



Federal Communications Commission
Washington, D.C. 20554

January 16, 2019

Entravision Holdings, LLC
Mark Boelke
2425 Olympic Blvd., Suite 6000 W
Santa Monica, CA 90404

Gray Television Licensee, LLC
KKTV
520 E. Colorado
Colorado Springs, CO 80903

Re: Request for Modification and
Waiver of Phase Assignment

KGHB-CD, Pueblo, Etc., CO
Facility ID No. 24515
LMS File No. 0000063481

KVSN-DT, Pueblo, CO
Facility ID No. 166331
LMS File No. 0000063482

KKTV(TV), Colorado Springs, CO
Facility ID No. 35037
LMS File No. 0000063493

Dear Licensee,

Entravision Holdings, LLC, (Entravision) and Gray Television Licensee, LLC (Gray) (collectively, Licensees) have each filed a *Request for Modification and Waiver of Phase Assignment* requesting to modify the post-incentive auction transition phase assigned to the above captioned Stations in the *Closing and Channel Reassignment Public Notice* from Phase 8 to Phase 3.¹ Entravision is the licensee of both KGHB-CD, Pueblo, Etc., Colorado (KGHB-CD) and KVSN-DT, Pueblo, CO (KVSN-DT); Gray is the licensee of KKTV(TV), Colorado Springs, Colorado (KKTV)(collectively, Stations). For the reasons below, we grant the requests for waiver and modify the Stations' phase assignments to Phase 3, as conditioned herein.

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. 0000063481, Phase Adjustment Waiver (KGHB-CD Waiver Request); LMS File No. 0000063482, Phase Adjustment Waiver (KVSN-DT Waiver Request); LMS File No. 0000063493, KKTV- Phase Adjustment Waiver (KKTV Waiver Request).

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 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

KGHB-CD is currently licensed to operate on channel 27 and was reassigned to channel 21 in the *Closing and Channel Reassignment Public Notice*. KVSN-DT is currently licensed to operate on channel 48 and is transitioning to channel 25.⁷ KKTV is currently licensed on channel 49 and was reassigned to channel 26. The three Stations were assigned to transition Phase 8, which has a testing period start date of January 18, 2020, and phase completion date of March 13, 2020. The Stations are located in the Colorado Springs-Pueblo, Colorado, Designated Market Area (Colorado Springs DMA). A total of four stations were repacked in the Colorado Springs DMA, all of which were assigned to transition Phase 8. The Licensees request permission to move the Stations from Phase 8 to Phase 3, which has a testing period start date of April 13, 2019, and phase completion date of June 21, 2019. The Licensees assert that modifying the Stations transition phase is intended to promote the deployment of new wireless broadband services by enabling T-Mobile, a winning 600 MHz band licensee, to deploy its new wireless broadband service in and around the Colorado Springs DMA up to nine months earlier than it would be able to under

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, 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*, 32 FCC Rcd 858, 881-82, para 73 (MB 2017).

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, para. 14, 6-7 (IATF & MB, rel. Aug. 27, 2018) (*Transition Reminder Public Notice*).

⁷ In the *Closing and Channel Reassignment Public Notice* KVSN-DT was reassigned to channel 27, but subsequently filed a major modification to be moved to channel 25. See LMS File No. 0000030616 (granted Nov. 17, 2017).

the current transition schedule.⁸ The Stations anticipate operating on the post-auction facility authorized in their construction permit by 11:59 pm (local time) on June 21, 2019 (the Phase 3, phase completion date).⁹ The Licensees have consulted with and included letters from their equipment manufacturers and vendors, including their tower crews, verifying that this phase change will not negatively impact other transitioning stations ability to access to resources.¹⁰

The Licensees have provided an engineering analysis demonstrating that the Stations' early transition will not create any new linked-station sets or result in increased pairwise interference greater than two percent during the transition period.¹¹ The Licensees also state that granting the waiver will increase the number of rescan periods in the Colorado Springs DMA from one to two.¹² In order to ensure that viewers are well-informed about the Stations' plan to transition ahead of their currently scheduled phase assignment, the Licensees have agreed to provide additional consumer outreach beyond what is required by the Commission's rules through the use of digital and social media.¹³

Discussion. Upon review of the facts and circumstances presented, we find the Licensees' requests to modify the phase assignments for the Stations to transition to their post-auction channels in Phase 3 satisfies the requirements for a waiver and are in the public interest. We agree that the change to the Stations' transition phase should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. 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

