

## REQUEST FOR PHASE CHANGE

Gray Television Licensee, LLC (“Gray”) seeks a waiver of the post-Incentive Auction Transition Phase assignment, and corresponding testing dates and construction completion deadlines, for WVIR-TV, Charlottesville, Virginia (Facility ID No. 70309) (“Station” or “WVIR”). The *Closing and Reassignment Public Notice* assigned the Station to Transition Phase 5. On September 6, 2019, WVIR was granted permission to move to Phase 6. This request seeks permission to further extend the Station’s transition date to Phase 7, for which the testing period begins on October 19, 2019 and ends on January 17, 2020.<sup>1</sup>

The *Transition Scheduling Adoption Public Notice* permitted stations to propose “alternative transition solutions that could create efficiencies,” and determined that a request to modify a station’s transition deadline would be viewed favorably if the request is “otherwise compliant with [FCC] rules and [has] little or no impact on the phase assignments or transition schedule.”<sup>2</sup> As demonstrated below, Gray’s request qualifies for such favorable treatment.

The FCC may grant a waiver for good cause shown.<sup>3</sup> A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.<sup>4</sup> In considering a waiver, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>5</sup> Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>6</sup>

As demonstrated herein, good cause exists for waiver of the assigned Transition Phase and its attendant testing and completion dates. As explained in its previous request, WVIR worked diligently to complete construction of its new facility by its original deadline. However, construction and delivery of its antenna were unexpectedly and significantly delayed making it

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<sup>1</sup> *Id.*

<sup>2</sup> *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, 913 ¶ 51 (MB 2017) (*Transition Scheduling Adoption Public Notice*), citing *Incentive Auction Task Force and Media Bureau Seek Comment on Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 31 FCC Rcd 10802 (MB 2016) (*Transition Scheduling Proposal Public Notice*).

<sup>3</sup> 47 C.F.R. § 1.3.

<sup>4</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>5</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

<sup>6</sup> *Northeast Cellular*, 897 F.2d at 1166.

impossible for the Station to complete the new facility. Its antenna manufacturer has now committed to complete the WVIR antenna by November 11. While awaiting its antenna, the Station moved forward with construction of its new tower. The tower is on schedule to be completed and ready for the antenna installation by the end of October. Assuming no further delays by the antenna manufacturer, WVIR expects to complete its final facility by December 1, 2019. If WVIR is unable to complete its final facility by December 1, 2019, it will cease operating on Channel 32 and identify an alternative channel from which to operate on a temporary basis while it completes construction of its authorized repack facility.

The Station is part of a linked set with WCAV(TV), Charlottesville, Virginia (FID 363) (“WCAV”). As part of the repack, WCAV is moving to WVIR’s current channel. WVIR has asked WCAV to also delay their transition to ensure a seamless transition with minimal disruption to viewers. WCAV has agreed to delay its repack until December 1 to allow WVIR additional time to receive and install its antenna.

The Station’s transition during a later phase will serve the public interest by allowing both WVIR and WCAV to remain on the air without disrupting service to their viewers.

Interference. WVIR’s move to Phase 7 will not create a new linked set between WVIR and any other station.

Impact to Viewers. Gray believes any disruption to viewers will be minimal. Because both WVIR and WCAV will move to Phase 7, grant of the instant request will require that viewers in the Charlottesville, VA market conduct only two rescans. This complies with presumptive cap established by the Transition PN.<sup>7</sup>

Gray commits to engage in a comprehensive consumer awareness campaign to further assist viewers. In addition to the required public service announcements and crawls to notify the Station audience of the proposed transition and provide detailed instructions on the rescanning process, the Station will conduct robust and diverse outreach through digital and social media. Moreover, to minimize consumer disruption during this transition period, Gray will simulcast WVIR-TV’s programming on its sister station WVIR-CD, which transitioned to its repack channel in Phase 5. Gray will air promotions explaining how viewers can receive WVIR-TV’s programming via WVIR-CD. To the extent viewers can access WVIR-TV’s content on WVIR-CD, they will experience less disruption during the transition period.

MVPD Notification. Finally, Gray will work closely with all impacted MVPDs to ensure they have all information needed to implement the channel change.

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<sup>7</sup> See Transition Public Notice at ¶¶ 20 and 21.

In sum, grant of this waiver will facilitate a more effective and efficient implementation of the overall policy goals of the Incentive Auction and post-auction transition, and thus is in the public interest.