

COVID-19 Phase Change Request for WBAL-TV to Move to Phase 10

A. Introduction, Background, and Repack Vendor Suspension of Field Operations

On February 3, 2020, WBAL Hearst Television Inc. (the “applicant”), licensee and repack permittee of WBAL-TV, Baltimore, Maryland (Fac. ID No. 65696) (“WBAL-TV” or the “Station”) filed an application to extend, for 180 days, the repack construction permit (“CP”) issued in LMS File No. [0000024625](#) as modified by LMS File No. [0000034523](#). See LMS File No. [0000104748](#) (the “Pending CP Extension Application”).¹ WBAL-TV has been assigned to Phase 9, which has a deadline of May 1, 2020. The reasoning behind the Pending CP Extension Application is that the complex configuration at WBAL-TV’s repack site will prevent the Station’s full repack project from being complete by the Phase 9 deadline, and WBAL-TV expects to initially transition using a post-transition interim facility (i.e., its post-transition aux antenna).

Late in the day on March 13, 2020, the applicant received written correspondence from the tower services vendor (Coast to Coast Tower Service, Inc.) who is contracted to work on WBAL-TV’s repack project—including the installation of post-transition interim facilities—indicating that the vendor is implementing a suspension of field operations for a period of at least two weeks in response to the rapidly evolving COVID-19 public health crisis. A copy of the vendor’s March 13 correspondence is reprinted below.

Upon receiving the vendor’s correspondence, a representative of the applicant contacted the vendor to attempt to ascertain the implications of the suspension for WBAL-TV’s repack project. During that discussion, the applicant was left with the impression that the suspension of field operations would last for *at least* two weeks, and it means that the vendor did not arrive at the WBAL-TV repack site during the week of March 16, 2020, as the original schedule called for. The principal tasks that were expected to be undertaken when the vendor had been scheduled to arrive during the week of March 16 relate to the installation of equipment for WBAL-TV’s (and two other co-located reassigned stations’) interim facilities. Because WBAL-TV’s timely cessation of operations on its pre-transition channel necessitates the use of interim facilities, the vendor’s delay—which WBAL-TV fears will actually stretch longer than two weeks—puts the May 1 timing of WBAL-TV’s cutover to its post-transition channel with interim facilities at significant risk because the interim facilities may not yet be operational by May 1. Thus, at a minimum, the applicant’s statement in the Pending CP Extension Application that “**Neither TTI nor WBAL-TV anticipate any issues with the timely installation of the side-mount interim facilities.**” is no longer accurate.²

¹ Because the instant application seeks a change from Phase 9 to Phase 10, the Pending CP Extension Application should not be acted on at this time. However, WBAL-TV would prefer to leave the Pending CP Extension Application on file in “pending” status while a determination is made whether a CP extension based on the Phase 10 deadline would be necessary.

² As identified in the Pending CP Extension Application, TTI is the tower owner, and TTI is, in turn, jointly owned by WBAL-TV and the other two co-located reassigned stations, i.e., WJZ-TV and WMAR-TV.

B. COVID-19 Repack Public Notice

On March 17, 2020, the Commission released a Public Notice announcing certain measures of flexibility that may be available to Phase 9 reassigned stations (such as WBAL-TV) in light of the national and international public health crisis known as COVID-19. *See Guidance for Stations in Phase 9 of the Post-Incentive Auction as a Result of the Novel Coronavirus (COVID-19) Pandemic*, Public Notice, DA 20-282, (rel. Mar. 17, 2020) (“COVID-19 Repack PN”). The instant application is (i) to advise the Commission that, for the reasons set forth herein—namely the suspension of field operations by WBAL-TV’s tower services vendor prior to the installation of the post-transition interim antennas for WBAL-TV and co-located repacked stations WJZ-TV, and WMAR-TV—WBAL-TV’s situation (and the stations co-located with WBAL-TV) fits within the measures identified in the COVID-19 Repack PN and (ii) to formally request that WBAL-TV be granted a phase change to move from Phase 9 to Phase 10.

In relevant part, the COVID-19 Repack PN, the Commission stated as follows:

We recognize that the construction and delivery delays that are occurring as a result of the COVID-19 pandemic, as well as efforts undertaken by the stations themselves to protect the health of their employees and their families, result from circumstances outside of a station’s control. As a result of these circumstances, any station scheduled to complete its transition in phase 9 that believes it may be unable to meet the May 1, 2020, deadline will be granted a waiver of the phase 9 deadline and reassignment to phase 10, which begins on May 2, 2020, and ends on July 3, 2020.³

WBAL-TV respectfully requests this relief.

C. Phase Changes and Waiver Standard

The *Transition Scheduling Adoption Public Notice* permitted stations to propose “alternative transition solutions that could create efficiencies,” and determined that a request to modify a station’s transition deadline would be viewed favorably if the request is “otherwise compliant with [FCC] rules and [has] little or no impact on the phase assignments or transition schedule.”⁴ As demonstrated throughout this exhibit and in light of the COVID-19 Repack PN, the instant request qualifies for such favorable treatment.

³ COVID-19 Repack PN, unnumbered ¶ 2.

