



Federal Communications Commission
Washington, D.C. 20554

October 23, 2018

Louisiana Educational Television Authority
Donald R. Ballard
7733 Perkins Road
Baton Rouge, LA 70810

Re: Request for Modification and
Waiver of Phase Assignment
KLPA-TV, Alexandria, LA
Facility ID No. 38590
LMS File No. 0000060737

Dear Licensee,

On October 5, 2018, Louisiana Educational Television Authority (Louisiana TV), the licensee of Station KLPA-TV, Alexandria, Louisiana (KLPA-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 2 to Phase 1.¹ For the reasons below, we grant Louisiana TV's request for waiver and modify KLPA-TV's phase assignment to Phase 1, 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. 0000060737, Request for Waiver of Phase Assignment (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, 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*, 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

KLPA-TV is currently licensed to operate on channel 26. It was reassigned to channel 33 in the *Closing and Channel Reassignment Public Notice* and assigned to transition Phase 2, which has a testing period start date of December 1, 2018, and phase completion date of April 12, 2019. KLPA-TV is located in the Alexandria, Louisiana, Designated Market Area (Alexandria DMA). A total of three stations, including KLPA-TV, were repacked in the Alexandria DMA and were all assigned to transition Phase 2. Louisiana TV states that its staff misunderstood its deadline for transition and completed its construction work on its new facility, sent out required MPVD and healthcare facility notices, and began running on-air viewer notifications all announcing a November 1, 2018 transition date.⁷ Upon realizing its error about the required transition deadline, Louisiana TV now requests modification of its phase assignment to Phase 1, which has a testing period start date of September 14, 2018, and phase completion date of November 30, 2018 to permit the station to transition as planned on November 1, 2018.

Louisiana TV believes that proceeding with its planned November 1 transition date would be less harmful to both viewers and station personnel – who are also involved in transitioning other commonly owned facilities – then abruptly halting its plans, issuing new notifications with a revised date, and transitioning during Phase 2.⁸ According to Louisiana TV its tower work is completed and all equipment is on-site and in the final stages of installation by Station staff.⁹ Louisiana TV also provides an engineering analysis demonstrating that its early transition will not create any new linked-station sets or result in increased pairwise interference greater than two percent during the transition period.¹⁰ While KLPA-TV's change to Phase 1 would create an additional rescan period in the Alexandria DMA, that would still be within the two rescan periods per DMA limitation used by the tool adopted by the Bureau in the *Transition Scheduling Adoption Public Notice* to assign stations to transition phases.¹¹

Discussion. Upon review of the facts and circumstances presented, we find Louisiana TV's request to modify its phase assignment to permit KLPA-TV to transition to its post-auction channel in Phase 1 satisfies the requirements for a waiver and is in the public interest. We agree that the change to KLPA-TV's transition phase should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. Given that Louisiana TV's tower work has been completed and all equipment is on-site and in the final stages of installation by Station staff, the phase change will not impact the availability of third party transition resources to other stations. A staff analysis also confirms that the phase change will not result in new increased pairwise interference above the two percent permitted during the post-auction transition period.¹² While viewers in the Alexandria DMA will

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, DA 18-884 (IATF & MB, rel. Aug. 27, 2018) (*Transition Reminder Public Notice*).

⁷ Wavier Request at 1 and 2.

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.* at 2 and 3-6.

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

¹² See *id.* at 897, para. 16 (allowing temporary increased pairwise (station-to-station) interference of up to two percent during the transition period).

be subjected to an additional rescan, the total number of rescans is still within the limit of two rescans per DMA used to create the transition schedule. As a result, we find the disruption and confusion that may be caused by the Station halting its planned November 1, 2018, transition and issuing notices with a new transition date together with the fact that all tower work has been completed and equipment is in the final stages installation outweighs the burden of an additional rescan period in this case.

We caution Louisiana TV that any additional expenses incurred as a result of the grant of KLPA-TV's voluntary phase change may not be reimbursable from the TV Broadcasters Relocation Fund. Such additional costs might include, but may not be limited to, additional legal or engineering expenses; filing fees; and interim or additional equipment that was not contemplated when the station filed its initial estimated expenses but was subsequently necessitated to complete the transition to its post-auction channel due to its phase change. Louisiana TV is responsible for paying for any expenses incurred as a result of voluntarily requested changes to the station's transition schedule.

Accordingly, we **GRANT** Louisiana TV's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for KLPA-TV-TV **from Phase 2 to Phase 1**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.¹³ The Station is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on November 30, 2018.**¹⁴ The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.¹⁵

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):
Steven C. Schaffer, Esq.

¹³ See generally 47 CFR § 73.3700; *Transition Reminder Public Notice*.

¹⁴ 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 2806, para. 64. The Phase 1 testing period start date was September 14, 2018.

¹⁵ *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. 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.