



Federal Communications Commission
Washington, D.C. 20554

September 6, 2019

Atlanta Television Station WUPA Inc.
Daniel G. Ryson
1725 DeSales Street, NW
Washington, DC 20036

Re: Request for Modification and
Waiver of Phase Assignment
WUPA(TV), Atlanta, GA
Facility ID No. 6900
LMS File No. 0000080633

Dear Licensee,

On August 27, 2019, Atlanta Television Station WUPA Inc. (Atlanta TV), the licensee of WUPA(TV), Atlanta, Georgia (WUPA 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 5 to Phase 6.¹ For the reasons below, we grant Atlanta TV's request for waiver and modify the Station's phase assignment 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

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*, GN Docket No. 12-268 et al., Public Notice, 32 FCC Rcd 2786 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*). See LMS File No. 0000080633 WUPA Phase Change Exhibit (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

WUPA is currently licensed to operate on channel 43. It was reassigned to channel 36 in the *Closing and Channel Reassignment Public Notice* and is currently assigned to transition Phase 5, which has a phase testing period start date of August 3, 2019, and a phase completion date of September 11, 2019.⁷ The Station is located in the Atlanta, Georgia, Designated Market Area (Atlanta DMA). A total of 14 stations were repacked in the Atlanta DMA, with 12 stations, including WUPA, currently being assigned to transition Phase 5, and two stations assigned to Phase 10. According to Atlanta TV, WUPA is currently operating from an authorized interim facility on its pre-auction channel.⁸ Atlanta TV states that due to delays in the delivery of needed electrical and transmitter equipment WUPA cannot complete construction of its post-auction facility by the end of Phase 5.⁹ As a result, Atlanta TV requests that the Station's transition phase assignment be modified from Phase 5 to Phase 6, which has a testing period start date of September 7, 2019, and a phase completion date of October 18, 2019.¹⁰

Atlanta TV states that WUPA is currently operating in the 600 MHz band and asserts that the instant phase change will not create any new linked-station sets or result in increased temporary pairwise interference greater than two percent during the transition period.¹¹ Atlanta TV acknowledges the phase change will increase the number of rescans in the Atlanta DMA. Atlanta TV also states that because the station plans to complete its transition shortly after the end of Phase 5, WUPA viewers "would benefit from the prior education efforts of other Atlanta stations."¹² Nevertheless, in order to mitigate any viewer disruption caused by the change in phase Atlanta TV commits to conduct additional consumer outreach beyond what is required by the Commission's rules through additional on-air crawls and social media outreach.¹³

Discussion. Upon review of the facts and circumstances presented, we find that Atlanta TV's request to modify the phase assignment for WUPA to transition to its post-auction channel satisfies 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 Originally, Phase 5 stations had phase completion date and construction permit expiration date of September 6, 2019. See, *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd 2786. On September 3, 2019, those dates were extended to September 11, 2019. See *The Completion Date For Phase 5 of the Post-Incentive Auction Transition Is Extended To September 11, 2019 Because of Hurricane Dorian*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, DA 19-866, rel. Sept. 3, 2019 (IATF & MB).

⁸ Waiver Request at 3.

⁹ *Id.* Atlanta TV further notes that its repack facility will be on channel 36, which is first adjacent to channel 37 where GE Healthcare has informed Atlanta TV that it has biomedical devices in operation. Therefore, once installation of WUPA's post-auction facility is complete GE Healthcare requires time to conduct testing to ensure that medical devices used in the area continue to function properly. *Id.*

¹⁰ *Id.* at 12.

¹¹ *Id.* at 3. 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 Request at 2-3.

¹³ *Id.* at 3.

requirement for a waiver and is in the public interest. We agree that changing the Station's transition phase to Phase 6 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 increased temporary pairwise interference. By moving WUPA to Phase 6, the total number of rescan periods in the Atlanta 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.¹⁴ To ensure viewers are fully informed about the repack and minimize any viewer confusion caused by the Station's change in phase and increase in rescan periods, Atlanta TV has agreed to increase consumer education and outreach beyond what is required by the Commission's rules. Modifying WUPA'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 increase in the number of rescan periods in the Atlanta DMA or a short delay in access by wireless licensees to the Station's pre-auction channel.

We remind Atlanta TV 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** Atlanta TV's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WUPA **from Phase 5 to Phase 6**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.¹⁶ Testing on the Station's post-auction channel **may not begin until 12:01 am local time on September 7, 2019**, and WUPA is required to cease operating on its pre-auction

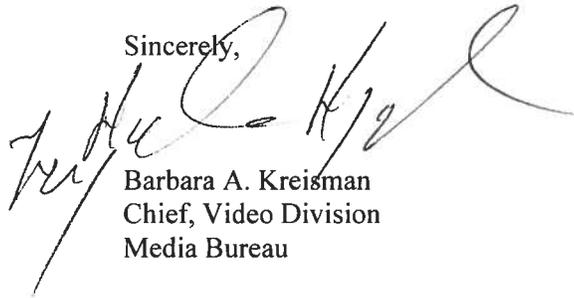
¹⁴ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21 (establishing a two rescan periods per DMA limitation when assigning stations to transition phases).

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.

channel **no later than 11:59 pm local time on October 18, 2019.**¹⁷ The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.¹⁸

Sincerely,

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

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):
Daniel Ryson, Esq.
Anne Lucy, Esq.

¹⁷ 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.

¹⁸ *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.