



Federal Communications Commission
Washington, D.C. 20554

November 30, 2018

Prime Time Christian Broadcasting, Inc.
Albert O. Cooper
12806 W Hwy 80 East
Odessa, TX 79765

Re: Request for Modification and
Waiver of Phase Assignment
KMLM-DT, Odessa, TX
Facility ID No. 53541
LMS File No. 0000063737

Dear Licensee,

On November 27, 2018, Prime Time Christian Broadcasting, Inc. (Prime Time), the licensee of Station KMLM-DT, Odessa, Texas (KMLM-DT or the Station), filed a request for waiver of the Station's phase completion date from November 30, 2018 to December 14, 2018.¹ For the reasons below, we grant Prime Time's request for waiver and reassign the Station from Phase 1 to Phase 2, as conditioned herein.

Background. Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waiver and modification of their phase assignment.² 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.³ The Media Bureau (Bureau) 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.⁴ The Bureau determined that it would view favorably requests that are compliant with the Commission's rules and

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. 0000063737 (Waiver Request).

² See *Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, Public Notice, MB Docket No. 16-306 and GN Docket No. 12-268, 32 FCC Rcd 890, 912-14, paras. 47-52 (IATF & MB 2017) (*Transition Scheduling Adoption Public Notice*).

³ 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.

⁴ 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).

have little or no impact on the transition schedule.⁵ Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.⁶

KMLM-DT is currently licensed to operate on channel 42. It was reassigned to channel 15 in the *Closing and Channel Reassignment Public Notice* and assigned to transition Phase 1, which has a testing period start date of September 14, 2018, and phase completion date of November 30, 2018. Prime Time seeks a brief extension of KMLM-DT's phase completion date in order to continue operating on its pre-auction channel until December 14, 2018. KMLM-DT's post-auction transition plan requires construction of a new 480-foot tower. The Station's antenna has been on site since early November, all transmission line equipment and accessories are on site, and the transmitter is installed, tested, and proofed.⁷ KSRE's tower crew has been diligently working to complete construction, but as the result of recent high-winds the crane needed to finish construction of the Station's tower could not operate.⁸ As a result, Prime Time has been informed by its tower crew that construction will not be complete by November 30, 2018. In consultation with its tower crew, Prime Time believes that construction will be completed during the first week of December and KMLM-DT will be able to complete the transition to its post-auction channel no later than December 14, 2018.⁹ Prime Time represents that modifying KMLM-DT's phase completion date will ensure that the Station is able to continue to serve its community of license without interruption.

Discussion. Upon review of the facts and circumstances presented, we find that Prime Time's request for a brief extension of its phase completion date is in the public interest and satisfies the requirements for a waiver. We find that a brief extension should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. A staff analysis also confirms that the phase change will not result in new increased pairwise interference above the two percent permitted during the post-auction transition period.¹⁰ The delay in construction was beyond the control of Prime Time, the tower crew remains on site, and the Station will be ready to commence operation on its post-auction channel by December 14, 2018. Grant of Prime Time's waiver request will only extend the Phase 1 rescan period for viewers by no more than two weeks. We believe that KMLM-DT has every incentive to ensure its viewers are fully informed of its change in transition timing. As a result, we find the public interest benefits of this brief extension to KMLM-DT's phase completion date and modification of its phase assignment outweigh the impact on viewers caused by the change in KMLM-DT's transition plan and limited delay in access by wireless providers to the 600 MHz band.

We caution Prime Time that any additional expenses incurred as a result of the grant of KMLM-DT's voluntary phase change may not be reimbursable from the TV Broadcasters Relocation Fund. Such additional costs might include, but may not be limited to, additional legal or engineering expenses; filing fees; and interim or additional equipment that was not contemplated when the station filed its initial

⁵ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-13, para. 49 and n.163.

⁶ *Id.*; see *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, MB Docket No. 16-306 and GN Docket No. 12-268, DA 18-884 (IATF & MB, rel. Aug. 27, 2018) (*Transition Reminder Public Notice*).

⁷ Waiver Request at 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ 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).

estimated expenses but was subsequently necessitated to complete the transition to its post-auction channel due to its phase change.

Accordingly, we **GRANT** Prime Time's request for wavier and modify the Station's phase completion date to **December 14, 2018**, subject to compliance with all Commission rules applicable to transitioning stations.¹¹ KMLM-DT will also be **reassigned from Phase 1 to Phase 2, however it is permitted to commence testing on its post-auction channel immediately and must cease operating on its pre-auction channel no later than 11:59 pm local time on December 14, 2018.**¹² The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.¹³

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc (via electronic mail):
Jerold L. Jacobs, Esq.
Clarence M. Beverage

¹¹ See generally 47 CFR § 73.3700; *Transition Reminder Public Notice*.

¹² 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.

¹³ *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.