



Federal Communications Commission
Washington, D.C. 20554

July 30, 2019

Video Voice, Inc.
Ernest Schimizzi
PO Box 769
Wainscott, NY 11975

Re: Request for Modification and
Waiver of Phase Assignment
WVH-CD, Southampton, NY
Facility ID No. 70158
LMS File No. 0000078223

Dear Licensee,

On July 18, 2019, Video Voice, Inc. (Video Voice), the licensee of WVH-CD, Southampton, New York (WVH-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 7.¹ For the reasons below, we grant Video Voice's request for waiver and modify the Station's phase assignment to Phase 7, 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. 0000078223, Legal STA Waiver Request for WVH-CD to Change to Transition Phase 7 (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

WVH-CD is currently licensed to operate on channel 50 and was reassigned to channel 18 in the *Closing and Channel Reassignment Public Notice*. The Station was 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 New York, New York, Designated Market Area (New York DMA). A total of 13 stations, including WVH-CD, were repacked in the New York DMA, with one station having transitioned before Phase 1, 11 stations (including WVH-CD) assigned to Phase 4, and one station assigned to Phase 9. While the Station's new transmitter and antenna have been ordered, Video Voice reports that the station did not complete lease negotiations with its tower owner, American Tower Corporation, until July 16, 2019.⁷ According to Video Voice, the tower lease was a condition precedent to obtaining electrical service from the utility company and scheduling delivery and installation of equipment.⁸ As a result, Video Voice requests that WVH-CD be moved from Phase 4 to Phase 7, which has a testing period start date of October 19, 2019, and a phase completion date of January 17, 2020.⁹ Video Voice asserts that 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.¹⁰

Discussion. Upon review of the facts and circumstances presented, we find that Video Voice's request to modify the phase assignment for WVH-CD to transition to its post-auction channel in Phase 7 satisfies the requirement for a waiver and is in the public interest. The Station has been unable to complete construction of its post-auction facility by its phase completion date due to delays related to finalizing its tower lease. 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. The Station is currently operating in the 600 MHz band. Staff has confirmed that the phase change will not create any new linked station sets or direct dependencies. As a result of the phase change, the total number of rescan periods in the New York DMA will be in excess of 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.¹¹ In order to minimize viewer confusion about the change in phase we require that WVH-CD, at a minimum, air double the amount of on-air consumer education notifications required by the Rules.¹² In the absence of a phase change, the Station would have to go dark and over-the-air viewers would lose access to WVH-CD. Modifying WVH-CD's transition phase will ensure that the Station is able to continue to serve its viewers without interruption. As a result, we find the facts

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.*

⁹ *Id.*

¹⁰ *Id.* at 2. 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).

¹¹ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21.

¹² See 47 CFR § 73.3700(c)(3) (repacked stations must air sixty (60) seconds per day of on-air crawls or public service announcements (PSAs) beginning 30 days prior to discontinuing operations on their pre-auction channel).

and circumstances discussed above outweigh any viewer burden caused by an additional rescan period in the New York DMA or a short delay in access by wireless licensees to the Station's pre-auction channel.

We remind Video Voice 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** Video Voice's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WVVH-CD **from Phase 4 to Phase 7**, subject to compliance with all Commission rules applicable to transitioning stations.¹⁴ Furthermore, WVVH-CD **IS REQUIRED** to air, at minimum, double the amount of consumer education notifications required by section 73.3700(c)(3) as set forth above.¹⁵ Testing on the Station's post-auction channel **may not begin until 12:01 am local time on October 19, 2019**, and WVVH-CD is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on January 17, 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

Cc: (via electronic mail): Jerold L. Jacobs, Esq.

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 47 CFR § 73.3700(c)(3).

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.