



Federal Communications Commission
Washington, D.C. 20554

March 31, 2020

Mayavision, Inc.
Alejandro Schweikert
3540 S I-10 Service Road W, Suite 342
Metairie, LA 70001

Re: Request for Modification and
Waiver of Phase Assignment; Requests
for Waiver of the Consumer Education
and MVPD Notice Requirements
KGLA-DT, Hammond, LA
Facility ID No. 83945
LMS File No. 0000109234

Dear Licensee,

On March 25, 2020, Mayavision, Inc. (Mayavision), the licensee of KGLA-DT, New Orleans, LA (KGLA or Station), filed a *Request for Modification and Waiver of Phase Assignment* requesting to modify the post-incentive auction transition phase from Phase 10 to Phase 9. Mayavision also requests waiver of the post-incentive auction consumer education and MVPD notice requirements.¹ For the reasons below, we grant Mayavision's requests for waiver and modify the Station's phase assignment to Phase 9, as conditioned herein.

Background. Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waiver and modification of their phase assignment.² 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.³ The Bureau determined that it would view favorably requests that are compliant with the Commission's rules and have little or no impact on the transition schedule.⁴ Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.⁵

According to Section 73.3700(d) of the Commission's rules, stations that were repacked as a result of the incentive auction must provide to MVPDs written notice of at least 90-days prior to commencing operations on their reassigned channel.⁶ Furthermore, pursuant to section 73.3700(c)(3) of

¹ 47 CFR §§ 73.3700(c)(3) and 73.3700(d).

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 *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).

⁴ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-13, para. 49 and n.163.

⁵ *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*).

⁶ 47 CFR § 73.3700(d).

the Commission's rules (Rules), 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.⁷ The Media Bureau has stated that to the extent a station is not able to comply with its consumer education requirements, it must file a request for waiver.⁸

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.⁹

Modification and Waiver of Phase Assignment. KGLA is currently licensed to operate on channel 42. It was reassigned to channel 35 in the *Closing and Channel Reassignment Public Notice*¹⁰ and is currently assigned to transition Phase 10, which has a phase testing period start date of May 2, 2020, and has a phase completion date of July 3, 2020.¹¹ The Station is located in the New Orleans, Louisiana, Designated Market Area (New Orleans DMA). A total of eight stations were repacked in the New Orleans DMA, with seven stations having transitioned in Phase 7 and one station, KGLA, being assigned to Phase 10. According to Mayavision, it was able to obtain the necessary equipment and crews to transition to its planned interim facility in advance of the Phase 10 testing period.¹² In light of the ongoing COVID-19 pandemic, Mayavision states that it commenced operation on its post-auction channel on March 23, 2020, in order to avoid the risk of future delays in transitioning that could result from access to resources due to the pandemic.¹³ Mayavision requests that the Station's transition phase assignment be modified from Phase 10 to Phase 9, which had a testing period start date of March 14, 2020, and has a phase completion date of May 1, 2020.

Mayavision states that because the station is currently operating in the 600 MHz band it will not cause any interference to any other broadcast stations by changing its transition phase.¹⁴ Mayavision asserts that it has already has been running general consumer education announcements about the

⁷ 47 CFR § 73.3700(c)(3).

⁸ *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, 33 FCC Rcd 8240, 8245, para. 15, n.41 (IATF & MB 2018). All waiver requests will be evaluated on a case-by-case basis in accordance with the Commission waiver standard and must include the following information: (1) an explanation describing why the station is unable to comply with the existing consumer education requirements; (2) an alternative but comparable means the station will use to notify viewers of the station's new channel; and (3) why grant of the waiver request complies with the Commission's general waiver standard. *Id.*

⁹ 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.

¹⁰ 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*).

¹¹ LMS File No. 00000105957 (granting a change in transition phase from Phase 8 to Phase 10).

¹² Waiver Request at 3-4.

¹³ *Id.*

¹⁴ *Id.* at 4. 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).

transition and, once it knew it was transitioning on March 23, immediately took steps to notify viewers by: (1) directly notifying viewers of the change via telephone; (2) revising its already running PSAs and crawls to notify viewers of KGLA's revised transition date; (3) conducting outreach through digital and social media and station programming to provide rescan instructions to viewers; and (4) airing announcements of KGLA's transition on affiliated radio broadcast stations.¹⁵

Request for Waiver of Viewer and MVPD Notice Requirements. Mayavision also requests waiver of the post-incentive auction consumer education and MVPD notice requirements. Pursuant to section 73.3700(c) of the Rules, KGLA was required to provide consumer notifications beginning 30-days prior to discontinuing operations on its pre-auction channel.¹⁶ As outlined above, upon determining its new transition date, Mayavision immediately undertook a range of viewer notification efforts. Pursuant to section 73.3700(d) of the Rules, KGLA was required to provide written notification to impacted MVPDs at least 90-days prior to commencing operations on their reassigned channel.¹⁷ Mayavision states that it "has now notified all affected MVPDs of KGLA's transition."¹⁸

Discussion. Upon review of the facts and circumstances presented, we find that Mayavision's request to modify the phase assignment for KGLA to transition to its post-auction channel satisfies the requirement for a waiver and is in the public interest. We also find that waiver of the post-incentive auction consumer education and MVPD notification requirements for KGLA is in the public interest. We agree that changing the Station's transition phase to Phase 9 will 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 KGLA to Phase 10, the total number of rescan periods in the New Orleans DMA will remain at two.¹⁹ Modifying KGLA's transition phase will ensure that the Station is able to avoid the possibility of future delays due to the COVID-19 pandemic. In order to ensure that viewers and MVPDs were fully informed about the Station's transition, Mayavision undertook numerous alternative means of viewer notification and has certified in its filing that it has notified all impacted MVPDs.²⁰ As a result, we find the facts and circumstances discussed above outweigh any viewer or MVPD burden caused by the modification of KGLA's phase assignment.

We remind Mayavision 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."²¹ Additional expenses

¹⁵ Waiver Request at 4-5.

¹⁶ 47 CFR § 73.3700(c)(3).

¹⁷ 47 CFR § 73.3700(d).

¹⁸ Waiver Request at 4, n. 18.

¹⁹ See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21 (establishing a limit of two rescan periods per DMA for purposes of assigning stations to transition phases).

²⁰ Despite its efforts to immediately notify MVPDs of its early transition, if in the event KGLA temporarily loses MVPD carriage the Bureau will not intervene in any cable carriage disputes so long as carriage of KGLA is commenced with 90 days of Mayavision providing written notice to all affected MVPDs as required by 47 CFR § 73.3700(d).

²¹ 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.").

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** Mayavision's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for KGLA **from Phase 10 to Phase 9**, subject to all the commitments made in its waiver request and, unless otherwise waived herein, compliance with all Commission rules applicable to transitioning stations.²² We also **GRANT** Mayavision's request for waiver of the post-incentive auction consumer education requirements, and MVPD notice requirements.²³ KGLA has ceased operation on its pre-auction channel and commenced operation from an interim facility on its post-auction channel. The Station is not permitted to operate on its pre-auction channel **after 11:59 pm local time on May 1, 2020**.²⁴ The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.²⁵

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail): Francisco R. Montero, Esq.

²² See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*, 33 FCC Rcd 8240.

²³ 47 CFR §§ 47 CFR § 73.3700(c)(3) and 73.3700(d) (respectively).

²⁴ 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.

²⁵ *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.