



Federal Communications Commission
Washington, D.C. 20554

April 12, 2019

KTBU Licensing, Inc.
Spanish Broadcasting System, Inc.
7007 NW 77th Avenue
Miami, FL 33166

Re: Request for Modification and
Waiver of Phase Assignment
KTBU(TV), Conroe, TX
Facility ID No. 28324
LMS File No. 0000071517

Dear Licensee,

On April 11, 2019, KTBU Licensing, Inc. (KTBU Licensing), the licensee of KTBU(TV), Conroe, Texas (KTBU 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 2 to Phase 3.¹ For the reasons below, we grant KTBU Licensing's request for waiver and modify the Station's phase assignment to Phase 3, as conditioned herein.

Background. Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waiver and modification of their phase assignment.² 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.³ 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.⁴ The Bureau determined that it would view favorably requests that are compliant with the Commission's rules and

¹ 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. 0000071517 (Waiver Request).

² 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*).

³ 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.

⁴ 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).

have little or no impact on the transition schedule.⁵ Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.⁶

KTBU is currently licensed to operate on channel 42. The Station was reassigned to channel 33 in the *Closing and Channel Reassignment Public Notice* and assigned to transition Phase 2, which has a phase testing period start date of December 1, 2018, and a phase completion date of April 12, 2019. The Station is located in the Houston, Texas, Designated Market Area (Houston DMA). A total of eight stations, including KTBU, were repacked in the Houston DMA. All of the stations were assigned to Phase 2. Although the Station's new antenna has been installed, installation of new transmission line has been delayed due to severe weather in the Houston area that has limited the tower crew's ability to access the tower.⁷ KTBU Licensing estimates that it needs 14 working days to complete installation of the transmission line.⁸ As a result, KTBU Licensing requests that KTBU be moved from Phase 2 to Phase 3, which has a testing period start date of April 13, 2019, and a phase completion date of June 21, 2019.

KTBU Licensing states that 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.⁹ KTBU Licensing has also notified T-Mobile, the 600 MHz licensee of its current pre-auction channel, about the circumstances, and KTBU Licensing represents that T-Mobile does not object to the delay.¹⁰ Weather permitting, KTBU Licensing anticipates that the Station will transition to its post-auction channel shortly after the Phase 3 testing period start date.

Discussion. Upon review of the facts and circumstances presented, we find that KTBU Licensing's request to modify the phase assignment for KTBU to transition to its post-auction channel in Phase 3 satisfies the requirement for a waiver and is in the public interest. We find 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. Staff has confirmed that the phase change will not create any new linked station sets or direct dependencies. Although the total number of rescan periods in the Houston DMA will increase from one to two, this is within the two rescan periods per DMA limitation used in the tool adopted by the Bureau in the *Transition Scheduling Adoption Public Notice* to assign stations to transition phases.¹¹ Nevertheless, because of the change in the Station's transition schedule and the fact that consumers in the Houston DMA will be subject to an additional rescan period, we require that KTBU Licensing air at least twice the number of consumer education notifications required by the Rules for the time period prior to KTBU Licensing's transition to its new channel. Based on the

⁵ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-13, para. 49 and n.163.

⁶ *Id.*; see *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, 33 FCC Rcd 8240, 8244-45, para. 14 (IATF & MB 2018) (*Transition Reminder Public Notice*).

⁷ Waiver Request at 1. Four other repacked stations in the Houston DMA, KTMD, KUBE-TV, KZJL, and KYAZ, are all on the same antenna farm as KTBU and have also been granted phase changes to Phase 3 because of delays related to installation of their transmission line. KTBU shares a tower and antenna with KYAZ and KZJL.

⁸ *Id.*

⁹ *Id.* at 2. 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).

¹⁰ Waiver Request at 2.

¹¹ See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21 (establishing a two rescan periods per DMA limitation when assigning stations to transition phases).

content of KTBU Licensing's phase change request, we believe that the Station has diligently pursued vacating its pre-auction channel, but that delays installing its new transmission line due to severe weather have rendered the Station unable to meet its phase completion date. In the absence of a phase change, the station would have to go dark, and over-the-air viewers would lose access to KTBU. As a result, we find the facts and circumstances discussed above outweigh any viewer burden caused by an additional rescan period in the Houston DMA or a short delay in access by wireless licensees to the Station's pre-auction channel.

We remind KTBU Licensing that pursuant to the Spectrum Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other." Additional expenses incurred such as expenses resulting from changes in a Station's transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

Accordingly, we **GRANT** KTBU Licensing's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for KTBU **from Phase 2 to Phase 3**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.¹² In particular, **KTBU IS REQUIRED** to air, at minimum, double the amount of consumer education notifications required by section 73.3700(c)(3).¹³ Testing on the Station's post-auction channel **may not begin until 12:01 am local time on April 13, 2019**, and KTBU is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on June 21, 2019**.¹⁴ The

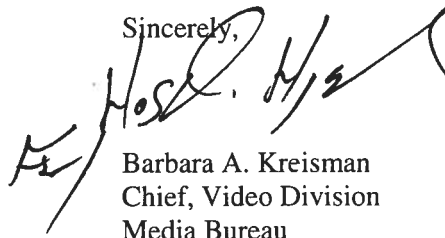
¹² See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*, 33 FCC Rcd 8240.

¹³ 47 CFR § 73.3700(c)(3) (repacked stations must air sixty (60) seconds per day of on-air crawls or public service announcements (PSAs) beginning 30 days prior to discontinuing operations on their pre-auction channel)

¹⁴ 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.

Station's construction permit expiration date will also be modified to correspond to its new phase completion date.¹⁵

Sincerely,

A handwritten signature in black ink, appearing to read 'Barbara A. Kreisman', is written over the typed name and title.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):
Nancy A. Ory, Esq.

¹⁵ *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.