greater than two percent during the transition period.¹¹ The Licensees also state that granting the waiver will not create any additional rescan periods in the Santa Barbara DMA and will complete the transition in the DMA.¹² In order to ensure that viewers are well-informed about each Station's transition, the Licensees state they will "cooperate" with one another to notify viewers in the DMA of the Stations intention to transition ahead of their currently scheduled phase assignment. The Licensees have also submitted a letter from T-Mobile stating that T-Mobile will provide additional resources and support to ensure that viewers in the DMA are well-informed about the transition.¹³

Discussion. Upon review of the facts and circumstances presented, we find the Licensees' requests to modify the phase assignments for KSBO-CD and K50LZ-D to transition to their post-auction channel in Phase 2 satisfies the requirements for a waiver and are in the public interest. We agree that the change to the Stations' transition phase should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. A staff analysis confirms that the phase change will not result in new increased pairwise interference above the two percent permitted during the post-auction transition period.¹⁴ The Licensees have received letters from their vendors confirming that the phase change will not impact other transitioning stations' access to resources. In addition, the phase change does not increase the number of rescan periods for viewers in the Santa Barbara DMA. The Licensees have also committed to put in place viewer outreach programs beyond those required by the Commission rules. As a result, we find that the benefit of early deployment in the 600 MHz band, statements of support from the Stations' vendors, completion of the repack in the Santa Barbara DMA, and additional consumer education and outreach efforts supports grant of the Licensees' waiver requests.

We caution the Licensees that any additional expenses incurred as a result of the grant of the Stations' voluntary phase change may not be reimbursable from the TV Broadcasters Relocation Fund. Such additional costs might include, but may not be limited to, additional legal or engineering expenses; filing fees; and interim or additional equipment that was not contemplated when the station filed its initial estimated expenses but was subsequently necessitated to complete the transition to its post-auction channel due to its phase change.

Accordingly, we **GRANT** both HC2 and Entravision's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for KSBO-CD and K50LZ-D **from Phase 8 to Phase 2**, subject to all the commitments made in its waiver request and compliance with all

¹⁰ KSBO-CD Waiver Request at 2-3, Letters from H.C. Jeffries Tower Company, Anywave Communication Technologies, and Katherein USA; K50LZ-D Waiver Requests at 3, Letters from H.C. Jeffries Tower Company, GatesAir, and Dielectric.

¹¹ KSBO-CD Waiver Request at 2 and Interference Report; K50LZ-D Waiver Request at 2-3 and Engineering Statement.

¹² KSBO-CD Waiver Request at 3; K50LZ-D Waiver Request at 3.

¹³ KSBO-CD Waiver Request at 4 and T-Mobile Rescan Letter; K50LZ-D Waiver Request at 4 and T-Mobile Rescan Letter.

¹⁴ See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16 (allowing temporary increased pairwise (station-to-station) interference of up to two percent during the transition period).

Commission rules applicable to transitioning stations.¹⁵ Testing on each Station's post-auction channel **may not begin until 12:01 am local time on December 1, 2018**, and each Station is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on April 12, 2019**.¹⁶ Each Station's construction permit expiration date will also be modified to correspond to its new phase completion date.¹⁷

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):
Barry Friedman, Esq.,
Paul Cicelski, Esq.,
Rebecca Hanson, Esq.

¹⁵ See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*.

¹⁶ Each transition phase has a designated testing period on which a station in that phase may begin testing equipment on its new channel and a designated phase completion date when a station must cease operation on its pre-auction channel. The phase completion date is the date that will be listed in that station's construction permit as its construction deadline and is the date the station must cease operation on its pre-auction channel. See *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd 2806, para. 64. A station that commences testing on its post-auction channel before the beginning of its assigned testing period will be operating in violation of Commission rules.

¹⁷ *Id.* ("The phase completion date is...[also] the date listed in each station's construction permit as its construction deadline."). If a station must commence operations on its post-auction channel at variance from the parameters authorized in its construction permit, it must file for and be granted special temporary authority prior to commencing operations. See 47 CFR § 73.1635. A station that needs additional time to complete construction of its post-auction facility beyond its construction permit expiration date must file for a 180-day extension of its construction permit in accordance with Section 73.3700(b)(5)(iv). Stations needing additional time to construct after a 180-day extension is granted, will be subject to the Commission's tolling provisions. 47 CFR § 73.3700(b)(5)(iv). Grant of an extension of time to construct does not relieve a station of the requirement that it ceases operation on its pre-auction channel by its assigned phase completion date.