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February 20, 2018

BY HAND

ACCEPTED/FILED

FEB 20 2018

**Federal Communications Commission
Office of the Secretary**

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20554

Re: KFFV, Seattle, WA, Facility ID 49264 — Petition for Waiver and Request for
Reassignment of PSIP Channel Designation

Dear Ms. Dortch:

TV-49, Inc. (“Licensee”), licensee of digital broadcast television station KFFV, Seattle, WA (the “Station”), by its counsel and pursuant to Section 1.3 of the Commission’s Rules, respectfully requests that the Commission waive the Program and System Information Protocol Standard (the “PSIP Standard”) incorporated in Section 73.682(d) of the Rules¹ and reassign the Station’s PSIP designation from PSIP Channel 45 to PSIP Channel 44. As demonstrated below, there is good cause in these circumstances to waive the PSIP Standard and permit the Station to operate on PSIP Channel 44.

The Station currently is authorized to broadcast on Radio Frequency (“RF”) Channel 44 and PSIP Channel 45.² Licensee acquired the license for the Station on January 16, 2018 pursuant to File No. BALCDT-20171024AAU. At the time of acquisition, Licensee believed that the Station had been operating on its Commission-designated PSIP Channel. Licensee later learned, however, that the Station has been operating continuously on PSIP Channel 44 since at least the completion of the digital television (“DTV”) transition.³

¹ See 47 C.F.R. § 73.682(d). Section 73.682(d) requires that digital broadcast television signals comply with ATSC A/65C: “ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable, Revision C With Amendment No. 1 dated May 9, 2006.”

² The Station will transition to RF Channel 16 by January 17, 2020, as a result of the post-Incentive Auction Phase 7 reassignment.

³ At the time of the DTV transition, the Station’s call sign was KHCV and it was licensed to North Pacific International Television, Inc. See File No. BLSTA-20081112AJA.

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Section 1.3 of the Rules provides that a waiver may be granted for good cause shown,⁴ allowing the Commission to “exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.”⁵ Recognizing in particular that the PSIP Standard may not advance the public interest in all instances, the Commission concluded in its *Second Periodic Review* that waivers of the standard may be granted on a “case-by-case basis” to the extent a broadcast station “ha[s] a unique situation that is not provided for in PSIP.”⁶

There is good cause to waive Section 73.682(d) and authorize the Station to continue to broadcast on PSIP Channel 44. Over the course of at least the past nine years, the Station has invested substantial resources developing its brand and promoting its programming. The use of PSIP Channel 44 has been critical to that strategy. Compelling the Station to begin operating on PSIP Channel 45 would result in a significant loss of brand recognition.

Further, requiring the Station to move to PSIP Channel 45 would cause viewer confusion, which was among the key considerations that the Commission sought to address in adopting the PSIP Standard.⁷ Over at least the past nine years, viewers have become accustomed to tuning their sets to channel 44 to find the Station. Accordingly, moving to PSIP Channel 45 would lead to disruption among the viewing public who wish to access the Station’s programming. In granting other petitions to waive the PSIP Standard, the Commission has expressly recognized the value of minimizing viewer confusion.⁸

Granting the requested waiver would not result in any countervailing public interest harms. Licensee’s request would not cause the Station’s protected service contour to overlap that of any other station in its market or in adjacent markets operating on major channel number 44. See Exhibit A, Engineering Statement Regarding PSIP Channel 44 Study (attached

⁴ 47 C.F.R. § 1.3.

⁵ *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁶ *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, 19 FCC Rcd 18279, 18346 (¶ 153) (2004).

⁷ See *id.* at 18343-46 (¶¶ 149-152).

⁸ See, e.g., Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, Media Bureau, to Weigel Broadcasting Company at 2 (Aug. 16, 2012) (granting waiver to allow two stations in the same market to exchange major channel numbers in order to “avoid viewer confusion when [the stations] swap programming”) (“Weigel Letter”); Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, Media Bureau, to Entravision Holdings, LLC (Feb. 17, 2012) (granting waiver to avoid confusion caused by nearby foreign station’s use of the PSIP Channel that was assigned to licensee seeking waiver) (“Entravision Letter”).

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hereto). The Commission previously has determined that waivers of the PSIP Standard were appropriate under similar circumstances.⁹

For the reasons set forth herein, the PSIP Channel reassignment requested by Licensee will serve the public interest by preserving the Station's brand equity and minimizing viewer confusion, without in any way affecting the operations of any other station. Licensee therefore asks the Commission to grant its waiver petition promptly.

Respectfully submitted,

TV-49, INC.

/s/ Ann West Bobeck

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Its Attorneys

cc: Hossein Hashemzadeh
Deputy Division Chief, Video Division
Media Bureau
Federal Communications Commission

⁹ See, e.g., Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, Media Bureau, to Francois Lecanto at 2 (Nov. 27, 2013); Weigel Letter at 2; Entravision Letter at 2.

