



Federal Communications Commission
Washington, D.C. 20554

November 21, 2018

Parker Broadcasting of Dakota License, LLC
Ravi Kapur
2118 Walsh Avenue
Suite 208
Santa Clara, CA 95050

Re: Request for Modification and
Waiver of Phase Assignment
KRDK-TV, Valley City, ND
Facility ID No. 49134
LMS File No. 0000063031

Dear Licensee,

On October 22, 2018, Parker Broadcasting of Dakota License, LLC (Parker), the licensee of Station KRDK-TV, Valley City, ND (KRDK-TV or Station), filed a *Request for Modification and Waiver of Phase Assignment* requesting to modify the post-incentive auction transition phase assigned to the Station in the *Closing and Channel Reassignment Public Notice* from Phase 1 to Phase 3.¹ For the reasons below, we grant Parker's request for waiver and modify KRDK-TV's phase assignment to Phase 3, as conditioned herein.

Background. Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waiver and modification of their phase assignment.² 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.³ The Media Bureau (Bureau) has stated it will evaluate such requests on a case-by-case basis to assess the impact on the transition schedule, including the impact on other broadcasters as well as viewers, in order to facilitate a timely and orderly transition.⁴ The Bureau determined that it would view favorably requests that are compliant with the Commission's rules and

¹ 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 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*). See LMS File No. 0000063031, Request for Waiver of Phase Assignment (Waiver Request). As a result of our action herein, Parker's request for an extension of KRDK-TV's construction permit is moot and has been dismissed. See LMS File No. 0000059401.

² See *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, 912-14, paras. 47-52 (MB 2017) (*Transition Scheduling Adoption Public Notice*).

³ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 CFR § 1.3 (waiver for good cause shown). See also *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 913-14, para. 51 and n.171.

⁴ See *id.* at 912-14, paras. 49-52. See also *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Broadcast Transition*, 32 FCC Rcd 858, 881-82, para 73 (MB 2017).

have little or no impact on the transition schedule.⁵ Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.⁶

KRDK-TV is currently licensed to operate on channel 38. It was reassigned to channel 24 in the *Closing and Channel Reassignment Public Notice* and assigned to transition Phase 1, which has a testing period start date of September 14, 2018, and phase completion date of November 30, 2018. KRDK-TV is located in the Fargo-Valley City, North Dakota, Designated Market Area (Fargo DMA). A total of two stations, KRDK-TV and KVLV-TV, Fargo, ND,⁷ were repacked in the Fargo DMA and both were assigned to Phase 1. According to Parker, KRDK-TV operates from one of the country's tallest towers, at 2060 feet above ground level, and as a result poses unique construction and safety considerations.⁸ According to KRDK-TV, the unique challenges faced as a result of the height of the tower have been "exacerbated by unforeseen circumstances," including delays in fabricating the Station's interim and permanent antennas, tower crew availability, and the death of the Station's consulting engineer. According to Parker, these issues have had "cascading impacts on [its] construction plans"⁹ and delayed the construction schedule. Given all of these facts, Parker seeks to have its phase assignment modified from Phase 1 to Phase 3, which has a testing period start date of April 13, 2019, and phase completion date of June 21, 2019. The Station notes that this delay will help it avoid additional delays due to the increasing likelihood of North Dakota winter weather.¹⁰ While the Station will need to operate from an interim facility in order to construct its permanent post-auction facility, the Station does not believe operating from its interim facility until next spring is a viable alternative to a phase change because it would result in significant coverage loss and extended signal quality degradation to MVPDs.¹¹ Therefore, Parker believes that minimizing the amount of time the Station will need to operate from an interim facility is in the public interest.¹²

Parker provides an engineering analysis demonstrating that modifying its phase assignment to transition Phase 3 will not create any new linked-station sets or result in increased pairwise interference greater than two percent during the transition period.¹³ Parker recognizes that granting the waiver will increase the number of rescan periods from one to two,¹⁴ which is still within the two rescan periods per DMA limitation used in the tool adopted by the Bureau in the *Transition Scheduling Adoption Public Notice* to assign stations to transition phases.¹⁵

⁵ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-13, para. 49 and n.163.

⁶ *Id.* see *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, MB docket No. 16-306 and GN Docket No. 12-268, DA 18-884 (IATF & MB, rel. Aug. 27, 2018) (*Transition Reminder Public Notice*).

⁷ KVLV-TV is licensed to Gray Television Licensee, LLC. KVLV-TV has requested a modification of its phase assignment from Phase 1 to Phase 2. See LMS File No. 0000063123

⁸ Waiver Request at 3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Waiver Request at 3-4 and Attachment B.

¹² *Id.* at 4.

¹³ *Id.* at 2 and Attachment A.

¹⁴ *Id.*

¹⁵ See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21.

Discussion. Upon review of the facts and circumstances presented, we find Parker's request to modify its phase assignment to permit KRDK-TV to transition to its post-auction channel in Phase 3 satisfies the requirements for a waiver and is in the public interest. We agree that the change to KRDK-TV's transition phase should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. A staff analysis confirms that the phase change will not result in new increased pairwise interference above the two percent permitted during the post-auction transition period.¹⁶ While viewers in the Fargo DMA will be subjected to a second rescan period, this is still within the two rescan periods per DMA limitation used in the tool adopted by the Bureau in the *Transition Scheduling Adoption Public Notice*.¹⁷ As a result, we find the benefits of this phase change, including ensuring the Station is able to continue to provide over-the-air service to its viewers, outweighs the viewer burden of an additional rescan period in this case and short delay in access by wireless providers to the 600 MHz band.

We caution Parker that any additional expenses incurred as a result of the grant of KRDK-TV's voluntary phase change may not be reimbursable from the TV Broadcasters Relocation Fund. Such additional costs might include, but may not be limited to, additional legal or engineering expenses; filing fees; and interim or additional equipment that was not contemplated when the station filed its initial estimated expenses but was subsequently necessitated to complete the transition to its post-auction channel due to its phase change. Parker is responsible for paying for any expenses incurred as a result of voluntarily requested changes to the station's transition schedule.

Accordingly, we **GRANT** Parker's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for KRDK-TV **from Phase 1 to Phase 3**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.¹⁸ Testing on the Station's post-auction channel **may not begin until 12:01 am local time on April 13, 2019**, and the Station is required to cease operating on its pre-auction channel **no**

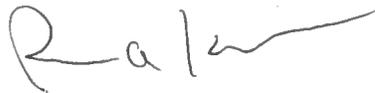
¹⁶ See *id.* at 897, para. 16 (allowing temporary increased pairwise (station-to-station) interference of up to two percent during the transition period).

¹⁷ See *id.* at 898-99, paras. 20-21.

¹⁸ See generally 47 CFR § 73.3700; *Transition Reminder Public Notice*.

later than 11:59 pm local time on June 21, 2019.¹⁹ The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.²⁰

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):
Dennis P. Corbett

¹⁹ Each transition phase has a designated testing period on which a station in that phase may begin testing equipment on its new channel and a designated phase completion date when a station must cease operation on its pre-auction channel. The phase completion date is the date that will be listed in that station's construction permit as its construction deadline and is the date the station must cease operation on its pre-auction channel. See *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd 2806, para. 64. A station that commences testing on its post-auction channel before the beginning of its assigned testing period will be operating in violation of Commission rules.

²⁰ *Id.* ("The phase completion date is...[also] the date listed in each station's construction permit as its construction deadline."). If a station must commence operations on its post-auction channel at variance from the parameters authorized in its construction permit, it must file for and be granted special temporary authority prior to commencing operations. 47 CFR § 73.1635.