



Federal Communications Commission
Washington, D.C. 20554

September 13, 2019

ION Media License Company, LLC
601 Clearwater Park Road
West Palm Beach, FL 22401

Re: Request for Modification and
Waiver of Phase Assignment
WPXV-TV, Norfolk, VA
Facility ID No. 67077
LMS File No. 0000073693

Dear Licensee,

On May 30, 2019, ION Media License Company, LLC (ION Media), the licensee of WPXV-TV, Norfolk, Virginia, (WPXV-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 7 to Phase 9.¹ For the reasons below, we grant ION Media's request for waiver and modify the Station's phase assignment to Phase 9, 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*, GN Docket No. 12-268 et. al., Public Notice, 32 FCC Rcd 2786 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*). See LMS File No. 0000073693, Phase Waiver Request (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*, MB Docket No. 16-306 and GN Docket No. 12-268, 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

WPXV-TV is currently licensed to operate on channel 46. It was reassigned to channel 32 in the *Closing and Channel Reassignment Public Notice* and is currently assigned to transition Phase 7, which has a phase testing period start date of October 19, 2019, and a phase completion date of January 17, 2020. The Station is located in the Norfolk-Portsmouth-Newport News, Virginia, Designated Market Area (Norfolk DMA). A total of 12 stations were repacked in the Norfolk DMA, with eight stations, including WPXV-TV, being assigned to Phase 7 and four stations being assigned to Phase 9.⁷ ION Media states that WPXV-TV is co-located on the same tower as repacked station WVEC-TV, Hampton, VA (WVEC-TV).⁸ WVEC-TV is also located in the Norfolk DMA and is assigned to transition Phase 9. According to ION Media, grant of its phase change request would result in a more efficient use of repack resources by allowing the same tower crew to perform all the required tower work at the same time.⁹ It would also minimize the amount of time that WVEC-TV would have to operate from an interim facility given WPXV-TV's earlier phase assignment.¹⁰ As a result, ION Media has filed a waiver request seeking to change its phase assignment from Phase 7 to Phase 9, which has a testing period start date of March 14, 2020, and a phase completion date of May 1, 2020. Because the Station is currently operating in the 600 MHz band, ION Media asserts that this phase change will not create any new linked-station sets, direct dependencies, or increased temporary pairwise interference greater than two percent during the transition period.¹¹

Discussion. Upon review of the facts and circumstances presented, we find that ION Media's request to modify the phase assignment for WPXV-TV to transition to its post-auction channel satisfies the requirement for a waiver and is in the public interest. We agree that changing the Station's transition phase to Phase 9 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, direct dependencies, or increased pairwise interference greater than two percent. The total number of rescan periods in the Norfolk DMA will remain the same.¹² As a result, we find the facts and circumstances discussed above outweigh any viewer burden caused by a change in the Station's transition phase and a short delay in access by wireless licensees to the Station's pre-auction channel.

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 WGNT, Portsmouth, VA, has simultaneously filed and is being granted an unrelated change in phase from Phase 7 to Phase 9. See LMS File No. 0000081042

⁸ Waiver Request at 1.

⁹ *Id.* at 2. ION Media has included with its waiver request a letter of support from TEGNA, the licensee of WVEC-TV.

¹⁰ *Id.* at 2.

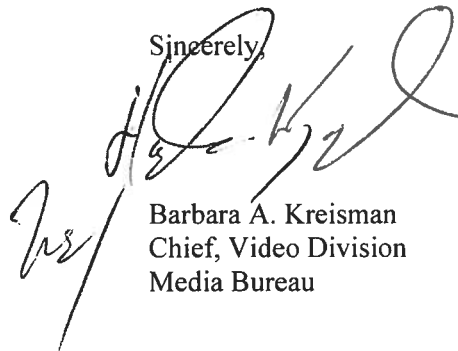
¹¹ *Id.* See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16 (allowing temporary increased pairwise (station-to-station) interference of up to two percent during the transition period).

¹² *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21 (establishing a two rescan periods per DMA limitation when assigning stations to transition phases).

We remind ION Media 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.”¹³ 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** ION Media’s *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WPXV-TV **from Phase 7 to Phase 9**, subject to any commitments made in its waiver request and 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 March 14, 2020**, and WPXV-TV is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on May 1, 2020**.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):
Terri Santisi

¹³ *Media Bureau Finalizes Reimbursement Form for Submission to OMB and Adopts Catalog of Expenses*, GN Docket No. 12-268, Public Notice, 30 FCC Rcd 11701, 11701-02 (MB 2015). *See also Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 (“The appropriate scope of ‘costs reasonably incurred’ necessarily will have to be decided on a case-by-case basis.”).

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 the beginning of 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.