



Federal Communications Commission
Washington, D.C. 20554

April 10, 2019

Sinclair Portland Licensee, LLC
Harvey Arnold
10706 Beaver Dam Road
Cockeysville, MD 21030

Re: Request for Modification and
Waiver of Phase Assignment
KATU(TV), Portland, OR
Facility ID No. 21649
LMS File No. 0000068645

Dear Licensee,

On March 22, 2019, Sinclair Portland Licensee, LLC (Sinclair), the licensee of KATU(TV), Portland, Oregon (KATU 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 2 to Phase 3.¹ For the reasons below, we grant Sinclair's request for waiver and modify the Station'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. 0000068438, KATU Legal STA Phase Change Narrative (Waiver Request).

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

KATU is currently licensed to operate on channel 43. The Station was reassigned to channel 24 in the *Closing and Channel Reassignment Public Notice* and assigned to transition Phase 2, which has a phase testing period start date of December 1, 2018 and a phase completion date of April 12, 2019. The Station is located in the Portland, Oregon, Designated Market Area (Portland DMA). A total of five stations, including KATU, were repacked in the Portland DMA, with two stations transitioning in the period prior to the phase 1 testing period start date, and the other three stations being assigned to Phase 2. KATU states that the Station's tower owner, Sylvan Tower, has submitted but not yet obtained all local permits necessary to allow for completion of the Station's post-auction facility.⁷ As a result, Sinclair requests that KATU's transition phase be modified from Phase 2 to a later phase. Sinclair states this phase change will not create any new linked-station sets or result in increased pairwise interference greater than two percent during the transition period.⁸ KATU is located at the same tower site as KNMT, Portland, OR, whose phase change request from Phase 2 to Phase 3 has been granted.⁹

Discussion. Upon review of the facts and circumstances presented, we find that Sinclair's request to modify the phase assignment for KATU to transition to its post-auction channel satisfies the requirement for a waiver and is in the public interest. We agree that changing the Station's transition phase to Phase 3 with a testing period start date of April 13, 2019 and a phase completion date of June 21, 2019 should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. Staff has confirmed that the phase change will not create any new linked station sets or direct dependencies. The total number of rescan periods in the Portland DMA will not increase because co-located station KNMT has been granted permission to transition in Phase 3 already.¹⁰ Nevertheless, because the consumers in the Portland DMA will be subject to three rescan periods, which is one more than the number of rescan periods used in the toll adopted by the Bureau in the *Transition Scheduling Adoption Public Notice* to assign stations to transition phases, we require that Sinclair, at minimum, air double the amount of consumer education notifications required by the Rules. As a result, we find the facts and circumstances discussed above outweigh any viewer burden caused by an additional rescan period in the Portland DMA or a short delay in access by wireless providers to the 600 MHz band.

We remind Sinclair 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." 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, may not be reimbursable from the Fund.

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, 33 FCC Rcd 8240, 8244-45, para. 14 (IATF & MB 2018) (*Transition Reminder Public Notice*).

⁷ Waiver Request at 1.

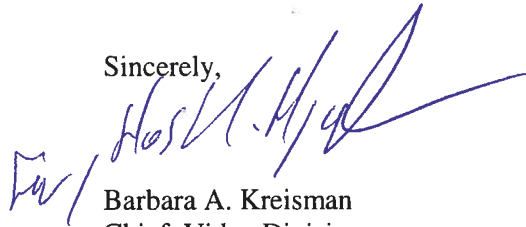
⁸ *Id.*

⁹ LMS File No. 0000068438. KNMT is licensed to Trinity Christian Center of Santa Ana, Inc.

¹⁰ See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21 (establishing a two rescan periods per DMA limitation when assigning stations to transition phases).

Accordingly, we **GRANT** Sinclair's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for KATU **from Phase 2 to Phase 3**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.¹¹ Furthermore, KATU **IS REQUIRED** to air, at minimum, double the amount of consumer education notifications required by Section 73.3700(c)(3).¹² Testing on the Station's post-auction channel **may not begin until 12:01 am local time on April 13, 2019**, and KATU is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on June 21, 2019**.¹³ The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.¹⁴

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):
Paul Cicelski, Esq.

¹¹ See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*, 33 FCC Rcd 8240.

¹² 47 CFR § 73.3700(c)(3) (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)

¹³ 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.

¹⁴ *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. See 47 CFR § 73.1635. A station that needs additional time to complete construction of its post-auction facility beyond its construction permit expiration date must file for a 180-day extension of its construction permit in accordance with Section 73.3700(b)(5)(iv). Stations needing additional time to construct after a 180-day extension is granted, will be subject to the Commission's tolling provisions. 47 CFR § 73.3700(b)(5)(iv). Grant of an extension of time to construct does not relieve a station of the requirement that it ceases operation on its pre-auction channel by its assigned phase completion date.