

## **REQUESTS FOR FURTHER WAIVER OF PHASE ASSIGNMENT AND SPECIAL TEMPORARY AUTHORITY TO REMAIN ON PRE-AUCTION CHANNEL**

Mayavision, Inc. (“Mayavision”), licensee of KGLA-DT, Hammond, Louisiana (Facility ID No. 83945) (“KGLA”), hereby requests a further waiver of KGLA’s post-incentive auction transition phase assignment, and the corresponding testing dates and construction completion deadlines. Mayavision has made extensive efforts to find solutions to various obstacles it has encountered in meeting KGLA’s current phase completion date of March 13, 2020, however, complications caused by difficult geographical terrain and logistical constraints will prevent KGLA from transitioning by that date. Accordingly, Mayavision hereby requests: (1) waiver of KGLA’s current phase assignment to reassign KGLA from Phase 8 to Phase 9; and (2) Special Temporary Authority (“STA”) for KGLA to continue operating on pre-auction channel 42 until the end of Phase 9.

### **BACKGROUND**

KGLA was originally assigned to transition Phase 7 – with phase completion date of January 17, 2020.<sup>1</sup> On December 11, 2019, however, Mayavision filed a Request for Modification and Waiver of Phase Assignment to modify KGLA’s phase assignment from Phase 7 to Phase 8.<sup>2</sup> In its request, Mayavision noted that reassigning KGLA to Phase 8 was warranted due in part to the logistical difficulties created by the Phase 7 completion date.<sup>3</sup> Furthermore, Mayavision noted that the New Orleans DMA would remain within the two rescan

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<sup>1</sup> See *Incentive Auction Closing and Channel Reassignment*, Public Notice, 32 FCC Rcd. 2786, 2806, ¶ 64 (WTB & MB 2017).

<sup>2</sup> See LMS File No. 0000093183 (filed Dec. 11, 2019) (“KGLA’s First Phase Assignment Waiver Request”).

<sup>3</sup> *Id.* at 2.

periods per DMA limitation after KGLA’s reassignment to Phase 8.<sup>4</sup> Mayavision’s request was granted on January 10, 2020.<sup>5</sup>

## I. WAIVER STANDARD

Individual stations are permitted to propose modifications to their phase assignments and transition schedules.<sup>6</sup> Such requests are viewed favorably if they are “otherwise compliant with [the Commission’s] rules and have little or no impact on the phase assignments or transition schedule.”<sup>7</sup> The Commission may grant a waiver for good cause shown.<sup>8</sup> A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.<sup>9</sup> In considering a waiver, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>10</sup> Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>11</sup>

## II. DISCUSSION

Good cause exists for waiver of KGLA’s current assignment to Phase 8 and grant of STA

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<sup>4</sup> *Id.* at 3.

<sup>5</sup> Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, FCC, to Mayavision, Inc., LMS File No. 0000093183 (Jan. 10, 2020).

<sup>6</sup> *Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 32 FCC Rcd. 890, 913, ¶ 51 (MB 2017).

<sup>7</sup> *Incentive Auction Task Force and Media Bureau Seek Comment on Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 31 FCC Rcd 10802, 10814-15, ¶ 27 (MB 2016).

<sup>8</sup> 47 C.F.R. § 1.3.

<sup>9</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>10</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

<sup>11</sup> *Northeast Cellular*, 897 F.2d at 1166.

to allow KGLA to remain on its pre-auction channel until the end of Phase 9. Mayavision has faced various complications in completing construction of KGLA’s post-transition facilities. As stated in KGLA’s First Phase Assignment Waiver Request, KGLA’s transmission facilities are located on an island and surrounded by water – thereby making it difficult to access, plan, design, and begin work on the structural modifications necessary for its post-transition facilities.<sup>12</sup> These geographic complications, coupled with inclement weather and unusually high delays in equipment deliveries, made it impossible for KGLA to meet the January 17, 2020 phase completion date for Phase 7.<sup>13</sup>

After the grant of Mayavision’s request for KGLA’s reassignment from Phase 7 to Phase 8, Mayavision’s engineers realized that these same factors would prevent KGLA from meeting the March 13, 2020 phase competition date for Phase 8. Moreover, Mayavision now anticipates further delays in construction of KGLA’s post-transition facilities caused by the pending influx of travelers to the New Orleans area for Mardi Gras and other upcoming festivals:

<u>Dates</u>	<u>Event</u>
February 8-26, 2020	Mardi Gras
March 18-22, 2020	New Orleans Wine & Food Experience
March 20-21, 2020	BUKU Music Festival
March 23-27, 2020	New Orleans Entrepreneur Week
March 27-28, 2020	Hogs for the Cause Festival
March 28-29, 2020	Cajun-Zydeco Festival
April 16-19, 2020	French Quarter Festival
April 23 – May 3, 2020	New Orleans Jazz & Heritage Festival
April 27-28, 2020	NOLA Crawfish Festival

These events will greatly impact hotel availability and pricing in the New Orleans area – thereby preventing Mayavision from scheduling engineers and other construction crews for completion

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<sup>12</sup> KGLA’s First Phase Assignment Waiver Request at 2.

<sup>13</sup> *Id.*

of KGLA's post-transition facilities by the March 13<sup>th</sup> deadline. Rather, reassigning KGLA from Phase 8 to Phase 9 will provide Mayavision with additional time to overcome these logistical hurdles to complete construction of KGLA's post-transition facilities.

Moreover, grant of this waiver will serve the public interest by facilitating an orderly and efficient transition without forcing KGLA to go off the air. KGLA provides locally-produced public affairs and children's programming that is unavailable on other broadcast stations serving Hammond, Louisiana. Moreover, a preliminary engineer's review indicates that further delay of KGLA's transition to its new channel will not delay the repack nor will continuing to operate KGLA on its pre-auction channel have any negative impact on the overall transition nor the transition of any specific station.

**Interference:** The proposed waiver will not cause any interference issues to any other broadcast station because KGLA is currently operating on Channel 42. No new linked station sets are created by the proposal, nor are any other station transitions impacted. Because the benefits far outweigh any unlikely interference, it is in the public interest to allow KGLA to continue its unique service to Hammond, Louisiana by operating on its pre-transition channel during this brief extension.

**Impact to Viewers:** Mayavision believes any disruption to viewers resulting from KGLA's delayed transition will be minimal. Mayavision already has been running daily consumer education public service announcements and crawls throughout this period, so viewers are aware that a channel change is pending for KGLA. Upon grant of this waiver request, Mayavision pledges to revise those PSAs and crawls to notify viewers of KGLA's revised transition date. If this waiver will necessitate an extra rescan of the channels in the market, Mayavision will broadcast additional educational spots, PSAs/crawls, and conduct outreach

through digital and social media and station programming to emphasize the change and provide rescan instructions. Mayavision also notes that the New Orleans DMA will remain compliant with the Commission's two rescan period per DMA limitation following KGLA's reassignment from Phase 8 to Phase 9.

### **CONCLUSION**

In sum, because grant of this waiver will ensure the goals of the Incentive Auction are met while having only *de minimis* temporary impacts and ensuring that unique local public affairs and children's programming is not interrupted, this request for waiver of KGLA's phase assignment and request for STA for KGLA to continue operating on its pre-auction channel is in the public interest and should be granted.