

Request for Waiver of Phase Assignment for KRDK-TV, Valley City, North Dakota

Parker Broadcasting of Dakota License, LLC (“Parker”), licensee of digital television broadcast station KRDK-TV, Valley City, North Dakota, Facility ID No. 49134 (the “Station”), hereby seeks Commission grant of a waiver of its post-incentive auction transition phase assignment, and corresponding testing dates and construction completion deadlines. The Station is currently assigned to Phase 1, which carries a construction completion date of November 30, 2018.¹ Parker hereby seeks the Station’s reassignment to Phase 3. A variety of reasons combine to create circumstances which justify grant of the respectfully requested reassignment to Phase 3, which would allow the Station until June 21, 2019 to complete its channel transition.

The *Transition Scheduling Adoption Public Notice* permits stations to propose “alternative transition solutions that could create efficiencies,” and stated that a request to modify a station’s transition deadline would be viewed favorably if the request is “otherwise compliant with [FCC] rules and [has] little or no impact on the phase assignments or transition schedule.”²

The FCC may grant a waiver for good cause shown.³ A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.⁴ In considering a waiver, the FCC may take into account considerations of hardship, equity, or more effective

¹ *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 Red 2786 (WTB & MB 2017).

² *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, 913 ¶ 51 (MB 2017) (*Transition Scheduling Adoption Public Notice*), citing *Incentive Auction Task Force and Media Bureau Seek Comment on Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 31 FCC Rcd 10802 (MB 2016).

³ 47 C.F.R. § 1.3.

⁴ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

implementation of overall policy on an individual basis.⁵ Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁶

As a threshold matter, Parker submits as Attachment A hereto the Engineering Statement of consulting engineer Benjamin Pidek of Mid-State Consultants. The Engineering Statement makes clear that the Station is not a linked station and that because no other television station will be moving to the Station's current Channel 38, "creation of a new linked station set with any other station or stations will not be possible." Accordingly, the Engineering Statement concludes that "no interference study is required" in connection with this phase change request. The Engineering Statement also states that with grant of this request, only two receiver rescans will be needed in the market, which falls within Commission per-market rescan expectations for the transition.

As noted above, multiple reasons justify this request. The repack of the Station from RF Channel 38 to RF Channel 24 is a project of unusually broad scope and substantial complexity. That is due in large part to the fact that the Station operates from one of this country's tallest towers, a structure that stands at 2060 feet above ground level. As the Commission's Form 399 effectively recognizes in the section concerning Tower Equipment and Rigging Costs, all towers greater than 500 feet above ground in height (much less those that exceed 2000 feet AGL like the Station's), pose construction issues of a greater magnitude, including but not limited to those relating to structural integrity and analysis, worker safety, installation intricacies (e.g., replacing transmission line of massive length), and the need to devise and implement an interim operation

⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

⁶ *Northeast Cellular*, 897 F.2d at 1166.

plan that will maximize efficiencies and minimize both service reductions and potential harm to a station's viewers and the station itself.

Given these technical realities, the Station would have faced a difficult task to implement the government-mandated repack even if it enjoyed the flexibility afforded by the three-year construction period that is the Commission's long established historical norm. Those anticipated difficulties were only sharpened by the Station's assignment to Phase 1 of the post-auction repack, requiring the Station to complete construction in a little more than one third of the time normally allotted by the Commission for construction projects, both simple and complex. In the intervening months, those anticipated difficulties have been exacerbated by unforeseen circumstances, including but not limited to delays encountered by the fabricator of the Station's interim and permanent antennas (making fabrication of the permanent antenna, much less its installation, effectively impossible prior to the Phase 1 November 30, 2018 completion date), crowded schedules of local tower crews, and the death of the Station's consulting engineer-of-record Byron St. Clair (May of this year). The delays have had outsized, cascading impacts on construction plans with so many different moving parts, impacts of particular consequence for a station licensed to a community located so close to this country's northern border, where the effects of weather on outdoor projects are keenly felt, particularly when the calendar turns to November. Furthermore, severe North Dakota winter weather makes a reassignment to Phase 2 entirely impractical.

