



Federal Communications Commission
Washington, D.C. 20554

September 13, 2019

WSYX Licensee, Inc.
Harvey Arnold
10706 Beaver Dam Road
Cockeysville, MD 21030

Re: Request for Modification and
Waiver of Phase Assignment
WSYX(TV), Columbus, OH
Facility ID No. 56549
LMS File No. 0000074525

Dear Licensee,

On June 6, 2019, WSYX Licensee, Inc. (Sinclair), the licensee of WSYX(TV), Columbus, Ohio (WSYX 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 7.¹ For the reasons below, we grant Sinclair's request for waiver and modify the Station's phase assignment to Phase 7, 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 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

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*, GN Docket No. 12-268 et. al., Public Notice, 32 FCC Rcd 2786 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*). See LMS File No. 0000074525, WSYX Legal STA Phase-Change Request and Waiver (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, Public Notice, 32 FCC Rcd 890, 912-14, paras. 47-52 (MB 2017) (*Transition Scheduling Adoption Public Notice*).

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*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 32 FCC Rcd 858, 881-82, para 73 (MB 2017) (*Transition Procedures PN*).

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

WSYX is currently licensed to operate on channel 48. It was reassigned to channel 28 in the *Closing and Channel Reassignment Public Notice* and is currently assigned to transition Phase 8, which has a phase testing period start date of January 18, 2020, and a phase completion date of March 13, 2020. The Station is located in the Columbus, Ohio, Designated Market Area (Columbus DMA). A total of 10 stations were repacked in the Columbus DMA, where six stations have completed their transition and four stations, including WSYX, are assigned to Phase 8. According to Sinclair, repacked stations WTTE(TV), Columbus, Ohio (WTTE), and WWHO(TV), Chillicothe, OH (WWHO), are located with WSYX on the same candelabra tower, and their transmitters and associated equipment are all located in the same building.⁷ Sinclair states that allowing WSYX to transition in Phase 7 would allow it to stage construction in a way that will more efficiently use of tower crews. Sinclair states that a phase change would eliminate the need for WTTE, WWHO, and WSYX to construct a new transmitter building, thus conserving construction resources.⁸ Sinclair has included with its waiver request letters of support from its antenna manufacturer, transmitter manufacturer, and tower crew.⁹ As a result, Sinclair has filed a waiver request seeking to change its phase assignment from Phase 8 to Phase 7, which has a testing period start date of October 19, 2019, and a phase completion date of January 17, 2020.

Because the Station is currently operating in the 600 MHz band, Sinclair asserts that this phase change will not create any new linked-station sets, direct dependencies, or increased temporary pairwise interference greater than two percent during the transition period.¹⁰ Sinclair acknowledges that this phase change will increase the number of rescan periods in the Columbus DMA from two to three, which is in excess of the two rescan periods per DMA limitation used in the tool adopted by the Bureau in the *Transition Scheduling Adoption Public Notice* to assign stations to transition phases.¹¹ In order to mitigate any viewer disruption caused by the change in phase, Sinclair commits to implementing a “comprehensive consumer awareness campaign” including conducting consumer outreach beyond what is required by the Commission’s rules through the use of social media and the Station’s website, and partnering with WTTE and WWHO to conduct consumer outreach.¹²

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, 33 FCC Rcd 8240, 8244-45, para. 14 (IATF & MB 2018) (*Transition Reminder Public Notice*).

⁷ Waiver Request at 1.

⁸ *Id.* at 1-2. Sinclair also states that not building the building will save the TV Broadcast Relocation Fund approximately \$300,000. *Id.*

⁹ *Id.* at 3-5.

¹⁰ *Id.* at 2. 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).

¹¹ Waiver Request at 2. *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).

¹² Waiver Request at 2. See 47 CFR § 73.3700(c)(3) (repacked stations must air sixty (60) seconds per day of on-air crawls or public service announcements beginning 30 days prior to discontinuing operations on their pre-auction channel).

Discussion. Upon review of the facts and circumstances presented, we find that Sinclair’s request to modify the phase assignment for WSYX to transition to its post-auction channel satisfies the requirement for a waiver and is in the public interest. We agree that changing the Station’s transition phase to Phase 7 should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. In letters included with Sinclair’s waiver request, the Station’s vendors confirm the resource-saving benefits of this phase change and that the phase change will not impair their ability to serve other transitioning stations. Staff has confirmed that the phase change will not create any new linked station sets or direct dependencies. The total number of rescan periods in the Columbus DMA will increase from two to three. Therefore, in order to mitigate viewer confusion caused by the change in phase, Sinclair has committed to undertake additional consumer outreach efforts beyond what is required by the Commission’s rules. As a result, we find the facts and circumstances discussed above outweigh any viewer burden caused by a change in the Station’s transition phase.

We remind Sinclair that pursuant to the Spectrum Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs “reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other.”¹³ Additional expenses incurred such as expenses resulting from changes in a Station’s transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

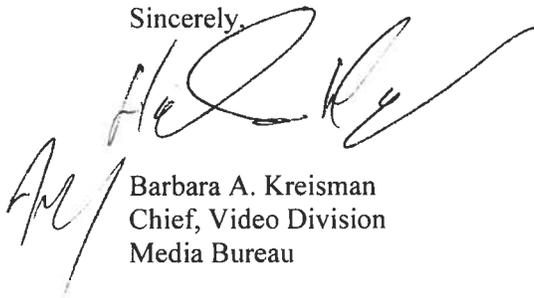
Accordingly, we **GRANT** Sinclair’s *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WSYX **from Phase 8 to Phase 7**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.¹⁴ Testing on the Station’s post-auction channel **may not begin until 12:01 am local time on October 19, 2019**, and WSYX is required to cease operating on its pre-auction channel **no**

¹³ *Media Bureau Finalizes Reimbursement Form for Submission to OMB and Adopts Catalog of Expenses*, GN Docket No. 12-268, Public Notice, 30 FCC Rcd 11701, 11701-02 (MB 2015). *See also Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 (“The appropriate scope of ‘costs reasonably incurred’ necessarily will have to be decided on a case-by-case basis.”).

¹⁴ *See generally* 47 CFR § 73.3700 and *Transition Reminder Public Notice*, 33 FCC Rcd 8240.

later than 11:59 pm local time on January 17, 2020.¹⁵ The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.¹⁶

Sincerely,

A handwritten signature in black ink, appearing to read 'Barbara A. Kreisman', is written over the typed name and title. The signature is fluid and cursive.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):
Paul Cicelski, Esq.

¹⁵ 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 at 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.

¹⁶ *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.