



Federal Communications Commission  
Washington, D.C. 20554

September 13, 2019

Word Broadcasting Broadcast, Inc.  
Tom Fawbush  
3701 Fern Valley Road  
Louisville, KY 40219

Re: Request for Modification and  
Waiver of Phase Assignment  
WJDE-LD, Nashville, TN  
Facility ID No. 61026  
LMS File No. 0000080193

Dear Licensee,

On August 9, 2019, Word Broadcasting Network, Inc. (Word Broadcasting), the licensee of Class A television stations, WJDE-LD, Nashville, Tennessee (WJDE-LD 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 6 to Phase 7.<sup>1</sup> For the reasons below, we grant Word Broadcasting'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.<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*, 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.0000080585, Explanatory Exhibit (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, Public Notice, 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*, 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.<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>

WJDE-LD is currently licensed to operate on channel 31. It was reassigned to channel 23 in the *Closing and Channel Reassignment Public Notice* and is currently assigned to transition Phase 6, which had a phase testing period start date of September 7, 2019, and has a phase completion date of October 18, 2019. The Station is located in the Nashville, Tennessee, Designated Market Area (Nashville DMA). A total of nine stations were repacked in the Nashville DMA, with eight stations stations, including WJDE-LD, being assigned to Phase 6 and one station being assigned to Phase 10. Word Broadcasting states that due to equipment delivery and tower crew delays, the Station will not be able to complete construction of its post-auction facility by October 18, 2019.<sup>7</sup> As a result, Word Broadcasting has filed a waiver request seeking to change its phase assignment from Phase 6 to Phase 7, which has a testing period start date of October 19, 2019, and a phase completion date of January 17, 2020.

Word Broadcasting acknowledges that WJDE-LD is part of Linked-Station Set 44 (LSS 44) and is directly linked with stations WNPX-TV, Franklin, TN (WNPX-TV), and WNAB, Nashville, TN (WNAB).<sup>8</sup> Word Broadcasting's analysis shows that if the Station remains on its pre-auction channel until Phase 7 it will receive additional temporary pairwise interference beyond two percent permitted by Commission rules but it will not cause any additional temporary pairwise interference beyond that benchmark.<sup>9</sup> WJDE-LD is willing to accept the temporary additional pairwise interference that will result. In order to mitigate any viewer disruption caused by the phase change, Word Broadcasting commits to conduct additional consumer outreach beyond what is required by the Commission's rules through additional on-air public service announcements crawls.<sup>10</sup>

*Discussion.* Upon review of the facts and circumstances presented, we find that Word Broadcasting's request to modify the phase assignment for WJDE-LD 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. Staff has confirmed that the phase change will not create any new linked station sets or direct dependencies. WJDE-LD must accept any additional temporary pairwise interference caused by WNPX-TV and WNAB after those stations transition to their

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

<sup>7</sup> Waiver Request at 1. Word Broadcasting also identifies the station's reimbursement filings in the Waiver Request. We remind Word Broadcasting that failure to timely initiate a construction project or undertake necessary steps to complete the transition by the phase transition date due to the amount of any allocation is not an excuse for failing to complete construction in a timely manner and will not be weighed favorably as a factor in considering grants of such relief. See *Incentive Auction Task Force and Media Bureau Announce Further Reimbursement Allocation for Eligible Broadcasters and MVPDS*, MB Docket No. 16-306 and GN docket No. 12-268, Public Notice, 33 FCC Rcd 3732, 3736 (IATF & MB 2018).

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

<sup>9</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>10</sup> Waiver Request at 2.

post-auction channels. The total number of rescan periods in the Nashville DMA will increase 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.<sup>11</sup> In order to mitigate viewer confusion caused by the phase change, Word Broadcasting has committed to undertake additional consumer outreach efforts beyond what is required by the Commission's rules. Specifically, we require that Word Broadcasting air, at minimum, double the amount of on-air consumer education notifications required by the Commission's rules in advance of its transition.<sup>12</sup> Modifying WJDE-LD's transition phase will ensure that the Station is able to continue to serve its viewers without interruption. 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 Word Broadcasting 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."<sup>13</sup> 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** Word Broadcasting's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WJDE-LD **from Phase 6 to Phase 7**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.<sup>14</sup> Furthermore, **WJDE-LD IS REQUIRED** to accept all interference from WNPX and WNAB once those stations transition to their post-auction channels. Additionally, **WJDE-LD IS REQUIRED** to air, at minimum, double the amount of consumer education notifications required by section 73.3700(c)(3) as set forth above.<sup>15</sup> Testing on the Station's post-auction channel **may not begin until 12:01 am local time on October 19, 2019**, and WJDE-LD is required to cease operating on its pre-

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<sup>11</sup> *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>12</sup> See 47 CFR § 73.3700(c)(3) (repacked stations must air sixty (60) seconds per day of on-air crawls or public service announcements (PSAs) beginning 30 days prior to discontinuing operations on their pre-auction channel)

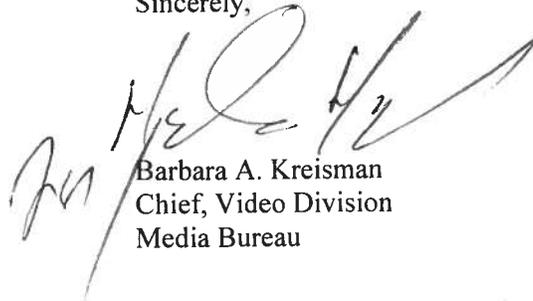
<sup>13</sup> *Media Bureau Finalizes Reimbursement Form for Submission to OMB and Adopts Catalog of Expenses*, GN Docket No. 12-268, Public Notice, 30 FCC Rcd 11701, 11701-02 (MB 2015). See also *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred'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

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

<sup>15</sup> 47 CFR § 73.3700(c)(3).

auction channel **no later than 11:59 pm local time on January 17, 2020.**<sup>16</sup> The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.<sup>17</sup>

Sincerely,



Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

Cc: (via electronic mail):  
Anthony T. Lepore, Esq.

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<sup>16</sup> 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.

<sup>17</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.