



Federal Communications Commission
Washington, D.C. 20554

July 29, 2019

Renard Communications Corporation
Craig Fox
401 West Kirkpatrick Street
Syracuse, NY 13204

Re: Request for Modification and
Waiver of Phase Assignment
WTVU-CD, Syracuse, NY
Facility ID No. 617
LMS File No. 0000078381

Dear Licensee,

On July 19, 2019, Renard Communications Corporation (Renard), the licensee of WTVU-CD, Syracuse, New York (WTVU-CD 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 4 to Phase 8.¹ For the reasons below, we grant Renard's request for waiver and modify the Station's phase assignment to Phase 8, 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, GN Docket No. 12-268 et. al., 32 FCC Rcd 2786 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*). See LMS File No. 0000078381, Waiver Request for Modification of Transition Phase (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

WTVU-CD is currently licensed to operate on channel 22. The Station was reassigned to channel 25 in the *Closing and Channel Reassignment Public Notice* and assigned to transition Phase 4, which has a phase testing period start date of June 22, 2019, and a phase completion date of August 2, 2019. The Station is located in the Syracuse, New York, Designated Market Area (Syracuse DMA). A total of 12 stations were repacked in the Syracuse DMA. Seven stations, including WTVU-CD, were assigned to transition Phase 4 and five stations were assigned to Phase 8. Repacked stations WHSU-CD, Syracuse, NY (WHSU-CD) and WONO-CD, Syracuse Etc., NY (WONO-CD) are also owned by Renard and located on the same tower as WTVU-CD. Both WONO-CD and WHSU-CD were assigned to transition Phase 8. Renard states that allowing WTVU-CD to transition in Phase 8 with WHSU-CD and WONO-CD will create resource efficiencies by allowing Renard's tower crew to rig the shared tower only one time.⁷ It would also permit the use of a common antenna for the three stations, which provides for reduced wind loading and physical space efficiency on the tower.⁸ Finally, having all three Renard stations transition in the same phase would minimize disruption to other users of the tower which include AM, FM, FM translators, and LPTV stations.⁹ Renard included with its request a letter of support for its request from its tower crew.¹⁰ As a result, Renard requests that WTVU-CD be moved from Phase 4 to Phase 8, which has a testing period start date of January 18, 2019, and a phase completion date of March 13, 2019.¹¹

Renard acknowledges that WTVU-CD is currently part of linked-station set 36 (LSS 36) and is upstream of station WXXI-TV, in Rochester, NY. Renard has included with its request an engineering analysis demonstrating that by the Station delaying its transition to Phase 8 and WXXI-TV transitioning as scheduled in Phase 4, WTVU-CD would receive temporary increased pairwise interference from WXXI-TV in the amount of 2.19%.¹² While this is just over the temporary increased pairwise interference of up to two percent during the transition period,¹³ Renard has agreed to accept this increased temporary interference so that WXXI-TV can transition on schedule. Renard's continued operation on its pre-auction channel until Phase 8 would not cause any increased pairwise interference to any other stations. Renard also states that the number of rescan periods in the Syracuse DMA would remain at two.¹⁴

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, 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.* at 1.

¹⁰ *Id.* at 1 and 3.

¹¹ *Id.* at 1.

¹² *Id.* at 2.

¹³ 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).

¹⁴ See *id.* at 898-99, paras. 20-21 (establishing a two rescan periods per DMA limitation when assigning stations to transition phases).

Discussion. Upon review of the facts and circumstances presented, we find that the Renard's request to modify the phase assignment for WTVU-CD to transition to its post-auction channel in Phase 8 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. In fact, we find that moving WTVU-CD back to Phase 8 will create resource efficiencies. Staff has confirmed that while the phase change will result in temporary increased pairwise interference to WTVU-CD, it would not cause any increased interference to any other stations. Renard has agreed to accept any temporary increased interference the Station receives due to its change in phase. The total number of rescan periods in the Syracuse DMA will also remain at two. As a result, we find the facts and circumstances discussed above outweigh any potential viewer burden caused by the change in transition phase or slight increase in temporary pairwise interference that will need to be received by WTVU-CD.

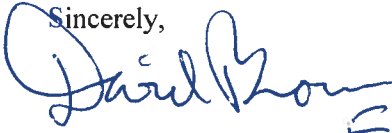
We remind Renard that pursuant to the Spectrum Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other." Additional expenses incurred, such 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** Renard's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WTVU-CD **from Phase 4 to Phase 8**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.¹⁵ Testing on the Station's post-auction channel **may not begin until 12:01 am local time on January 18, 2020**, and WTVU-CD is required to cease operating on its pre-auction channel

¹⁵ See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*, 33 FCC Rcd 8240.

no later than 11:59 pm local time on March 13, 2020.¹⁶ The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.¹⁷

Sincerely,


Barbara A. Kreisman
Chief, Video Division
Media Bureau

For /

Cc: (via electronic mail):
James L. Oyster, 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.