



Federal Communications Commission
Washington, D.C. 20554

February 22, 2019

Maryland Public Broadcasting Commission
Larry D. Ugner, President & CEO
11767 Owings Mills Blvd.
Owings Mills, MD 21117

Re: Request for Modification and
Waiver of Phase Assignment
WMPT, Annapolis, MD
Facility ID No. 65942
LMS File No. 0000063170

Dear Licensee,

On October 30, 2018, Maryland Public Broadcasting Commission (MPBC), the licensee of WMPT(TV), Annapolis, Maryland (WMPT 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 4.¹ For the reasons below, we grant MPBC'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.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. 0000063170 (as amended Jan. 28, 2019), Amended Waiver (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

WMPT is currently licensed to operate on channel 42. It was reassigned to channel 21 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. For purposes of establishing the transition schedule, WMPT was considered to be located in the Baltimore, Maryland DMA (Baltimore DMA). However, in addition to serving areas in the Baltimore DMA (which is also served by WMPB, Baltimore, MD), WMPT is the primary source of MPBC PBS programming for areas of Maryland located in the Washington D.C. Designated Market Area (DC DMA). A total of eight stations were repacked in the Washington D.C. DMA, with six stations being assigned to Phase 4, two to Phase 9. MPBC requests permission to move WMPT from Phase 8 to Phase 4, which has a testing period start date of June 22, 2019, and a phase completion date of August 2, 2019. MPT asserts that disruption to viewers in the DC DMA will be minimized if a waiver is granted since the majority of stations in the Washington, DC area are transitioning in phase 4. MPBC also asserts that modifying WMPT's transition phase to Phase 4 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 Washington, D.C., up to seven months earlier than it would be able to do under the current transition schedule.⁷ MPBC anticipates completing the transition using its final, permanent transmission facilities as provided in its post-auction construction permit. It does not anticipate needing to utilize auxiliary facilities past the phase completion date for Phase 4.⁸ MPBC has consulted with, and included letters from, its equipment manufacturers and vendors, including their tower crews, verifying that this phase change will not negatively impact the ability of other transitioning stations to access to resources.⁹

MPBC has also provided an engineering analysis demonstrating that the Station's early transition will add WMPT to an existing linked-station set, LSS 36, and have a direct dependency with both WBOC-TV, Salisbury, MD (WBOC-TV), and WHP-TV, Harrisburg, PA (WHP-TV).¹⁰ In order to prevent an increase in temporary pairwise interference beyond two percent, WMPT must transition to its post-auction channel at the same time as or after WBOC-TV and WHP-TV.¹¹ MPBC includes with its waiver request letters from both WBOC-TV and WHP-TV agreeing to coordinate their transition

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, 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*).

⁷ Waiver Request at 2. Included with both waiver requests is also a study conducted by T-Mobile verifying that as a result of the Station's early transition, T-Mobile will be able to commence 600 MHz operations earlier than under the existing transition schedule. See Waiver Request, T-Mobile Deployment Letter-Redacted. 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.

⁸ Waiver Request at 5.

⁹ *Id.* at 3 and Letters from Stainless, Comark Communications, and Dielectric, LLC.

¹⁰ WBOC-TV is licensed to WBOC, Inc. and WHP-TV is licensed to WHP Licensee, LLC, a subsidiary of Sinclair Broadcast Group.

¹¹ *Id.* at 2-3 and Engineering Statement.

schedules to avoid such interference.¹² Following grant of the instant waiver request, the total number of rescan periods for the DC DMA would remain at two, which is consistent with 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.¹³ In order to ensure that viewers are well-informed about the Station's plans to transition ahead of its currently scheduled phase assignment, MPBC has agreed to provide additional consumer outreach beyond what is required by the Commission's rules, including through the use of digital and social media, newscast, and press releases sent to other location stations and print media.¹⁴

Discussion. Upon review of the facts and circumstances presented, we find that MPBC's request to modify the phase assignment for WMPT to transition to its post-auction channel 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 any negative impact on other stations or viewers. Although staff has confirmed that the phase change will add WMPT to LSS 4 and create a direct dependency with WHP-TV and WBOC-TV, we find the written agreements between the three stations to coordinate their efforts will prevent any new temporary increased pairwise interference above the two percent permitted during the post-auction transition period.¹⁵ MPBC has received letters of support from its vendors confirming that the phase change will not impact other transitioning stations' access to resources. We also find that the total number of rescan periods in the DC DMA will remain at two.¹⁶ In order to ensure all viewers are aware of the Station's change in phase assignment, MPBC has committed to put in place viewer outreach programs beyond those required by the Commission rules. As a result, we find that the benefit of early deployment in the 600 MHz band, minimizing disruption to WMPT viewers in the DC DMA, statements of support from the Station's vendors, agreement to coordinate with WHP-TV and WBOC-TV, and additional consumer education and outreach efforts outweighs any viewer burden caused by the change in WMPT's transition schedule.

We caution MPBC 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. 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 necessary to complete the transition to its post-auction channel due to its phase change.

Accordingly, we **GRANT** MPBC's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WMPT **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.¹⁷ Testing on the Station's post-auction channel **may not begin until 12:01 am**

¹² *Id.*, WBOC Letter and WHP-TV Letter.

¹³ *Id.* at 4. *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).

¹⁴ Waiver Request at 4.

¹⁵ 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).

¹⁶ See *id.* at 898-99, paras. 20-21 (establishing a two rescan periods per DMA limitation when assigning stations to transition phases).

¹⁷ See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*.

local time on June 22, 2019, and WMPT is required to cease operating on its pre-auction channel no later than 11:59 pm local time on August 2, 2019.¹⁸ The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.¹⁹

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):
Steven C. Schaffer, Esq.

¹⁸ 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.

¹⁹ *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.