JUSTIFICATION FOR WAIVER

Puget Sound Educational TV, Inc. ("Daystar"), licensee of television station KWDK(TV), Tacoma, WA (Fac. ID 35419) ("Station"), respectfully requests a waiver of Section 73.3700(c) and (d) to allow the Station to discontinue use of its pre-auction channel (42) on November 1, 2019. In furtherance of this request, Daystar commits to take the actions described herein to ensure that its viewers in the Seattle-Tacoma Designated Market Area receive ample notice of Daystar's transition.

In connection with the post-incentive auction transition, the FCC reassigned KWDK to operate on UHF channel 34 and placed the Station in Phase 7 of the post-auction transition, which ends on January 17, 2020. Daystar has been actively working to complete its transition during the early part of Phase 7 to avoid potential weather-related delays at the Station's transmission site on Tiger Mountain. Daystar has received delivery of its transmitter and antenna for the Station's post-auction facility, and all that remains is for installation of the Station's post-auction facilities. KWDK is the last station in its linked station set to transition to its post auction channel. Indeed, because most stations in the Seattle-Tacoma Designated Market Area completed their transition at the start of Phase 7, Daystar has identified a tower crew that is already on site and can install KWDK's antenna in early November.

To facilitate Daystar's transition at this time, Daystar seeks a waiver of the consumer notification requirements in Section 73.3700(c) and the MVPD notification requirements in Section 73.3700(d) of the Commission's Rules. Pursuant to Section 73.3700(c)(4), transitioning stations "must air 60 seconds per day of on-air consumer education PSAs or crawls for 30 days prior to the station's termination of operations on its pre-auction channel."[1] The FCC's Rules do not specify when during each day the consumer education announcements must air. Pursuant to Section 73.3700(d)(5), meanwhile, transitioning stations must send notification letters to MVPDs not less than 90 days prior to the date on which they will begin operations on their post-auction channel.[2] As of this writing, the Station has not yet broadcast any consumer announcements and has sent letters to MVPDs indicating that the Station will transition to its new channel on January 17, 2020.

The FCC may grant a waiver for good cause shown.[3] The Commission typically grants a waiver where the specific facts make strict compliance inconsistent with the public interest.[4] In determining whether a waiver is appropriate, the Commission may take into account considerations of hardship, equity, or the effective implementation of overall policy on an individual basis.[5] Waiver is therefore appropriate if special circumstances warrant a deviation from the general rule, and such a deviation will benefit the public interest.

Here, good cause exists for the Commission to waive the consumer education and MVPD notification requirements in Section 73.3700 of the FCC's Rules. First, Daystar has identified an opportunity that will allow the Station to complete its transition ahead of the potentially harsh Seattle

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[1] 47 C.F.R. § 73.3700(c)(3).

[2] *Id.* § 73.3700(d)(5).

[3] 47 C.F.R. § 1.3.

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

[5] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

winter, which will avoid potential delays or hardships in installing the Station's post-auction facilities. Because this opportunity was not previously known, Daystar was unable to begin broadcasting its consumer education announcements sooner. Second, not only will allowing Daystar to transition at this time not disrupt the post-auction transition, but it will actually lead to a more efficient distribution of resources by allowing the tower crew that is already onsite to install the Station's antenna without having to move to another site and restage at a later date. Third, allowing the Station to vacate its pre-auction channel by November 1, 2019 will enable the 600 MHz licensee, T-Mobile, to expeditiously offer services using the spectrum currently assigned to KWDK in fulfillment of a Commission objective.

Daystar's commitments to robust consumer education announcements will alleviate any detrimental impact from an abbreviated transition period. Specifically, Daystar will broadcast transition crawls as set forth in Section 73.3700(c)(4) at the top of every hour from October 30, 2019 through November 1, 2019. As a result, the Station will broadcast more than 70 total crawls – more than doubling the number required under the FCC's Rules – and the crawls will run at all hours of the day, providing extensive reach to the Station's viewers. Second, Daystar will provide a toll free number reaching a staffed phone bank for viewers to call with any questions about rescanning. Third, Daystar will provide direct contact via e-mail and/or U.S. Mail to the thousands of viewers in its database from the Seattle-Tacoma DMA to advise them of the forthcoming transition and the need to rescan. In addition to the foregoing commitments, any adverse effect to the Station's viewers will be mitigated by the fact that most stations in the DMA have already transitioned to their post-auction channels. As a result, over-the-air viewers should already be familiar with the rescanning process.

The effect of an early transition on MVPDs, meanwhile, should be minimal. Daystar providers a fiber optic feed of the Station to Comcast, which is the largest MVPD serving the Seattle-Tacoma DMA. The next largest MVPDs – Charter, DirecTV, and Dish Network – all receive the Station's signal by satellite. Daystar will contact all MVPDs in the Seattle-Tacoma DMA and work with them to avoid any unnecessary interruption.

For the foregoing reasons, grant of the instant waiver request is in the public interest, and the Commission should waive Section 73.3700(c) and (d) as to the Station subject to Daystar's consumer education commitments as set forth herein.