



Federal Communications Commission
Washington, D.C. 20554

April 12, 2019

KALO TV, Inc.
Malala Pau
P.O. Box 1256
Honolulu, HI 96807

Re: Request for Modification and
Waiver of Phase Assignment
KALO(TV), Honolulu, HI
Facility ID No. 51241
LMS File No. 0000069596

Dear Licensee,

On April 4, 2019, KALO TV, Inc. (KALO TV), the licensee of KALO(TV) (KALO 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 3.¹ For the reasons below, we grant KALO TV's request for waiver and modify the Station's phase assignment to Phase 3, 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. 00000695966, Extraordinary Circumstances Justifying STA and Continued Brief Use of Channel 38 (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

KALO is currently licensed to operate on channel 38. The Station was reassigned to channel 32 in the *Closing and Channel Reassignment Public Notice* and assigned to transition Phase 2, which has a phase testing period start date of December 1, 2018 and a phase completion date of April 12, 2019. The Station is located in the Honolulu, Hawaii, Designated Market Area (Honolulu DMA). A total of five stations, including KALO, were repacked in the Honolulu DMA. All of the stations were assigned to Phase 2. Because of construction delays related to the Station's post-auction facility, KALO is planning to transition to an interim facility in order to vacate its pre-auction channel.⁷ The Station's temporary transmitter has arrived in Hawaii and was scheduled to be transported to the transmitter site on or about April 8.⁸ Unfortunately, personnel with the necessary skills to install the transmitter and connect it to the antenna are not available to work at the site until the week of April 22.⁹ KALO anticipates that it will be able to complete the installation during that week and expects to commence operation on its new channel at that time. KALO states that it obtained the consent of T-Mobile, the new licensee of its current pre-auction channel, to continue operating on its current channel through April 30.¹⁰ As a result, KALO TV requests that KALO be permitted to operate on its pre-auction channel until April 30, 2019.

Discussion. Upon review of the facts and circumstances presented, we find that KALO TV's request to modify the phase assignment for KALO to transition to its post-auction channel in Phase 3 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. Staff has confirmed that the phase change will not create any new linked station sets or direct dependencies.¹¹ Although the total number of rescan periods in the Honolulu DMA will increase from one to two, this is consistent with 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.¹² Because of the change in the Station's transition schedule and the fact that consumers in the Honolulu DMA will be subject to an additional rescan period, we require KALO TV to air at least twice the number of consumer education notifications required by the Rules for the time period prior to KALO's transition to its new channel. Based on the KALO TV's phase change request, we believe that the Station has diligently pursued vacating its pre-auction channel, but due to equipment delivery and

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 Waiver Request at 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*, Confirmation of No Objection from T-Mobile.

¹¹ 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 See *id.* at 898-99, paras. 20-21 (establishing a two rescan periods per DMA limitation when assigning stations to transition phases).

installation delays has been is unable to meet its phase completion date.¹³ In the absence of a phase change, the station would have to go dark, and over-the-air viewers would lose access to KALO. As a result, we find the facts and circumstances discussed above outweigh any viewer burden caused by an additional rescan period in the Honolulu DMA or a short delay in access by wireless providers to KALO's pre-auction channel.

We remind KALO TV 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** KALO-TV's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for KALO **from Phase 2 to Phase 3**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.¹⁴ In particular, **KALO IS REQUIRED** to air, at minimum, double the amount of consumer education notifications required by section 73.3700(c)(3).¹⁵ Testing on the Station's post-auction channel **may not begin until 12:01 am local time on April 13, 2019**, and KALO is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on June 21, 2019**.¹⁶ The

¹³ We note that KALO TV has also filed a separate request to have its construction permit extended 180 days from its current construction permit deadline. See LMS File No. 0000068474. We will act on that request separately.

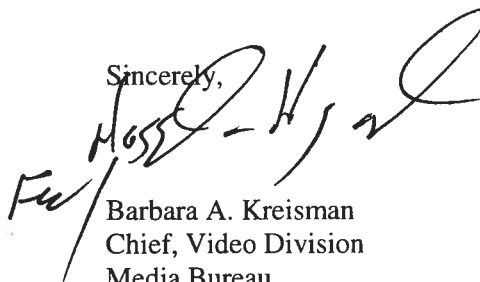
¹⁴ See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*, 33 FCC Rcd 8240.

¹⁵ 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)

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 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.

Station's construction permit expiration date will also be modified to correspond to its new phase completion date.¹⁷

Sincerely,

A handwritten signature in black ink, appearing to read 'Barbara A. Kreisman', is written over the typed name. To the left of the signature, the word 'Fw' is written vertically.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):
Anne Goodwin Crump, Esq.

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.