



Federal Communications Commission
Washington, D.C. 20554

October 30, 2019

Puget Sound Educational TV, Inc.
Arnold Torres
3901 Highway 121 South
Bedford, TX 76021

Re: Request for Waiver of
Post-Incentive Auction
Consumer Education and MVPD Notice
Requirements
KWDK, Tacoma, WA
Facility ID No. 35419
LMS File No. 0000087603

Dear Licensee,

On October 29, 2019, Puget Sound Educational TV, Inc. (Puget Sound TV), submitted the above-referenced request for waiver for KWDK(TV), Tacoma, Washington (KWDK Station), of the post-incentive auction consumer education and MVPD notice requirements.¹ For the reasons set forth below, we grant Puget Sound TV's request for waiver.

Background. Pursuant to section 73.3700(c)(3) of the Commission's rules (Rules), 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.² The Media Bureau has stated that to the extent a station is not able to comply with its consumer education requirements, it must file a request for waiver. All waiver requests will be evaluated on a case-by-case basis in accordance with the Commission waiver standard and must include the following information: (1) an explanation describing why the station is unable to comply with the existing consumer education requirements; (2) an alternative but comparable means the station will use to notify viewers of the station's new channel; and (3) why grant of the waiver request complies with the Commission's general waiver standard.³ According to Section 73.3700(d) of the Commission's rules, stations that were repacked as a result of the incentive auction must provide to MVPDs written notice of at least 90-days prior to commencing operations on their reassigned channel.⁴ 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.⁵

¹ 47 CFR §§ 73.3700(c)(3) and 73.3700(d).

² *Id.*

³ *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, 33 FCC Rcd 8240, 8245, para. 15, n.41 (IATF & MB 2018).

⁴ *Id.*

⁵ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown).

In the *Closing and Channel Reassignment Public Notice*,⁶ the Station was assigned to transition phase 7, which had a testing period start date of October 19, 2019, and has a phase completion date of January 17, 2020. All stations in the Seattle-Tacoma, Washington Designated Market Area, with the exception of KWDK, have transitioned to their post-auction channels. KWDK is downstream from KVOS-TV, Bellingham, WA, which has already transitioned.⁷ As of the time of filing, Puget Sound TV states that it had not yet commenced its required viewer notifications and that it had already notified all impacted MVPDs of its intention to transition to its post-auction channel on January 17, 2020. Puget Sound TV states, however, that KWDK's facility is located on Tiger Mountain and would like to complete the Station's construction project before the onset of winter weather. Specifically, Puget Sound TV would like to vacate its pre-auction channel by November 1, 2019 and as a result, Puget Sound TV is requesting waiver of both the Commission's consumer education and MVPD notification rules.

Puget Sound TV states that it can be ready to transition by November 1, 2019. It has received delivery of its transmitter and antenna for the Station's post-auction facility and it has identified a tower crew that is already on site and can complete installation of KWDK's equipment in early November. Puget Sound TV asserts that allowing KWDK to transition in early November will result in a more efficient distribution of resources by allowing the tower crew that is already onsite to complete construction without having to move to another site and return at later date. Puget Sound TV also states that vacating its pre-auction channel by November 1, 2019,⁸ will enable the new 600 MHz licensee, T-Mobile, to expeditiously offer services using the channel currently assigned to KWDK.

In lieu of the 30 day notice required to be provided to consumers, Puget Sound TV commits to providing enhanced notification of its channel change by: (1) broadcasting 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; (2) providing viewers with a toll free number to call with any questions about rescanning; (3) making direct contact with viewers via e-mail and/or U.S. Mail using the Station's viewer database to advise viewers of the need to rescan. In addition to the foregoing commitments, Puget Sound TV contends that any adverse impact on the Station's viewers should be mitigated by the fact that all other stations in the DMA have already transitioned to their post-auction channels and over-the-air viewers are already familiar with the rescanning process and need to rescan if they are unable to receive a channel.

Puget Sound TV also commits to contact all impacted MVPDs in the Seattle-Tacoma DMA and work with them to avoid any unnecessary interruption. Ultimately, Puget Sound TV believes the effect of an early transition on MVPDs should be minimal. The Station's programming is provided to Comcast, which is the largest MVPD serving the Seattle-Tacoma DMA, via fiber optic cable. The next largest MVPDs – Charter, DirecTV, and Dish Network – all receive the Station's signal by satellite.

Discussion. Upon review of the facts and circumstances presented, we find that grant of Puget Sound TV's requests meet the standard for a waiver and are in the public interest. We believe that Puget Sound TV has every incentive to ensure viewers and MVPDs are fully informed about the Station's

⁶ 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 (MB & WTB 2017).

⁷ See LMS File No. 0000087123.

⁸ Puget Sound TV plans to cease operating on its pre-auction channel on or about November 1, 2019. It will then go silent for a period of time while work is completed on its new post-auction channel facility. Puget Sound TV anticipates resuming operation on its post-auction channel in early November 2019.

transition plan. Given the facts and circumstances discussed above, as well as the commitments made by Puget Sound TV to inform viewers and MVPDs of the earlier than expected transition, we grant the waiver request.

We remind Puget Sound 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.”⁹ 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 or not reasonably incurred, may not be reimbursable from the Fund.

Accordingly, Providence Licensee’s request for waiver of the post-incentive auction consumer education and MVPD notice requirements, 47 CFR § 73.3700(c)(3) and 73.3700(d), for KWDK, Tacoma, WA, **ARE GRANTED**, conditioned upon the commitments made in its waiver request.

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc (via electronic mail):
Ari Meltzer, Esq.

⁹ *Media Bureau Finalizes Reimbursement Form for Submission to OMB and Adopts Catalog of Expenses*, GN Docket No. 12-268, Public Notice, 30 FCC Rcd 11701, 11701-02 (MB 2015). 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.”).