



Federal Communications Commission  
Washington, D.C. 20554

July 1, 2020

Gray Television Licensee LLC  
4370 Peachtree Road  
Atlanta, GA 30319  
robert.folliard@gray.tv

Re: Request for Waiver of Transition  
Deadline  
WVFX(TV), Clarksburg, WV  
Facility ID No. 10976  
LMS File No. 0000116615

Dear Licensee,

On June 26, 2020, Gray Television Licensee, LLC (the Licensee), the licensee of WVFX(TV), Clarksburg, West Virginia (WVFX or Station), filed a *Request for Waiver of Transition Deadline*<sup>1</sup> requesting to waive the July 13, 2020, post-incentive auction transition deadline<sup>2</sup> and to modify the Station's July 3, 2020, phase 10 phase completion date.<sup>3</sup> We grant the Licensee's request for waiver and a brief extension of the Station's deadline to September 8, 2020, as conditioned herein.

*Background.* On June 18, 2020, the Commission issued the *WFOX-TV Order*<sup>4</sup> extending the deadline for WFOX-TV, Jacksonville, Florida (WFOX-TV), to transition to its new channel as a result of the post-incentive auction repack from July 3 to September 8, 2020. Due to construction delays that were beyond the licensee's control, the Commission waived<sup>5</sup> section 73.3700(b)(4)(iii) of the Commission's rules (Rules), which prohibits stations from operating on their pre-auction channel assignments after July 13, 2020.<sup>6</sup> The Commission also waived section 73.616(d) of the Rules which prohibits stations from causing more than 0.5 percent pairwise interference of a station's population served and allowed WFOX-TV to cause temporary increased pairwise interference of up to two percent, the transition period

<sup>1</sup> Gray Television Licensee, LLC, Request for Waiver for station WVFX, Clarksburg, WV, LMS File No. 0000116615 (June 26, 2020) (WVFX Request for Waiver).

<sup>2</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 et al., Report and Order, 29 FCC Rcd 6567, 6575, para. 19 (2014) (*Incentive Auction R&O*), *aff'd*, *Nat'l Assoc. of Broadcasters et al. v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) (*NAB v. FCC*) (subsequent citation omitted).

<sup>3</sup> *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*).

<sup>4</sup> *Post-Incentive Auction Transition Request for Waiver of Cox Television Jacksonville LLC, Licensee of Station WFOX-TV, Jacksonville, Florida*, Order, FCC 20-82, paras. 12-14 (rel. Jun. 18, 2020) (*WFOX-TV Order*).

<sup>5</sup> A waiver of our rules 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. *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). Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008).

<sup>6</sup> *WFOX-TV Order* at paras. 12-14; 47 CFR § 73.3700(b)(4)(iii).

standard, during the extended period.<sup>7</sup> The Commission also instructed the Media Bureau to consider future requests seeking such waivers consistent with the considerations included in the *WFOX-TV Order*.<sup>8</sup>

*Waiver Request.* The Station is currently licensed to operate on channel 10 and was reassigned to channel 13 in the *Closing and Channel Reassignment Public Notice* and is currently assigned to transition phase 10, which has a phase completion date of July 3, 2020. The Licensee states that it purchased the Station in May 2017 and thereafter “worked diligently to complete construction” of the post-auction facilities prior to the deadline,<sup>9</sup> but faced “unexpected and significant structural issues with its tower” that were “outside of its control.”<sup>10</sup> The Licensee states that it commissioned structural studies to evaluate various engineering solutions in March 2018, February 2019, October 2019, and January 2020.<sup>11</sup> These studies determined that a new tower needed to be constructed. The Station reached out to a vendor to construct the new tower, but in March 2020 its efforts were delayed due to COVID-19 and the need to modify lease agreements for guy wire anchors.<sup>12</sup> The Licensee states that it has secured all necessary equipment.<sup>13</sup>

The Licensee states that it has evaluated the alternatives included in the Transition Scheduling Plan for a station to vacate its pre-auction channel and that the only option available to WVFX is use of an interim antenna, construction of which will require additional time past the July 3 deadline.<sup>14</sup> The Licensee states that remaining on channel 10 until its interim antenna is complete will cause 0.68 percent outgoing interference to its co-owned station WOIO(TV), Shaker Heights, Ohio (WOIO), which although slightly above the 0.5 percent permitted by Commission rules, does not change the “status quo” as it is preexisting interference that pre-dates the repack.<sup>15</sup> While WVFX will temporarily receive 2.5 percent pairwise interference from WOWK-TV, Huntington, West Virginia (WOWK-TV), the Licensee is willing to accept that small amount of incoming interference.<sup>16</sup> The Licensee also states that it will “robustly

---

<sup>7</sup> See *WFOX-TV Order* at paras. 12-14; 47 CFR § 73.616(d); *Incentive Auction Task Force and Media Bureau Adopt Post-Incentive Auction Transition Scheduling Plan*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 32 FCC Rcd 890, 897, para. 16 (IATF/MB 2017) (*Transition Scheduling Adoption Public Notice*).

