



Federal Communications Commission
Washington, D.C. 20554

August 16, 2012

Weigel Broadcasting Company
c/o Mace Rosenstein
Covington & Burlington
1201 Pennsylvania Avenue, NW
Washington, DC 2001-2401

Re: WMYS-LP, South Bend, IN
Facility ID No. 71426
WBND-LD, South Bend, IN
Facility ID No. 168647
Request for Waivers of ATSC A/65C

Dear Counsel:

This is in reference to Weigel Broadcasting Company and WBND-TV Limited Partnership's (collectively "Weigel"¹), request for waivers of ATSC A/65C ("ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable, Revision C With Amendment No. 1 dated May 9, 2006") ("PSIP Standard").² Weigel Broadcasting Company is the licensee of the WMYS-LP, South Bend, IN, which will be associated with major channel 34³ once it completes its flash cut to digital RF channel 34.⁴ WBND-TV Limited Partnership, the licensee of WBND-LD, South Bend, IN is currently operating on major channel 57.⁵ Weigel requests that stations WMYS-LP and WBND-LP exchange major channel numbers. We grant Weigel's waiver requests.

The PSIP Standard explains, "For broadcasters with existing NTSC licenses, the major channel number for the existing NTSC channels, as well as the digital virtual channels, controlled by the broadcaster, shall be set to the current NTSC RF channel number."⁶ Here, pursuant to the PSIP Standard, WMYS-LP will operate on major channel 34, as its NTSC license is for operation on RF channel 34.⁷ Likewise, WBND-LD is operating on major channel number

¹ Weigel Broadcasting Company and WBND-TV Limited Partnership have common ownership interests and are under common control. Therefore, for this proceeding the two entities will collectively be referred to as "Weigel." Weigel Petition for Waiver of 47 C.F.R. §73.682(d) at n.1.

² Low power televisions are not required to implement the PSIP Standard, but may do so should they choose to. *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19411-13 (2004).

³ PSIP Standard, Annex B at 1.1.

⁴ WMYS has been granted a construction permit to "flash cut" its analog facilities to digital operation on channel 34. FCC File No. BDFCDTL-20120223ADZ.

⁵ PSIP Standard, Annex B at 1.1.

⁶ *Id.*

⁷ *Id.* WMYS broadcasts on NTSC RF channel 34, but has been granted a construction permit to "flash cut" its analog facilities to digital operation on RF channel 34. FCC File No. BDFCDTL-20120223ADZ.

57, as its NTSC license was for operation on RF channel 57.⁸ In the *Second Periodic Review*, however, the Commission states, “To the extent broadcasters have a unique situation that is not provided for in PSIP, the Commission may grant exceptions on a case-by-case basis.”⁹

Weigel asserts that it has a “unique situation,” as contemplated by the *Second Periodic Review*,¹⁰ which warrants waiver of the PSIP Standard. Weigel explains that WBND-LD is the ABC Network affiliate serving South Bend, while WMYS-LP is the MyNetwork affiliate serving South Bend. Weigel hopes to activate WBND-LD’s approved displacement facility on digital RF channel 39 and WMYS-LP’s approved flash cut facility on digital RF channel 34 on or about August 17, 2012. Weigel states that it has “determined that digital RF channel 34 will provide superior signal strength and coverage over the South Bend market as compared to digital RF channel 39.” Therefore, in order to enhance ABC network service to South Bend, Weigel explains that it “intends to swap the content broadcast on RF channel 34 [(MyNetwork)] and RF channel 39 [(ABC)].” Weigel states that “Grant of the instant waiver request would allow the proposed programming swap to be completely transparent to viewers on both stations, because they will be able to continue to tune to the virtual channel number already associated with the underlying content.”¹¹

Based on the record before us, we find that Weigel presents a “unique situation” that is not provided for in the PSIP Standard. The *Second Periodic Review* provides that waiver of the PSIP Standard is to be evaluated on a case-by-case basis for those unique situations that are not accounted for by the PSIP Standard.¹² The instant request is a unique circumstance as it will facilitate improved ABC network programming to the South Bend Market by aiding to avoid viewer confusion when WMYS-LP and WBND-LD swap programming. One of the reasons that the Commission instituted the PSIP standard is to avoid viewer confusion.¹³ Furthermore, based upon Weigel’s showing¹⁴ and the Commission’s own studies, WMYS-LP’s operation on major channel 57 and WBND-LP’s operation on major channel 34 is technically feasible as the stations’ protected service contours will not overlap with the protected service contours of other stations on those major channel numbers.¹⁵ Therefore, Weigel’s request for waivers of ATSC

⁸ *Id.* WBND-LD has been granted a construction permit to modify its facilities to operate on digital RF channel 39 in lieu of digital RF channel 49. FCC File No. BDISDTL-20120224AAY.

⁹ *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, FCC 04-192, 19 FCC Rcd 18279, 18346 (2004) (“*Second Periodic Review*”).

¹⁰ *Id.* at 18346.

¹¹ Weigel Petition for Waiver of 47 C.F.R. §73.682(d) at 2.

¹² *Second Periodic Review* at 18344.

¹³ *Second Periodic Review* at 18443-44.

¹⁴ Weigel explains that “Because the [s]tations are under common control the proposed swap would ... [not] create a conflict with the virtual channel number associated with any other station in the South Bend market.” Weigel Petition for Waiver of 47 C.F.R. §73.682(d) at 3.

¹⁵ See Letter from Barbara A Kreisman, Chief, Video Division to Associated Christian Television System, Inc., c/o James A. Koerner, Esq., 25 FCC Rcd. 9237, 9238 (Vid. Div. 2010) (WACX(TV)’s use of major channel 40 interfered with WWSB(TV)’s use of major channel 40 as the two stations contours overlapped and consequently caused WWSB(TV) viewers’ receivers to lock onto station WACX(TV) signal incorrectly.).

A/65C is warranted as it presents a “unique situation” not accounted for by the PSIP Standard and the waivers are technically feasible.

Accordingly, IT IS ORDERED That, Weigel Broadcasting Company and WBND-TV Limited Partnership’s requests for waivers of ATSC A/65C to operate WMYS-LP on major channel 57 in lieu of major channel 34 and to operate WBND-LD on major channel 34 in lieu of major channel 57 IS GRANTED.

Sincerely,

Hossein Hashemzadeh
Deputy Chief, Video Division
Media Bureau