



June 12, 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: 000961889**  
**Request for Legal STA**  
**KUCW(TV), Ogden, UT, FAC ID 1136**

Dear Ms. Dortch:

Pursuant to 47 CFR §73.3700(b)(1)(iv)(A), Nexstar Broadcasting, Inc. ("Nexstar"), licensee of television station KUCW(TV), Ogden, UT, FAC ID 1136, seeks a waiver — in coordination with the seven other television stations co-located with the Station (together, the "Utah Stations") — to modify the Utah Stations' transition schedule to allow the Utah Stations to begin the testing of their post-auction channels earlier than is contemplated in the Federal Communications Commission's (the "Commission") current transition phase 1 schedule, on a rolling basis. In addition, each of the Utah Stations is filing a concurrent waiver request of the July 12, 2017 deadline for filing a construction permit for its post-auction channel facilities. As detailed below, circumstances beyond the Utah Stations' control render them unable to construct their facilities specified in the *Closing and Reassignment Public Notice*. The waiver request will allow the Utah Stations to apply for alternate facilities in the first priority window.<sup>1</sup>

Grant of these waivers will serve the public interest by allowing the Utah Stations to efficiently construct post-auction facilities while maintaining service to their communities. Moreover, the waivers requested in this filing and the parallel filings by other Utah Stations, and the alternate facilities for which the Utah Stations intend to apply, will not impede or delay any other station's post-auction transition or cause additional interference to any station. The Commission therefore should grant these waivers expeditiously.

**Background**

Nexstar is a member of DTV Utah, LC ("DTV Utah"), which is made up of eight full power television stations in the Utah market (five commercial and three non-commercial) which came together in 1998 in a collective effort to implement more effectively the DTV transition in

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<sup>1</sup> See Incentive Auction Closing and Channel Reassignment Public Notice, DA 17-314, ¶ 70 (Apr. 13, 2017) ("Closing and Reassignment PN").

the Utah market.<sup>2</sup> As part of this effort and in coordination with the Commission, the eight Utah Stations entered into an operating agreement to fund the design and construction of, and to co-locate their digital operations to, a single tower located on Farnsworth Peak. Since that time, the Utah Stations have continued to share facilities, thereby significantly reducing the respective operational costs and overhead of providing television broadcast services in Utah. Currently, the stations share two combiners and two antennas, with each station maintaining its own transmitter.

### **The Utah Stations Require Greater Flexibility in Their Transition Schedule**

The repacked Utah Stations concurrently are filing requests to deviate from the transition phase 1 schedule. Specifically, given the severe geographic, climate, and other limitations of the shared Farnsworth Peak site, it would not be possible for the stations to test all of their post-auction facilities in the two-and-a-half-month testing period scheduled for transition phase 1. The Utah Stations accordingly request that the Commission waive its prohibition on stations testing their post-auction facilities prior to the scheduled start of the transition phase 1 testing period.<sup>3</sup>

Construction at the Farnsworth Peak site presents significant challenges. The site is located about 17 miles southwest of Salt Lake City, in the Oquirrh mountain range, on a small mesa at an altitude of 9,050 feet. Vehicles typically can access the site only from June until the first heavy snow, usually in October; access to the site is restricted to snow-cat or helicopter the rest of the year. This means the Utah Stations have only two June-October construction windows prior to the transition phase 1 completion deadline of November 30, 2018, with the 2017 window already underway and likely to be mostly over before the Utah Stations have received approved post-auction facilities and reimbursement allocations. Even during the windows when construction is possible, travel up the mountainside for large vehicles requires a slow trip up a single-lane dirt road, as well as careful coordination among the site's more than 25 tenants for the use of the site's limited parking and storage space.

Given these myriad challenges, completing construction of the Utah Stations' shared post-auction facilities by the transition phase 1 deadline — with most of the work having to occur in the 2018 construction window — will be extremely difficult under the best of circumstances, and may be possible only because of the Utah Stations' close coordination in designing the alternate post-auction facilities the stations intend to request in the first priority window.

At a minimum, however, the Utah Stations must be permitted to test their new transmitters on a rolling basis as soon as each transmitter is installed. Power at the site, which must be trenched up from Tooele County on the west side of the mountain range, is limited, and the site already is operating near its power capacity. The site accordingly cannot support the

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<sup>2</sup> The licensees of these eight stations are: KUTV Licensee, LLC (licensee of Station KUTV); Utah State Board of Regents (licensee of NCE station KUEN); Bonneville International Corporation (licensee of Station KSL-TV); Nexstar Broadcasting, Inc. (licensee of Stations KTVX and KUCW); University of Utah (licensee of NCE Station KUED); Brigham Young University (licensee of NCE Station KBYU-TV); and Larry H. Miller Communications Corp. (licensee of Station KJZZ-TV).

<sup>3</sup> See *id.* at 910-11 ¶ 44.



testing of all six new transmitters, along with the continued operation of the Utah Stations' existing transmitters, during the scheduled transition phase 1 testing window. Instead, each of the Utah Stations should be permitted to begin testing its post-auction transmitter once it is installed, and to cease operating on its pre-auction channel once its testing is complete (subject to satisfying the applicable notification requirements to viewers and MVPDs).