DECLARATION OF KYLE WALKER

KYLE WALKER, being duly sworn, hereby deposes and says:

1. I am Vice President, Technology, at Weigel Broadcasting Co. ("Weigel"). Weigel is the corporate parent of TV-49, Inc. ("Licensee"), the licensee of digital broadcast television station KFFV, Seattle, WA (the "Station").
2. Licensee acquired the Station on January 16, 2018, pursuant to FCC File No. BALCDT-20171024AAU.
3. At the time it acquired the Station, Licensee believed the Station was operating on its Commission-designated Program and System Information Protocol ("PSIP") Channel, PSIP Channel 45. Licensee subsequently determined, however, that the Station was in fact operating on PSIP Channel 44. On information and belief, the Station has been doing so since at least the completion of the digital television transition.
4. This Declaration is being submitted in support of Licensee's request for waiver of Section 73.682(d) of the Commission's Rules and for reassignment of the Station's PSIP designation from PSIP Channel 45 to PSIP Channel 44.
5. I declare under penalty of perjury that the foregoing facts are true and correct to the best of my knowledge and belief.

Executed: February 20, 2018

By: 

Kyle Walker

EXHIBIT A

ENGINEERING STATEMENT
REGARDING PSIP CHANNEL 44 STUDY
TELEVISION STATION KFFV
(FACILITY ID NO. 49264)
SEATTLE, WASHINGTON
RF CHANNEL 44

This statement was prepared on behalf of TV-49, Inc., licensee of full-power commercial digital broadcast television station KFFV, in support of a request for waiver of the FCC's Program and System Information Protocol ("PSIP") Rules. KFFV is licensed for operation at Seattle, WA on RF* Channel 44 in the Seattle-Tacoma DMA†. TV-49, Inc. is requesting a change in its PSIP virtual channel assignment from Channel 45 to Channel 44.

In support of this request, this statement reports the results of a study of PSIP Channel 44 usage in and around the KFFV noise-limited service area and its DMA. The FCC's latest LMS database entitled "Application_Facility" was employed to study PSIP usage in the entire KFFV service area region.

The attached tabulation lists the usage of PSIP Channel 44 throughout the entire United States. It is demonstrated that there are no stations anywhere in the vicinity of the KFFV noise-limited service area or the Seattle-Tacoma DMA that employ the PSIP virtual Channel 44. See Attachment 1.

It is noted from the tabulation that the closest station to KFFV utilizing the Channel 44 PSIP is KBCW, San Francisco, CA. This station is more than 1000 km distant from the KFFV facility.

* The RF Channel refers to the actual radio frequency (RF) that is broadcast over-the-air. For example, for Channel 44, the radio frequency of the KFFV signal falls between 650 MHz and 656 MHz.

† Nielsen Designated Market Area.

Based on these results, the use of PSIP Channel 44 by KFFV will have no PSIP virtual channel conflicts with any other station in or near the KFFV market area.

I declare under penalty of perjury that the foregoing facts are true and correct to the best of my knowledge and belief.



Louis R. du Treil, Jr., P.E.

du Treil, Lundin & Rackley, Inc.
3135 Southgate Circle
Sarasota, Florida 34239

February 15, 2018

PSIP CHANNEL 44 IN THE U.S. BASED ON FCC LMS DATABASE

Call Sign	City	State	Facility ID	TSID-DTV	TSID-NTSC	PSIP Channel
WPXH-TV	GADSDEN	AL	73312	73	72	44
KXLA	RANCHO PALOS VERDES	CA	55083	335	334	44
KBCW	SAN FRANCISCO	CA	69619	395	394	44
WZDC-CD	WASHINGTON	DC	50347	8013	8012	44
WJTC	PENSACOLA	FL	41210	689	688	44
WTOG	ST. PETERSBURG	FL	74112	697	696	44
WSWG	VALDOSTA	GA	28155	819	818	44
KWBN	HONOLULU	HI	27425	863	862	44
KCYM-LD	Des Moines	IA	188745	0	0	44
KPTH	SIOUX CITY	IA	77451	947	946	44
WSNS-TV	CHICAGO	IL	70119	1017	1016	44
WEVV-TV	EVANSVILLE	IN	72041	1101	1100	44
WAGV	HARLAN	KY	37809	1231	1230	44
WGMB-TV	BATON ROUGE	LA	12520	1299	1298	44
WGBX-TV	BOSTON	MA	72098	1369	1368	44
WMCN-TV	CHERRY HILL	NJ	9739	1997	1996	44
K34KZ-D	HOBBS	NM	181386	0	0	44
WOUC-TV	CAMBRIDGE	OH	50141	2235	2234	44
WTLW	LIMA	OH	1222	2285	2284	44
KTPX-TV	OKMULGEE	OK	7078	2361	2360	44
WVIA-TV	SCRANTON	PA	47929	2525	2524	44
WVEO	AGUADILLA	PR	61573	3329	3328	44
KLEG-CD	DALLAS	TX	16930	8859	8858	44
KHPF-CD	FREDERICKSBURG	TX	35923	9175	9174	44
KLUJ-TV	HARLINGEN	TX	12913	2855	2854	44
KGMM-CD	SAN ANTONIO	TX	17830	8867	8866	44
KWKT-TV	WACO	TX	12522	2979	2978	44
WFFF-TV	BURLINGTON	VT	10132	3091	3090	44

Note: The closest facility is KBCW, San Francisco, CA, which is more than 1000 km distant from KFFV.