



Federal Communications Commission
Washington, D.C. 20554

October 15, 2019

Central Ohio Association of Christian Broadcasters
David Aiken
1282 North Main Street
Marion, OH 43302

Re: Request for Modification and
Waiver of Phase Assignment
WXCB-CD, Delaware, OH
Facility ID No. 59852
LMS File No. 0000084106

Dear Licensee,

On October 4, 2019, Central Ohio Association of Christian Broadcasters (COACB) the licensee of WXCB-CD, Delaware, Ohio, (WXCB-CD 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 COACB also requests waiver of the Commission's consumer education requirements. For the reasons below, we grant COACB's requests for waiver and modify WXCB-CD'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. 0000084106 (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).

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

Pursuant to Section 73.3700(c)(3) of the Commission's rules (Rules), 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.⁷ A waiver of the Rules may be 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.⁸

Request for Phase Change. WXCB-CD is currently licensed to operate on channel 45. It was reassigned to channel 25 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, with six stations having transitioned in Phase 2, one station assigned to Phase 7 and three stations, including WXCB-CD, being assigned to Phase 8. According to COACB, construction of WXCB-CD's facility is complete, and the station is prepared to transition to its post-auction channel without utilizing any further external resources.⁹ As a result, COACB requests that the Station's transition phase assignment be modified 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. COACB states that it plans to transition WXCB-CD on October 19, 2019. COAB has provided an engineering analysis with the waiver request demonstrating that the Station's early transition will not create any new linked-station sets or result in increased pairwise interference greater than two percent during the transition period.¹⁰ The Columbus DMA has three rescan periods (Phase 2, Phase 7, and Phase 8), so the requested phase change will not increase the total number of rescan periods for the Columbus DMA.

Request for Waiver Consumer Education Requirements. In order to transition on the same day as WSYX-TV, the other Phase 7 station in the Columbus DMA, and leverage the benefits of both stations transitioning on the same day, COACB requests a waiver of its 30-day consumer education requirements.¹¹ In order to ensure viewers are fully informed about WXCB-CD's transition, COACB

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 47 CFR § 73.3700(c)(3).

⁸ 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.

⁹ Waiver Request at 3.

¹⁰ *Id.* at 1-2 and Engineering Statement. 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 2-4. 47 CFR § 73.3700(c)(3) (requiring 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).

commits to airing three times the number of announcements required by the Commission's rules,¹² and has informed Bureau staff that it has already commenced airing such notifications. COACB will also notify viewers of its revised transition date using newspaper, radio, the internet, and its social media assets.¹³

Discussion. Upon review of the facts and circumstances presented, we find COACB's request for waiver and modification of WXCB-CD's phase assignment to Phase 7 satisfies the requirements for a waiver and are in the public interest. We agree that the change to WXCB-CD's 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 does not create any new linked station sets and will not result in new interference above the two percent permitted during the transition. COACB has confirmed that it does not require any external resources to complete its transition and therefore will not delay other transitioning stations' access to such resources. Any remaining work necessary to complete this transition will require only internal Station resources. We also find that granting COACB's request for this phase change will not have a negative impact on viewers. The total number of rescan periods in the Columbus DMA will remain the same.

Furthermore, we find that under the circumstances of this move, granting COACB's request for waiver of the post-incentive auction consumer education requirements is not likely to harm viewers or cause viewer confusion. WXCB-CD has begun viewer notifications and has committed to make sure viewers are fully informed about WXCB-CD's transition by airing three times the number of viewer notifications required by Commission rules prior to its transition and by also informing members of the public through radio, newspaper, and social media. In addition, WSYX-TV, Columbus, Ohio, which is also located in the Columbus DMA, will be transitioning on the same day – October 19, 2019. As a result, we find the facts and circumstances discussed above outweigh any viewer burden caused by a change in the station's transition schedule.

We remind CBS 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."¹⁴ We caution COACB that any additional expenses incurred as a result of the grant of WXCB-CD'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.

Accordingly, we **GRANT** COACB's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WXCB-CD **from Phase 8 to Phase 7**, as well its request for waiver of Section 73.3700(c)(3), subject to all the commitments made in its waiver request and compliance with all other Commission rules applicable to transitioning stations.¹⁵ Testing on the Station's post-auction channel **may begin at 12:01 am on October 19, 2019**, and WXCB-CD is required

¹² Waiver Request at 3.

¹³ *Id.* at 3-4.

¹⁴ 47 U.S.C. § 1452(b)(4)(A)(i). *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.").

¹⁵ *See generally* 47 CFR § 73.3700 and *Transition Reminder Public Notice*, 33 FCC Rcd 8240.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'B A K', with a long horizontal flourish extending to the right.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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.