



Federal Communications Commission
Washington, D.C. 20554

December 3, 2019

Mountain Lake Public Telecommunications Council
1 Sesame Street
Plattsburgh, NY 12901
Attention: William Rogers

Re: Request for Modification and
Waiver of Phase Assignment
WCFE-TV, Plattsburgh, NY
Facility ID No. 46755
LMS File No. 0000087629

Dear Licensee,

On October 29, 2019, Mountain Lake Public Telecommunications Council (Mountain Lake), the licensee of WCFE-TV, Plattsburgh, New York (WCFE 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 7 to Phase 10.¹ For the reasons below, we grant Mountain Lake's request for waiver and modify the Station's phase assignment to Phase 10, 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. 0000087629WCFE Phase Change Request (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 (IATF & 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 (IATF & 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

WCFE is currently licensed to operate on channel 38. It was reassigned to channel 36 in the *Closing and Channel Reassignment Public Notice* and is currently assigned to transition Phase 7, which had a phase testing period start date of October 19, 2019, and has a phase completion date of January 17, 2020. The Station is located in the Burlington, Vermont-Plattsburgh, New York, Designated Market Area (Burlington DMA). A total of nine stations were repacked in the Burlington DMA, with one station having transitioned in the period prior to the Phase 1 testing period start date, five stations, including WCFE, being assigned to transition Phase 7, and three stations being assigned to Phase 10. According to Mountain Lake, the Station's main transmitter and tower are located near the top of Averill Peak on Lyon Mountain in the Adirondack Mountains.⁷ The site is remote and accessible only by a single road.⁸ The last crew that was sent up to the tower site turned back after encountering hazardous road conditions.⁹ In lieu of using the existing road, Mountain Lake attempted to secure an easement from an adjoining landowner to allow for the creation of a new road to access the Station's tower site, but the landowner has declined to grant such easement.¹⁰ WCFE states that without reliable road access, the tower site now can only be reached by tracked snow vehicle or helicopter. Tracked snow vehicles cannot be used until there is sufficient snow depth, which is not present until late December or early January, and helicopter crews are prohibited from operating until spring.¹¹ Mountain Lake goes on to states that WCFE 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.¹² As a result, Mountain Lake requests that the Station's transition phase assignment be modified from Phase 7 to Phase 10, which has a testing period start date of May 2, 2020, and a phase completion date of July 3, 2020.

Discussion. Upon review of the facts and circumstances presented, we find that Mountain Lake's request to modify the phase assignment for WCFE 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 phase to Phase 10 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 WCFE to Phase 10, the total number of rescan periods in the Burlington DMA will remain the same and WCFE will be transitioning in the same phase as other repacked stations in the DMA. Modifying WCFE'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

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 Waiver Request at 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 1-2.

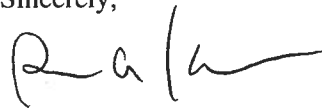
¹² *Id.* at 2. See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16 (allowing temporary increased pairwise (station-to-station) interference of up to two percent during the transition period).

and circumstances discussed above outweigh any viewer burden caused by a change in the Station's transition plans or a short delay in access by wireless licensees to the Station's pre-auction channel.

We remind Mountain Lake 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."¹³ 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** Mountain Lake's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WCFE **from Phase 7 to Phase 10**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.¹⁴ Testing on the Station's post-auction channel **may not begin until 12:01 am local time on May 2, 2020**, and WCFE is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on July 3, 2020**.¹⁵ The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.¹⁶

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):
Barry Persh, Esq.
Derek Teslik, Esq.

¹³ 47 U.S.C. § 1452(b)(4)(A)(i). 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.").

¹⁴ See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*, 33 FCC Rcd 8240.

¹⁵ 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.

¹⁶ *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.