



Federal Communications Commission  
Washington, D.C. 20554

January 16, 2019

WGBH Educational Foundation  
Eric Brass  
1 Guest Street  
Boston, MA 02135

NBC Telemundo License LLC  
Margaret L. Tobey  
300 New Jersey Avenue, Suite 700  
Washington, DC 20001

Re: Request for Modification and  
Waiver of Phase Assignment  
WGBX-TV, Boston, MA  
Facility ID No. 72098  
LMS File No. 0000063730

Dear Licensee,

On November 26, 2018, WGBH Educational Foundation (WEF), the licensee of WGBX-TV Boston, Massachusetts (WGBX-TV 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 4.<sup>1</sup> For the reasons below, we grant WEF's request for waiver and modify the Station's phase assignment to Phase 4, 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

---

<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*, Public Notice, 32 FCC Rcd 2786 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*). See LMS File No. 0000063730, WGBX/WYCN Early Transition Exhibit (Waiver Request). We note that WGBX shares its channel with WYCN-CD, Nashua, NH, which is licensed to NBC Telemundo License LLC. WEF represents that the waiver request is filed on behalf of both stations. For purposes of simplicity, in this letter we will only reference WGBX-TV and WEF, but our action also applies to WYCN-CD.

<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, 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.

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 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>

WGBX-TV is currently licensed to operate on channel 43. It was reassigned to channel 32 in the *Closing and Channel Reassignment Public Notice* and assigned to transition Phase 8, which has a testing period start date of January 18, 2020, and a phase completion date of March 13, 2020. WGBX-TV is located in the Boston, Massachusetts (Manchester, New Hampshire), Designated Market Area (Boston DMA). A total of 12 stations, including WGBX-TV, were repacked in the Boston DMA, with eight being assigned to Phase 4 and four being assigned to Phase 8.<sup>7</sup> WEF states that phase change is necessary because the interim antenna that WGBX-TV had planned to use as part of its transition plan was inadvertently not optimized to operate on WGBX-TV's pre-auction channel as it should have been.<sup>8</sup> If this antenna were to be used by WGBX-TV to broadcast on channel 43 it is anticipated that the Station would suffer "substantial loss in the station's over-the-air signal during the transition period."<sup>9</sup> WEF has been informed by American Tower Corporation, who is managing the Station's transition, that "re-tuning or remanufacturing the antenna at this stage is likely to cause substantial delays and require an allocation of significant resources."<sup>10</sup> WEF states that if WGBX-TV can instead transition to its post-auction channel (channel 32) in transition Phase 4 it can operate within the interim antenna's designed parameters.<sup>11</sup> As a result, WEF requests permission to move WGBX-TV from Phase 8 to Phase 4, which has a testing period start date of June 22, 2019, and phase completion date of August 2, 2019.

WEF has provided an engineering analysis finding that the Station's change in phase to Phase 4 will result in it joining Linked-Station Set 36 (LSS 36) and become directly linked with WPX-TV, Boston, MA (WPX) and WPXG-TV, Concord, NH (WPXG).<sup>12</sup> WEF's request therefore includes a copy of an agreement with ION to coordinate the transition of the three stations in order to prevent

---

<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*, 32 FCC Rcd 858, 881-82, para 73 (MB 2017).

<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, MB Docket No. 16-306 and GN Docket No. 12-268, DA 18-884, para. 14, 6-7 (IATF & MB, rel. Aug. 27, 2018) (*Transition Reminder Public Notice*).

<sup>7</sup> Stations WHDH(TV), Boston, MA (WHDH) and WSBK-TV, Boston, MA, both of which are assigned to Phase 8 have requested to be moved to Phase 7. See LMS File Nos. 0000055148 and 0000064276. Both requests are currently pending.

<sup>8</sup> Waiver Request at 2-3.

<sup>9</sup> *Id.* at 3 and 6.

