

## **COVID-19 Phase Change Request for WMOW to Move to Phase 10**

### **A. Introduction, Background, and COVID-19 Effects**

On February 3, 2020, WMOW License, LLC (the “applicant”), licensee and repack permittee of WMOW, Crandon, Wisconsin (Fac. ID No. 81503) (“WMOW” or the “Station”) filed an application (in LMS File No. [0000107818](#)) to extend, for 90 days, the Station’s repack construction permit (“CP”) (LMS File No. [0000027451](#)) (the “Pending CP Extension Application”).<sup>1</sup> WMOW has been assigned to Phase 9, which has a deadline of May 1, 2020. WMOW is downstream from Phase 9 station WNMU and is upstream from Phase 9 station WLUK. Technical and legal representatives of WMOW have been in touch with their counterparts for WNMU and WLUK and have been advised that both WNMU and WLUK plan to file phase change requests to move from Phase 9 to Phase 10, pursuant to the FCC’s March 17 COVID-19 Repack PN (discussed below). The reasoning behind the instant phase change request is that the COVID-19 pandemic situation has interfered with WMOW’s ability to meet the Phase 9 deadline.

### **B. COVID-19 Repack Public Notice**

On March 17, 2020, the Commission released a Public Notice announcing certain measures of flexibility that may be available to Phase 9 reassigned stations (such as WMOW) in light of the national and international public health crisis known as COVID-19. *See Guidance for Stations in Phase 9 of the Post-Incentive Auction as a Result of the Novel Coronavirus (COVID-19) Pandemic*, Public Notice, DA 20-282, (rel. Mar. 17, 2020) (“COVID-19 Repack PN”). The instant application is (i) to advise the Commission that, for the reasons set forth herein, WMOW’s situation fits within the measures identified in the COVID-19 Repack PN and (ii) to formally request that WMOW be granted a phase change to move from Phase 9 to Phase 10.

In relevant part, the COVID-19 Repack PN, the Commission stated as follows:

We recognize that the construction and delivery delays that are occurring as a result of the COVID-19 pandemic, as well as efforts undertaken by the stations themselves to protect the health of their employees and their families, result from circumstances outside of a station’s control. As a result of these circumstances, any station scheduled to complete its transition in phase 9 that believes it may be unable to meet the May 1, 2020, deadline

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<sup>1</sup> Because the instant application seeks a change from Phase 9 to Phase 10, we respectfully request that the Pending CP Extension Application not be acted on at this time—WMOW would prefer to leave the Pending CP Extension Application on file in “pending” status while a determination is made whether a CP extension based on the Phase 10 deadline would be necessary. Given the Station’s repack plan—which includes a period of temporary silence to facilitate the final construction process—an extension of WMOW’s repack CP is likely to be necessary even if WMOW becomes a Phase 10 station. *See* Pending CP Extension Application.

will be granted a waiver of the phase 9 deadline and reassignment to phase 10, which begins on May 2, 2020, and ends on July 3, 2020.<sup>2</sup>

WMOW respectfully requests this relief.

### **C. Phase Changes and Waiver Standard**

The *Transition Scheduling Adoption Public Notice* permitted stations to propose “alternative transition solutions that could create efficiencies,” and determined 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.”<sup>3</sup> As demonstrated throughout this exhibit and in light of the COVID-19 Repack PN, the instant request qualifies for such favorable treatment.

The FCC may grant a waiver for good cause shown.<sup>4</sup> A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.<sup>5</sup> In considering a waiver, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>6</sup> Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>7</sup> As demonstrated herein, good cause exists for waiver of the assigned Transition Phase 9 and its attendant testing and completion dates.

### **D. Interference Will Not Be an Issue**

Following the release of the COVID-19 Repack PN, the applicant has communicated directly with the two other stations that are still in the same linked station set as WMOW (i.e., LSS 68).<sup>8</sup> Based on those communications, it is apparent to WMOW that all LSS 68 stations have

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<sup>2</sup> COVID-19 Repack PN, unnumbered ¶ 2.

<sup>3</sup> *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) (*Transition Scheduling Proposal Public Notice*).

<sup>4</sup> 47 C.F.R. § 1.3.

<sup>5</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>6</sup> *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.

<sup>7</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>8</sup> In addition to WLUK and WNMU, an additional station—WISC-TV—had also been assigned to LSS 68. WISC-TV’s operations are not relevant to this application, however, because

concluded in the decision to move from Phase 9 to Phase 10, and reassignment to Phase 10 will not result in any new linkages. Thus, there should be no technical or interference-based obstacle to moving WMOW (and the rest of the LSS 68 stations) to Phase 10.

**E. Impact on Viewers: Consumer Education**

WMOW is the only station in its DMA assigned to Phase 9. The only other repacked station (WTPX-TV) in its DMA was assigned to Phase 2 and has already transitioned. Thus, viewer confusion with respect to on-air consumer education should not be an issue.

**F. MVPD Notifications**

WMOW timely notified MVPDs of its Phase 9 transition plans and will remain in contact with—and distribute re-notifications (with the new Phase 10 date, if this request is granted) as warranted to—all impacted MVPDs to ensure they have all information needed to implement WMOW’s channel change.

**G. Conclusion**

The applicant merely wishes to change its repack deadline to Phase 10 as provided for in the COVID-19 Repack PN. And, for the reasons set forth above—which demonstrate the phase change (i) represents no less an effective implementation of the overall policy goals of the Incentive Auction and post-auction transition, (ii) will not harm viewers, and (iii) is not the fault of any station involved—the applicant believes a grant of this request is in the public interest.

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WISC-TV transitioned during Phase 6 and is already operating on its post-transition channel. *See* LMS File No. [0000064028](#).