



Federal Communications Commission
Washington, D.C. 20554

October 30, 2017

Board of Trustees, Michigan State University
Susanne Elkins, Director of Broadcasting
WKAR-AM/FM/TV
404 Wilson Road
Room 212
East Lansing, MI 48824

Jonathan Cohen
Wilkinson Barker & Knauer LLP
1800 M Street, NW
Suite 800N
Washington, DC 20036

Re: Request for Modification and
Waiver of Phase Assignment
WKAR-TV, East Lansing, MI
Facility ID No. 6104
LMS File No. 0000030442

Dear Licensee,

On September 29, 2017, the Board of Trustees, Michigan State University (MSU), the licensee of Station WKAR-TV, East Lansing, Michigan (Station or WKAR), 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 7, and instead transition on or before June 1, 2018, with a testing period to commence immediately prior.¹ For the reasons below, we grant MSU's request for waiver and modify WKAR's phase assignment to permit it to commence testing and transition to its post-auction channel on or before June 1, 2018, subject to completion of applicable consumer education requirements and any required notice to multichannel video programming distributors (MVPDs).²

Background. Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waiver and modification of their phase assignment.³ A waiver is appropriate where the

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. 0000030442, WKAR-TV Request for STA/Waiver (Waiver Request).

² Repacked stations are required to conduct consumer outreach efforts including providing on-air viewer notifications in the form of public service announcements as well as on-screen crawls at least thirty (30) days prior to transitioning to their post-auction channels. See 47 CFR § 73.3700(c). To the extent applicable, repack stations are also required to provide MVPDs with notice ninety (90) days prior to transitioning. See 47 CFR 73.3700(d).

³ 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*).

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.⁴ 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.⁵ The Bureau determined that it would view favorably requests that are compliant with the Commission's rules and have little or no impact on the transition schedule.⁶ Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.⁷

WKAR is currently licensed to operate on channel 40. It was reassigned to channel 33 in the *Closing and Channel Reassignment Public Notice* and assigned to transition phase 7, which has a testing period start date of October 19, 2019, and phase completion date of January 17, 2020. WKAR is located in the Lansing, Michigan Designated Market Area (Lansing DMA). A total of three stations, including WKAR, were repacked in the Lansing DMA and all were assigned to Phase 7. MSU requests permission to begin testing and commence operation on WKAR's post-auction channel on or before June 1, 2018. MSU states that the early move is the result of an agreement with T-Mobile, a winning 600 MHz licensee, so that T-Mobile may deploy its new wireless broadband service in the Lansing DMA nineteen months earlier than under the current transition schedule.⁸ MSU argues that its proposal will also "permit better utilization of resources by engaging vendors and service providers early in the process, thereby reducing the demand on those resources in later phases when they may become constrained."⁹ MSU states that it has consulted with its numerous vendors and provided letters from its antenna manufacturer, transmitter manufacturer, and RF and structural engineering firm confirming that WKAR's early transition "will not impair their ability to fulfill other orders."¹⁰

MSU also provides an engineering analysis demonstrating that its early transition will not create any new linked station sets or result in impermissible interference during the transition period.¹¹ MSU notes that, while WKAR's proposed early transition will create an additional rescan period in the Lansing DMA, there is currently only one rescan period for the DMA and adding an additional rescan would continue to satisfy the two rescan periods per DMA limitation used in the tool adopted by the Bureau in *Transition Scheduling Adoption Public Notice* to assign stations to transition phases.¹² MSU also states that it will conduct consumer education and outreach efforts beyond what is required by Commission rules, including additional on-air notifications, e-mails to contacts in the Station's viewer database,

⁴ 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.

⁵ See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd 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).

⁶ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-13, para. 49 and n.163.

⁷ *Id.*

⁸ Waiver Request at 1 and 2.

⁹ *Id.* at 2.

¹⁰ *Id.* at 2-3. LMS File No. 0000030442, No Impact Statements

¹¹ Waiver Request at 3-4; LMS File No. 0000030442, Engineering Statement.

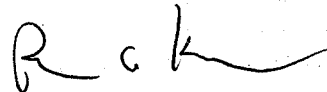
¹² Waiver Request at 3-4; see *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21.

information in the Station's monthly newsletter, information to viewers through social media, and its chief engineer will be made available to take calls from the public to help with rescanning.¹³

Discussion. Upon review of the facts and circumstances presented, we find MSU's request to modify its phase assignment to permit WKAR to transition to its post-auction channel on or before June 1, 2018, satisfies the requirements for a waiver. We agree that the change to the Station'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 does not create any new linked station sets and will not result in new interference above the two percent permitted during the transition.¹⁴ While viewers in the Lansing DMA will be subject to an additional rescan period, the total number of rescan periods will be limited to two. MSU has also committed to put in place viewer outreach programs beyond those required by the Commission rules in order to ensure that viewers will be well-informed and can manage the additional rescan period. MSU has also provided evidence that the resources necessary to support its early transition are available and will not delay other transitioning stations' access to resources. As a result, we find on balance that the benefit of early deployment in the 600 MHz band, the early use of repack resources to free up resources for other stations in subsequent transition phases, and additional consumer education and outreach efforts, outweighs the burden of an additional rescan period in this case.

Accordingly, we **GRANT** MSU's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WKAR **from Phase 7 and permit the Station to commence testing and transition to its post-auction channel on or before June 1, 2018, subject to completion of applicable consumer education requirements and any required notice to MVPDs.**¹⁵ Furthermore, the WKAR must cease operation on its pre-auction channel on or before June 1, 2018, upon commencement of operation pursuant to program test authority, or upon the filing of an application for license to cover, whichever occurs first.

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹³ Waiver Request at 4. As needed MSU commits to train additional staff members to respond to public inquiries.

¹⁴ See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16 (allowing temporary increased pairwise (station-to-station) interference of up to two percent during the transition period).

¹⁵ See 47 CFR § 73.3700(c), (d).