



Federal Communications Commission
Washington, D.C. 20554

October 17, 2019

Charlottesville TV LLC
220 Salters Creek Road
Charlottesville, VA 22902

Re: Request for Modification and
Waiver of Phase Assignment
WCAV(TV), Charlottesville, VA
Facility ID No. 363
LMS File No. 0000086717

Dear Licensee,

On October 16, 2019, Charlottesville TV LLC (Charlottesville TV), the licensee of WCAV(TV), Charlottesville, Virginia (WCAV 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 6 to Phase 7.¹ For the reasons below, we grant Charlottesville TV's request for waiver and modify the Station's phase assignment to Phase 7, 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*, GN Docket No. 12-268 et al., Public Notice, 32 FCC Rcd 2786 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*). See LMS File No. 000008671, as amended Oct. 16, 2019 (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, Public Notice, 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*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 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

WCAV is currently licensed to operate on channel 19. It was reassigned to channel 32 in the *Closing and Channel Reassignment Public Notice* and is currently assigned to transition Phase 6, which had a phase testing period start date of September 7, 2019, and a phase completion date of October 18, 2019. The Station is located in the Charlottesville, Virginia, Designated Market Area (Charlottesville DMA). A total of four stations were repacked in the Charlottesville DMA, with one station having transitioned in Phase 5; two stations, including WCAV, currently assigned to transition Phase 6; and one station assigned to Phase 8. Charlottesville TV is requesting a phase change for WCAV in order to accommodate the phase change request of WVIR-TV, Charlottesville, Virginia (WVIR-TV).⁷ WCAV is currently part of Linked-Station Set 98 (LSS 98) and is repacked to WVIR-TV's current channel.⁸ Therefore, WCAV can only transition to its repack channel at the same time as or after WVIR-TV vacates its pre-auction channel. As a result, Charlottesville TV requests that the Station's transition phase assignment be modified from Phase 6 to Phase 7, which has a testing period start date of October 19, 2019. WCAV has agreed to cease operating on its pre-auction channel on or before December 1, 2019.⁹

WCAV-TV is also directly linked with station WZBJ-CD, Lynchburg, VA.¹⁰ WZBJ-CD has completed its transition to its post-auction channel. Both WZBJ-CD and WCAV-TV have been and agree to continue accepting between 2% and 5% caused or received temporary pairwise interference from one another.¹¹ In order to mitigate any viewer disruption caused by the Station's change in phase, Charlottesville TV has also agreed to increase viewer education and outreach above and beyond what is required by the Commission's rules as committed to by the former licensee of WCAV-TV.¹² Charlottesville TV also states that it will coordinate its testing and transition with WVIR-TV.¹³

Discussion. Upon review of the facts and circumstances presented, we find that Charlottesville TV's request to modify the phase assignment for WCAV to transition to its post-auction channel satisfies

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, 33 FCC Rcd 8240, 8244-45, para. 14 (IATF & MB 2018) (*Transition Reminder Public Notice*).

⁷ Waiver Request at 1. WVIR-TV has requested a change of its transition phase assignment to Phase 7 due to antenna delivery delays. LMS File No. 0000086613. WVIR-TV is licensed to Gray Television Licensee LLC (Gray TV).

⁸ WVIR-TV and WCAV were formerly part of linked-station set 40 but assigned a new linked-station set number as the other stations in that linked-station set completed their transition.

⁹ Waiver Request at 1.

¹⁰ WZBJ-CD is licensed to Gray TV.

¹¹ Waiver Request at 1. See LMS File Nos. 0000080705, 0000086695, and 0000086613 (agreeing to accepting a temporary increase in pairwise interference).

¹² *Id.* at 1. The former licensee of WCAV, Gray TV, agreed as a condition of its prior phase change from Phase 5 to Phase 6 to provide additional information about its transition using its digital and social media assets, as well as local newscast. See LMS File No. 0000080705.

¹³ Waiver Request at 1.

the requirement for a waiver and is in the public interest. The Station is directly linked with WVIR-TV and that station's request to change its transition phase assignment to Phase 7 is being granted simultaneously. We agree that changing the Station's transition phase to Phase 7 should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. While the phase change will result in increased temporary pairwise interference between WCAV and WZBJ-CD, both stations have agreed to continue to accept all temporary interference until December 1, 2019. Staff has also determined that the phase change will result in WCAV becoming directly linked with station WAVY-TV, Portsmouth, VA.¹⁴ Both WCAV and WVIR-TV would also become part of existing linked station set 99. Therefore, as a condition of grant we require both WCAV and WVIR-TV to coordinate with WAVY-TV to ensure that they do not violate the Commission's restriction prohibiting temporary pairwise interference above 2% during the transition.

By moving WCAV and WVIR-TV to Phase 7, the total number of rescan periods in the Charlottesville DMA will remain the same. To ensure that viewers are fully informed about the repack and in order to minimize any viewer confusion caused by the Station's change in phase, Charlottesville TV has agreed to increase consumer education and outreach beyond what is required by the Commission's rules.¹⁵ Charlottesville TV will also continue to coordinate its testing and transition with WVIR-TV. Modifying WCAV's transition phase will ensure that both WCAV and WVIR-TV are able to continue to serve its viewers with only limited interruption. As a result, we find the facts and circumstances discussed above outweigh any viewer burden caused by a change in transition schedule for WCIV and WVIR-TV, and a temporary increase in limited amounts of pairwise interference between WCAV and WZBJ-CD.

We remind Charlottesville TV 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."¹⁶ 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** Charlottesville TV's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WCAV **from Phase 6 to Phase 7**, subject to all the commitments made in its waiver request, compliance with all Commission rules applicable to transitioning stations, and as otherwise conditioned herein.¹⁷ Testing on the Station's post-auction channel **may not begin until 12:01 am local time on October 19, 2019**, and WCAV is required to cease

¹⁴ WAVY-TV is licensed to Nexstar Broadcasting, Inc.

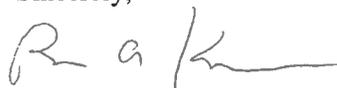
¹⁵ See 47 CFR § 73.3700(c)(3).

¹⁶ *Media Bureau Finalizes Reimbursement Form for Submission to OMB and Adopts Catalog of Expenses*, GN Docket No. 12-268, Public Notice, 30 FCC Rcd 11701, 11701-02 (MB 2015). See also *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

¹⁷ See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*, 33 FCC Rcd 8240.

operating on its pre-auction channel **no later than 11:59 pm local time on December 1, 2019**.¹⁸ The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.¹⁹

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):
Coe Ramsey, Esq. (counsel for Charlottesville TV LLC)
Joan Stewart, Esq. (counsel for Gray Television Licensee, LLC)

¹⁸ 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. 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. Normally, 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 at 2806, para. 64. As noted above, here Charlottesville TV and Gray TV have requested, pursuant to a mutual agreement for allowing WCAV to complete its transition, that both WVIR-TV and WCAV's phase completion date and construction permit expiration date be listed as December 1, 2019.

¹⁹ *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. 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.