



Federal Communications Commission  
Washington, D.C. 20554

February 22, 2019

Raycom Media Licensee, LLC  
4370 Peachtree Road, NE  
Atlanta, GA 30319

WUPV License Subsidiary, LLC  
Thomas Henson  
2131 Aysley Town Blvd., Suite 300  
Charlotte, NC 28273

Re: Request for Modification and  
Waiver of Phase Assignment  
WUPV, Ashland, VA  
Facility ID No. 10897  
LMS File No. 0000067221

Dear Licensee,

On January 23, 2019, Raycom Media Licensee, LLC (Raycom), the licensee of WUPV(TV), Ashland, Virginia (WUPV 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 8 to Phase 3.<sup>1</sup> For the reasons below, we grant Raycom's request for waiver and modify the Station's phase assignment to Phase 3, as conditioned herein.

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

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<sup>1</sup> 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. 0000067221, Exhibit Supporting Waiver of Phase Assignment, Testing Period, and Completion Date (Waiver Request).

<sup>2</sup> 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*).

<sup>3</sup> 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.

<sup>4</sup> 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.<sup>5</sup> Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.<sup>6</sup>

WUPV is currently licensed to operate on channel 47. As a winning UHF to VHF relinquishment bidder in the incentive auction, the Station was reassigned to channel 8 in the *Closing and Channel Reassignment Public Notice*. The Station is located in the Richmond-Petersburg, VA Designated Market Area (Richmond DMA) and has been assigned to transition Phase 8, which has a testing period start date of January 18, 2020, and phase completion date of March 13, 2020. A total of seven stations, including WUPV, were repacked in the Richmond DMA, with one station being assigned to Phase 5 and six to Phase 8. On or about January 14, 2019, the Station's main UHF transmitter, operating on Channel 47 failed and the station is currently operating on its emergency backup transmitter.<sup>7</sup> Raycom has been told that it will take approximately six months to receive the parts necessary to repair the Station's main channel 47 transmitter.<sup>8</sup> In lieu of continuing to operate at reduced power and repairing a transmitter that will only be used for a few months, Raycom requests authority to transition to its post-auction channel on or before April 25, 2019.<sup>9</sup>

In support of its request, Raycom has provided an engineering analysis demonstrating that the Station's early transition will not create any new linked station sets, dependencies, or increased pairwise interference greater than two percent during the transition period.<sup>10</sup> Raycom also states that it has already completed installation of its new VHF antenna and transmitter and therefore there will not be any negative impact on other transitioning stations' access to resources.<sup>11</sup> Raycom recognizes that if its phase change request is granted, the total number of rescan periods for the Richmond DMA would increase to three,<sup>12</sup> which is one 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.<sup>13</sup> In order to ensure that viewers are well-informed about the Station's plans to transition ahead of its currently scheduled phase assignment and additional rescan period, Raycom has agreed to provide additional consumer outreach beyond what is required by the Commission's rules, including through the use of digital and social media.<sup>14</sup>

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

<sup>6</sup> *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, para. 14, 6-7 (IATF & MB, rel. Aug. 27, 2018) (*Transition Reminder Public Notice*).

<sup>7</sup> Waiver Request at 2.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 2-3.

<sup>10</sup> *Id.* at 3 and Engineering Statement Supporting Request for Waiver. 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).

<sup>11</sup> Waiver Request at 2 and 3.

<sup>12</sup> *Id.* at 3.

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

<sup>14</sup> Waiver Request at 3-4.

*Discussion.* Upon review of the facts and circumstances presented, we find that Raycom's request to modify the phase assignment for WUPV to transition to its post-auction channel in Phase 3 satisfies the requirement for a waiver and is in the public interest. We agree that the change to the Station's transition phase should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. Staff has confirmed that the phase change will not create any new linked station sets or direct dependencies. Raycom confirms that it has completed installation of WUPV's post-auction antenna and transmitter. We therefore find that grant of this phase change is unlikely to negatively impact other transitioning stations' access to resources. While the total number of rescan periods in the Richmond DMA will increase to three, Raycom has committed to put in place viewer outreach programs beyond those required by the Commission rules. Transitioning to its post-auction channel will also allow WUPV to resume providing service to viewers that lost access to the Station when its channel 47 transmitter failed. As a result, we find the facts and circumstances discussed above outweigh any viewer burden caused by an additional rescan period.

We caution Raycom that any additional expenses incurred as a result of the grant of the Station'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 necessary to complete the transition to its post-auction channel due to its phase change.

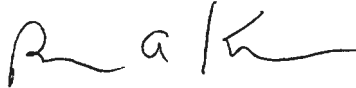
Accordingly, we **GRANT** Raycom's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WUPV **from Phase 8 to Phase 3**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.<sup>15</sup> Testing on the Station's post-auction channel **may not begin until 12:01 am local time on April 13, 2019**, and WUPV is required to cease operating on its pre-auction channel **no**

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<sup>15</sup> See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*.

**later than 11:59 pm local time on June 21, 2019.**<sup>16</sup> The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.<sup>17</sup>

Sincerely,

A handwritten signature in black ink, appearing to read 'B A K', with a stylized flourish at the end.

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

Cc: (via electronic mail):  
Daniel A Kirkpatrick, Esq.

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<sup>16</sup> 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 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.

<sup>17</sup> *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.