

### **Waiver of Phase Assignment**

Gray Television License, LLC (Gray), licensee of KVLV-TV, Fargo, North Dakota (FID 61961) (KVLV) files this request for waiver of the post-Incentive Auction Transition Phase assignment and corresponding testing dates and construction completion deadlines for KVLV. KVLV was assigned to Transition Phase 1, pursuant to the *Closing and Reassignment Public Notice*.<sup>1</sup> The Phase Completion Date for Phase 1 is November 30, 2018. KVLV requests re-assignment to Transition Phase 2 because construction of its post-repack facility has been delayed by circumstances outside of its control.

In the *Transition Scheduling Adoption Public Notice*,<sup>2</sup> the Commission anticipated that there would be circumstances where a station would need to seek a waiver of the phase construction deadline, including authority to continue operating on their current channel. The Commission indicated that it would consider these requests on a “case-by-case basis,” by evaluating the impact to viewers and the transition schedule.<sup>3</sup> As explained below, re-assigning KVLV to a later transition phase will ensure its viewers are not left without important news and weather information during the severe winters that are usual in this part of the United States. KVLV is not part of a paired transition group, therefore, its move to a later transition phase will not delay the transition of another station.

To complete the transition to its post-repack facility, KVLV must reinforce its tower, install a new main antenna and transmission line, and install a new transmitter. KVLV executed a contract with TCI Tower (TCI) in March 2018 for engineering services, tower modification, antenna installation of both the interim and main antenna and main transmission line replacement. TCI subcontracted the KVLV work to Steve Lemay Tower.

In April 2018, Steve Lemay and his crew were working on a tower in Springfield, Missouri when it collapsed, killing Mr. Lemay and seriously injuring several people in his crew. TCI was eventually able to find a new subcontractor—Seacomm Erectors, Inc. (Seacomm)—for the KVLV tower work.

Seacomm was scheduled to begin the KVLV tower work on September 4, with the interim facility scheduled to be completed by September 17 and the final facility scheduled to be completed by October 15. Despite repeated assurances that the tower crew was on schedule, the Seacomm crew was delayed on another job. They briefly appeared at the KVLV site on

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<sup>1</sup> *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 Red 2786 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*).

<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 (MB 2017) (*Transition Scheduling Adoption Public Notice*).

<sup>3</sup> *Transition Scheduling Adoption Public Notice*, ¶ 49.

September 4, but only installed the interim antenna (but not the transmission line) before returning to an earlier job where late-delivered equipment finally had arrived.

Seacomm has delayed their return to the KVLV tower site several times. Then on October 5, Seacomm informed KVLV they could not complete the tower work and install the final antenna before the Phase 1 deadline. Seacomm tentatively has committed to return in March 2019—depending on weather—to complete construction of the final facility. *See* Letter from TCI supporting this Transition Phase Change Request. March weather can be severe in Fargo, North Dakota, making tower work difficult, therefore, further delays are possible.

KVLV has contacted several other tower crews, including local crews. However, each crew that was contacted either did not have the capacity or the ability to complete the KVLV build-out.

Based on current information from Seacomm, KVLV expects to have its interim facility constructed by the Phase 1 deadline. KVLV had planned to operate temporarily from an interim facility for weeks, not months. KVLV is both the CBS and the NBC affiliate for Fargo. The interim facility leaves over 30,000 viewers without over-the-air coverage in remote areas of North Dakota. *See Map*. During the winter with its severe storms and bone-chilling cold, over-the-air news and weather information is crucial to many of these viewers. Therefore, Gray requests that KVLV be re-assigned to Phase 2, allowing it to continue operating on its current (pre-transition) Channel 44 until April 12, 2019.

KVLV is not part of a linked set and does not require coordination with any other station to complete its transition. Because KVLV currently operates in the 600MHz band, a delay in its transition will not create a new linked station set.

Two stations in the Fargo market must transition to post-repack facilities—KVLV and KRDK. Both stations currently are assigned to Phase 1 and both stations are having difficulties locating tower crews that can complete their repack facilities by the Phase 1 deadline. KRDK has requested authority to move to Transition Phase 3 (See KRDK STA, File No. 63031). KVLV's move to Phase 2 and KRDK's move to Phase 3 will increase the total number of times a view may need to rescan equipment from one to two, which is within the presumptive cap established by the Transition Scheduling PN.<sup>4</sup>

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<sup>4</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, DA 17-107 at ¶¶ 20 and 21 (MB 2017) (*Transition Scheduling PN*).

### **Map**

The attached map shows the loss area between KVLV's authorized interim facility and final repack facility.

**Letter from TCI**