⁴ *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, 913 ¶ 51 (MB 2017) (*Transition Scheduling Adoption Public Notice*), citing *Incentive Auction Task Force and Media Bureau Seek Comment on Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 31 FCC Rcd 10802 (MB 2016) (*Transition Scheduling Proposal Public Notice*).

The FCC may grant a waiver for good cause shown.⁵ A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.⁶ In considering a waiver, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁷ Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁸ As demonstrated herein, good cause exists for waiver of the assigned Transition Phase 9 and its attendant testing and completion dates.

D. Interference Will Not Be an Issue

Following the release of the COVID-19 Repack PN, WBAL-TV has directly or indirectly communicated with or heard from all other stations in the same linked station set as WBAL-TV (i.e., LSS 65). It is WBAL-TV's understanding that all LSS 65 stations have concurred in the decision to move from Phase 9 to Phase 10,⁹ and reassignment to Phase 10 will not result in any new linkages. Thus, there should be no technical or interference-based obstacle to moving WBAL-TV (and the rest of the LSS 65 stations) to Phase 10.

E. Impact on Viewers: Consumer Education

WBAL-TV, WJZ-TV, and WMAR-TV are the only three stations in the Baltimore DMA that are assigned to Phase 9. They are co-located and subject to the same circumstances (i.e., the suspension of field operations by their tower services vendor), which means that there will be a unanimous and consistent change in the "rescan date" messaging for all three stations during on-air consumer education PSAs and crawls. Thus, viewer confusion will be minimized, particularly since the on-air consumer messaging campaigns for Phase 9 are not required to commence until April 1 anyway. In other words, viewers in the Baltimore DMA will be hearing the same consumer education message from all stations in the market that were assigned to Phase 9 and are now seeking reassignment to Phase 10.

F. MVPD Notifications

WBAL-TV timely notified MVPDs of its Phase 9 transition plans and will remain in contact with—and distribute re-notifications (with the new Phase 10 date, if this request is granted)

⁵ 47 C.F.R. § 1.3.

⁶ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

⁸ *Northeast Cellular*, 897 F.2d at 1166.

⁹ In the pending phase change request filed March 19, 2020, by WJZ-TV (LMS File No. [0000108425](#)), the narrative justification indicates that "Most of the [LSS 65 stations] have already informally agreed to the delay as well." (emphasis added). WBAL-TV now believes—based on communications subsequent to WJZ-TV's filing—that all LSS 65 stations have concurred in the decision to change phases.

as warranted to—all impacted MVPDs to ensure they have all information needed to implement WBAL-TV's channel change.

G. Conclusion

Finally, the applicant wishes to make clear that it takes no issue whatsoever with the tower services vendor's decision to suspend field operations in light of the rapidly evolving and unpredictable nature of the national and international crisis that is the COVID-19 pandemic. Just as WBAL-TV has implemented certain steps to help mitigate the spread of the disease (including a limited-staffing arrangement to promote social distancing), so too now is Coast to Coast; this is what responsible people and entities must do in these unprecedented times. The applicant merely wishes to change its repack deadline to Phase 10 as provided for in the COVID-19 Repack PN. And, for the reasons set forth above—which demonstrate the phase change (i) represents no less an effective implementation of the overall policy goals of the Incentive Auction and post-auction transition, (ii) will not harm viewers, and (iii) is not the fault of any station involved—the applicant believes a grant of this request is in the public interest.

* * * * *

March 13 Correspondence from Coast to Coast Tower Service, Inc.

From: mfaulkenberry@ctctower.com <mfaulkenberry@ctctower.com>

Sent: Friday, March 13, 2020 4:52 PM

To: Todd Jackson <tjackson@ctctower.com>; jking@ctctower.com

Subject: Coast to Coast Field Service

March 13, 2020

Dear Customers and Vendors,

753 Arrowhead Road
Waxahachie, Texas 75167 <http://ctctower.com> Office: 972-923-9504
Fax: 972-923-9619



Along with the rest of the country we have been watching the developments of the coronavirus in the United States. Due to how rapidly things are changing I have decided to recall our crews and suspend field service for approximately two weeks. I am aware that the pandemic will not be resolved in the next few weeks. However, with the situation changing almost hourly at this time, I feel that pausing field operations for a couple of weeks will allow us to receive reliable information on how we should move forward in our jobs.

Right now there is a lot of emphasis being put on essential vs nonessential travel, employees that can work from are working home, and we should all practice social distancing. Our field service personnel obviously cannot work from home, but that does not mean their safety is less important than someone's safety that can work from home. Additionally, our field service employees travel 40-50,000 miles a year from site to site, which not only increases their potential exposure to the virus, it also increases the potential for our people to spread the virus to others, which is something everyone should also be concerned with. As everyone knows, several of the tower workers in the country rely on hotels for lodging and restaurants for food every day, which makes it difficult to control who you come in contact with.

The field service pause is going to impact our already strained repack schedule. We will be working on the schedule over the coming days and will be reaching out to each customer with schedule developments on their projects.

I apologize in advance for the inconvenience this is going cause some of our customers, but we have to put the safety of our employees' above the repack schedule.

Thanks,

M. Todd Jackson, President
Coast to Coast Tower Service, Inc.
753 Arrowhead Road
Waxahachie, TX 75167

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(214) 251-8050 - Direct Phone

Thank you,

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