



Federal Communications Commission
Washington, D.C. 20554

June 21, 2019

Radio Perry, Inc., Debtor-in Possession
Steven J. Latkovic
1691 Forsyth Street
Macon, GA 31202

Re: Request for Modification and
Waiver of Phase Assignment
WPGA-TV, Perry, GA
Facility ID No. 54728
LMS File No. 0000074891

Dear Licensee,

On June 21, 2019, Radio Perry, Inc., Debtor-in Possession (Radio Perry), the licensee of WPGA-TV(TV), Perry, Georgia (WPGA-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 3 to Phase 4.¹ For the reasons below, we grant Radio Perry'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. 0000074891 (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, Public Notice, 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*, 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.⁵ Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.⁶

WPGA-TV is currently licensed to operate on channel 32. The Station was reassigned to channel 23 in the *Closing and Channel Reassignment Public Notice* and is currently assigned to transition Phase 3, which has a phase testing period start date of April 13, 2019, and a phase completion date of June 21, 2019. The Station is located in the Macon, Georgia, Designated Market Area (Macon DMA). A total of six stations, including WPGA-TV, were repacked in the Macon DMA, with four stations assigned to Phase 3 and two to Phase 9. WPGA-TV was planning to transition to its post-auction channel using an interim facility,⁷ however its tower crew has been delayed at a prior work site due to weather and will not be able to arrive on site until after June 21.⁸ Radio Perry expects that construction of its interim facility and operation on its post-auction channel from the facility will commence will be complete within “several weeks.”⁹ The Station has already applied for and been granted an extension of its construction permit until December 18, 2019, to complete its permanent post-auction facility.¹⁰ As a result, Radio Perry requests that WPGA-TV’s transition phase be modified from Phase 3 to Phase 4, which has a testing period start date of June 22, 2019, and phase completion date of August 2, 2019.

Radio Perry has included with its phase change request a study demonstrating that the Station is not currently linked and grant of its request will not create any new linked-station sets or result in increased pairwise interference greater than two percent during the transition period.¹¹ Following grant of the waiver request, the total number of rescan periods for the Macon DMA will increase from two to three, which is more than 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.¹² In order to minimize viewer confusion caused by the additional rescan period, Radio Perry agrees to conduct consumer education and outreach efforts beyond what is required by Commission rules by, at a minimum airing double the amount of on-air consumer education notifications required by the Rules once the Station announces its new transition date and until the Station completes its transition.¹³

Discussion. Upon review of the facts and circumstances presented, we find that Radio Perry’s request to modify the phase assignment for WPGA-TV to transition to its post-auction channel satisfies the requirement for a waiver and is in the public interest. We agree that changing the Station’s 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*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 33 FCC Rcd 8240, 8244-45, para. 14 (IATF & MB 2018) (*Transition Reminder Public Notice*).

⁷ LMS File No. 0000074624.

⁸ Waiver Request at 1.

⁹ *Id.* Radio Perry has also reached out to other tower crews who have indicated that they could conduct the work if the Station’s scheduled tower crew continues to be delayed. *Id.* at n.2.

¹⁰ LMS File No. 0000068677.

¹¹ Waiver Request at 1, TVStudy -- Interference Caused, and TVStudy -- Interference Received. 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).

¹² Waiver Requests at 1. See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21.

¹³ Waiver Request at 1.

phase to Phase 4 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. The total number of rescan periods in the Macon DMA will increase from two to three, which is one more than 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.¹⁴ Radio Perry has committed to taking additional steps beyond what is required by Commission's consumer education rules to notify viewers of its change in phase. In the absence of a phase change, the Station would have to go dark. Modifying WPGA-TV's transition phase will ensure that the Station is able to continue to serve its viewers without interruption. As a result, we find the facts and circumstances discussed above outweigh any viewer burden caused by an additional rescan period in the Macon DMA.

We remind Radio Perry 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."¹⁵ 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** Radio Perry's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WPGA-TV **from Phase 3 to Phase 4**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.¹⁶ Furthermore, WPGA-TV **IS REQUIRED** to air, at minimum, double the amount of consumer education notifications required by Section 73.3700(c)(3) as set forth above.¹⁷ Testing on the Station's post-auction channel **may not begin until 12:01 am local time on June 22, 2019**, and WPGA-TV is required to cease operating on its pre-auction channel **no later than 11:59 pm**

¹⁴ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21.

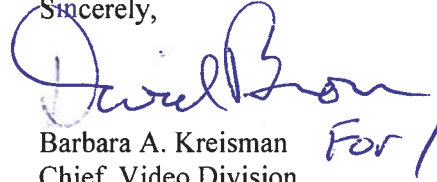
¹⁵ *Media Bureau Finalizes Reimbursement Form for Submission to OMB and Adopts Catalog of Expenses*, GN Docket No. 12-268, Public Notice, 30 FCC Rcd 11701, 11701-02 (MB 2015). See also *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

¹⁶ See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*, 33 FCC Rcd 8240.

¹⁷ 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)

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,

A handwritten signature in blue ink, appearing to read "Barbara A. Kreisman". To the right of the signature, the word "For" is handwritten in blue ink, followed by a large, stylized slanted line.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):
Karen Milne, 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 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.

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.