The *Transition Scheduling PN* states that the prohibition on stations beginning their tests before the scheduled testing period is intended to "minimize interference, incentivize the distribution of resources across the phases, and encourage stations within a phase to switch to their post-auction channels at roughly the same time, which will minimize confusion to television viewers."<sup>4</sup> In this case, however, these considerations either do not apply or are outweighed by other factors. First, as noted above, the Utah Stations' proposed post-auction facilities are not part of any linked-station set and will not cause more than *de minimis* interference to each other (on either their pre-auction or post-auction channels) or to any other station. Second, because the Utah Stations are assigned to transition phase 1, permitting them to begin testing early cannot draw resources away from any other phase. Finally, although it would be ideal for the Utah Stations to switch to their post-auction channels at roughly the same time, maintaining each station's pre-auction service until all of the stations have completed their testing is not feasible given the power limitations of the Farnsworth Peak site. Nonetheless, each station will complete the required notifications to viewers and MVPDs,<sup>5</sup> thus ensuring that all stakeholders are fully informed and prepared for each station's transition.

#### **The Utah Stations Cannot Construct the Assigned Post-Auction Facilities**

In addition, six of the eight Utah Stations, including KUCW(TV), have been reassigned to new channels in the post-auction repacking, and all six of these repacked stations have been assigned to transition in transition phase 1.<sup>6</sup> However, the Utah Stations have determined that it is not possible to construct their assigned post-auction facilities at the Farnsworth Peak site.

Specifically, an engineering analysis by William Meintel of Meintel, Sgrignoli & Wallace determined that the new shared antennas required for the Utah Stations to continue operating at the site would not allow any of the repacked Utah Stations to duplicate its pre-auction contour on its new channel without expanding its contour by more than one percent in any direction.<sup>7</sup> Contour maps comparing each Utah Station's allotted contour with the contour produced by the new antennas are attached hereto as Attachment A.

In addition, the new shared combiners the Utah Stations must acquire cannot accommodate all eight Utah Stations if Nexstar is required to construct its KUCW(TV) post-auction facility on Channel 35, as it is currently assigned.

Because Nexstar and the other repacked Utah Stations cannot "construct facilities that

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

<sup>5</sup> See *Procedures PN*, 32 FCC Rcd at 874 ¶¶ 50-51.

<sup>6</sup> The Commission did not reassign KUTV or KUEN.

<sup>7</sup> See 47 C.F.R. § 73.3700(b)(1)(ii)(B).



meet the technical parameters specified in the *Closing and Reassignment Public Notice* within the permissible contour coverage variance,” these stations qualify for “unable to construct” waivers of the initial construction permit application deadline.<sup>8</sup> Moreover, there is good cause for granting the requested waivers.<sup>9</sup> A waiver is appropriate “where the particular facts make strict compliance inconsistent with the public interest” and a deviation from the general rule would relieve hardship or produce a “more effective implementation of overall policy on an individual basis.”<sup>10</sup> In this case, it would not be consistent with the public interest to require Nexstar and the other Utah Stations to apply for post-auction facilities that their engineering analysis shows cannot be constructed in compliance with the Commission’s contour-expansion restrictions, nor would it be in the public interest to require Nexstar to construct its KUCW(TV) post-auction facility on a channel that would preclude it from continuing the share equipment with the other Utah Stations.

To the contrary, the Utah Stations’ experience during and after the DTV transition demonstrates that the Commission’s overall policy goals — maintaining broadcast television service to the public, supporting the provision of non-commercial television service, and providing for an efficient and cost-effective post-auction transition — are far better served by allowing the repacked Utah Stations to apply for alternate post-auction facilities that would allow these stations to continue sharing combiners and antennas at their existing site. 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.”<sup>11</sup> Such is the case with the Utah Stations’ requested waivers, which will facilitate the stations’ ability to construct coordinated, cost-effective post-auction facilities. In addition, the alternate facilities the Utah Stations intend to apply for would not impact any other stations. The Utah Stations’ proposal would not create any new linked-station sets, cause new interference (beyond the Commission’s 0.5 percent *de minimis* standard) to any other station, or otherwise delay or disrupt any station’s transition.

Accordingly, the Commission should waive the initial construction permit application deadline for Nexstar’s KUCW(TV) and the other repacked Utah Stations.

For the reasons set forth herein, public interest would be best served by (1) waiving the initial construction permit deadline for KUCW(TV) and the other repacked Utah Stations, and (2) permitting the Utah Stations to test and transition to their post-auction facilities on a rolling basis as soon as their new facilities are ready.

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<sup>8</sup> See Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition, Public Notice, 32 FCC Rcd 858, 865 ¶ 24 (MB 2017) (“Procedures PN”).

<sup>9</sup> See Procedures PN, 32 FCC Rcd at 865 ¶ 24 n.36 (citing 47 C.F.R. § 1.3).

<sup>10</sup> *Id.* (citing *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

<sup>11</sup> See Incentive Auction Task Force and Media Bureau Adopt Post-Incentive Auction Transition Scheduling Plan, Public Notice, 32 FCC Rcd 890, 913 ¶ 50 (MB 2017) (“Transition Scheduling PN”).

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Elizabeth Ryder", with a long, sweeping horizontal line extending to the right.

Elizabeth Ryder  
EVP & General Counsel