



Federal Communications Commission
Washington, D.C. 20554

July 15, 2019

WGBO License Partnership, G.P.
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Los Angeles, CA 90045

ION Media Chicago License, Inc.
Bianca Frye
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Channel 23 Limited Partnership
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Local Media TV Chicago, LLC
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Re: Request for Modification and
Waiver of Phase Assignment

WGBO-DT, Joliet, IL
Facility ID No. 12498
LMS File No. 0000073040

WCPX-TV, Chicago, IL
Facility ID No. 10981
LMS File No. 0000072735

WWME-CD, Chicago, IL
Facility ID No. 71425
LMS File No. 0000073139

W40CN-D, Chicago, IL
Facility ID No. 71111
LMS File No. 0000072712

Dear Licensees,

WGBO License Partnership, G.P. (Univision), the licensee of WGBO-DT, Joliet, Illinois (WGBO-DT); ION Media Chicago License, Inc. (ION), the licensee of WCPX-TV, Chicago, Illinois (WCPX-TV); Channel 23 Limited Partnership (Channel 23), the licensee of WWME-CD, Chicago, Illinois (WWME-CD); and Local Media TV Chicago, LLC (Local Media), the licensee of W40CN-D,

Chicago, Illinois (W40CN-D) (collectively, Licensees and Stations), each filed a *Request for Modification and Waiver of Phase Assignment* requesting to modify the post-incentive auction transition phase assigned to each station in the *Closing and Channel Reassignment Public Notice* from Phase 8 to Phase 6.¹ For the reasons below, we grant the requests for waiver and modify the above captioned Stations' phase assignments to Phase 6, 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 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

In the *Closing and Channel Reassignment Public Notice* the Stations were each repacked to new channels⁷ 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. The Stations are located in the Chicago, Illinois, Designated Market Area (Chicago DMA). A total of 14 stations were repacked in the Chicago DMA, with 10 stations currently being assigned to Phase 6 and four to Phase 8. The Licensees request permission to move the Stations from Phase 8 to Phase 6, which has a testing period start date of September 7, 2019, and a phase completion date of October 18, 2019. The Licensees assert that modifying the Stations transition phase to Phase 6 will promote the deployment of new wireless broadband services by enabling T-Mobile, a winning 600 MHz band licensee, to deploy its new wireless broadband service in and around

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*).

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).

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*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 33 FCC Rcd 8240, 8245, para. 14 (IATF & MB, rel. Aug. 27, 2018) (*Transition Reminder Public Notice*).

⁷ The Stations were repacked as follows: WGB0-DT from channel 38 to channel 35; WCPX-TV from channel 43 to channel 34; WWME-CD from channel 39 to channel 20; and W40CN-D from channel 40 to channel 27.

Chicago up to six months earlier than it would be able to do under the current transition schedule.⁸ The Licensees have consulted with, and included letters from, their equipment manufacturers and vendors, including Vertical Bridge, who is managing the transitions on Willis Tower for WCPX-TV, WGBO-DT and WWME-CD, verifying that this phase change will not negatively impact the ability of other transitioning stations to access resources. WCPX-TV and WGBO-DT state they will both meet the phase completion deadline using an auxiliary or interim facility. WWME-CD and W40CN-D anticipate meeting the deadline using their permanent post-auction facilities.

The Licensees have also provided an engineering analysis demonstrating that the Stations' early transition will add them to linked-station set 45 (LSS 45) and thereby create direct dependencies with other stations in LSS 45.⁹ In order to prevent an increase in temporary pairwise interference beyond the two percent permitted during the transition,¹⁰ the Stations must coordinate their transition with the newly linked-stations. The Licensees each have submitted letters from the stations in the newly linked-station set agreeing to coordinate the transitions.

The Licensees also assert that modifying the transition phase will allow all stations in the Chicago DMA to transition in Phase 6, reducing the number of rescan periods in the DMA. Nevertheless, to mitigate any viewer disruption caused by the phase change, the Licensees have each agreed 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.

Discussion. Upon review of the facts and circumstances presented, we find that the Licensees' requests to modify the phase assignment for the Stations to transition to their post-auction channel in Phase 6 satisfies the requirement for a waiver and is in the public interest. We agree that the change to the Stations' 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 add the Stations to LSS 45 and thereby create new direct dependencies with stations already in LSS 45, we find that the written agreements between all impacted stations to coordinate their efforts will prevent any new temporary increased pairwise interference above the two percent permitted during the post-auction transition period.¹¹ The Licensees have also received letters of support from their vendors confirming that the phase change will not impact other transitioning stations' access to resources. We also find that the phase change will benefit viewers by reducing the total number of rescan periods in the Chicago DMA from two to one.¹² Furthermore, to mitigate any potential viewer confusion caused by the Stations'

⁸ The waiver requests include a study conducted by T-Mobile verifying that as a result of the Stations' early transition, T-Mobile will be able to commence 600 MHz operations earlier than under the existing transition schedule. Pursuant to sections 0.457 and 0.459 of the Rules, T-Mobile requests confidential treatment of the information pertaining to the precise timing and location of its deployment. T-Mobile contends such information is not routinely made publicly available and should be withheld from public inspection as trade secrets, or privileged or confidential commercial, financial or technical data. See 47 CFR §§ 0.457(d)(2) and 0.459.

⁹ The Stations become directly linked as follows: WGBO-DT becomes directly linked with WEDE-CD, WISN-TV, WNIT, and WLPD-CD; WCPX-TV becomes directly linked with WEDE-CD and WISN-TV; WWME-CD becomes directly linked with WPVN-CD; and W40CN-D becomes directly linked with WCIU-TV.

¹⁰ 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).

¹¹ *Id.*

¹² See *id.* at 898-99, paras. 20-21 (establishing a two rescan periods per DMA limitation when assigning stations to transition phases).

change in transition phase, the Licensees have agreed to increased consumer education and outreach beyond what is required by the Commission's rules.¹³ As a result, we find the benefits of the phase change discussed above outweigh any viewer burden caused by a change in the Station's transition schedule.

We caution the Licensees that any additional expenses incurred as a result of the grant of the Stations' voluntary phase change may not be reimbursable from the TV Broadcasters Relocation Fund.¹⁴ 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** the Licensees' *Requests for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for the above captioned Stations **from Phase 8 to Phase 6**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.¹⁵ Testing on the Stations' post-auction channels **may not begin until 12:01 am local time on September 7, 2019**, and the Stations are required to cease operating on their pre-auction channels **no later than 11:59 pm local time on October 18, 2019**.¹⁶ The Stations'

¹³ See 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).

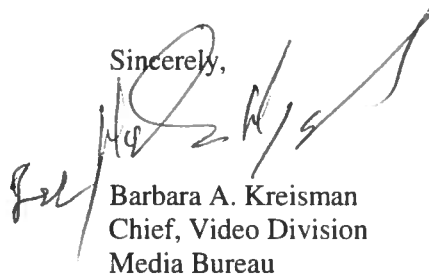
¹⁴ The Stations are eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) for costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other." *Media Bureau Finalizes Reimbursement Form for Submission to OMB and Adopts Catalog 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.").

¹⁵ See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*.

¹⁶ Each transition phase has a designated testing period in 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.

construction permit expiration dates will also be modified to correspond to their new phase completion date.¹⁷

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):
Matthew S. DelNero, Esq.
Terri Santisi
Joan Stewart, Esq.

¹⁷ *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 cease operation on its pre-auction channel by its assigned phase completion date.