With respect to the Station's interim operation plan, Attachment B hereto contains a Station coverage comparison map, prepared by Station consulting engineer Jim McDonald. It shows that the Station's coverage area will shrink from 31,873 square kilometers to 17,545 square kilometers (a reduction of 14,328 square kilometers or 45 percent) during interim

operations. Such a loss in coverage will be detrimental to the Station, including potential impact on MVPD carriage due to signal quality degradation within the market, and maximizes the importance of careful coordination of repack installation work to minimize the period of interim Station operation. Such coordination, a tangible efficiency, can occur in Phase 3. In all events, this layer of complexity provides yet another justification for the requested relief.

Parker notes that grant of this requested phase change would provide substantial public interest benefits. The Station is one of the very few minority owned and controlled television stations in the United States, and it provides an important independent voice in the Fargo-Valley City DMA. Grant of the requested waiver will directly promote the survival of this tall-tower Station, and is particularly appropriate where the post-incentive auction transition is only in Phase 1, and grant of this request “will have little or no impact on the ...transition schedule.”⁷

For all of the foregoing reasons, grant of the requested waiver to modify the Station’s transition phase from Phase 1 to Phase 3 is amply justified and will serve the public interest, relief which is respectfully requested.

⁷ See n.2 *supra* and accompanying text.

ATTACHMENT A

**Request for Waiver of Phase Assignment
KRDK-TV, Valley City, North Dakota**



ENGINEERING STATEMENT

IN SUPPORT OF

REQUEST FOR SPECIAL TEMPORARY AUTHORITY

TO

CHANGE POST-INCENTIVE AUCTION TRANSITION CONSTRUCTION PHASE DEADLINE FROM

PHASE 1 TO PHASE 3

KRDK-TV

VALLEY CITY, ND

Parker Broadcasting of Dakota License, LLC (Parker) is the licensee of KRDK-TV, located at Valley City, ND (Fargo DMA), which is presently authorized to operate its digital facility on Channel 38. KRDK-TV has been assigned Ch. 24 for its post-incentive auction facility and has also been assigned Phase 1 for the construction phase completion date (11/30/2020).

KRDK-TV is requesting Special Temporary Authority to change its phase completion date from Phase 1 to Phase 3 (6/21/19) for the reasons described in the STA request which this statement supports.

Presently, KRDK-TV is not a linked station and the current KRDK-TV channel (Ch. 38) is outside the new core of UHF channels (Ch. 2-Ch. 36). As such, no other stations will be moving to Ch. 38 as part of the incentive auction repacking process. For this reason, creation of a new linked station set with any other station or stations will not be possible. Therefore, no interference study is required to demonstrate the fact that the requested change in phase completion date would not create any new linked station set with other stations.

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Of the thirteen stations in the Fargo DMA, only KVLV-TV and KRDK-TV are moving to new channels. Like KRDK-TV, KVLV-TV has been assigned Phase 1 for its construction phase completion date. Accordingly, under the current Transition Plan, there is only one scheduled rescan for the Fargo DMA. Grant of the proposed delay in the transition of KRDK-TV (from Phase 1 to Phase 3) will result in an additional rescan in the DMA; however, the Commission determined in the *Transition Scheduling Adoption Public Notice* that up to two non-sequential rescans would service the goals of efficiently clearing DMAs while minimizing viewer disruption. The KRDK-TV request to move to Phase 3 will not increase the number of rescans in the Fargo DMA above two.

Certification

I hereby certify that the foregoing report or statement was prepared by me but may include work performed by others under my supervision or direction. The statements of fact contained therein are believed to be true and correct based on personal knowledge, information and belief unless otherwise stated; with respect to facts not known of my own personal knowledge, I believe them to be true and correct based on their origin from sources known to me to be generally reliable and accurate. I have prepared this document with due care and in accordance with applicable standards of professional practice.

A handwritten signature in black ink, appearing to read "Ben Pidek", is written over a horizontal line.

Benjamin L. Pidek, P.E.
October 22, 2018

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ATTACHMENT B

**Request for Waiver of Phase Assignment
KRDK-TV, Valley City, North Dakota**

KRDK-TV.C
0000028708
Latitude: 47-16-45.06 N
Longitude: 097-20-25.68 W
ERP: 285.00 kW
Channel: 24
Frequency: 533.0 MHz

