



Federal Communications Commission
Washington, D.C. 20554

November 14, 2018

Vermont ETV, Inc.
204 Ethan Allen Avenue
Colchester, VT 05446

Re: Request for Waiver of Deadline to
Implement Shared Channel Operations
WVTA, Windsor, VT
Facility ID No. 69943
LMS File No. 0000063255

Dear Licensee,

On October 31, 2018, Vermont ETV, Inc. (VETV) submitted the above-captioned request for waiver (VETV Waiver) for WVTA, Windsor, Vermont (WVTA or Station) of its November 30, 2018, deadline to implement shared channel operations and discontinue operations on its pre-auction channel (channel sharing implementation deadline).¹ For the reasons set forth below, we grant the request for waiver and extend the channel sharing implementation deadline to April 12, 2019.

Background. Under our rules, winning bidder stations that elected in their incentive auction application the option to continue to broadcast by channel sharing² must implement shared channel operations and discontinue operations on their pre-auction channels 180 days after receipt of the winning bid proceeds.³ Our rules also provide that a station may request a waiver of the channel sharing implementation deadline.⁴ All such requests for waiver will be evaluated to determine whether grant will delay or disrupt the post-auction transition schedule.⁵ A waiver is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation from the general rule

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*, Public Notice, 32 FCC Rcd 2786, 2813, para. 76 (MB & WTB 2017) (*Closing and Channel Reassignment Public Notice*); see also *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd 858, 879, para. 63 (MB 2017) (*Broadcast Transition Procedures Public Notice*); 47 CFR §§ 73.3700(b)(4)(ii).

² *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at Appendix A.

³ 47 C.F.R. 73.3700(b)(3)-(4); *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2813, para. 76; *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 879-80, paras. 63-64. VETV was originally required to discontinue operations by January 23, 2018 but as described below, it received waivers of the channel sharing implementation deadline until July 23, 2018.

⁴ See *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2814, para. 81; *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 881, para. 69. A station that intends to channel share may request an additional 90-day waiver of the deadline (for a total of 180 additional days) using the same procedure. *Id.*

⁵ *Id.*

would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis.⁶

VETV was previously granted three waivers extending its channel sharing implementation deadline to November 30, 2018.⁷ In support of its current request for waiver of the deadline, VETV notes that the Station will be sharing with commonly-owned WVER, Rutland, Vermont (WVER).⁸ VETV states that it operates a network of four full power Public Broadcasting System (PBS) stations that provide Vermont with its only in-state public television service. VETV maintains that the WVTA serves a significant region in southern Vermont not reached by the other three Vermont PBS stations, including rural areas in which viewers rely to a greater than average extent on over-the-air service.⁹ Its post-auction plan is for WVTA to share with WVER and for WVER to seek to operate a Distributed Transmission System (DTS). According to VETV, the use of a DTV will allow WVER to cover a portion of the WVTA's service area not already covered by WVER. VETV states that the channel sharing plan has been complicated by technical issues resulting from the repacking of WVER from Channel 9 to Channel 10 and WVER's phase assignment at the end of the transition (Phase 10).¹⁰ In February 2018, WVER's application for a DTS construction permit was granted and in May 2018 the Station received a grant of a Special Temporary Authorization (STA) to permit it to implement four of the DTS sites in order to fill in lost coverage prior to the general implementation of the DTS construction permit in its scheduled phase.¹¹

VETV now reports that, although substantial progress has been made on the DTS project, there continue to be challenges.¹² In particular, VETV represents that construction at one of the DTS sites was delayed because it is located at an intricate multiple facility site where tower mapping was required and due to the repack such services were at a premium.¹³ Additionally, VETV states that it has encountered continuing delays at another DTS site resulting from unanticipated tower safety issues and weather delays.¹⁴

Without a further waiver of the Station's November 30, 2018, channel sharing implementation deadline, VETV contends that many of WVTA's over-the-air and cable viewers who are not within the service contour of WVER would lose access to Vermont PBS until the WVER DTS STA can be implemented.¹⁵ VETV estimates this number to be approximately 159,200 and includes a supporting engineering analysis with its request.¹⁶

⁶ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown).

⁷ See LMS File Nos. 0000034626, 0000048440 and 0000055163.

⁸ VETV Waiver at 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See LMS File Nos. 0000034603 and 0000054181 (respectively).

¹² VETV Waiver at 1-2.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 2.

¹⁶ *Id.*

VETV argues that grant of its waiver request will not delay the transition inasmuch as WVTA's continued operation on its pre-auction channel (channel 24) through Phase 2 of the transition would not result in any additional interference being received from other stations changing channels in the repack until Phase 3 or additional interference being caused to repacked stations until Phase 4.¹⁷ In further support, VETV states that providing a waiver of its channel sharing implementation deadline until the end of Phase 2 will not divert resources away from other transitioning stations.¹⁸ VETV maintains WVER is already a repacked station and its existing facilities and facilities authorized in WVER's DTS construction permit and related STA are what will be used for the channel sharing.¹⁹

Discussion. Upon review of the facts and circumstances presented, we find VETV's request to extend the channel sharing implementation deadline until April 12, 2019, satisfies the requirements for a waiver. We find that it would not be consistent with the public interest to require WVTA to implement its shared channel operations by its current November 30, 2018, deadline. VETV has demonstrated that unique technical challenges are likely to prevent a timely implementation of its shared operations. In addition, allowing VETV additional time to implement will both ensure a successful completion of its shared operations and prevent a loss of service to some of its viewers only source of Vermont PBS programming. VETV has further demonstrated that grant of the waiver will not adversely impact the post-incentive auction transition as it uses WVER facilities that are already authorized to be constructed as part of the post auction transition. By remaining on its pre-auction channel 24 through Phase 2, WVTA will not receive any additional interference from, or cause any additional interference to, other stations. Finally, because the Station's pre-auction channel (24) is in the television band, continued use of its pre-auction channel will not adversely impact 600 MHz wireless licensee deployment plans. We caution, however, that further requests for waiver of the channel sharing implementation deadline will not be viewed favorably due to the potential for interference beginning in Phase 3.

The above facts considered, Vermont ETV, Inc.'s request for waiver **IS GRANTED** and the deadline to implement its shared channel operations and to discontinue operations on its pre-auction channel for WVTA, Windsor, Vermont **IS EXTENDED** to April 12, 2019.

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Lawrence M. Miller, Esq.

¹⁷ *Id.* at 2-3 and 6 (Post-Auction Interference Analysis). Because WVTA is not a repacked station the applicable threshold for determining permissible levels of pairwise interference is the Commission's *de minimis* standard of 0.5%.

¹⁸ *Id.* at 2.

¹⁹ *Id.*