



Federal Communications Commission
Washington, D.C. 20554

October 17, 2019

Gray Television Licensee LLC
PO Box 769
Atlanta, GA 30319

Re: Request for Modification and
Waiver of Phase Assignment
WVIR-TV, Charlottesville, VA
Facility ID No. 70309
LMS File No. 0000086613

Dear Licensee,

On October 16, 2019, Gray Television Licensee LLC (Gray TV), the licensee of WVIR-TV, Charlottesville, Virginia (WVIR-TV 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 Virginia Broadcasting'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. 0000086613, 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

WVIR-TV is currently licensed to operate on channel 32. As a winning band changing station in the incentive auction, it was reassigned to channel 2 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 WVIR-TV, currently assigned to transition Phase 6; and one station assigned to Phase 8. Gray TV states that due to delays in the delivery of its post-auction antenna, WVIR-TV cannot meet its Phase 6 deadline.⁷ Its antenna manufacturer has committed to complete the new antenna by November 11 and deliver it shortly thereafter. While awaiting its antenna, the Station has moved forward with construction of its new tower, which is scheduled to be completed and ready for the antenna installation by the end of October.⁸ As a result, Gray 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. Consistent with an agreement with Charlottesville TV, LLC (Charlottesville TV), licensee of linked-station WCAV, Charlottesville, VA, Gray TV has expressly requested a phase completion date and construction permit expiration date of December 1, 2019.⁹ To the extent that WVIR-TV has not completed construction to its post-auction facility by December 1, 2019, Gray TV will cease operation on its pre-auction channel and continue to operate either through temporary joint use of a channel and/or through the use temporary use of a vacant channel.¹⁰

WVIR-TV is part of Linked-Station Set 98 (LSS 98) and is directly linked with WCAV, Charlottesville, VA (WCAV).¹¹ In order to prevent increased temporary pairwise interference greater than two percent,¹² WCAV has also filed a pending waiver request to have its phase modified to Phase 7

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 1-2.

⁸ *Id.* at 1-2.

⁹ *Id.* at 2.

¹⁰ *Id.*

¹¹ WCAV is downstream from WVIR-TV and therefore must wait to transition until the same time as or after WCAV. Failure to do so would either require WVIR-TV to go silent or result in a significant increase in temporary pairwise interference – between 75% and 86% caused or received. WCAV is also directly linked with commonly owned station WZBJ-CD, Lynchburg, VA. WZBJ-CD is licensed to Gray TV and has completed its transition as assigned. Gray TV and Charlottesville TV have agreed to continue to accept the limited amount of increased temporary pairwise interference from one another – between 2% and 5% caused or received. *Id.* at 2. 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.

¹² See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16 (allowing temporary increased pairwise (station-to-station) interference of up to two percent during the transition period).

to accommodate WVIR-TV's phase change request.¹³ Gray states that both stations will continue to coordinate their transition.¹⁴ Further, in order to mitigate any viewer disruption caused by the Station's change in phase, Gray has agreed to increase viewer education and outreach above and beyond what is required by the Commission's rules by airing double the amount of required consumer education notices.¹⁵ Gray will also simulcast WVIR-TV's programming and provide viewer notices using its sister station WVIR-CD, which transitioned to its post-auction channel in Phase 5.¹⁶

Discussion. Upon review of the facts and circumstances presented, we find that Gray TV's request to modify the phase assignment for WVIR-TV to transition to its post-auction channel satisfies the requirement for a waiver and is in the public interest. 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. The Station is directly linked with WCAV, which is simultaneously being granted a modification of its transition phase to Phase 7. As a result, staff has confirmed that the phase change will not create any increased interference between WCAV and WVIR-TV. We note that as a result of WCAV moving to Phase 7, it becomes directly linked with WAVY-TV, Portsmouth, VA, and both WCAV and WVIR-TV would become part of existing linked station set 99.¹⁷ 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 WVIR-TV and WCAV 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 to minimize any viewer confusion caused by the Station's change in phase, Gray has agreed to increase consumer education and outreach beyond what is required by the Commission's rules. Modifying WVIR-TV's transition phase will ensure that the Station is 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 a change in the Station's transition plans.

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."¹⁸ 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 WVIR-TV **from Phase 6 to Phase 7**, subject to all the commitments made in its waiver request, compliance with all Commission rules applicable to

¹³ *Id.* See LMS file No. 0000086717.

¹⁴ Waiver Request at 2.

¹⁵ *Id.* at 2. See 47 CFR § 73.3700(c)(3) (repacked stations must air sixty (60) seconds per day of on-air crawls or public service announcements beginning 30 days prior to discontinuing operations on their pre-auction channel)

¹⁶ Waiver Request at 2-3.

¹⁷ WAVY-TV is licensed to Nexstar Broadcasting, Inc.

¹⁸ *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.").

transitioning stations, and as otherwise conditioned herein.¹⁹ Testing on the Station's post-auction channel **may not begin until 12:01 am local time on October 19, 2019**, and WVIR-TV is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on December 1, 2019**.²⁰ The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.²¹

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)

¹⁹ See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*, 33 FCC Rcd 8240.

²⁰ 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, 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.

²¹ *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.