



Federal Communications Commission
Washington, D.C. 20554

November 30, 2018

Community Broadcast Group, Inc.
Jesse Weatherby, President
11770 Haynes Bridge Road
#205
Atlanta, GA 30004

Re: Request for Modification and
Waiver of Phase Assignment
WMNT-CD, Toledo, OH
Facility ID No. 51913
LMS File No. 0000063809

Dear Licensee,

On November 29, 2018, Community Broadcast Group, Inc. (CBG), the licensee of Station WMNT-CD, Toledo, Ohio (WMNT-CD or the Station), filed a request for waiver to extend the Station's phase completion date from November 30, 2018 to January 18, 2019.¹ For the reasons below, we grant GPTC'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. 0000063809 (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

WMNT-CD is currently licensed to operate on channel 48. It was reassigned to channel 36 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. CBG seeks a limited extension of WMNT-CD's phase completion date in order to continue operating on its pre-auction channel until January 18, 2019. WMNT-CD is located in the Toledo, Ohio, Designated Market Area (Toledo DMA). In total, four stations in the Toledo DMA were repacked, with two stations, including WMNT-CD, being assigned to Phase 1 and two stations being assigned to Phase 8. By early September 2018, CBG had still not ordered its equipment and CBG's equipment vendor began expressing concerns about whether it would be able to meet WMNT-CD's November 30th deadline.⁷ As a result, CBG sought out a new equipment vendor. The new equipment vendor has advised CBG that installation of the Station's equipment will begin the week of December 17, 2018 and that construction should be completed by the end of the year.⁸ However, to allow time for delays caused that could be caused by weather, as well as to permit the Station sufficient time to conduct testing of the new equipment, CGB requests that its phase completion date be extended to January 18, 2018.⁹

CGB notes that the spectrum WMNT-CD is vacating is part of the new 600 MHz wireless band. CBG has been in communication with one of the wireless licensee of WMNT-CD's current channel, T-Mobile, who has advised CGB that a brief delay would not inhibit T-Mobile's 600 MHz deployment plans.¹⁰ In the event that a wireless carrier advises CGB that it wishes to commence wireless 600 MHz operations on WMNT-CD's current channel, CGB agrees to take its station silent and continue to distribute its programming to MVPDS via fiber.¹¹ CGB concludes that allowing WMNT-CD to continue operating on its pre-auction channel for this limited period would ensure all viewers continue to receive its programming without interruption.¹²

Discussion. Upon review of the facts and circumstances presented, we find that CGB's request for an extension of its phase completion date is in the public interest and satisfies the requirements for a waiver. We find that a limited extension should not have an adverse impact on the overall transition schedule or other transitioning stations. While it appears that CGB's original equipment vendor's inability to deliver the necessary equipment in time to meet the Phase 1 completion date was because CGB made the decision to wait to order its equipment until it received reimbursement, because WMNT-CD has coordinated with one of the wireless carriers and has agreed to vacate the channel if it receives commence operations information from any wireless licensee, we believe it is in the public interest to

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 *Id.* at 2

¹¹ *Id.*

¹² *Id.*

permit the station to continue serving viewers rather than go silent. Similarly, while it is true that grant of this relief means that viewers in the Toledo DMA will be subjected to a third rescan period, which is one more than the two rescan periods per DMA limit established in the *Transition Scheduling Adoption Public Notice*,¹³ absent the grant viewers would lose access to WMNT-CD programming until mid-January 2019. As a result of these unique facts and circumstances, we find the public interest benefits of providing WJSP-TV a limited extension of its phase completion date and modifying its phase assignment to Phase 2 outweigh the impact on viewers that may be caused by an additional rescan period.

We caution CGB that any additional expenses incurred as a result of the grant of WMNT-CD'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 estimated expenses but was subsequently necessitated to complete the transition to its post-auction channel due to its phase change. We also take this opportunity to reiterate, our prior admonition that failure to timely initiate a construction project or undertake necessary steps to complete the transition by the phase transition date due to the amount of any allocation will not be weighed favorably as a factor in considering grants of such relief.¹⁴

Accordingly, we **GRANT** CGB's request for STA to operate at reduced power and request for waiver. We modify the Station's phase completion date to **January 18, 2019**, subject to compliance with all Commission rules applicable to transitioning stations.¹⁵ WMNT-CD 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**

¹³ See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21.

¹⁴ *Incentive Auction Task Force and Media Bureau Announce the Initial Reimbursement Allocation for Eligible Broadcasters and MVPDs*, Public Notice, 32 FCC Rcd 7556, 7559-60 (IATF/MB 2017).

¹⁵ See generally 47 CFR § 73.3700; *Transition Reminder Public Notice*.

time) on January 18, 2019.¹⁶ The Station's construction permit expiration date will be modified to correspond to its new phase completion date.¹⁷

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc (via electronic mail):
Jeffrey L. Timmons, Esq.

¹⁶ 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.

¹⁷ *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.