



Federal Communications Commission  
Washington, D.C. 20554

July 15, 2019

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

Re: Request for Modification and  
Waiver of Phase Assignment  
KSTS(TV), San Jose, CA  
Facility ID No. 64987  
LMS File No. 0000069111

Dear Licensee,

On April 2, 2019, NBC Telemundo License LLC (NBC), the licensee of KSTS(TV), San Jose, California (KSTS 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 9.<sup>1</sup> For the reasons below, we grant NBC's request for waiver and modify the Station's phase assignment to Phase 9, 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 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

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<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. 0000069111, Request to Modify Repack Transition Schedule (Waiver Request).

<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, Public Notice, 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.

<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*, 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.<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>

KSTS is currently licensed to operate on channel 49. It was reassigned to channel 19 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 phase completion date of March 13, 2020. KSTS is located in the San Francisco-Oakland-San Jose, California, Designated Market Area (San Francisco DMA). A total of 14 stations, including KSTS, were repacked in the San Francisco DMA, with six stations being assigned to transition Phase 8 and nine stations to Phase 9. NBC requests permission to move KSTS from Phase 8 to Phase 9, which has a testing period start date of March 14, 2019, and a phase completion date of May 1, 2020.

According to NBC, the Station is co-located on the “Mount Allison tower” with repacked station KDTV-DT, Santa Rosa, CA (KDTV-DT), which was assigned to Phase 9.<sup>7</sup> NBC has been closely coordinating the work down on the tower with Univision, the licensee of KDTV-DT. NBC asserts that having both stations transition in the same phase will allow the stations to utilize resources more efficiently by, among other things, reducing the number of times a tower crew will need to visit and work on the tower.<sup>8</sup> Because KDTV-DT is an “upstream” linked-station to KMAX-TV, Sacramento, CA, KSTS must move back to Phase 9 in order for KSTS and KDTV-DT to transition in the same phase.<sup>9</sup> Although the requested phase change will not increase the number of rescan periods in the San Francisco DMA, in order to mitigate any potential viewer disruption caused by the change in phase, NBC has committed to increase viewer education and outreach above and beyond what is required by the Commission’s rules through the use of the Stations’ digital and social media assets, local newscasts, press release, dedicated viewer rescan “hotline” and e-mail address, and double the amount of required on-air announcements.<sup>10</sup>

*Discussion.* Upon review of the facts and circumstances presented, we find that NBC’s request to modify the phase assignment for KSTS to transition to its post-auction channel in Phase 9 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 any negative impact on other stations or viewers. The Station is currently operating in the 600 MHz band and staff has confirmed grant of this phase change will not create any new linked-station sets or result in increased pairwise interference greater than two percent during the transition period.<sup>11</sup> We also find that the total number of rescan periods in the San Francisco DMA will not change.<sup>12</sup> Nevertheless, NBC has committed to

<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*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 33 FCC Rcd 8240, 8245, para. 14 (IATF & MB 2018) (*Transition Reminder Public Notice*).

<sup>7</sup> Waiver Request at 1.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 2

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* 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>12</sup> See *id.* at 898-99, paras. 20-21 (establishing a limit of two rescan periods per DMA for purposes of assigning stations to transition phases).

undertake additional consumer outreach efforts beyond what is required by the Commission's rules in order to ensure that viewers will be well-informed about the change in the Station's phase. As a result, we find the tower crew resource savings and additional consumer outreach efforts outweighs any viewer burden caused by a change in the station's phase or a short delay in access by 600 MHz wireless licensees to the Station's pre-auction channel.

We caution NBC 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.<sup>13</sup> 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 changes in its transition plan caused by the voluntary phase change.

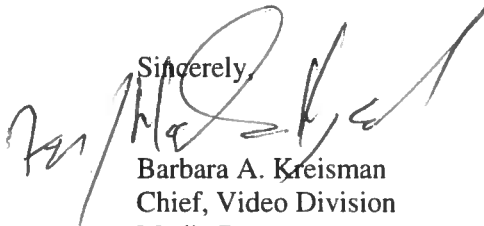
Accordingly, we **GRANT** NBC's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for KSTS **from Phase 8 to Phase 9**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.<sup>14</sup> Testing on the Station's post-auction channel **may not begin until 12:01 am local time on March 14, 2019**, and KSTS is required to cease operating on its pre-auction channel **no**

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<sup>13</sup> The Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) for costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other." *Media Bureau Finalizes Reimbursement Form for Submission to OMB and Adopts Catalog of Expenses*, GN Docket No. 12-268, Public Notice, 30 FCC Rcd 11701, 11701-02 (MB 2015). 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.").

<sup>14</sup> See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*.

later than 11:59 pm local time on May 1, 2020.<sup>15</sup> The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.<sup>16</sup>

Sincerely,  
  
Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>15</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 at 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>16</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.