



Federal Communications Commission
Washington, D.C. 20554

October 15, 2019

Gray Television Licensee, LLC
WSAZ
645 Fifth Avenue
Huntington, WV 25701

Gray Television Licensee, LLC
4370 Peachtree Road, NE
Atlanta, GA 30319

Re: Request for Modification and
Waiver of Phase Assignment
WSAZ-TV, Huntington, WV
Facility ID No. 36912
LMS File No. 0000083266

WQCW(TV), Portsmouth, Ohio
Facility ID No. 65130
LMS File No. 0000083269

Dear Licensee,

On October 1, 2019, Gray Television Licensee, LLC (Gray) the licensee of WSAZ-TV, Huntington, West Virginia (WSAZ-TV) and WQCW(TV), Portsmouth, Ohio (WQCW) (collectively, Stations), file *Requests for Modification and Waiver of Phase Assignment* requesting to modify the post-incentive auction transition phases assigned to the Stations in the *Closing and Channel Reassignment Public Notice* from Phase 6 to Phase 7.¹ For the reasons below, we grant Gray's requests for waiver and modify the Stations' phase assignments 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

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. 0000083266 (WSAV-TV Waiver Request) and LMS File No. 0000083269 (WQCW 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.

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

WSAZ-TV is currently licensed to operate on channel 23 and was reassigned to channel 22 in the *Closing and Channel Reassignment Public Notice*. WQCW is currently licensed to operate on channel 17 and was reassigned to channel 15 in the *Closing and Channel Reassignment Public Notice*. The Stations are currently assigned to transition Phase 6, which has a phase testing period start date of September 7, 2019, and a phase completion date of October 18, 2019. The Stations are located in the Charleston-Huntington, West Virginia, Designated Market Area (Charleston DMA). A total of 10 stations were repacked in the Charleston DMA, with one station having transitioned in the period prior to the phase 1 testing period start date, six stations, including WSAZ-TV and WQCW, being assigned to transition Phase 6, and three stations to Phase 10. WSAZ-TV and WQCW will be co-located and utilize a shared post-auction antenna.⁷ Gray states that, due to delays in the arrival of their tower crew, the Stations cannot complete construction of the post-auction facility by the end of Phase 6. The Stations expect the tower crew to arrive on-site in October and once on-site, the tower work and equipment installation are expected to take four to five weeks.⁸ As a result, Gray requests that the Stations' transition phase assignments be modified from Phase 6 to Phase 7, which has a testing period start date of October 19, 2019, and a phase completion date of January 17, 2020.

Both Stations are currently operating on their pre-auction channels from interim facilities at reduced power pursuant to special temporary authority.⁹ According to an engineering analysis provided by Gray, a change in the Stations' phases will not result in any new linked-station sets or cause any increase in temporary pairwise interference to any other stations while the Stations operate from their STA facilities.¹⁰ However, a delay in WSAZ-TV's transition will result in it receiving just under 7%

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).

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 WSAV-TV Waiver Request at 2 and fn.8; WQCW Waiver Request at 2 and fn.8.

⁸ WSAV-TV Waiver Request at 2; WQCW Waiver Request at 2

⁹ WSAV-TV Waiver Request at 2 and LMS File No. 0000084685; WQCW Waiver Request at 2 and LMS File No. 0000084682.

¹⁰ WSAV-TV Waiver Request at 2 and Engineering Statement; WQCW Waiver Request at 2 and Engineering Statement. 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). Both stations are part of existing linked-station sets (LSS). WSAV-TV is part of LSS 46 and upstream of WVAH-TV, Charleston, WV and WKPI-TV, Pikeville, KY. WQCW is part of LSS 96 and upstream of stations WKSO-TV, Somerset, KY, WCET, Cincinnati, OH, and WLPX-TV, Charleston, WV. According to Gray's engineering statements, even if both Stations downstream neighbors still transition in Phase 6, continued operation on the Stations' pre-auction channels under their STA will not cause any temporary pairwise interference greater than two percent.

temporary pairwise interference from station WVAH-TV, Charleston, WV (WVAH-TV), after WVAH-TV completes its transition in Phase 6.¹¹ Gray has stated that WSAZ-TV will accept this limited amount of increased temporary pairwise interference from WVAH-TV until WSAZ-TV completes its transition.¹² 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.¹³

Discussion. Upon review of the facts and circumstances presented, we find that Gray's request to modify the phase assignments for WSAZ-TV and WQCW to transition to their post-auction channels satisfies the requirement for a waiver and is in the public interest. We agree that changing the Stations' transition phases to Phase 7 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 changes will not create any new linked-station sets or cause any increased temporary pairwise interference. WSAZ-TV will receive temporary increased pairwise interference from WVAH-TV. Gray consents to accepting this temporary increase in interference. By moving the Stations to Phase 7, the total number of rescan periods in the Charleston DMA will increase from three to four, which is greater 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 that viewers are fully informed about the repack and to minimize any viewer confusion caused by the Stations' change in phase, Gray has agreed to increase consumer education and outreach beyond what is required by the Commission's rules. Modifying the Stations' 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 or temporary increase in pairwise interference that WSAZ-TV will be required to accept while it continues to operate on its pre-auction channel.

We remind Gray that pursuant to the Spectrum Act, the Stations are 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."¹⁵ 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's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WSAZ-TV and WQCW **from Phase 6 to Phase 7**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.¹⁶ Testing on the Stations' post-auction channels **may not begin until 12:01 am local time on October 19, 2019**, and the Stations are required to cease operating on their pre-auction

¹¹ WSAV-TV Waiver Request at 2 and Engineering Statement.

¹² WSAV-TV Waiver Request at 2.

¹³ WSAV-TV Waiver Request at 2; WQCW Waiver Request at 2.

¹⁴ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21.

¹⁵ 47 U.S.C. § 1452(b)(4)(A)(i). 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.").

¹⁶ See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*, 33 FCC Rcd 8240.

channels **no later than 11:59 pm local time on January 17, 2020.**¹⁷ The Stations' 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.

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. 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.