



Federal Communications Commission  
Washington, D.C. 20554

April 8, 2019

WLS Television, Inc.  
John W. Zucker  
77 W 66<sup>th</sup> Street, Floor 16  
New York, NY 10023

Re: Request for Modification and  
Waiver of Phase Assignment  
WLS-TV, Chicago, IL  
Facility ID No. 73226  
LMS File No. 0000067056

Dear Licensee,

On January 17, 2019, WLS Television Inc. (ABC), the licensee of WLS-TV, Chicago, Illinois (WLS-TV or Station) filed a *Request for Modification and Waiver of Phase Assignment* requesting to modify the post-incentive auction transition phase assigned to the Station in the *Closing and Channel Reassignment Public Notice* from Phase 8 to Phase 6.<sup>1</sup> For the reasons below, we grant ABC's request for waiver and modify the Station's phase assignment to Phase 6, as conditioned herein.

*Background.* Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waiver and modification of their phase assignment.<sup>2</sup> 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 overall policy on an individual basis.<sup>3</sup> 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.<sup>4</sup> The Bureau determined that it would view favorably requests that are compliant with the Commission's rules and

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<sup>1</sup> 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. 0000067056, WLS Request for Waiver to Modify Phase Completion Date to Phase 6 (Waiver Request).

<sup>2</sup> 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*).

<sup>3</sup> 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.

<sup>4</sup> 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).

have little or no impact on the transition schedule.<sup>5</sup> Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.<sup>6</sup>

WLS-TV is currently licensed to operate on channel 44. It was reassigned to channel 22 in the *Closing and Channel Reassignment Public Notice* and assigned to transition Phase 8, which has a testing period start date of January 18, 2020, and a phase completion date of March 13, 2020. The Station is located in the Chicago, Illinois, Designated Market Area (Chicago DMA). A total of 14 stations, including WLS-TV, were repacked in the Chicago DMA, with nine stations assigned to Phase 6 and five to Phase 8. ABC requests permission to move WLS-TV from Phase 8 to Phase 6, which has a testing period start date of September 7, 2019, and a phase completion date of October 18, 2019. ABC asserts that modifying WLS-TV's transition phase will allow it to transition with other repacked network affiliates, specifically the NBC network affiliate, WMAQ-TV, and the FOX affiliate, WFLD.<sup>7</sup> ABC also states that transitioning during Phase 6 will provide more favorable weather conditions for performing the necessary construction work on top of Willis Tower, where the Station's antenna and transmitter are located.<sup>8</sup> The Station will initially meet its phase completion deadline using an auxiliary facility on its post-auction channel. ABC states that WLS-TV's permanent channel 22 facility will be completed, at the latest, by spring 2020.<sup>9</sup> ABC has consulted with, and included letters from, its equipment manufacturers and vendors, including Vertical Bridge who is managing the transition process for repacked stations that are located on Willis Tower, verifying that this phase change will not negatively impact other transitioning stations' ability to access to resources.<sup>10</sup> In particular, Vertical Bridge states that "[p]resently Willis Tower intends to have completed construction of facilities for all repacked stations' post-auction channels by the beginning of Phase 6 (September 7, 2019)."<sup>11</sup>

ABC has also provided an engineering analysis demonstrating that the Station's early transition will add WLS-TV to linked-station set 45 (LSS 45) and have a direct dependency with WSBT-TV, South Bend, Indiana (WSBT-TV).<sup>12</sup> In order to prevent an increase in temporary pairwise interference beyond

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

<sup>6</sup> *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*).

<sup>7</sup> Waiver Request at 4.

<sup>8</sup> *Id.* at 2-3.

<sup>9</sup> *Id.* at n.10. According to ABC, it is also its understanding that most of the Phase 8 stations have committed to completing the transition in Phase 6, such that together with WLS's proposed early transition, the post-auction transition in the Chicago market can occur entirely within Phase 6. This would not only create a unified rescan period in the DMA, but also enable the early deployment of 600 MHz wireless broadband services by T-Mobile. To date, no other waiver requests have been received by any other station in Chicago DMA seeking to move from Phase 8 to Phase 6. Therefore, we do not take these arguments into account for purposes of determining how ABC's waiver request would impact the transition and whether grant would be in the public interest. See *id.* at 2-3, 4-5, and Exhibit C in Support of Waiver Request (Letters from T-Mobile).

