



Federal Communications Commission
Washington, D.C. 20554

January 10, 2020

Latina Broadcasters of Daytona Beach, LLC
Nora Crosby
2320 N Houston Street #1007
Dallas, TX 75219

Re: Request for Modification and
Waiver of Phase Assignment
WDYB-CD Daytona Beach, FL
Facility ID No. 41375
LMS File No. 0000096186

Dear Licensee,

On January 9, 2020, Latina Broadcasters of Daytona Beach, LLC (Latina), the licensee of WDYB-CD, Daytona, Florida (WDYB-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 7 to Phase 8.¹ For the reasons below, we grant Latina'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*, 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. 0000095289, Request for Phase Waiver Exhibit (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

WDYB-CD is currently licensed to operate on channel 14. It was reassigned to channel 21 in the *Closing and Channel Reassignment Public Notice* and is currently assigned to transition Phase 7, which had a phase testing period start date of October 19, 2019, and has a phase completion date of January 17, 2020. The Station is located in the Orlando-Daytona Beach-Melbourne, Florida, Designated Market Area (Orlando DMA). A total of 16 stations were repacked in the Orlando DMA, with 15 stations, including WDYB-CD, being assigned to transition Phase 7 and one station being assigned to Phase 9. According to Latina, it had intended to locate its post-auction facility at its current tower site, but in December 2019 was unexpectedly notified by the Station's tower site owner that the Station's tower lease (which expires in April 2020) would not be renewed.⁷ Latina has since identified a new tower site and is working diligently to seek authorization from the Commission for this new site and, upon receiving authority, will install its equipment.⁸ Even if its amended construction permit is approved promptly, the earliest date that Latina believes it could start installing its antenna at the new tower site is January 18, 2020. Latina expects that construction can be completed within seven to ten days.⁹ As a result of these circumstances, Latina states that it will not meet its current phase completion deadline and requests that the Station's transition phase assignment be modified from Phase 7 to Phase 8, which has a testing period start date of January 18, 2020, and phase completion date of March 13, 2020.

WDYB-CD is part of Linked-Station Set (LSS) 103 and is directly linked with stations WOPX-TV, Melbourne, Florida (WOPX-TV), and WOTF-TV, Daytona Beach, Florida (WOTF-TV).¹⁰ Both WOPX-TV and WOTF-TV were also assigned to transition Phase 7, but WOPX-TV has requested, and concurrently herewith is being granted, a phase change to Phase 8.¹¹ In order to prevent increased temporary pairwise interference greater than two percent,¹² WDYB-CD must transition at the same time as or prior to WOPX-TV and WOTF-TV. Because WOTF-TV plans to complete its transition by January 17, 2020, continued operation by WDYB-CD on channel 14 after WOTF-TV transitions would result in temporary pairwise interference caused to WDYB-CD above two percent. As a result, WDYB-CD has agreed to accept all temporary incoming pairwise interference from WOTF-TV.¹³ Because WOPX-TV has moved to Phase 8, Latina also commits that it will coordinate with WOPX-TV to ensure that WDYB-CD has ceased operations on Channel 14 prior to WOPX-TV's commencement of operations

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.* at 1-2. WOPX-TV is licensed to ION Media Orlando License, Inc. and WOTF-TV is licensed to Entravision Holdings, LLC.

¹¹ See LMS File no. 0000093119.

¹² 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).

¹³ Waiver Request at 2.

on Channel 14.¹⁴ Latina also acknowledges that by moving WDYB-CD to Phase 8, the total number of rescan periods in the Orlando DMA will increase.¹⁵ In order to mitigate any viewer disruption caused by the Station's change in phase, Latina has agreed to increase viewer education and outreach above and beyond what is required by the Commission's rules through its digital and social media assets.¹⁶

Discussion. Upon review of the facts and circumstances presented, we find that Latina's request to modify the phase assignment for WDYB-CD 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 8 should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. The station has agreed to accept any interference it receives from WOTF-TV and to coordinate its transition with WOPX-TV. Staff has confirmed that the phase change will not create any new linked-station sets or cause increased temporary pairwise interference to any other station so long as WDYB-CD and WOPX-TV coordinate their transition. By moving WDYB-CD (and concurrently WOPX-TV) to Phase 8, the total number of rescan periods in the Orlando DMA will increase from two to three, which will be 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*.¹⁷ Latina has agreed to increase consumer education and outreach beyond what is required by the Commission's rules in order to ensure that viewers are fully informed about the repack and in order to minimize any viewer confusion caused by the Station's change in phase. In addition, we note that WDYB-CD expects that construction will be completed by the end of January 2020, just a short time after Phase 7 concludes. Moreover, WOPX-TV, which is also in the Orlando DMA, has also been granted a modification of its phase assignment to phase 8. We believe these factors will further reduce viewer confusion. Further, modifying WDYB-CD's transition phase will ensure that the Station is able to continue to serve its viewers while it completes construction of its post-auction facility. As a result, we find the facts and circumstances discussed above outweigh any viewer burden caused by an increase in the number of rescan periods in the Orlando DMA and a temporary reduction in service.

We remind Latina 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."¹⁸ 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** Latina's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WDYB-CD **from Phase 7 to Phase 8**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.¹⁹ Testing on the Station's post-auction channel **may not begin until 12:01 am local time on January 18, 2020**, and WDYB-CD is required to cease operating on its pre-auction

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd 898-99, paras. 20-21.

¹⁸ 47 U.S.C. § 1452(b)(4)(A)(i). 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.").

¹⁹ See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*, 33 FCC Rcd 8240.

channel no later than 11:59 pm local time on March 13, 2020.²⁰ The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.²¹

Sincerely,
 David Brown For /

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):
Kathleen A Kirby, Esq.
John Burgett, Esq.

²⁰ 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.

²¹ *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.