

## AMENDED REQUEST FOR EARLY PHASE TRANSITION

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 KNCT(TV), Belton, Texas (Facility ID No. 9754) (“Station”). The *Closing and Reassignment Public Notice* assigned the Station to Transition Phase 8, for which the Phase Completion Date is March 13, 2020.<sup>1</sup> Gray had previously sought permission to transition the Station during Transition Phase 4.<sup>2</sup> This request amends that earlier filing and seeks permission to transition the Station early by moving to Transition Phase 5, for which the testing period begins on August 3, 2019 and ends on September 6, 2019.<sup>3</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 — including by moving to an earlier phase — 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>4</sup> As demonstrated below, Gray’s request qualifies for such favorable treatment.

The FCC may grant a waiver for good cause shown.<sup>5</sup> A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.<sup>6</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>7</sup> Such a waiver is appropriate if

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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 Rcd 2786 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*).

<sup>2</sup> See Legal STA (FCC File No. 68442).

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

<sup>4</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>5</sup> 47 C.F.R. § 1.3.

<sup>6</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>7</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.

circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>8</sup>

As demonstrated herein, good cause exists for waiver of the assigned Transition Phase and its attendant testing and completion dates. The Station is currently operating at reduced power with rapidly deteriorating equipment. Its current tower location is tenuous at best, with the landlord unwilling to allow construction of a replacement tower which is necessary to build its repack facility. Therefore, the Station's transition during an earlier phase will serve the public interest by allowing the Station to resume full-power operations from a permanent site before its existing equipment completely fails. Further, an earlier transition allows the Station to direct its financial and management resources toward constructing a permanent new facility rather than continuing temporary fixes to keep the Station on the air. Allowing the Station to build and operate its repack facility earlier will provide a tangible benefit to viewers with minimal disruption.

The Station is currently operating at reduced power, pursuant to Special Temporary Authority,<sup>9</sup> as its transmitter and transmission line are failing. Both the transmitter and transmission line must be replaced during construction of the repack facility. Replacing this equipment now to allow the Station to operate at full power until Phase 8 would place an unnecessary strain on manufacturers and would represent a stranded financial investment.

Additionally, a tower study revealed that the Station's current tower will not support the repack facility, necessitating construction of a new tower. Further, Gray has been unable to secure permission to construct a replacement tower from the land owner. Left with no choice but to explore other options to build the repack facility; Gray identified a solution which will avoid the cost and inconvenience of building a new tower and extended operation from an interim facility while allowing the Station to resume full power operations in a timely manner. Specifically, Gray has been granted a construction permit to co-locate the Station on a tower owned by Gray in neighboring Waco, Texas.<sup>10</sup> This tower currently is used by KWTX-TV, Waco, Texas (a station owned by Gray), and with certain modifications, the tower also can support the Station. The modified facility will result in significant cost savings to the repack fund as it requires only reinforcing the existing KWTX tower rather than construction of a new tower structure and avoids the need for an interim facility. Likewise, prompt construction of the repack facility will allow KNCT to resume full power operations.

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<sup>8</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>9</sup> See FCC File No. 59953.

<sup>10</sup> See FCC File No. 64448.

Interference. An “Engineering Statement” supporting this request prepared by Chesapeake RF Consultants, LLC (“Engineering Statement”) is attached. As demonstrated in the Engineering Statement, a move to Phase 5 with the modified facilities proposed in the pending construction permit application does not create a linked set with any station. Additionally, there are no cases of outgoing (caused) interference exceeding the FCC’s temporary 2% permitted interference level to any other protected full-power or Class A television stations now operating. Likewise, no new incoming pairwise (station-to-station) interference will be created by the proposed early transition of Station.

Impacts to Transition Plan. Construction of the Station’s repack facility requires a new antenna, transmitter, and transmission line. A structural analysis was completed for the KWTX tower, resulting in the recommendation to reinforce the legs of the tower by adding plates to the existing angle columns to ensure the tower meets the ANSI/TIA-222-H Standard with the addition of the Station’s equipment. Additionally, the existing transmitter building must be expanded and HVAC capacity increased.

Gray has ordered all needed equipment and scheduled all services. Its equipment vendors have confirmed that building and supplying the equipment by Phase 5 will not prevent them from timely supplying equipment for other repack stations. Statements from these vendors are attached.

Impact to Viewers. Gray believes any disruption to viewers will be minimal. The Station recognizes that its request for an early transition may increase, in theory, the total number of times a viewer may need to rescan equipment in order to receive all reassigned stations in the Waco-Temple-Bryan DMA from two to three scans. However, in reality the Waco-Temple-Bryan DMA operates as two distinct markets: Waco and Bryan/College Station. All of the major networks have a main parent station serving the Waco side of the market and a satellite or other repeater serving the Bryan/College Station side of the market. Viewers who watch Waco stations generally don’t watch stations based in the Bryan/College Station region and vice-a-versa. The repacked stations on the Bryan/College Station side of the market are assigned to Phase 8. The Station serves the Waco side of the market and the other repacked Waco stations are assigned to Phase 9. Thus, if the Station moves to Phase 5, over-the-air viewers in Waco will still only have two rescans. For those few over-the-air viewers that watch stations on both sides of the market, this additional rescan would exceed the presumptive cap established by the Transition PN<sup>11</sup> by one scan. The Media Bureau previously has recognized that more than two rescan periods may still be in the public interest – in particular in “split” markets, such as Waco-Temple-Bryan where viewers generally do not receive signals from stations in both sides of the

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<sup>11</sup> See Transition Public Notice at ¶¶ 20 and 21.

market.<sup>12</sup> Further, the Station is currently operating at reduced power, therefore, by completing its repack transition in an earlier phase, it will restore service to viewers who may not be able to receive its lower power signal.<sup>13</sup>

Gray also 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. Likewise, its sister station KWTX-TV will provide information about the repack and the need to rescan equipment during its local newscasts to ensure that viewers will be well-informed of the transition.

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

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.

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<sup>12</sup> See Request for Modification and Waiver of Phase Assignment (WQOW), dated July 27, 2018; See also Request for Modification and Waiver of Phase Assignment (WHLA-TV), dated July 27, 2018.

<sup>13</sup> See Request for Modification and Waiver of Phase Assignment (WUPV), dated February 22, 2019.