



June 9, 2017

VIA LMS

Marlene H. Dortch, Secretary
Federal Communications Commission
ATTN: VIDEO DIVISION
445 12th Street, SW
Washington, DC 20554

Re: **Nexstar Broadcasting, Inc.**
FRN: 0009961889
Request for Legal STA
WFNA(TV), Gulf Shores, AL, FAC ID 83943

Dear Ms. Dortch:

Pursuant to 47 CFR §73.3700(b)(1) (iv)(A), Nexstar Broadcasting, Inc. (“Nexstar”), licensee of television broadcast station WFNA(TV), Gulf Shores, Alabama, FAC ID 83943, seeks waiver of the July 12, 2017 filing deadline for construction permits for stations assigned to new channels. As detailed below, circumstances beyond Nexstar’s control render it unable to construct the WFNA(TV) post-auction channel 27 facility as mandated by the *Closing and Reassignment Public Notice*.¹ Grant of the waiver serves the public interest and will allow Nexstar to file an application for an alternative post-auction facility during the first priority window.

The Federal Communications Commission (the “Commission”) has provided that “[r]eassigned stations . . . that determine they are unable to construct facilities that meet the technical parameters specified in the *Closing and Reassignment Public Notice* . . . may seek waiver of the [July 12, 2017] deadline.”² The Commission may grant a waiver for good cause shown.³ The agency typically grants a waiver where the particular facts make strict compliance inconsistent with the public interest.⁴ In granting a waiver, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁵ A waiver is, therefore, appropriate if special circumstances warrant a deviation from the general rule and such a deviation serves the public interest. In the context of the deadline to apply for a construction permit for a station’s post-auction facilities, the Commission has said that it “will look most favorably on requests demonstrating” that construction is impossible “due

¹ Incentive Auction Closing and Channel Reassignment Public Notice, 32 FCC Rcd 2786 (rel. April 13, 2017) (“Closing and Reassignment Public Notice”).

² Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition, Public Notice, 32 FCC Rcd 858, 861, para. 10 (MB 2017) (“Broadcast Transition Procedures Public Notice”).

³ 47 C.F.R. §1.3.

⁴ N.E. Cellular Tel. Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“Northeast Cellular”).

⁵ WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969); Northeast Cellular, 897 F.2d at 1166.

to extraordinary technical or legal issues beyond the station's control."⁶ Specifically, "[t]his could occur . . . if a station is unable to construct a compliant facility on its current tower and a replacement tower cannot be constructed from which the station would be able to meet the specified technical parameters."⁷

As part of the repacking process, the Commission reassigned WFNA(TV) from channel 25 to channel 27 and assigned the station to transition stage 5 with an associated completion date of September 6, 2019. WFNA(TV)'s antenna currently is located on ASR 1059778, a tower owned by Meredith Corporation ("Meredith"). As stated in Attachment A, Meredith has "no intention of extending the tower lease beyond the current term," which expires in December 2019.⁸ Accordingly, the tower and site information currently associated with WFNA(TV) and utilized to determine its post-auction facilities are useless in the actual post-auction environment. As a result, legal issues beyond Nexstar's control will prevent it from constructing and operating the post-auction facilities mandated by the *Closing and Reassignment Public Notice*. In addition, per the attached declaration of Brett Jenkins, Nexstar has not been able to secure a new tower site where it can replicate WFNA(TV)'s pre-auction contour on its new channel within permissible contour coverage variance.

Considering the impending ejection of the WFNA(TV) antenna from the Meredith tower, forcing Nexstar to construct the WFNA(TV) post-auction facilities, which it must abandon within 90 days (assuming no delays in the phased repack), contravenes the Commission's goal of an efficient, cost-effective post-auction transition.

Accordingly, Nexstar seeks a waiver of the July 12, 2017 to pursue alternate facilities from a different (or new) antenna structure. Such a grant would serve the public interest by allowing WFNA(TV) to continue to broadcast uninterrupted and by conserving valuable engineering resources.

If there are any questions concerning this matter, please do not hesitate to contact the undersigned.

Respectfully submitted,



Elizabeth Ryder
EVP & General Counsel

⁶ Broadcast Transition Procedures Public Notice, at p. 866.

⁷ Id.

⁸ See Attachment A, Letter from Larence Oaks to Brett Jenkins, Chief Technology Officer, Nexstar Media Group, Inc. (June 6, 2017).

DECLARATION OF BRETT E. JENKINS

I, Brett E. Jenkins, declare under penalty of perjury as follows:

1. I am SVP, Chief Technology Officer for Nexstar Media Group, Inc., the parent company of the licensee of broadcast television station WFNA.
2. The statements regarding WFNA's facilities and technical operations in the attached Request for Special Temporary Authority are true and correct to the best of my knowledge.



Brett E. Jenkins

Dated: June 9, 2017

ATTACHMENT A



June 6, 2017

Dear Mr. Jenkins,

In a recent phone conversation concerning repack planning, you inquired as to whether Meredith Corporation would be willing to extend the current tower lease arrangement for WFNA beyond December 31, 2019. At the current time, we have no intention of extending the tower lease beyond the current term of our agreement.

A handwritten signature in black ink that reads "Lawrence K. Oaks".

Larence Oaks

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