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June 12, 2017

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VIA ELECTRONIC FILING

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

**Re: Mission Broadcasting, Inc., licensee of WVNY
Burlington, VT Fac. ID 11259
Request for Legal STA for Waiver of July 12, 2017 Deadline for
Construction Permit Application for New Channel**

Dear Ms. Dortch:

This letter, via a request for Special Temporary Authority (STA), seeks waiver of the July 12, 2017 deadline for broadcast television station WVNY's filing of a construction permit for its post-auction channel facilities. As explained more fully below, circumstances beyond the Station's control render WVNY unable to construct its facility specified in the *Closing and Reassignment Public Notice*. Grant of the waiver serves the public interest and will allow the Station to file an alternative transition solution during the first priority window.

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."¹ The FCC may grant a waiver for good cause shown.² The agency typically grants a waiver where the particular facts make strict compliance inconsistent with the public interest.³ 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.⁴ Waiver is therefore

¹ *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*").

² 47 C.F.R. § 1.3.

³ *N.E. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

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appropriate if special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest. In the context of the deadline to apply for a construction permit for a station's post-auction facilities, the FCC has said that it "will look most favorably on requests demonstrating" that construction is impossible "due to extraordinary technical or legal issues beyond the station's control."⁵ 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."⁶

WVNY shares a relatively short 24.4-meter tower with appurtenances with WFFF-TV, a UHF station licensed to Nexstar Broadcasting, Inc., at the summit of Mt. Mansfield in Vermont. With the current antenna stack, the tower already has issues with vortexing and must withstand the harsh winter temperatures, ice, snow, and wind that the area experiences annually.

As part of the repack, the Commission reassigned WVNY from high-VHF channel 13 to high-VHF channel 7. While that channel positioning change is innocuous on its face, it carries great implications for the shared tower. Specifically, the new antenna equipment needed for WVNY to broadcast on channel 7 combined with the new antenna for WFFF's assigned change from channel 43 to channel 16 will add **more than five tons** to the stack weight and increase the tower's wind load by about 100%. This increased load will compound existing issues on the shared tower.

The Commission has recognized that "alternative transition solutions" proposed by repacked stations "may reduce reimbursement costs or implement a market-wide transition plan that could allow stations to more efficiently utilize limited resources, facilitate coordination, or reduce the impact of the transition on television viewers."⁷ Here, a grant would serve the public interest by allowing the Stations to continue to broadcast uninterrupted and by conserving valuable engineering resources. Importantly, grant would allow both WVNY and WFFF-TV sufficient time to continue to analyze alternative antenna designs as well as alternate channel allotments that would reduce the structural impact on the tower.

⁵ *Broadcast Transition Procedures Public Notice*, para. 25.

⁶ *Id.*

⁷ *Id.*, para. 50.



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

Sincerely,

/s/

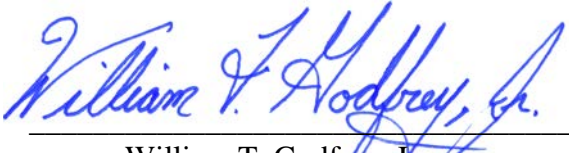
Henry Gola

Counsel for Mission Broadcasting, Inc.

DECLARATION OF WILLIAM T. GODFREY, JR.

I, William T. Godfrey, Jr., declare under penalty of perjury as follows:

1. I am an Engineering Consultant with Kessler and Gehman Associates, Inc. I have been hired to examine the technical operations, both currently and post-repack, of WFFF-TV and WVNY.
2. The statements regarding the facilities and technical operations of WFFF-TV and WVNY in the attached Request for Special Temporary Authority are true and correct to the best of my knowledge.



William T. Godfrey, Jr.

Dated: June 9, 2017