



Federal Communications Commission
Washington, D.C. 20554

July 3, 2018

WCHS Licensee, LLC
Harvey Arnold
10706 Beaver Dam Road
Cockeysville, MD 21030

Re: Request for Modification and
Waiver of Phase Assignment
WCHS-TV, Charleston, WV
Facility ID No. 71280
LMS File No. 0000055033

Dear Licensee,

On June 6, 2018, WCHS Licensee, LLC (WCHS Licensee), the licensee of Station WCHS-TV, Charleston, West Virginia (WCHS-TV 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 6, and instead transition on or before September 1, 2018, with a testing period to commence immediately prior.¹ For the reasons below, we grant WCHS Licensee's request for waiver and modify WCHS-TV's phase assignment to permit it to commence testing and transition to its post-auction channel on or before September 1, 2018, subject to completion of applicable consumer education requirements and any required notice to multichannel video programming distributors (MVPDs),² compliance with FCC Form 2100, Schedule 387 (Schedule 387) reporting requirements,³ and any additional commitments made in its waiver request.

Background. Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waiver and modification of their phase assignment.⁴ A waiver is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation from the

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 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*). See LMS File No. 0000055033, WCHS-TV Phase Assignment Letter (Waiver Request).

² Repacked stations are required to conduct consumer outreach efforts including providing on-air viewer notifications in the form of public service announcements as well as on-screen crawls at least thirty (30) days prior to transitioning to their post-auction channels. See 47 CFR § 73.3700(c). To the extent applicable, repack stations are also required to provide MVPDs with notice ninety (90) days prior to transitioning. See 47 CFR 73.3700(d).

³ See *Incentive Auction Task Force and Media Bureau Release Transition Progress Report and Filing Requirements for Stations Eligible for Reimbursement from the TV Broadcast Relocation Fund & Seek Comment on the Filing of the Report by Non-Reimbursable Stations*, Public Notice, 32 FCC Rcd 256 (MB 2017) (subsequent history omitted). In addition to filing on a quarterly basis, repacked stations are required to file an FCC Form 2100, Schedule 387 (1) 10 weeks before the end of their assigned construction deadline; (2) 10 days after they complete all work related to construction of their post auction facilities; and (3) five days after they cease broadcasting on their pre-auction channel. *Id.* at 258-59, para. 8.

⁴ 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, 32 FCC Rcd 890, 912-14, paras. 47-52 (MB 2017) (*Transition Scheduling Adoption Public Notice*).

WCHS Licensee also provides an engineering analysis demonstrating that its early transition will not create any new linked-station sets or result in increased pairwise interference greater than two percent during the transition period.¹³ WCHS Licensee notes that granting the waiver will create an additional rescan period in the Charleston DMA, increasing the total number of rescan periods for the DMA to three.¹⁴ This would be more than the two rescan periods per DMA limitation used in the tool adopted by the Bureau in the *Transition Scheduling Adoption Public Notice* to assign stations to transition phases.¹⁵ WCHS Licensee also states that it will conduct expanded consumer education and outreach efforts beyond what is required by Commission rules through digital and social media, newscasts, and via notices with other local stations and print media.¹⁶ WCHS Licensee has also submitted a letter from T-Mobile stating that T-Mobile will provide additional resources and support to ensure that viewers in the DMA are well-informed about the transition schedule of WCHS-TV.¹⁷

Discussion. Upon review of the facts and circumstances presented, we find WCHS Licensee's request to modify its phase assignment to permit WCHS-TV to transition to its post-auction channel on or before September 1, 2018, satisfies the requirements for a waiver and is in the public interest. We agree that the change of WCHS-TV's transition phase should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. A staff analysis confirms that the phase change will not result in new increased pairwise interference above the two percent permitted during the post-auction transition period.¹⁸ WCHS Licensee has also provided evidence that the resources necessary to support its early transition are available and will not delay other transitioning stations' access to resources. Although viewers in the Charleston DMA will be subject to a third rescan period, WCHS Licensee, with the support of T-Mobile, has committed to put in place viewer outreach programs beyond those required by the Commission rules to ensure that viewers will be well-informed and can manage the additional rescan period. As a result, we find on balance that the benefit of early deployment in the 600 MHz band, the ability to vendors to support WCHS-TV's early transition, and additional consumer education and outreach efforts, outweighs the viewer burden of an additional rescan period in this case.

