



Federal Communications Commission
Washington, D.C. 20554

April 8, 2019

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

Re: Request for Modification and
Waiver of Phase Assignment
KVLV-TV, Fargo, ND
Facility ID No. 61961
LMS File No. 0000068651

Dear Licensee,

On March 22, 2018, Gray Television Licensee, LLC (Gray), the licensee of Station KVLV-TV, Fargo, ND (KVLV-TV 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 2 to Phase 3.¹ For the reasons below, we grant Gray's request for waiver and modify KVLV-TV's phase assignment to Phase 3, 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. 0000068651, KVLV - STA Exhibit (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

KVLY-TV is currently licensed to operate on channel 44. It was reassigned to channel 36 as part of the post-incentive auction repacking process.⁷ Although the Station was initially assigned to transition Phase 1, it was subsequently granted a waiver of its phase assignment and reassigned to transition Phase 2, which has a testing period start date of December 1, 2019, and a phase completion date of April 12, 2019.⁸ KVLY-TV is located in the Fargo-Valley City, North Dakota, Designated Market Area (Fargo DMA). A total of two stations, KVLY-TV and KRDK-TV, Valley City, ND,⁹ were repacked in the Fargo DMA. At the time the phase change was granted to Phase 2, Gray stated that KVLY-TV had experienced construction delays related to weather and the ongoing availability of its tower crew, TCI. TCI performed work at KVLY-TV's facility, but could not complete construction before the crew had to leave to perform work for another customer. At that time, TCI was scheduled to return on March 8, 2019, to complete KVLY-TV's post-auction interim facility and finish construction of the final post-auction facility.¹⁰ However, on March 19, 2019, TCI informed Gray that due to delays caused by weather and issues at other tower sites, KVLY's construction would not be complete in time for KVLY to commence operating on its post-auction channel by the Phase 2 transition deadline.¹¹ Given all these facts, Gray requests that KVLY-TV's phase assignment be modified from Phase 2 to Phase 3, which has a testing period start date of April 13, 2019, and a phase completion date of June 21, 2019.

Gray states 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.¹² Gray notes that granting the waiver request will create a single unified rescan period in the Fargo DMA, as originally planned under the transition schedule.¹³ TCI also provides a letter in support of Gray's phase change request and supports Gray's explanation as to why construction cannot be completed by April 12, 2019.¹⁴

Discussion. Upon review of the facts and circumstances presented, we find Gray's request to modify its phase assignment to permit KVLY-TV to transition to its post-auction channel in Phase 3 satisfies the requirements for a waiver and is in the public interest. We agree that the change to KVLY-TV'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

⁵ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-13, para. 49 and n.163.

⁶ *Id.* *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, 33 FCC Rcd 8240, 8244-45, para. 14 (IATF & MB 2018) (*Transition Reminder Public Notice*).

⁷ KVLY-TV was initially reassigned to channel 18 and subsequently requested and received approval to instead be reassigned to channel 36. See LMS File No. 0000034096.

⁸ See LMS File No. 0000063123 (granted Nov. 21, 2018).

⁹ KRDK-TV is licensed to Parker Broadcasting of Dakota License, LLC. KRDK-TV was granted a modification of its phase assignment from Phase 1 to Phase 3. See LMS File No. 0000063031.

¹⁰ Waiver Request at 2.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

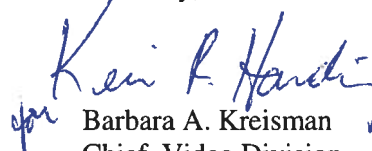
¹⁴ *Id.* at 2 and 4 (Letter from TCI to Gray Television).

increased pairwise interference above the two percent permitted during the post-auction transition period.¹⁵ Viewers in the Fargo DMA will also now only be subjected to a single rescan period in Phase 3, as opposed to two rescan periods in Phases 2 and 3. As a result, we find the benefits of this phase change, including ensuring the Station is able to continue to provide over-the-air service to its viewers, outweighs the short delay in access by wireless providers to the 600 MHz band.

We remind Gray that pursuant to the Spectrum Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs “reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other.” Additional expenses incurred such as expenses resulting from changes in a Station’s transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

Accordingly, we **GRANT** Gray’s *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for KVLV-TV **from Phase 2 to Phase 3**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.¹⁶ Testing on the Station’s post-auction channel **may not begin until 12:01 am local time on April 13, 2019**, and the Station is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on June 21, 2019**.¹⁷ The Station’s construction permit expiration date will also be modified to correspond to its new phase completion date.¹⁸

Sincerely,


Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

¹⁵ See *id.* at 897, para. 16 (allowing temporary increased pairwise (station-to-station) interference of up to two percent during the transition period).

¹⁶ See generally 47 CFR § 73.3700; *Transition Reminder Public Notice*, 23 FCC Rcd 8240.

¹⁷ 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.

¹⁸ *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.