

**Request for Waiver of Deadline for Channel Sharing Station  
to File Construction Permit and Discontinue Operations on Pre-Auction Channel**

Pursuant to Section 1.3 of the FCC's Rules, NRJ TV Philly License Co., LLC ("Licensee"), licensee of full power television station WTVE(TV), Reading, PA (Fac. ID 55305) ("Station"), hereby requests waiver of Sections 73.3700(b)(1)(vii), (b)(3), and (b)(4)(ii) of the Commission's rules to provide Station with an additional 90 days to file an application for a construction permit to channel share and to discontinue operations on its pre-auction channel (and file a license to cover its channel sharing construction permit).

Licensee submitted a successful bid in the incentive auction for the Station to go off air. On its FCC Form 177, the Station indicated an intent to enter into a channel sharing agreement ("CSA"). The Station intends to channel share with commonly-owned WPHY-CD. However, due to a technical issue in LMS involving two stations with separate agreements to channel share with the same sharer station, Licensee has been unable to file its application for a construction permit to channel share at this time. Moreover, the Station requires additional time to implement channel sharing.

Section 73.3700(b)(4)(ii) of the FCC's Rules requires a license relinquishment station indicating an intent to enter into a post-auction CSA to terminate operations on its pre-auction channel within six months of the date that the licensee receives its incentive payment.<sup>1</sup> Section 73.3700(b)(1)(vi), in turn, requires a channel sharee station to file a minor change application for a construction permit on its shared channel at least sixty days prior to the date by which it must terminate operations on its pre-auction channel.<sup>2</sup> Additionally, section 73.3700(b)(3) requires such licensee to file a license application for a shared channel within six months of the date that the licensee receives its incentive payment.<sup>3</sup> Accordingly, absent a waiver, the Station would be required to terminate operations on its pre-auction channel and file a license application no later than January 23, 2018.

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<sup>1</sup> 47 C.F.R. § 73.3700(b)(4)(ii). The Media Bureau and the Incentive Auction Task Force have subsequently indicated that they will convert months to days, with each month consisting of 30 days. See *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, DA 17-106, MB Docket No. 16-306, GN Docket No. 12-268 ¶ 12 & n.18 (rel. Jan. 27, 2017).

<sup>2</sup> 47 C.F.R. § 73.3700(b)(1)(vi).

<sup>3</sup> 47 C.F.R. § 73.3700(b)(3).

The FCC may grant a waiver for good cause shown.<sup>4</sup> The agency typically grants a waiver where the particular facts make strict compliance inconsistent with the public interest.<sup>5</sup> In the *Incentive Auction Order*, the Commission specifically addressed criteria for the waiver sought here, indicating that it “will view requests for up to three additional months to terminate operations *most favorably*.”<sup>6</sup> Specifically, “[t]he Media Bureau will view favorably applications/requests that are otherwise compliant with our rules and have little or no impact on other stations’ transition schedule.”<sup>7</sup> As the agency has acknowledged, “the availability of waivers of up to an additional six months is unlikely to adversely affect the Commission’s post-auction transition timeline.”<sup>8</sup>

Here, grant is in the public interest. First, an extension will facilitate the Station’s ability to channel share successfully and without disruption, which, as the Commission has recognized, will “promote longstanding policy goals for broadcast television, including localism, viewpoint diversity, and competition.” *In the Matter of Innovation in the Broad. Television Bands: Allocations, Channel Sharing & Improvements to VHF*, Report and Order, 27 FCC Rcd. 4616 ¶ 3 (2012); *see also id.* ¶ 22 (recognizing that channel sharing will extent the “important benefits to the public” of broadcast television); *In the Matter of Expanding the Econ. & Innovation Opportunities of Spectrum Through Incentive Auctions*, 30 FCC Rcd. 6668 (2015) (recognizing public interest benefits of flexible, post-auction channel sharing). Licensee will utilize the additional time to configure its encoders as optimally as possible, conduct equipment testing, and engage in consumer education to ensure that viewers will have the best viewing experience once channel sharing begins.

Second, permitting the Station to utilize a full 6 MHz channel for an additional three months will allow it to provide the best over-the-air experience to its viewers by providing a better quality signal (with increased bandwidth and lower compression) and additional programming on multicast streams.

Moreover, a grant of 90 additional days will not adversely affect the Commission’s post-auction transition timeline. The channel sharing arrangement under consideration will utilize existing facilities, and grant of this waiver will not divert any engineering resources otherwise needed for the post-auction transition. In fact, grant of the waiver will help maximize the efficiency of Licensee’s limited engineering resources needed to organize and implement the repack of five commonly owned full-power and Class A stations. Furthermore, as the testing period for Phase 1

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<sup>4</sup> 47 C.F.R. § 1.3.

<sup>5</sup> *N.E. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>6</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd. 6567 ¶ 578 (2014) (emphasis added).

<sup>7</sup> *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd. 858 ¶ 73 (2017).

<sup>8</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Second Order on Reconsideration, 30 FCC Rcd. 12016 ¶ 11 (2015).

of the repack does not begin until September 14, 2018, providing the Station with 90 additional days to cease operations on its pre-auction channel and transition to shared operations will not affect other stations' transition schedules.

Accordingly, the Media Bureau should provide the Station until February 22, 2018, to file an application for a construction permit to channel share and until April 23, 2018, to terminate operations on its pre-auction channel and file its license application.