<sup>10</sup> *Id.* at 7 and Exhibit C, Letters from Dielectric, LLC, GatesAir, and Vertical Bridge.

<sup>11</sup> *Id.*, Exhibit C, Letter from Vertical Bridge.

<sup>12</sup> *Id.* at 5-6 and Engineering Statement. WSBT-TV is licensed to WSBT Licensee, LLC, a subsidiary of Sinclair Broadcast Group (Sinclair).

the two percent permitted during the transition,<sup>13</sup> WLS-TV must transition to its post-auction channel at the same time as or after WSBT-TV.<sup>14</sup> WLS-TV includes with its waiver request a letter from WSBT-TV agreeing to coordinate their transition.<sup>15</sup> Following grant of the instant waiver request, the total number of rescan periods for the Chicago DMA would remain the same, two, consistent with the limitation used in the tool adopted by the Bureau in the *Transition Scheduling Adoption Public Notice* to assign stations to transition phases.<sup>16</sup> ABC contends that allowing WLS-TV to transition in Phase 6 will “reduce the impact of the transition on Chicago’s viewers by authorizing WLS to transition [] concurrently with the other top four network affiliates.”<sup>17</sup>

*Discussion.* Upon review of the facts and circumstances presented, we find that ABC’s request to modify the phase assignment for WLS-TV to transition to its post-auction channel in Phase 6 satisfies the requirement for a waiver and is in the public interest. We agree that the change to the Station’s transition phase should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. Although staff has confirmed that the phase change will add WLS-TV to LSS 45 and create a direct dependency with WSBT-TV, we find the written agreement between WLS-TV and WSBT-TV to coordinate their efforts will prevent any new temporary increased pairwise interference above the two percent permitted during the post-auction transition period.<sup>18</sup> ABC has also received letters of support from its vendors confirming that the phase change will not impact other transitioning stations’ access to resources. We also find that the phase change will not affect the total number of rescan periods in the Chicago DMA.<sup>19</sup> As a result, we find the benefits of the phase change discussed above outweigh any viewer burden caused by a change in WLS-TV’s transition schedule.

We caution ABC that any additional expenses incurred as a result of the grant of the Station’s 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.

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<sup>13</sup> 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).

<sup>14</sup> Waiver Request at 5-6 and Engineering Statement. ABC has also worked with Sinclair to develop a transition schedule for the South Bend-Elkhart, Indiana Designated Market Area (South Bend DMA). Under this schedule, television stations in the South Bend DMA assigned to Phase 6 would begin post-auction channel equipment tests on September 7, 2019, and transition to their post-auction channels by September 28, 2019. WLS would then commence its post-auction equipment tests beginning September 29, 2019, and fully transition to channel 22 by October 18, 2019. *Id.* at 6.

<sup>15</sup> *Id.* at 5-6, Exhibit B Letters from South Bend Stations.

<sup>16</sup> *Id.* at 4. *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21 (establishing a two rescan periods per DMA limitation when assigning stations to transition phases).

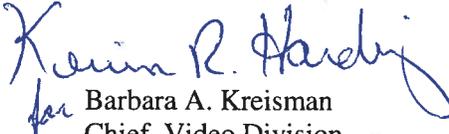
<sup>17</sup> Waiver Request at 4.

<sup>18</sup> 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).

<sup>19</sup> See *id.* at 898-99, paras. 20-21 (establishing a two rescan periods per DMA limitation when assigning stations to transition phases).

Accordingly, we **GRANT** ABC's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WLS-TV **from Phase 8 to Phase 6**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.<sup>20</sup> Testing on the Station's post-auction channel **may not begin until 12:01 am local time on September 7, 2019**, and WLS-TV is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on October 18, 2019**.<sup>21</sup> The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.<sup>22</sup>

Sincerely,

  
for Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

Cc: (via electronic mail):  
Susan Fox, Esq.

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<sup>20</sup> See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*.

<sup>21</sup> Each transition phase has a designated testing period in 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.

<sup>22</sup> *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.