

Exhibit Supporting Waiver of Phase Assignment Date

Atlanta Television Station WUPA Inc

WUPA(TV) Atlanta, Georgia

Facility ID 6900

Atlanta Television Station WUPA Inc (“CBS”) seeks waiver of the post-Incentive Auction Transition Phase assignment and corresponding testing dates and construction completion deadlines for WUPA(TV) Atlanta, GA (Facility ID 6900) (the “Station”), which is assigned to the Atlanta Designated Market Area (“DMA”). Pursuant to the *Closing and Reassignment Public Notice*, WUPA was assigned to Transition Phase 5 with a Phase Completion Date of September 6, 2019.¹ CBS has been diligently working toward completion of the required repack. However, as construction of the Station’s post-transition facility² has been delayed by circumstances beyond its control, CBS now must request modification of the Station’s transition phase assignment to Phase 6, with a transition completion date of October 18, 2019. This change would extend the current construction period by six weeks.

The *Transition Scheduling Adoption Public Notice* permitted stations to propose “alternative transition solutions that could create efficiencies,” and held that a request to modify a station’s transition deadline would be viewed favorably if the request is “otherwise compliant with [FCC] rules and [has] little or no impact on the phase assignments or transition schedule.”³ As demonstrated below, Station’s instant request qualifies for such favorable treatment.

The FCC may grant a waiver for good cause shown.⁴ The Commission has indicated that it would evaluate waiver requests on a case-by-case basis by considering impact to other

¹ *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 Red 2786 (WTB & MB 2017) (“*Closing and Channel Reassignment Public Notice*”).

² See Construction Permit file number 0000033802.

³ *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, 32 FCC Rcd 890, 913 ¶ 51 (MB 2017) (*Transition Scheduling Adoption Public Notice*), citing *Incentive Auction Task Force and Media Bureau Seek Comment on Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 31 FCC Rcd 10802 (MB 2016) (*Transition Scheduling Proposal Public Notice*).

⁴ 47 C.F.R. § 1.3.

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broadcasters, viewers, and the transition schedule.⁵ In considering a waiver, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁶ Such a waiver is generally appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁷

WUPA is now operating with a newly-constructed interim transmitter facility on pre-transition channel 43.⁸ Continued operation of this facility is fully compliant with the FCC Rules since it provides principal community coverage of Atlanta while meeting all pertinent allocations and RF Exposure requirements. The proposed waiver would be in the public interest because it would ensure viewers in the Atlanta market will continue to receive an over-the-air signal from WUPA and would allow successful completion of the ambitious repack well before the final deadline for the broadcast transition. As WUPA now broadcasts in the 600 MHz band, there are no “Downstream Neighbor” television stations that would be impacted by the proposed delay. Furthermore, the phase change will not create new linked-station sets or increase pairwise (station-to-station) interference during the transition period.⁹

CBS believes disruption to Atlanta viewers will be minimal. The Atlanta DMA has stations assigned to repack Phases 5 and 10. Because the proposed phase change would occur shortly after the Phase 5 viewer rescan, WUPA viewers would benefit from the prior education efforts of other Atlanta stations. Further, CBS is uniquely capable of reaching and educating WUPA viewers to advise of the delayed transition and need for an additional rescan. CBS is also prepared to increase outreach education by taking steps beyond the standard viewer and MVPD notification requirements, including additional crawls and social media outreach to notify the Station audience of the proposed transition and provide detailed instructions on the rescanning

⁵ *Transition Scheduling Adoption Public Notice*, para. 49-51.

⁶ *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.

⁷ *Northeast Cellular*, 897 F.2d at 1166.

⁸ See interim STA FCC file number 0000067590 as extended by 0000078482 and 0000080337 (which is pending).

⁹ *Transition Scheduling Adoption Public Notice*, para. 16.

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process. This will ensure that WUPA viewers will be well informed of the modified transition schedule.

Until recently and despite many significant challenges, all subcontractors and equipment vendors had remained confident that the main facility work would be completed prior to the Phase 5 completion deadline. Because *CBS* was previously assured by third parties that construction would be completed on time, and relied on those assurances, a timelier phase change application could not be filed. That changed early in August 2019 when *CBS* faced even more setbacks and informally advised the FCC staff of the situation.

In recent weeks, although significant progress has been made and some significant problems have been resolved, it has become clear that WUPA will not be able to transition during Phase 5. At present, the primary issue is the late anticipated delivery of the electrical bypass cabinet necessary to power the transmitter and cooling pumps. Until that cabinet is installed, the final transmitter installation, adjustment, and commissioning cannot begin.

Further complications are unique to WUPA's post-transition assignment to UHF channel 36. Upon necessary notification of the Station's repack plans to area medical providers, GE Healthcare informed *CBS* that they have some biomedical devices operating on first-adjacent UHF channel 37 in the area. In the abundance of caution, *CBS* has agreed to conduct limited testing of the channel 36 transmitter prior to beginning full-time operations while GE Healthcare determines the proper operation of their equipment.

As explained above, through no fault of *CBS*, the work required to transition the WUPA main facility to channel 36 cannot be completed until after the Phase 5 completion deadline. By modifying the WUPA transition phase, the Station will continue to serve viewers without interruption. Further, GE Healthcare will be able to assure the proper operation of their potentially life-saving medical devices. Therefore, it is believed that the requested WUPA transition delay from Phase 5 to Phase 6 is consistent with the public interest.