Accordingly, we **GRANT** WCHS Licensee's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WCHS-TV **from Phase 6** and permit the Station to commence testing and transition to its post-auction channel **on or before September 1, 2018**, subject to completion of applicable consumer education requirements and any required notice to MVPDs,¹⁹ compliance with the Schedule 387 reporting requirements,²⁰ and the additional consumer education commitments made in the waiver request. The Station's construction permit expiration date

¹³ *Id.* and Interference Report WCHS.

¹⁴ *Id.* at 4.

¹⁵ See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21.

¹⁶ Waiver Request at 3-4.

¹⁷ *Id.* and WCHS T Mobile Rescan Media Support Letter.

¹⁸ 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).

¹⁹ See 47 CFR § 73.3700(c), (d).

²⁰ See *supra* note 3; 47 CFR § 73.3700(e)(5).

general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis.⁵ 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.⁶ 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.⁷ Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.⁸

WCHS-TV is currently licensed to operate on channel 41. It was reassigned to channel 29 in the *Closing and Channel Reassignment Public Notice* and assigned to transition Phase 6, which has a testing period start date of September 7, 2019, and phase completion date of October 18, 2019. WCHS-TV is located in the Charleston-Huntington, West Virginia, Designated Market Area (Charleston DMA). A total of 10 stations including WCHS-TV, were repacked in the Charleston DMA, with seven stations being assigned to Phase 6 and three being assigned to Phase 10. WCHS Licensee requests permission to begin testing and commence operation on WCHS-TV's post-auction channel on or before September 1, 2018. WCHS Licensee asserts that transitioning to its post-auction channel on or before September 1, 2018, is intended to promote the deployment of new wireless broadband services by enabling T-Mobile, a winning 600 MHz licensee, to deploy its new wireless broadband service in the Charleston DMA up to 13 months earlier than it would be able to under the current transition schedule.⁹ WCHS Licensee argues that its proposal will also "permit better utilization of resources by engaging vendors and service providers early in the process, rather than have them potentially overloaded further in the transition."¹⁰ WCHS Licensee has consulted with its vendors, site lessor and engineers, and provided letters from its transmitter and antenna manufacturer confirming that they will be able to support WCHS-TV's early transition and that such a change will not impact their ability to support other stations' transition efforts.¹¹ WCHS Licensee notes that it will be "retuning the existing antenna system and will not need the services of a tower crew for this installation."¹²

⁵ 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.

⁶ 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*, 32 FCC Rcd 858, 881-82, para 73 (MB 2017) (*Broadcast Transition Procedures Public Notice*).

⁷ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-13, para. 49 and n.163.

⁸ *Id.*

⁹ Waiver Request at 2. Included with its waiver request is also a study conducted by T-Mobile verifying that as a result of the Station's early transition, T-Mobile will be able to commence 600 MHz operations earlier than under the existing transition schedule. See T-Mobile Deployment Statement. Pursuant to Sections 0.457 and 0.459 of the Rules, T-Mobile requests confidential treatment of the information pertaining to the precise timing and location of its deployment. T-Mobile contends such information is not routinely made publicly available and should be withheld from public inspection as trade secrets, or privileged or confidential commercial, financial or technical data. See 47 CFR §§ 0.457(d)(2) and 0.459.


¹⁰ Waiver Request at 3.

¹¹ *Id.* and WCHS Dielectric Letter and WCHS Rohde Schwarz Letter.

¹² *Id.* at 3.

will also be modified to correspond to its new phase completion date.²¹ Furthermore, WCHS-TV must cease operation on its pre-auction channel **no later than 11:59 pm local time on September 1, 2018.**

Sincerely,

A handwritten signature in black ink, appearing to read 'Barbara A. Kreisman', with a long horizontal flourish extending to the right.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail)
Paul A. Cicelski, Esq.
Scott R. Flick, Esq.

²¹ *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2806, para. 64 (“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. 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); see *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 871-72, paras. 40-45. 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.