



Federal Communications Commission
Washington, D.C. 20554

November 21, 2018

Gray Television Licensee, LLC
WJHG-TV
8195 Front Beach Road
Panama City, FL 32407

Re: Request for Modification and
Waiver of Phase Assignment
WJHG-TV, Panama City, FL
Facility ID No. 73136
LMS File No. 0000063268

Dear Licensee,

On November 1, 2018, Gray Television License, LLC, the licensee of Station WJHG-TV, Panama City, Florida (WJHG-TV or Station), filed a Request to Move to a Later Phase seeking a waiver to modify the post-incentive auction transition phase assigned to the Station in the *Closing and Channel Reassignment Public Notice* from Phase 1 to Phase 2.¹ For the reasons below, we grant Gray's request for waiver and modify WJHG-TV's phase assignment to Phase 2, 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) 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. 0000063268, Request to Move to a Later Phase (Waiver Request).

² See *Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, Public Notice, MB Docket No. 16-306 and GN Docket No. 12-268, 32 FCC Rcd 890, 912-14, paras. 47-52 (IATF & 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

WJHG-TV is currently licensed to operate on channel 18. It was reassigned to channel 16 in the *Closing and Channel Reassignment Public Notice* and assigned to transition Phase 1, which has a testing period start date of September 14, 2018, and phase completion date of November 30, 2018. Gray states that it contracted with GTI America (GTI) for tower work, tower reinforcement, installation of a new main antenna, transmission line, and a transmitter.⁷ After several delays, GTI was scheduled to work on the WJHG-TV tower the week that Hurricane Michael hit Panama City. The work could not be accomplished as scheduled due to the storm and its aftermath. Gray explains that re-assigning WJHG-TV to a later transition phase will ensure that its viewers are not left without important news and weather information while Panama City is rebuilding from that storm.⁸ GTI has notified WJHG-TV that because of overall conditions in the Panama City area, they are concerned that they will not be able to secure the needed equipment, such as forklifts and cranes, and appropriate lodging and boarding for their crew in time to complete the transition by the Phase 1 deadline.⁹ GTI has recommended that it work be scheduled for WJHG-TV in late November once the region has made more progress in recovering from the hurricane.¹⁰

Gray states that WJHG-TV is not part of a linked set and does not require coordination with any other station to complete its transition and confirms that moving its transition date to Phase 2 will not create a new linked station set.¹¹ Gray recognizes that granting the waiver will increase the number of rescan periods from one to two,¹² which is still within the two rescan periods per DMA limitation used in the tool adopted by the Bureau in the *Transition Scheduling Adoption Public Notice* to assign stations to transition phases.¹³

Discussion. Upon review of the facts and circumstances presented, we find that Gray's request to modify its phase assignment to permit WJHG-TV to transition to its post-auction channel in Phase 2 satisfies the requirements for a waiver and is in the public interest. We agree that the change to WJHG-TV's transition phase should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. As noted above, Gray's tower crew (GTI) supports the phase change. Permitting Gray to transition WJHG-TV to its post-auction channel in Phase 2 will benefit the public by allowing the Station to continue broadcasting during the post-hurricane recovery process. The phase change will alleviate the hardship that would otherwise be imposed upon the Station in the aftermath of this natural disaster and enable Gray and GTI to obtain the equipment and services necessary for the work

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, MB docket No. 16-306 and GN Docket No. 12-268, DA 18-884 (IATF & MB, rel. Aug. 27, 2018) (*Transition Reminder Public Notice*).

⁷ Waiver Request at 1.

⁸ *Id.*

⁹ *Id.* and Letter from GTI.

¹⁰ *Id.*

¹¹ *Id.* at 1.

¹² *Id.*

¹³ See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21.

crew to complete the transition safely and responsibly. A staff analysis confirms that the phase change will not result in new increased pairwise interference above the two percent permitted during the post-auction transition period until Phase 5.¹⁴ While viewers in the Panama City DMA will be subjected to a second rescan period, this is still within the two rescan periods per DMA limitation set forth in the *Transition Scheduling Adoption Public Notice*.¹⁵ As a result, we find the benefits of this phase change in light of the damage caused by Hurricane Michael, outweighs the viewer burden of an additional rescan period in this case.

We caution Gray that any additional expenses incurred as a result of the grant of WJHG-TV's voluntary phase change may not be reimbursable from the TV Broadcasters Relocation Fund. Such additional costs might include, but may not be limited to, additional legal or engineering expenses; filing fees; and interim or additional equipment that was not contemplated when the station filed its initial estimated expenses but was subsequently necessitated to complete the transition to its post-auction channel due to its phase change. Gray is responsible for paying for any expenses incurred as a result of voluntarily requested changes to the station's transition schedule.

Accordingly, we **GRANT** Gray's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WJHG-TV **from Phase 1 to Phase 2**, 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 December 1, 2019**, and the Station is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on April 12, 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.

¹⁴ See *id.* at 897, para. 16 (allowing temporary increased pairwise (station-to-station) interference of up to two percent during the transition period).

¹⁵ See *id.* at 898-99, paras. 20-21.

¹⁶ See generally 47 CFR § 73.3700; *Transition Reminder Public Notice*.

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 at 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.