

## SPECIAL TEMPORARY AUTHORITY JUSTIFICATION

Gray Television Licensee, LLC (Gray TV), licensee of WVIR-TV, Charlottesville, Virginia (Facility ID 70309) (WVIR) seeks renewal of its authority to operate with a power level in excess of that permitted by the Commission's rules in order to improve reception of WVIR's low-VHF signal by viewers. (See File No. 112974)

As explained in its original filing, Gray TV requests a waiver of Section 73.622(f)(6)(ii) to allow WVIR to operate at 34 kW ERP. WVIR has been inundated by complaints of viewers unable to receive its signal since WVIR transitioned from UHF channel 32 to low-VHF channel 2 as part of the post-Incentive Auction transition.

The Commission long has recognized the problems with DTV broadcast operations in the Low-VHF part of the RF spectrum. As it acknowledged the Allocations NPRM, "VHF channels have certain characteristics that have posed challenges for their use in providing digital television service."<sup>1</sup> In further explanation, the Commission said, "the propagation characteristics of these channels allow undesired signals and noise to be receivable at relatively farther distances, nearby electrical devices tends to emit noise in this band that can cause interference, and reception of VHF signals requires physically larger antennas ... relative to UHF channels."<sup>2</sup>

In recognition of the challenges facing VHF stations and to encourage stations to consider the UHF-to-VHF bid option, the FCC, in its Incentive Auction Report and Order, explained that it would "afford favorable consideration to post-incentive auction requests for waivers of the VHF power and height limits for winning UHF-to-VHF bidders that may be necessary to resolve coverage problems on their new channels."<sup>3</sup> As the Commission recognized, this is consistent with the Media Bureau's approval of similar waivers following the DTV transition.<sup>4</sup>

---

<sup>1</sup> *Matter of Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Notice of Proposed Rulemaking, 25 FCC Rcd. 16498 ¶ 42 (2010) (Allocations NPRM).

<sup>2</sup> *Id.*

<sup>3</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd. 6567 ¶ 371 (2014), *aff'd*, *Nat'l Ass'n of Broadcasters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015).

<sup>4</sup> *Id.* (citing Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, to ABC, Inc. and Freedom Broadcasting of New York Licensee, LLC (dated Mar. 16, 2011) ([http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter\\_exh.cgi?import\\_letter\\_id=24963](http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter_exh.cgi?import_letter_id=24963))).

WVIR, through its previous licensee, submitted a successful bid in the Incentive Auction to move from a UHF channel to a channel in the low-VHF band. On March 18, 2020, WVIR began operating on Channel 2. Immediately, it began receiving complaints from viewers unable to receive WVIR's programming over the air.

The FCC may grant a waiver for good cause shown. The agency typically grants a waiver where the particular facts make strict compliance inconsistent with the public interest.<sup>5</sup> Here, waiver of the operating levels for Low-VHF stations operating in Zone I is "necessary to resolve coverage problems" on WVIR's new channel and, therefore, is presumptively in the public interest. WVIR provides NBC and CW programming to the Charlottesville community. Many of the viewers that are unable to receive its over-the-air signal rely on WVIR for local news and information. Now, during the current COVID-19 pandemic, it is even more crucial for WVIR to reach these viewers with its programming.

As a result of its transition to a Low-VHF channel, the reach of WVIR's over-the-air broadcast signal has been reduced. WVIR has received hundreds of telephone calls, emails, and interactions on social media platforms from viewers who are no longer able to receive WVIR on its new channel. While WVIR has worked with these viewers to trouble-shoot various solutions, including ensuring they have successfully rescanned their receivers and performed any necessary upgrades to their antennas, a significant number of viewers remain unable to receive WVIR's programming on Channel 2.

WVIR's operation with this higher power level serves the public interest, allowing WVIR to restore service to many viewers who lost over-the-air access to WVIR when it transitioned to a Low-VHF channel.

---

<sup>5</sup> *N.E. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); 47 CFR § 1.3.