<sup>8</sup> See *WFOX-TV Order* at para. 16.

<sup>9</sup> WVFX Request for Waiver at 7.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.* at 3-4.

<sup>13</sup> *Id.* at 4.

<sup>14</sup> *Id.* at 4-5. The Licensee states that it evaluated options for temporary channel sharing, including with sister station WDTV, Weston, West Virginia, but the robust use of spectrum by both stations prohibits that option. The Licensee also considered utilizing the facilities of its low power station, W22CY, Clarksburg, West Virginia, but that station lost its lease and cannot be supported on the existing tower. *Id.*

<sup>15</sup> *Id.* at 5. To the extent necessary the Licensee consents to this continued pairwise interference from WVFX to WOIO.

<sup>16</sup> *Id.* The interference received is in excess of the .5% pairwise interference limit permitted under the Rules, 47 CFR §73.616(d), and is above the two percent pairwise interference threshold that has been permitted during the post-auction transition period. *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16. However, consistent with prior actions during the transition period, increased levels of temporary pairwise interference above two percent have been permitted so long as the impacted station(s) agree to accept such increased interference. See e.g., *WFOX-TV Order* at para. 13; WAND(TV) Partnership, Request for Waiver and Modification of Phase Assignment for station WAND(TV), Decatur, IL, LMS File No. 0000097698 (granted Jan. 17, 2020).

communicate with its viewers” about the need to rescan through PSAs, news stories and social media posts beyond what is required by section 73.3700(c)(3) of the Rules.<sup>17</sup>

*Discussion.* The Licensee’s request to waive the July 13, 2020, post-incentive auction transition deadline and to modify the Station’s July 3, 2020, phase 10 phase completion date due to circumstances beyond the Licensee’s control satisfies the requirement for a waiver pursuant to the considerations in the *WFOX-TV Order* and is in the public interest. We find that the Licensee has presented information demonstrating that during the course of the post-auction transition period it pursued and scheduled work sufficient to timely complete the Station’s construction project and that is taking steps to minimize the length of the delay. The Licensee has established that there are no facilities available to the Station, or that could reasonably be made available to the Station pursuant to the flexibility available under the Transition Scheduling Plan, that would permit it to vacate its pre-auction channel prior to the deadline without going dark.<sup>18</sup> We also view the request favorably because it will not delay or disrupt other transitioning stations. Staff has also confirmed that modifying the Station’s transition deadline will cause a small amount of existing pairwise interference to the Licensee’s sister station, WOIO, but the Licensee consents to the interference. The Licensee is also willing to accept the small amount of incoming temporary pairwise interference it will receive from WOWK-TV. Because the Station’s pre-auction channel is located in the new TV Band, grant of the Licensee’s requests will not delay any wireless licensee that purchased 600 MHz wireless licenses in the forward auction from accessing its spectrum when promised. In order to minimize potential viewer confusion caused by the short delay in the Station’s transition, the Licensee commits to increased viewer education and outreach beyond what is required by the Rules.

Accordingly, we **GRANT** the Licensee’s *Request for Waiver of Transition Deadline* and modify the phase transition deadline for WVFX(TV), Clarksburg, West Virginia, **from July 3, 2020 to September 8, 2020**, subject to all the commitments made in its waiver request, including interference agreements, and compliance with all Rules applicable to transitioning stations.<sup>19</sup> Testing on the Station’s post-auction channel may begin immediately. The Station is required to cease operating on its pre-

---

<sup>17</sup> *Id.* at 6. 47 CFR § 73.3700(c)(3) (requiring repacked stations to air sixty (60) seconds per day of on-air crawls or public service announcements (PSAs) beginning 30-days prior to discontinuing operations on their pre-auction channel).

<sup>18</sup> See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 915-17, paras. 54-59 (providing alternative means for a station to meet its phase completion date including moving to interim facilities on a station’s post-auction channel, operating at reduced power on a vacant channel, and temporary channel sharing); 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, 872-73, para. 46-47 (IATF & MB 2017).

<sup>19</sup> See generally 47 CFR § 73.3700 and *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 33 FCC Rcd 8240, 8244-45, para. 14 (IATF & MB 2018).

auction channel **no later than 11:59 pm local time on September 8, 2020.**<sup>20</sup> The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.<sup>21</sup>

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

Cc: (via electronic mail):  
Joan Stewart, Esq. (jstewart@wiley.law)  
(Attorney of Record)

---

<sup>20</sup> Each transition phase has a testing period during which a station in that phase may begin testing equipment on its new channel and a phase completion date on which 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.

<sup>21</sup> 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). 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)(i) *citing* 47 CFR § 73.3598(b). 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.