



Federal Communications Commission  
Washington, D.C. 20554

September 6, 2019

Gray Television Licensee, LLC  
4370 Peachtree Road  
Atlanta, GA 30319

Re: Request for Modification and  
Waiver of Phase Assignment  
KNCT(TV), Belton, TX  
Facility ID No. 9754  
LMS File No. 0000080713

Dear Licensee,

On August 28, 2019, Gray Television Licensee, LLC (Gray TV), the licensee of KNCT(TV), Belton, Texas, (KNCT 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 5 to Phase 6.<sup>1</sup> For the reasons below, we grant Gray TV'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. 0000080713, KNCT Phase Change Request (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, Public Notice, 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*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 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>

KNCT is currently licensed to operate on channel 46. It was reassigned to channel 17 in the *Closing and Channel Reassignment Public Notice* and is currently assigned to transition Phase 5, which has a testing period start date of August 3, 2019, and phase completion date of September 11, 2019.<sup>7</sup> KNCT is located in the Waco-Temple-Bryan, Texas, Designated Market Area (Waco DMA). A total of five stations, including KNCT, were repacked in the Waco-Bryan DMA, with KNCT being assigned to Phase 5, two stations being assigned to transition Phase 8, and two stations to Phase 9.

Gray TV was previously granted a change in phase for KNCT from Phase 8 to Phase 5.<sup>8</sup> Gray TV states all necessary equipment is on-site, the transmitter is installed, the STL link built, and its tower crew has been on-site working on tower reinforcements and installing transmission line.<sup>9</sup> While the work is almost complete, weather delays have limited the ability of the tower crew to be on the tower.<sup>10</sup> Gray TV anticipates needing an additional three to four weeks to complete the needed tower work, including hanging the Station's antenna.<sup>11</sup> As a result, Gray TV requests permission to move KNCT from Phase 5 to Phase 6, which has a testing period start date of September 7, 2019, and a phase completion date of October 18, 2019.

Because the Station is currently operating in the 600 MHz band, Gray TV asserts that 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.<sup>12</sup> The phase change will also not change the number of rescan periods in the Waco DMA.<sup>13</sup> Nevertheless, in order to mitigate any viewer disruption caused by the change in phase, Gray TV has committed to increased viewer education and outreach above and beyond what is required by the Commission's rules through the use of the Station's digital and social media assets, as well as its local newscasts.<sup>14</sup>

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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*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 33 FCC Rcd 8240, 8245, para. 14 (IATF & MB 2018) (*Transition Reminder Public Notice*).

<sup>7</sup> Originally, Phase 5 stations had 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).

<sup>8</sup> LMS File No. 0000068442.

<sup>9</sup> Waiver Request at 2.

<sup>10</sup> *Id.* and Letter from TCI.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.* 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).

<sup>13</sup> Waiver Request at 2.

<sup>14</sup> *Id.* at 3.

*Discussion.* Upon review of the facts and circumstances presented, we find that Gray TV's request to modify the phase assignment for KNCT to transition to its post-auction channel 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 any 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. We find that the total number of rescan periods in the Waco DMA will remain the same. Nevertheless, in order to mitigate viewer confusion caused by the change in phase Gray TV has committed to undertake additional consumer outreach efforts beyond what is required by the Commission's rules in order to ensure that viewers will be well-informed and can manage the additional rescan period. Modifying KNCT's transition phase will ensure that the Station is able to continue to serve its viewers without interruption. As a result, we find the facts and circumstances discussed above outweigh any viewer burden caused by a change in the Station's transition phase.

We caution Gray TV 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.<sup>15</sup> 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 changes in its transition plan caused by the voluntary phase change.

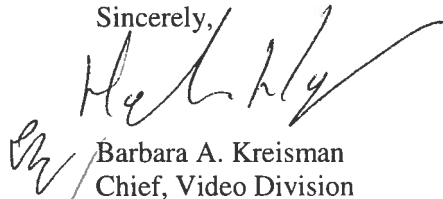
Accordingly, we **GRANT** Gray TV's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for KNCT **from Phase 5 to Phase 6**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning 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 KNCT is required to cease operating on its pre-auction channel **no**

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<sup>15</sup> The Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) for costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other." *Media Bureau Finalizes Reimbursement Form for Submission to OMB and Adopts Catalog of Expenses*, GN Docket No. 12-268, Public Notice, 30 FCC Rcd 11701, 11701-02 (MB 2015). See also *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

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

later than 11:59 pm local time on October 18, 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): Joan Stewart, Esq.

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<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 at 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.