



Federal Communications Commission
Washington, D.C. 20554

September 6, 2019

Gray Television Licensee, LLC
999 Second Street S.E.
Charlottesville, VA 22902

Re: Request for Modification and
Waiver of Phase Assignment
WCAV(TV), Charlottesville, VA
Facility ID No. 363
LMS File No. 0000080705

Dear Licensee,

On August 28, 2019, Gray Television Licensee, LLC (Gray 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 5 to Phase 6.¹ For the reasons below, we grant Gray TV's request for waiver and modify the Station's phase assignment to Phase 6, 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. 0000080705, Request for Phase Change (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 5, which has a phase testing period start date of August 3, 2019, and a phase completion date of September 11, 2019.⁷ 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 three stations, including WCAV, currently being assigned to transition Phase 5, and one station assigned to Phase 8. Gray TV is requesting a phase change for WCAV in order to accommodate the pending phase change request of WVIR-TV, Charlottesville, Virginia (WVIR-TV).⁸ WCAV is part of Linked-Station Set 40 (LSS 40) and is repacked to WVIR-TV's current channel. Therefore, WCAV can only transition to its repack channel simultaneous with or after WVIR-TV vacates that channel. WVIR-TV has requested a change of its transition phase assignment to Phase 6 due to equipment delivery delays.⁹ As a result, Gray TV requests that the Station's transition phase assignment be modified from Phase 5 to Phase 6, which has a testing period start date of September 7, 2019, and a phase completion date of October 18, 2019.¹⁰

WCAV-TV is also directly linked with commonly owned station WZBJ-CD, Lynchburg, VA. WZBJ-CD is also assigned to Phase 5 and plans to complete its transition by the Phase 5 completion date. Gray has stated that WZBJ-CD and WCAV-TV will accept the limited amount of increased temporary pairwise interference from one another that will result from WZBJ-CD transitioning in Phase 5 and WCAV-TV transitioning in Phase 6 – between 2% and 5% caused or received.¹¹ In order to mitigate any viewer disruption caused by the Station's change in phase, Gray TV has agreed to increase viewer education and outreach above and beyond what is required by the Commission's rules through its digital and social media assets, as well as local newscast.¹² Gray 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 Gray TV's request to modify the phase assignment for WCAV to transition to its post-auction channel satisfies the requirement for a waiver and is in the public interest. The Station is directly linked with WVIR-TV and

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 Originally, Phase 5 stations had phase completion date and construction permit expiration date of September 6, 2019. See, *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd 2786. On September 3, 2019, those dates were extended to September 11, 2019. See *The Completion Date For Phase 5 of the Post-Incentive Auction Transition Is Extended To September 11, 2019 Because of Hurricane Dorian*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, DA 19-866, rel. Sept. 3, 2019 (IATF & MB).

⁸ Waiver Request at 2; see LMS File No. 0000080372. WVIR-TV is licensed to Virginia Broadcasting LLC.

⁹ *Id.*

¹⁰ *Id.* at 2.

¹¹ Waiver Request at 2 and Engineering Statement.

¹² *Id.* at 2.

¹³ Waiver Request at 2.

that station's request to change its transition phase assignment to Phase 6 is being granted simultaneously. We agree that changing the Station's transition phase to Phase 6 should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. Staff has confirmed that the phase change will not create any increased temporary pairwise interference between WCAV and WVIR-TV or create any new linked station sets. While the phase change will result in increased temporary pairwise interference between WCAV and WZBJ-CD, both stations are commonly owned by Gray TV and Gray TV has agreed to accept all temporary interference. By moving to WCAV and WVIR-TV to Phase 6, the total number of rescan periods in the Charlottesville DMA will increase from two to three, which is one more than 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.¹⁴ To ensure viewers are fully informed about the repack and minimize any viewer confusion caused by the Station's change in phase and increase in rescan periods, Gray TV has agreed to increase consumer education and outreach beyond what is required by the Commission's rules.¹⁵ Gray TV will also continue 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 without interruption. As a result, we find the facts and circumstances discussed above outweigh any viewer burden caused by an increase in the number of rescan periods in the Charlottesville DMA and temporary increase in limited amounts of pairwise interference between commonly owned stations WCAV and WZBJ-CD.

We remind Gray 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** Gray TV's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WCAV **from Phase 5 to Phase 6**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.¹⁷ Testing on the Station's post-auction channel **may not begin until 12:01 am local time on September 7, 2019**, and WCAV is required to cease operating on its pre-auction channel

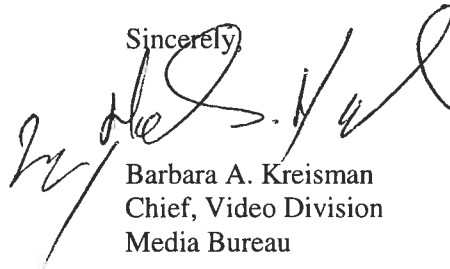
¹⁴ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21 (establishing a two rescan periods per DMA limitation when assigning stations to transition phases).

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.

no later than 11:59 pm local time on October 18, 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):
Joan Stewart, Esq.

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. 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.

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.