



Federal Communications Commission
Washington, D.C. 20554

September 11, 2019

KM LPTV of Atlanta, LLC
Jeffrey L. Timmons, Esq.
974 Brandford lane NW
Lilburn, GA 30047

Re: Request for Waiver of
Post-Incentive Auction
Consumer Education Requirements
WSKC-CD, Atlanta, GA
Facility ID No. 35090
LMS File No. 0000080780

Dear Licensee,

On August 30, 2019, KM LPTV of Atlanta (KM) submitted the above-referenced request for waiver for WSKC-CD, Atlanta, Georgia (Station), of the post-incentive auction consumer education requirements.¹ For the reasons set forth below, we grant KM's request for waiver.

Background. Pursuant to section 73.3700(c)(3) of the Commission's rules (Rules), 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.² The Media Bureau has stated that to the extent a station is not able to comply with its consumer education requirements, it must file a request for waiver. All waiver requests will be evaluated on a case-by-case basis in accordance with the Commission waiver standard and must include the following information: (1) an explanation describing why the station is unable to comply with the existing consumer education requirements; (2) an alternative but comparable means the station will use to notify viewers of the station's new channel; and (3) why grant of the waiver request complies with the Commission's general waiver standard.³ 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.⁴

In the *Closing and Channel Reassignment Public Notice*,⁵ the Station was assigned to transition phase 5, which had a testing period start date of August 3, 2019, and has a phase completion date of

¹ 47 CFR § 73.3700(c)(3).

² *Id.*

³ *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, 33 FCC Rcd 8240, 8245, para. 15, n.41 (IATF & MB 2018).

⁴ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown). *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, 33 FCC Rcd 8240, 8245, para. 15, n.41 (IATF & MB 2018)..

⁵ 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 (MB & WTB 2017) (*Closing and Channel Reassignment Public Notice*).

September 11, 2019.⁶ KM has filed a request for waiver explaining that on August 3, 2019, the Station went silent due to damage to its pre-auction channel transmitter. KM intended to resume operations on August 6, 2019, and provide the required on-air consumer notices, but due to a miscommunication with its vendors KM was not able to resume operation as planned and had to remain silent. As such the Station did not run the required on-air consumer notifications required by section 73.3700(c)(3). Instead KM requests a waiver of the viewer notification rule and has proposed alternative means of notifying its viewers of its channel change. Specifically, KM proposes to provide notification to viewers and consumers through: (i) publication of the notification in a Korean language newspaper published in Gwinnett County and serving the Atlanta area, and (ii) broadcast of the notification over an AM radio station that broadcasts in Korean and serves Gwinnett County and the Atlanta area.⁷ KM will continue the radio and newspaper notifications for at least 30 days.

Discussion. Upon review of the facts and circumstances presented, we find that grant of KM's request meets the standard for a waiver and is in the public interest. We believe that KM has every incentive to ensure viewers are fully informed about the Station's transition plan. Given the facts and circumstances, including the alternative efforts KM plans to undertake to ensure its viewers are notified of the Station's channel change, we grant KM's waiver request.

Accordingly, KM's request for waiver of the post-incentive auction consumer education requirements, 47 CFR § 73.3700(c)(3), for WSKC-CD, Atlanta, Georgia, **IS GRANTED**, condition upon the commitments made in its waiver request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Barbara A. Kreisman' with a stylized flourish at the end.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc:

Jeffrey L. Timmons, Esq.

⁶ Originally, Phase 5 stations had a phase completion date and construction permit expiration date of September 6, 2019. *See Closing and Channel Reassignment Public Notice*, 32 FCC Rcd 2786. On September 3, 2019, those dates were extended to September 11, 2019. *See The Completion Date For Phase 5 of the Post-Incentive Auction Transition Is Extended To September 11, 2019 Because of Hurricane Dorian*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, DA 19-866, rel. Sept. 3, 2019 (IATF & MB).

⁷ According to KM its airs Korean language programming and as such proposes its alternate notifications be in Korean and provided through other Korean media outlets.