

**Request for Waiver of Deadline to Discontinue Operations on Pre-Auction Channel  
and Commence Shared Channel Operations**

Pursuant to Section 1.3 of the FCC's Rules, WMCN License Holdings, LLC ("Licensee"), licensee of full power television station WMCN-TV, Atlantic City, NJ (Fac. ID 9739) ("Station"), hereby requests waiver of Rules 73.3700(b)(3) and (b)(4)(ii) to provide the Station with an additional 90 days to discontinue operations on its pre-auction channel and implement shared channel operations.

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. Pursuant to a Channel Sharing and Facilities Agreement ("CSA") by and between Licensee and NRJ TV Philly License Co., LLC, entered into on July 14, 2017, WMCN-TV will channel share with station WPHY-CD, Trenton, NJ (Fac. ID 74464). A construction permit authorizing the channel sharing arrangement was issued on August 17, 2017 (FCC File No. 0000029021). The parties are working diligently to implement the channel sharing arrangement pursuant to the construction permit, but recognize that additional time may be necessary.

Sections 73.3700(b)(3) and (b)(4)(ii) of the FCC's Rules require a channel sharee station to terminate operations on its pre-auction channel and implement shared channel operations within six months of the date that the licensee receives its incentive payment.<sup>1</sup> Accordingly, absent a waiver, the Station would be required to terminate operations on its pre-auction channel no later than January 23, 2018.

The FCC may grant a waiver for good cause shown.<sup>2</sup> The agency typically grants a waiver where the particular facts make strict compliance inconsistent with the public interest.<sup>3</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>4</sup> Specifically, "[t]he Media Bureau will view favorably applications/requests

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<sup>1</sup> 47 C.F.R. §§ 73.3700(b)(3) and (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*, Public Notice, 32 FCC Rcd 858, 862, para. 12 & n.18 (MB 2017).

<sup>2</sup> 47 C.F.R. § 1.3.

<sup>3</sup> *N.E. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>4</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6803, para. 578 (2014) (emphasis added).

that are otherwise compliant with our rules and have little or no impact on other stations' transition schedule."<sup>5</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>6</sup>

Here, a 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."<sup>7</sup> The Station will utilize the additional time to 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).

Moreover, a grant of 90 additional days will not adversely affect the Commission's post-auction transition timeline. As the testing period for Phase 1 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 April 23, 2018, to terminate operations on its pre-auction channel and file its license application.

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<sup>5</sup> *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd 858, 882, para. 73 (MB 2017).

<sup>6</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Second Order on Reconsideration, 30 FCC Rcd 12016, 12020, para. 11 (2015).

<sup>7</sup> *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Report and Order, 27 FCC Rcd 4616, 4617, para. 3 (2012); *see also id.* at 4627, para. 22 (recognizing that channel sharing will extend the "important benefits to the public" of broadcast television); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, 30 FCC Rcd 6668 (2015) (recognizing public interest benefits of flexible, post-auction channel sharing).