

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 WSAZ-TV, Huntington, West Virginia (Facility ID No. 36912) (“WSAZ” or the “Station”). The *Closing and Reassignment Public Notice* originally assigned the Station to Transition Phase 6, for which the Phase Completion Date is October 18, 2019.¹ The tower crew scheduled to install the Station’s antenna is delayed, which will prevent the Station from making its phase deadline. Therefore, this request seeks permission to transition the Station in a later phase by moving to Transition Phase 7, for which the testing period begins on October 19, 2019 and ends on January 17, 2019.²

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.”³ As demonstrated below, Gray’s request qualifies for such favorable treatment.

The FCC may grant a waiver for good cause shown.⁴ A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.⁵ 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.⁶ Such a waiver is appropriate if

¹ *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*).

² *Id.*

³ *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*).

⁴ 47 C.F.R. § 1.3.

⁵ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁶ *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.⁷

As demonstrated herein, good cause exists for waiver of the assigned Transition Phase and its attendant testing and completion dates. WSAZ has been working diligently to complete construction of its repack facility. It began operating from an interim facility on its pre-auction channel in August 2019 to allow for the required tower work—removal of the old antenna (auxiliary and main), removal of old line and installation of the new top-mount antenna and line.⁸ However, the tower crew has been repeatedly delayed. Currently, the tower crew is expected to arrive on-site in early October. Once on-site, the tower work and equipment installation are expected to take 4-5 weeks, assuming no weather delays.

Interference. As demonstrated in the attached Engineering Statement, WSAZ moving to Phase 7 and continuing to operate with its current STA facility does not create a linked set with any new station. Additionally, there are no cases of outgoing interference exceeding the FCC's temporary 2% permitted interference level to any other protected full-power or Class A television stations now operating. WVAH-TV is downstream from WSAZ. Once WVAH-TV transitions to its post-auction facility, it will cause 6.87 percent interference to WSAZ. WSAZ consents to this temporary increased interference between the time that WVAH-TV transitions to its post-auction facility and WSAZ's ending operations on Channel 23.

Impact to Viewers. Gray believes any disruption to viewers will be minimal. This request will increase the total number of times a viewer needs to rescan equipment in order to receive all reassigned stations in the Charleston-Huntington DMA from three to four scans. However, this market was already scheduled to experience three rescan phases (Phase 0, Phase 6 and Phase 10). Ultimately, it is less disruptive for viewers to rescan one additional time than to lose over the air service for two stations in the market. Because both WSAZ and WQCW are impacted by the delay of the tower crew, both stations are seeking a phase change delay and will coordinate their transition date and time to facilitate the required rescan by viewers.

WSAZ will revise its viewer notifications to prepare viewers for a later transition date. 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 to ensure that viewers will be well-informed of the transition.

⁷ *Northeast Cellular*, 897 F.2d at 1166.

⁸ WSAZ's post-repack antenna will be shared with sister station WQCW. WQCW separately will submit a request for a Phase Change waiver.

MVPD Notification. Finally, WSAZ is in contact 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.