



Federal Communications Commission  
Washington, D.C. 20554

January 29, 2019

Television Wisconsin, Inc.  
Kevin Ruppert  
7025 Raymond Road  
Madison, WI 53719

Re: Request for Modification and  
Waiver of Phase Assignment  
WISC-TV, Madison, WI  
Facility ID No. 65143  
LMS File No. 0000064028

Dear Licensee,

On December 6, 2018, Television Wisconsin, Inc. (TV Wisconsin), the licensee of WISC-TV, Madison, Wisconsin (WISC-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 9 to Phase 6.<sup>1</sup> For the reasons below, we grant TV Wisconsin's request for waiver and modify the Station's phase assignment to Phase 6, as conditioned herein.

*Background.* Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waiver and modification of their phase assignment.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> The Bureau determined that it would view favorably requests that are compliant with the Commission's rules and

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<sup>1</sup> 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. 0000063730, STA Request Exhibit (Waiver Request).

<sup>2</sup> 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*).

<sup>3</sup> 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.

<sup>4</sup> 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.<sup>5</sup> Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.<sup>6</sup>

WISC-TV is currently licensed to operate on channel 50. It was reassigned to channel 11 in the *Closing and Channel Reassignment Public Notice* and assigned to transition Phase 9, which has a testing period start date of March 14, 2020, and a phase completion date of May 1, 2020. WISC-TV is located in the Madison, Wisconsin, Designated Market Area (Madison DMA). A total of three stations, including WISC-TV, were repacked in the Madison DMA, with two stations being assigned to Phase 6 and one station (WISC-TV) being assigned to Phase 9. TV Wisconsin states that a phase change to Phase 6 is necessary because WISC-TV is co-located with station WMSN-TV, Madison, WI (WMSN-TV), which is licensed to a subsidiary of Sinclair Broadcast Group, Inc. (Sinclair). WMSN-TV is also a repacked station assigned to transition Phase 6, which has a testing period start date of September 7, 2019, and phase completion date of October 17, 2019.<sup>7</sup>

The two stations operate from a stacked antenna that sits on a candelabra, with WISC-TV's antenna on top of WMSN-TV's antenna. In order to install WMSN-TV's antenna, WISC-TV's antenna must be removed. In the absence of a phase change, the Station states that it would have to operate using an interim channel 50 facility with a side mounted antenna on its pre-auction channel from the time of WMSN-TV's antenna installation until at least the Phase 9 testing date, March 14, 2020. That period would last at least five months. This would result in a total viewer loss for WISC-TV of 293,619 persons – nearly 15 percent of the Station's predicted interference-free population.<sup>8</sup> WISC-TV states that the tower crew would also have to visit the tower twice. Once to perform WMSN-TV's antenna work for a phase 6 transition and install WISC-TV's interim antenna and again to uninstall the channel 50 side-mount antenna and complete any remaining work on WISC-TV's post-auction facility for a phase 9 transition. A change in phase to Phase 6 would eliminate the need for WISC-TV's tower crew to visit the site a second time. Therefore, TV Wisconsin asserts that moving WISC-TV to Phase 6 "would result in significant efficiencies in time, resources and cost – in fact, the vendor for the tower work currently estimates at least \$180,000 in incremental costs if the Station remains in Phase 9."<sup>9</sup>

In support of its phase change request, TV Wisconsin has provided an engineering analysis finding that the change to Phase 6 will result in WISC-TV causing, on a temporary basis, 3.77 percent pairwise interference to WLUK-TV, Green Bay, WI (WLUK-TV), which is also licensed to a subsidiary of Sinclair. WLUK-TV would cause 5.06 percent temporary pairwise interference to WISC-TV.<sup>10</sup> WLUK-TV is also a repacked station that currently operates on channel 11 and was repacked in the *Closing and*

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

<sup>6</sup> *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, para. 14, 6-7 (IATF & MB, rel. Aug. 27, 2018) (*Transition Reminder Public Notice*).

<sup>7</sup> Waiver Request at 2-3.