⁸ KVSNDT Waiver Requests at 2; KGHB-CD Waiver Request at 2; KKTVD Waiver Request at 2. Included with the waiver requests is also a study conducted by T-Mobile verifying that as a result of the Stations' early transition, T-Mobile will be able to commence 600 MHz operations earlier than under the existing transition schedule. See KVSNDT Waiver Request, Confidentiality Request; KGHB-CD Waiver Request, Confidentiality Request; KKTVD Waiver Request, T-Mobile Statement Denver Redacted. Pursuant to Sections 0.457 and 0.459 of the Rules, T-Mobile requests confidential treatment of the information pertaining to the precise timing and location of its deployment. T-Mobile contends such information is not routinely made publicly available and should be withheld from public inspection as trade secrets, or privileged or confidential commercial, financial or technical data. See 47 CFR §§ 0.457(d)(2) and 0.459.

⁹ KVSNDT Waiver Request at 4; KGHB-CD Waiver Request at 4; KKTVD Waiver Request at 4.

¹⁰ KVSNDT Waiver Request at 3, Letters from H.C. Jeffries Tower Company, GatesAir, and Dielectric; KGHB-CD Waiver Request at 3, Letters from H.C. Jeffries Tower Company, GatesAir, and Dielectric; KKTVD Waiver Request at 3, Letters from Electronics Research, Inc., Rohde & Schwarz USA, Inc., and Galvanized Endeavors.

¹¹ KVSNDT Waiver Request at 2-3 and Engineering Statement; KGHB-CD Waiver Request at 2-3, Engineering Statement; KKTVD Waiver Request at 2-3, Engineering Statement KKTVD Colorado Springs CO. The Stations are all part of Linked-Station Set 59 (LSS 59), with KKTVD and KVSNDT downstream of KGHB-CD. As a result, KGHB-CD must transition at the same time as or prior to KKTVD and KVSNDT in order to prevent pairwise interference beyond the temporary two percent increase in pairwise interference permitted during the transition. The Stations have all agreed to coordinate their transition with one another to prevent such interference. There is also existing interference received by KVSNDT from stations KLWY, Cheyenne, WY and KTFD-TV, Denver, CO. However, KVSNDT's facility was approved based on the acceptance interference received from KLWY and KTFD-TV and grant of this phase change request does not alter that relationship. 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).

¹² KVSNDT Waiver Request at 3-4; KGHB-CD Waiver Request at 3-4; KKTVD Waiver Request at 3-4.

¹³ KVSNDT Waiver Request at 4; KGHB-CD Waiver Request at 4; KKTVD Waiver Request at 4.

transition period.¹⁴ The Licensees have received letters from their vendors confirming that the phase change will not impact other transitioning stations' access to resources. Although the phase change increases the total number of rescan periods for viewers in the Colorado Springs DMA from one to two, this is still within the two rescan periods per DMA parameter used by the Bureau in the *Transition Scheduling Adoption Public Notice* when establishing the transition schedule.¹⁵ The Licensees have also committed to put in place viewer outreach programs beyond those required by the Commission rules. As a result, we find that the benefit of early deployment in the 600 MHz band, statements of support from the Stations' vendors, and additional consumer education and outreach efforts outweighs any viewer burden caused by the additional rescan period.

We caution the Licensees that any additional expenses incurred as a result of the grant of the Stations' 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.

Accordingly, we **GRANT** both Gray's and Entravision's' *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for KGHB-CD, KVSN-DT, and KKTV **from Phase 8 to Phase 3**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.¹⁶ Testing on each Station's post-auction channel **may not begin until 12:01 am local time on April 13, 2019**, and each Station is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on June 21, 2019**.¹⁷ Each Station's construction permit expiration date will also be modified to correspond to its new phase completion date.¹⁸

¹⁴ See supra note 11. 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).

¹⁵ See *id.* at 898-99, paras. 20-21.

¹⁶ See generally 47 CFR § 73.3700 and *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 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. 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.

Sincerely,

A handwritten signature in black ink, appearing to read "Barbara A. Kreisman". The signature is fluid and cursive, with the first name being the most prominent.

**Barbara A. Kreisman
Chief, Video Division
Media Bureau**

**Cc: (via electronic mail):
Barry Friedman, Esq.
Joan Stewart, Esq.**