



Federal Communications Commission
Washington, D.C. 20554

July 1, 2020

George G. Duncan
PO Box 10 PO BOX 10
Savannah, TN 38372
GeorgeDuncan@yahoo.com
(via electronic mail)

Re: Request for Waiver of Transition
Deadline
W18BL-D, Adamsville, TN
Facility ID No. 68911
LMS File No. 0000116414

Dear Licensee,

On June 23, 2020, George G. Duncan, (the Licensee), the licensee of W18BL-D, Adamsville, Tennessee (W18BL-D or Station), filed a *Request for Waiver of Transition Deadline*¹ requesting to waive the July 13, 2020, post-incentive auction transition deadline² and to modify the Station's July 3, 2020, phase 10 phase completion date.³ We grant the Licensee's request for waiver and a brief extension of the Station's deadline to September 8, 2020, as conditioned herein.

Background. On June 18, 2020, the Commission issued the *WFOX-TV Order*⁴ extending the deadline for WFOX-TV, Jacksonville, Florida (WFOX-TV), to transition to its new channel as a result of the post-incentive auction repack from July 3 to September 8, 2020. Due to construction delays that were beyond the licensee's control, the *WFOX-TV Order* waived⁵ section 73.3700(b)(4)(iii) of the Commission's rules (Rules), which prohibits stations from operating on their pre-auction channel assignments after July 13, 2020.⁶ The Commission also waived section 73.616(d) of the Rules which

¹ George G. Duncan (Licensee), Request for Waiver for station W18BL-D, Adamsville, TN, LMS File No. 0000116414, as amended (June 23, 2020) (W18BL-D Request for Waiver).

² *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 et al., Report and Order, 29 FCC Rcd 6567, 6575, para. 19 (2014) (*Incentive Auction R&O*), *aff'd*, *Nat'l Assoc. of Broadcasters et al. v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) (*NAB v. FCC*) (subsequent citation omitted).

³ 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*).

⁴ *Post-Incentive Auction Transition Request for Waiver of Cox Television Jacksonville LLC, Licensee of Station WFOX-TV, Jacksonville, Florida*, Order, FCC 20-82, paras. 12-14 (rel. Jun. 18, 2020) (*WFOX-TV Order*).

⁵ A waiver of our rules 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. 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). Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008).

⁶ *WFOX-TV Order* at paras. 12-14; 47 CFR § 73.3700(b)(4)(iii).

prohibits stations from causing more than 0.5 percent pairwise interference of a station's population served and allowed WFOX-TV to cause temporary increased pairwise interference of up to two percent, the transition period standard, during the extended period.⁷ The Commission also instructed the Media Bureau to consider future requests seeking such waivers consistent with the considerations included in the *WFOX-TV Order*.⁸

Waiver Request. The Station is currently licensed to operate on channel 18. It was reassigned to channel 32 in the *Closing and Channel Reassignment Public Notice* and is currently assigned to transition phase 10, which has a phase completion date of July 3, 2020. The Licensee states that it was in the process of completing construction of a new tower and had nearly completed the necessary steel work when the COVID-19 pandemic caused construction delays.⁹ Contractors were unable to move necessary equipment from the Florida Keys due to a "stay at home" order. The order has now been lifted and the equipment was expected to arrive on June 26, 2020, and the tower crew is scheduled to begin work on July 5, 2020. All other equipment is on hand and ready for installation.¹⁰

The Licensee states that it has evaluated the alternatives included in the Transition Scheduling Plan for a station to vacate its pre-auction channel and that those options are not available to W18BL-D.¹¹ The Licensee states that the current tower cannot support an interim antenna and there are no licensed stations within 50 km, which precludes channel sharing.¹² The Licensee notes that when the Station vacates channel 18 it will become vacant and therefore analogizes its request to temporarily remain on channel 18 to temporarily using a vacant channel.¹³ The Licensee states that remaining on channel 18 will not cause any outgoing interference above .5% pairwise and that the Station is willing to accept the small amount of incoming interference above the permitted threshold that it will receive from WZDX(TV), Huntsville, Alabama (WZDX).¹⁴

Discussion. The Licensee's request to waive the July 13, 2020, post-incentive auction transition deadline and to modify the Station's July 3, 2020, phase 10 phase completion date due to circumstances beyond the Licensee's control satisfies the requirement for a waiver pursuant to the considerations in the *WFOX-TV Order* and is in the public interest. We find that the Licensee has presented information demonstrating that, during the course of the post-auction transition period, it pursued and scheduled the work necessary to complete the Station's construction project in a timely manner. The Licensee has established that there are no facilities available to the Station, or that could reasonably be made available to the Station pursuant to the flexibility available under the Transition Scheduling Plan, that would permit

⁷ See *WFOX-TV Order* at paras. 12-14; 47 CFR § 73.616(d); *Incentive Auction Task Force and Media Bureau Adopt Post-Incentive Auction Transition Scheduling Plan*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 32 FCC Rcd 890, 897, para. 16 (IATF/MB 2017) (*Transition Scheduling Adoption Public Notice*).

⁸ See *WFOX-TV Order* at para. 16.

⁹ W18BL-D Request for Waiver at 2.

¹⁰ *Id.*

¹¹ *Id.* at 3.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 2, 5-9. The Station is predicted to receive approximately 1.77% in temporary pairwise inference from WZDX, to which it consents and is below the two percent pairwise interference threshold that has been permitted during the post-auction transition period. *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16; see also *WFOX-TV Order* at para. 13.

it to vacate its pre-auction channel without going dark.¹⁵ We also view the request favorably because it will not delay or disrupt other transitioning stations. Staff has also confirmed that modifying the Station's transition deadline will not cause any interference to other stations and W18BL-D has confirmed that it is willing to accept the small amount of temporary pairwise interference it will receive from WZDX. Because the Station's pre-auction channel is located in the new TV Band, grant of the Licensee's request will not delay any wireless licensee that purchased 600 MHz wireless licenses in the forward auction from accessing its spectrum when promised. In order to minimize potential viewer confusion caused by the short delay in the Station's transition, the Licensee must continue to provide consumer notifications, as required by section 73.3700(c)(3), to the Station's viewers until the Station ceases operation on its pre-auction channel.

Accordingly, we **GRANT** the Licensee's *Request for Waiver of Transition Deadline* and modify the phase transition deadline W18BL-D, Adamsville, Tennessee, **from July 3, 2020 to September 8, 2020**, subject to all the commitments made in its waiver request, including interference agreements, and compliance with all Rules applicable to transitioning stations.¹⁶ Testing on the Station's post-auction channel **may begin immediately**. The Station is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on September 8, 2020**.¹⁷ The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.¹⁸

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc (via electronic mail):
Susan Hansen (STCL@comcast.net)
Consultant to Licensee

¹⁵ See *id.* at 915-17, paras. 54-59 (providing alternative means for a station to meet its phase completion date including moving to interim facilities on a station's post-auction channel, operating at reduced power on a vacant channel, and temporary channel sharing); 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, 872-73, para. 46-47 (IATF & MB 2017).

¹⁶ See generally 47 CFR § 73.3700 and *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 33 FCC Rcd 8240, 8244-45, para. 14 (IATF & MB 2018).

¹⁷ Each transition phase has a testing period during which a station in that phase may begin testing equipment on its new channel and a phase completion date on which 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.

¹⁸ 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). 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)(i) citing 74 CFR § 73.3598(b). 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.