



Federal Communications Commission  
Washington, D.C. 20554

September 16, 2019

Alabama Heritage Communications  
Kathy Bridges  
P.O. Box 3248  
Oxford, AL 36203

Re: Request for Modification and  
Waiver of Phase Assignment  
WEAC-CD, Jacksonville, AL  
Facility ID No. 64338  
LMS File No. 0000081350

Dear Licensee,

Alabama Heritage Communications (Heritage), the licensee of WEAC-CD, Jackson, Alabama (WEAC-CD 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 7.<sup>1</sup> For the reasons below, we grant Heritage's request for waiver and modify the Station's phase assignment to Phase 7, as conditioned herein.

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

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<sup>1</sup> 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.0000081350, Statement of Circumstances Requiring STA and Waiver Request (Waiver Request).

<sup>2</sup> 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*).

<sup>3</sup> 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.

<sup>4</sup> 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.<sup>5</sup> Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.<sup>6</sup>

WEAC-CD is currently licensed to operate on channel 34. It was reassigned to channel 35 in the *Closing and Channel Reassignment Public Notice* and is currently assigned to transition Phase 5, which had a phase testing period start date of August 3, 2019 and a phase completion date of September 11, 2019.<sup>7</sup> The Station is located in the Birmingham, Alabama, Designated Market Area (Birmingham DMA). A total of ten stations were repacked in the Birmingham DMA, with 8 stations, including WEAC-CD, assigned to Phase 5, one station assigned to Phase 7, and one station assigned to Phase 10. Heritage states that the incorrect transmitter was ordered and the Station was not be able to complete construction of its post-auction facility by September 11, 2019.<sup>8</sup> The estimated delivery date for the correct transmitter is late October 2019.<sup>9</sup> As a result, Heritage has filed a waiver request seeking to change its phase assignment from Phase 5 to Phase 7, which had a testing period start date of October 19, 2019, and has a phase completion date of January 17, 2020.

Heritage acknowledges that WEAC-CD is part of Linked-Station Set 94 (LSS 94) and is directly linked with downstream stations WPXH-TV, Hoover, AL and WBIH, Selma, AL; and upstream station WABM, Birmingham, AL.<sup>10</sup> During the transition period stations are permitted to cause a temporary increase in pairwise interference of up to two percent.<sup>11</sup> In order to stay within this interference threshold WEAC-CD has filed for and been granted special temporary authority to operate at reduced power on its pre-auction channel.<sup>12</sup> Further, in order to mitigate any viewer disruption caused by the Station's change in phase, Heritage has agreed to increase viewer education and outreach above and beyond what is required by the Commission's rules through segments that will be aired during its local newscast.<sup>13</sup>

*Discussion.* Upon review of the facts and circumstances presented, we find that Heritage's request to modify the phase assignment for WEAC-CD 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

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

<sup>6</sup> *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*).

<sup>7</sup> Originally, Phase 5 stations had a 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).

<sup>8</sup> Waiver Request at 1.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *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).

<sup>12</sup> See LMS File No. 0000081240.

<sup>13</sup> *Id.* at 2. See 47 CFR § 73.3700(c)(3) (repacked stations must air sixty (60) seconds per day of on-air crawls or public service announcements beginning 30 days prior to discontinuing operations on their pre-auction channel).

phase to Phase 7 should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. Staff has confirmed the phase change will not create any new linked-station sets and so long as WEAC-CD operates at reduced power, as authorized under its STA, will cause any temporary pairwise interference above two percent permitted during the transition period. WEAC-CD is required to accept any temporary increased pairwise interference received from other linked-stations, even if such interference is in excess of two percent. The total number of rescan periods in the Birmingham DMA will remain the same. Nonetheless, in order to mitigate viewer confusion caused by the change in phase Heritage has committed to undertake additional consumer outreach efforts beyond what is required by the Commission's rules. Modifying WEAC-CD'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 a change in the Station's transition phase.

We remind Heritage 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."<sup>14</sup> 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** Heritage's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WEAC-CD **from Phase 5 to Phase 7**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.<sup>15</sup> Testing on the Station's post-auction channel **may not begin until 12:01 am local time on October 19, 2019**, and WEAC-CD is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on January 17, 2020**.<sup>16</sup> The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.<sup>17</sup>

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<sup>14</sup> *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.").

<sup>15</sup> *See generally* 47 CFR § 73.3700 and *Transition Reminder Public Notice*, 33 FCC Rcd 8240.

<sup>16</sup> 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.

<sup>17</sup> *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.

Sincerely,

A handwritten signature in blue ink that reads "David Brown / For". The signature is fluid and cursive, with a large initial "D" and a stylized "B".

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

Cc: (via electronic mail):  
Nathaniel Hardy, Esq.