<sup>8</sup> See *id.*, Engineering Statement at 4. TV Wisconsin concedes that even if the phase change is granted, in order to install the new primary antenna, it will still be necessary for WISC-TV to operate on channel 11 using an interim side-mounted antenna for a period of time necessary to complete certain tower work and that this would result in a temporary population loss of 628,818 persons. TV Wisconsin states however that this would occur for a limited period of time during the testing period and cannot be avoided regardless of the phase assignment.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *Id.* at 4 and Engineering Statement at 3- 4.

*Channel Reassignments Public Notice* to channel 12 and assigned to transition Phase 9.<sup>11</sup> Sinclair and TV Wisconsin have entered into an interference agreement to permit temporary increased pairwise interference that would result if the phase change were granted for up to eight months, from the phase completion date for Phase 6 through the phase completion date for Phase 9.<sup>12</sup> The interference is predicted to result in temporary population losses to WLUK-TV of 46,685 persons and to WISC-TV of 90,740 persons. TV Wisconsin argues that this interference is less impactful on viewers overall than the loss in service from the need for WISC-TV to operate from interim facilities in the absence of a phase change. TV Wisconsin also notes that moving WISC-TV to Phase 6 will reduce the total number of rescan periods in the Madison DMA from two to one.<sup>13</sup> In order to ensure that viewers are well-informed about the Station's plans to transition ahead of its currently scheduled phase assignment, TV Wisconsin has agreed to provide additional consumer outreach beyond what is required by the Commission's rules by providing notice using newscasts, social media and its website.<sup>14</sup>

*Discussion.* Upon review of the facts and circumstances presented, we find that TV Wisconsin's request to modify the phase assignment for WISC-TV to transition to its post-auction channels in Phase 6 satisfies the requirement for a waiver and is in the public interest. 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. We find the phase change is likely to conserve transition resources by eliminating the need for WISC-TV's tower crew to visit the Station's tower site twice, to do work for Phase 6 and Phase 9. We also find that the phase change will alleviate the need for a second rescan period in the Madison DMA. Although staff has confirmed that the phase change will cause a temporary increase in pairwise interference between WISC-TV and WLUK-TV beyond the two percent permitted during the transition period,<sup>15</sup> we note that the stations implicated by such interference have entered a written agreement accepting the interference. We also note that the viewer loss resulting from this interference must be balanced against the significant viewer loss that would occur in the absence of a phase change if WISC-TV remained in Phase 9 and operated from an interim facility starting in Phase 6. TV Wisconsin has committed to put in place viewer outreach programs beyond those required by the Commission's rules to ease the burden on viewers. To the extent some viewers are unable to receive either WLUK-TV or WISC-TV's signal during due to the temporary increase in pairwise interference caused by this phase change, we believe that both stations have every incentive to ensure their viewers are fully informed about their transition plan. Accordingly, we find that the benefit of modifying the Station's transition phase outweighs any viewer burden caused by the change in WISC-TV's transition schedule.

We caution TV Wisconsin that any additional expenses incurred as a result of the grant of the Station'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

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<sup>11</sup> *Id.* at 4-5 and Engineering Statement.

<sup>12</sup> *Id.* at 5 and WLUK-WISC Interference Agreement.

<sup>13</sup> Waiver Request at 3. *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).

<sup>14</sup> *Id.*

<sup>15</sup> 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).

estimated expenses but was subsequently necessitated to complete the transition to its post-auction channel due to its phase change.

Accordingly, we **GRANT** TV Wisconsin's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WISC-TV **from Phase 9 to Phase 6**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.<sup>16</sup> Testing on the Station's post-auction channel **may not begin until 12:01 am local time on September 7, 2019**, and WISC-TV is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on October 17, 2019**.<sup>17</sup> The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.<sup>18</sup>

Sincerely,



Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

Cc: (via electronic mail):  
Jonathan Allen, Esq.

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<sup>16</sup> See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*.

<sup>17</sup> 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.

<sup>18</sup> *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.