



Federal Communications Commission  
Washington, D.C. 20554

September 6, 2019

New Bern (WYDO-TV) Licensee, Inc.  
Phillip Brinson  
2000 West 41<sup>st</sup> Street  
Baltimore, MD 21211

Re: Request for Modification and  
Waiver of Phase Assignment  
WYDO(TV), Greenville, NC  
Facility ID No. 35582  
LMS File No. 0000080747

Dear Licensee,

On August 29, 2019, New Bern (WYDO-TV) Licensee, Inc. (New Bern) the licensee of WYDO(TV), Greenville, North Carolina (WYDO 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 5 to Phase 7.<sup>1</sup> For the reasons below, we grant New Bern'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.<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

---

<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*, 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. 0000080747, WYDO Phase Change Request (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, Public Notice, 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*, 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.<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>

WYDO is currently licensed to operate on channel 47. It was reassigned to channel 19 in the *Closing and Channel Reassignment Public Notice* and is currently assigned to transition Phase 5, which has a phase testing period start date of August 3, 2019, and a phase completion date of September 11, 2019.<sup>7</sup> The Station is located in the Greenville-New Bern-Washington, North Carolina, Designated Market Area (Greenville DMA). A total of eight stations were repacked in the Greenville DMA, with seven stations, including WYDO, being assigned to transition Phase 5 and one station assigned to Phase 10. New Bern has filed a waiver request seeking to change its phase assignment from Phase 5 to Phase 7, which has a testing period start date of October 19, 2019 and phase completion date of January 17, 2020. According to New Bern, WYDO shares a tower with WUNM-TV, Jacksonville, NC, which also has pending a request to modify its phase assignment to Phase 7.<sup>8</sup> New Bern states that allowing it to move WYDO to a later phase will “provide efficiencies by allowing installation crews and other technical personnel to coordinate the repack for both co-located stations and the stations have coordinated with ERI to complete the tower work on the co-located tower.”<sup>9</sup> New Bern goes on to assert that “the phase change request will also allow engineering and other resources to devote more time to assist other stations in changing to their post-repack channels by the Phase 5 deadline.”<sup>10</sup>

*Discussion.* Upon review of the facts and circumstances presented, we find that New Bern’s request to modify the phase assignment for WYDO 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 7 should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. The Station is currently licensed to operate in the 600 MHz band. Staff has confirmed that the phase change will not create any new linked station sets or direct dependencies.<sup>11</sup> The total number of rescan periods in the Greenville DMA will increase from two to three, 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>12</sup> As noted above, WUNM-TV has also requested to change its transition phase assignment to Phase 7 and that request is being granted simultaneously. Having two stations in the Greenville DMA transitioning in

---

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

<sup>7</sup> Waiver Request at 1. Originally, Phase 5 stations had phase completion date and construction permit expiration date of September 6, 2019. See, *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd 2786. On September 3, 2019, those dates were extended to September 11, 2019. See *The Completion Date For Phase 5 of the Post-Incentive Auction Transition Is Extended To September 11, 2019 Because of Hurricane Dorian*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, DA 19-866, rel. Sept. 3, 2019 (IATF & MB).

<sup>8</sup> *Id.* See LMS File No. 0000080817 (WUNM-TV Phase Change Request).

<sup>9</sup> Waiver Request at 1.

<sup>10</sup> *Id.*

<sup>11</sup> 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>12</sup> *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21.

Phase 7 will help inform viewers of the need to rescan their over-the-air TVs during Phase 7. Nevertheless, in order to minimize potential viewer confusion that may be caused by the change in the transition schedule, we require that New Bern air, at minimum, double the amount of on-air consumer education notifications required by the Commission's rules in advance of its transition.<sup>13</sup> As a result, we find the facts and circumstances discussed above outweigh any viewer burden caused by an additional rescan period in the Greenville DMA or a short delay in access by wireless licensees to the Station's pre-auction channel.

We remind New Bern 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."<sup>14</sup> 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** New Bern's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WYDO **from Phase 5 to Phase 7**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.<sup>15</sup> Furthermore, **WYDO IS REQUIRED** to air, at minimum, double the amount of consumer education notifications required by section 73.3700(c)(3) as set forth above.<sup>16</sup> Testing on the Station's post-auction channel **may not begin until 12:01 am local time on October 19, 2019**, and WYDO is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on**

---

<sup>13</sup> 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)

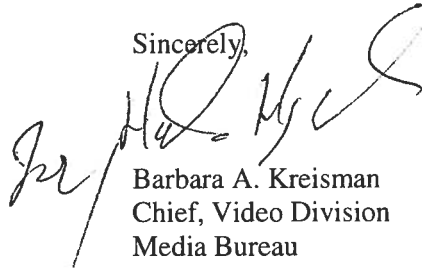
<sup>14</sup> *Media Bureau Finalizes Reimbursement Form for Submission to OMB and Adopts Catalog of Expenses*, GN Docket No. 12-268, Public Notice, 30 FCC Rcd 11701, 11701-02 (MB 2015). See also *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

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

<sup>16</sup> 47 CFR § 73.3700(c)(3).

**January 17, 2020.**<sup>17</sup> The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.<sup>18</sup>

Sincerely,

A handwritten signature in black ink, appearing to read 'Barbara A. Kreisman', is written over the typed name and title.

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

Cc: (via electronic mail):  
Paul Cicelski, Esq.  
Scott Flick, Esq.

---

<sup>17</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 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.

<sup>18</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.