<sup>10</sup> *Id.* at 3 and 5.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.* at 4-5 and Engineering Statement.

interference.<sup>13</sup> So long as all three stations coordinate their transitions, grant of the requested phase change will not result in increased pairwise interference greater than two percent during the transition period.<sup>14</sup> WEF states that because there are already stations in the Boston DMA that are assigned to Phase 4, WGBX-TV's requested phase change would not change the total number of rescan periods (two) that are currently scheduled to occur in the Boston DMA.<sup>15</sup> WEF also notes that permitting WGBX-TV to transition during Phase 4 will also allow WEF to coordinate its transition messaging with commonly owned WGBH-TV, which is assigned to transition during Phase 4 and located in the Boston DMA.<sup>16</sup>

*Discussion.* Upon review of the facts and circumstances presented, we find that WEF's request to modify the phase assignment for WGBX-TV to transition to its post-auction channels in Phase 4 satisfies the requirement for a waiver and is in the public interest. We agree that the change to the Station's transition phase should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. Although staff has confirmed that the phase change will cause WGBX-TV to join LSS 36 and become directly linked with WBPX and WPXG, we find that the written agreement between WGBX-TV, WPXG, and WBPX to coordinate their transitions will prevent new increased pairwise interference above the two percent permitted during the post-auction transition period.<sup>17</sup> We also find that permitting WGBX-TV to transition to its post-auction channel during Phase 4 will prevent significant delays to WGBX-TV's transition and the impact on other transitioning stations access to resources that could result if the Station were required to replace the improperly optimized interim antenna that it received.<sup>18</sup> Furthermore, the phase change will not cause an increase in the current number of rescan periods since Phase 4 already contains stations from the Boston DMA. Finally, allowing WGBX-TV to move to Phase 4 will allow WEF to the transition of WGBX-TV and its commonly owned Boston station, WGBH-TV, which is also assigned to Phase 4. In light of the facts and circumstances discussed above, we find that the benefits of modifying the Station's transition phase are not offset by any viewer burden caused by the change in WGBX-TV's transition schedule.

We caution WEF that any additional expenses incurred as a result of the grant of the Station'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

---

<sup>13</sup> *Id.* at 5 and Statements from Stations in Linked-Station Set 36. WBPX and WPXG are licensed to ION Media Boston License, LLC. WBPX and WPXG would both be "upstream" of WGBX-TV. Therefore, WGBX-TV must transition at the same time as or after those stations. As noted in its waiver request, as result of this direct link WGBX-TV is also indirectly linked with WCVB(TV), Boston, MA (WCVB); and WFXT(TV), Boston, MA (WFXT), which are downstream stations of WBPX and WPXG.

<sup>14</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>15</sup> See *id.* at 898-99, paras. 20-21 (establishing a two rescan periods per DMA limitation when assigning stations to transition phases). As noted above, stations WHDH and WSBK have both applied to modify their phase assignments from Phase 8 to Phase 7. See *supra* note 7. Grant of those requests would result in the addition of a third rescan period in the Boston DMA. Those requests will be addressed in a separate decision and do not impact whether it is appropriate to permit WGBX-TV to be moved to Phase 4, which already has stations in the Boston DMA assigned to it. As a result, WGBX-TV's phase change would not result in the creation of an additional rescan period for the Boston DMA.

<sup>16</sup> Waiver Request at 3-4.

<sup>17</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>18</sup> Waiver Request at 2-3.

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** WEF's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WGBX-TV **from Phase 8 to Phase 4**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.<sup>19</sup> Testing on the Station's post-auction channel **may not begin until 12:01 am local time on June 22, 2019**, and WGBX-TV is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on August 2, 2019**.<sup>20</sup> The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.<sup>21</sup> Our action taken herein also applies to WGBX-TV's channel sharing partner WYCN-CD.<sup>22</sup>

Sincerely,



Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

Cc: (via electronic mail):  
Ari Meltzer, Esq.  
Margaret L. Tobey, Esq.

---

<sup>19</sup> See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*.

<sup>20</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 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>21</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.

<sup>22</sup> See supra note 1.