

**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, WRNN License Company, LLC ("Licensee"), licensee of full power television station WRNN-TV, Kingston, NY (Fac. ID 74156) ("Station"), hereby requests a further waiver of Sections 73.3700(b)(1)(vii), (b)(3), and (b)(4)(ii) of the Commission's rules to provide Station with three additional months 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).

On October 23, 2017, Licensee filed a Request for Special Temporary Authority in which it sought a waiver of the November 24, 2017, deadline to file its application for a construction permit to channel share and its January 23, 2018, deadline to commence channel sharing and discontinue operations on its pre-auction channel, File No. 0000034060 (the "Initial STA"). The Video Division granted the Initial STA on October 26, 2017, by letter from Barbara A. Kreisman, Chief, Video Division. As a result, Licensee now has until February 22, 2018, to file its application for a construction permit to channel share and until April 23, 2018, to discontinue operations on its pre-auction channel and file a license to cover its channel sharing construction permit.

Licensee is currently negotiating with a station in the New York Designated Market Area to channel share with Station. Due to technical and programming constraints, however, it may not be possible to commence channel sharing before April 23, 2018. Accordingly, Licensee seeks a further extension so that it may proceed with negotiations knowing that the counterparty is a viable sharing partner.

The FCC may grant a waiver for good cause shown.¹ The agency typically grants a waiver where the particular facts make strict compliance inconsistent with the public interest.² In the *Incentive Auction Order*, the Commission specifically addressed criteria for the further waiver sought here, indicating that it "will view requests for up to three additional months to terminate operations **most favorably**."³ In its *Second Order on Reconsideration*, the Commission recognized that certain winning channel sharing bidders may require an additional three months, declaring that it "will view the additional requests favorably as well so long as we determine that grant of the

¹ 47 C.F.R. § 1.3.

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

³ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd. 6567 ¶ 578 (2014) ("*Incentive Auction Report and Order*") (emphasis added).

extension will not delay the post-auction transition.”⁴ The agency went on to acknowledge that “the availability of waiver of up to an additional six months is unlikely to adversely affect the Commission’s post-auction transition timeline.”⁵

Here, grant of an additional three months 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.”⁶

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 Commission has defined the post-auction transition period as “the 39–month period commencing upon the public release of the Channel Reassignment Public Notice as defined in § 73.3700(a) of this chapter.”⁷ The requested extension will not have any effect on the 39-month transition period. 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. Furthermore, as the testing period for Phase 1 of the repack does not begin until September 14, 2018 and the testing period for the potential channel sharing station does not begin until June 22, 2019, providing the Station with 90 additional days

⁴ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Second Order on Reconsideration, 30 FCC Rcd. 12016 ¶ 11 (2015) (“*Second Order on Reconsideration*”). In this context, the term “post-auction transition” refers to the 39-month period for broadcasters to transition off their pre-auction channels. The *Incentive Auction Report and Order* described the post-auction transition as the combination of the three month period for reassigned stations to file construction permits and the 36 month period for stations to transition to their new channels. *Incentive Auction Report and Order* ¶ 34. The Order further defines the “Post-Auction Transition Period” as the “39-month transition period for broadcasters that are assigned new channels in the repacking process and winning UHF-to-VHF and high-VHF-to-low-VHF bidders.” *Id.* ¶ 559; 47 C.F.R. § 27.4.

⁵ *Id.*

⁶ *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).

⁷ *See* 47 C.F.R. § 27.4; *see also Incentive Auction Report and Order* ¶ 34 (referring to the post-auction transition as the transition of television stations that will continue to broadcast as well as LPTV and TV translator stations, BAS operations, wireless microphones and related services”).

to cease operations on its pre-auction channel and transition to shared operations will not affect other stations' transition schedules.⁸

Accordingly, the Media Bureau should provide the Station until May 24, 2018, to file an application for a construction permit to channel share and until July 23, 2018, to terminate operations on its pre-auction channel.

⁸ The desire by one or more 600 MHz band wireless licensees to utilize the repurposed spectrum during the post-auction transition period is irrelevant to the waiver criteria adopted by the Commission and should not factor into the Media Bureau's disposition of the instant waiver request. In the *Incentive Auction Report and Order*, the Commission extended the typical term for wireless licenses by two years "to accommodate the necessary broadcast transition while retaining the proper incentives for 600 MHz Band licensees to rapidly deploy wireless services in the Band. *Incentive Auction Report and Order* ¶ 761. The Commission subsequently explained that "600 MHz Band wireless licensees will not have access to the repurposed spectrum during the Post-Auction Transition Period unless full power and Class A television operations have ceased operations in their licensed area." *In the Matter of Expanding the Economic & Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 30 FCC Red. 12025 ¶ 2 & n.5 (2015). Thus, while some 600 MHz band wireless licensees might *desire* to utilize the spectrum sooner, as long as they can utilize the spectrum by the end of the Post-Auction Transition Period, there is no *delay* to the post-auction transition. Indeed, if the FCC intended for the Media Bureau to consider the desire of 600 MHz band wireless licensees to utilize the repurposed spectrum before the end of the Post-Auction Transition Period, it would not have concluded that "the availability of waiver of up to an additional six months is unlikely to adversely affect the Commission's post-auction transition timeline."