



Federal Communications Commission
Washington, D.C. 20554

October 5, 2018

Gray Television Licensee, LLC
999 Second Street S.E.
Charlottesville, VA 22902

Re: Request for Modification and
Waiver of Phase Assignment
WAHU-CD, Charlottesville, VA
Facility ID No. 47705
LMS File No. 0000054658

Dear Licensee,

On September 25, 2018, Gray Television Licensee, LLC (Gray TV), the licensee of Station WAHU-CD, Charlottesville, Virginia, (WAHU-CD or Station), filed an amended *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 8 to Phase 5.¹ For the reasons below, we grant Gray TV's request for waiver and modify WAHU-CD's phase assignment to Phase 5, 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. 0000054658, Amended Out of Phase Legal STA Waiver (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

WAHU-CD is currently licensed to operate on channel 40. It was reassigned to channel 35 in the *Closing and Channel Reassignment Public Notice* and assigned to transition Phase 8, which has a testing period start date of January 18, 2020, and phase completion date of March 13, 2020. WAHU-CD is located in the Charlottesville, Virginia, Designated Market Area (Charlottesville DMA). A total of four stations including WAHU-CD were repacked in the Charlottesville DMA, with two stations being assigned to Phase 5 and two stations being assigned to Phase 8. Gray TV requests permission to move from Phase 8 to Phase 5, which has a testing period start date of August 3, 2019, and phase completion date of September 6, 2019. Gray TV asserts that modifying WAHU-CD's transition phase is intended to promote the deployment of new wireless broadband services by enabling T-Mobile, a winning 600 MHz band licensee, to deploy its new wireless broadband service in and around Charlottesville, Winchester, and Harrisonburg, Virginia, up to six months earlier than it would be able to under the current transition schedule.⁷ Gray TV states that it has completed construction of its post-auction facility and at this time only needs to conduct testing.⁸

Gray TV provides an engineering analysis demonstrating that its early transition will not create any new linked-station sets or result in increased pairwise interference greater than two percent during the transition period.⁹ Gray TV also states that granting the waiver will not create any additional rescan periods in the Charlottesville DMA.¹⁰ In fact, by modifying WAHU-CD's transition phase to Phase 5, WAHU-CD will transition at the same time as commonly owned station WCAV, which is also located in the Charlottesville DMA. In order to ensure that viewers are well-informed about the Station's transition, Gray TV states that it will conduct expanded consumer education and outreach efforts beyond what is required by Commission rules through digital and social media, as well as newscasts.¹¹ Gray TV has also submitted a letter from T-Mobile stating that T-Mobile will provide additional resources and support to ensure that viewers in the DMA are well-informed about the transition.¹²

Discussion. Upon review of the facts and circumstances presented, we find Gray TV's request to modify its phase assignment to permit WAHU-CD to transition to its post-auction channel in Phase 5

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, MB docket No. 16-306 and GN Docket No. 12-268, DA 18-884 (IATF & MB, rel. Aug. 27, 2018) (*Transition Reminder Public Notice*).

⁷ Waiver Request at 2. Included with its waiver request is also a study conducted by T-Mobile verifying that as a result of the Station's early transition, T-Mobile will be able to commence 600 MHz operations earlier than under the existing transition schedule. See Waiver Request, WAHU Package-redacted. Pursuant to Sections 0.457 and 0.459 of the Rules, T-Mobile requests confidential treatment of the information pertaining to the precise timing and location of its deployment. T-Mobile contends such information is not routinely made publicly available and should be withheld from public inspection as trade secrets, or privileged or confidential commercial, financial or technical data. See 47 CFR §§ 0.457(d)(2) and 0.459.

⁸ Waiver Request at 3.

⁹ *Id.* at 2-3 and Engineering Statement.

¹⁰ *Id.* at 3.

¹¹ *Id.* at 3-4.

¹² *Id.* at 4 and WAHU T-Mobile Rescan Letter.

satisfies the requirements for a waiver and is in the public interest. We agree that the change to WAHU-CD's transition phase should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. A staff analysis confirms that the phase change will not result in new increased pairwise interference above the two percent permitted during the post-auction transition period.¹³ Gray TV has completed construction of WAHU-CD's post-auction facility and other transitioning stations' access to resources will not be impacted. The phase change does not increase the number of rescan periods for viewers in the Charlottesville DMA. Gray TV, with the support of T-Mobile, has also committed to put in place viewer outreach programs beyond those required by the Commission rules. As a result, we find that the benefit of early deployment in the 600 MHz band, the fact that WAHU-CD has completed construction of its post-auction facility, the total number of rescan periods in the DMA will remain at two, and additional consumer education and outreach efforts supports grant of Gray TV's waiver request.

We caution Gray TV that any additional expenses incurred as a result of the grant of WAHU-CD'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 estimated expenses but was subsequently necessitated to complete the transition to its post-auction channel due to its phase change. The station is responsible for paying for any expenses incurred as a result of voluntarily requested changes to the station's transition schedule.

Accordingly, we **GRANT** Gray TV's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WAHU-CD **from Phase 8 to Phase 5**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.¹⁴ Testing on the Station's post-auction channel **may not begin until 12:01 am local time on August 3, 2019**, and the Station is required to cease operating on its pre-auction channel **no**

¹³ 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).

¹⁴ See generally 47 CFR § 73.3700; *Transition Reminder Public Notice*.

later than 11:59 pm local time on September 6, 2019.¹⁵ The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.¹⁶

Sincerely,

A handwritten signature in blue ink that reads "David Brown for/". The signature is fluid and cursive, with the last part appearing as "for/".

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):
Joan Stewart, Esq.

¹⁵ 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.

¹⁶ *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. 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.