



Federal Communications Commission
Washington, D.C. 20554

June 12, 2019

KUVI License Partnership, G.P.
Christopher G. Wood
5999 Center Drive
Los Angeles, CAS 90045

Re: Request for Modification and
Waiver of Phase Assignment
KUVI-DT, Bakersfield, CA
Facility ID No. 7700
LMS File No. 0000072975

Dear Licensee,

On May 20, 2019, KUVI License Partnership, G.P. (Licensee), the licensee of KUVI-DT, Bakersfield, California (KUVI-DT 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 3 to Phase 5.¹ For the reasons below, we grant the Licensee's request for waiver and modify the Station's phase assignment to Phase 5, 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) 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.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. 0000072975, Request for Phase Move Narrative (Waiver Request).

² 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, Public Notice, 32 FCC Rcd 890, 912-14, paras. 47-52 (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*, Public Notice, 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

KUVI-DT is currently licensed to operate on channel 45. The Station was reassigned to channel 26 in the *Closing and Channel Reassignment Public Notice* and assigned to transition Phase 3, which has a phase testing period start date of April 13, 2019, and a phase completion date of June 21, 2019. The Station is located in the Bakersfield, California, Designated Market Area (Bakersfield DMA). A total of two stations, including KUVI-DT, and commonly owned station KABE-CD, Bakersfield, CA (KABE-CD), were repacked in the Bakersfield DMA. Both stations were assigned to transition Phase 3.

The Licensee states that construction of KUVI-DT's post auction facility required replacement of its existing tower.⁷ However, when construction began in March of 2019, the Licensee's tower contractor encountered unexpected site conditions that resulted in six weeks of delay.⁸ Specifically, large amounts of granite were found that required significant additional drilling and jack hammering and the contractor experienced significant difficulties in securing the necessary resources to pour the tower's foundation.⁹ KUVI states that it has explored alternatives to a phase change, but no temporary facilities are available.¹⁰ Moreover, by allowing KUVI-DT to continue operating on its pre-auction channel until Phase 5, the Licensee states that KABE-CD will be able to avoid needing a similar extension by engaging in temporary joint use of KUVI-DT's existing channel 45. KABE-CD will therefore be able to vacate its pre-auction channel by the Phase 3 transition deadline.¹¹ Because KUVI-DT is currently operating in the 600 MHz band this phase change will not create any new linked-station sets or result in increased pairwise interference greater than two percent during the transition period.¹² As a result, the Licensee requests that KUVI-DT be moved from Phase 3 to Phase 5, which has a testing period start date of August 3, 2019, and a phase completion date of September 6, 2019.

Discussion. Upon review of the facts and circumstances presented, we find that the Licensee's request to modify the phase assignment for KUVI-DT to transition to its post-auction channel in Phase 5 satisfies the requirement for a waiver and is in the public interest. We find 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. Although the total number of rescan periods in the Bakersfield DMA will increase from one to two, this is still within 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

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, 33 FCC Rcd 8240, 8244-45, para. 14 (IATF & MB 2018) (*Transition Reminder Public Notice*).

⁷ Waiver Request at 1.

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ LMS File No. 00000073151 (granted May 29, 2019)

¹² Waiver Request at 3. 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).

transition phases.¹³ We believe that the Station has diligently pursued vacating its pre-auction channel, but delays beyond its control related to construction of its new tower have resulted in the Station being unable to meet its phase completion date. In the absence of a phase change, the Station would have to go dark, and over-the-air viewers would lose access to both KUVI-DT and its sister station KABE-CD until the new tower is completed. Modifying KUVI-DT's transition phase will ensure that both stations are able to continue to serve their viewers without interruption and that KABE-CD will be able to vacate its pre-auction channel on a timely basis in Phase 3. As a result, we find the facts and circumstances discussed above outweigh any viewer burden caused by an additional rescan period in the Bakersfield DMA or a short delay in access by wireless licensees to the Station's pre-auction channel.

We remind the Licensee that pursuant to the Spectrum Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other." Additional expenses incurred, such as expenses resulting from changes in a Station's transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

Accordingly, we **GRANT** KUVI License Partnership, G.P.'s *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for KUVI-DT **from Phase 3 to Phase 5**, subject to compliance with all Commission rules applicable to transitioning stations.¹⁴ Testing on the Station's post-auction channel **may not begin until 12:01 am local time on August 3, 2019**, and KUVI-DT is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on September 6, 2019**.¹⁵ The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.¹⁶

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail): Matthew S. DelNero, Esq.

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

¹⁴ *See generally* 47 CFR § 73.3700 and *Transition Reminder Public Notice*, 33 FCC Rcd 8240.

¹⁵ 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 its assigned testing period will be operating in violation of Commission rules.

¹⁶ *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.