

General Information Exhibit
Request for Waiver of Go Off-Air Deadline

Pursuant to the Commission's spectrum incentive auction-related rules and policies¹ and FCC Rule 1.3,² Morning Star Broadcasting, LLC ("Morning Star"), licensee of television station WFFP-TV ("WFFP" or the "Station"), hereby respectfully requests an additional 90 days, until July 22, 2018, to continue operations on its pre-auction channel and to file a license to cover its channel sharing construction permit and implement channel sharing operations.³

Morning Star submitted a successful bid in the incentive auction to go off-air. Under the Commission's rules, as a "license relinquishment station" in connection with the broadcast spectrum incentive auction,⁴ WFFP's original go off-air date was 180 days after receipt of payment of auction proceeds—January 23, 2018.⁵ In LMS File No. 0000035592, Morning Star requested, and Commission staff granted,⁶ authority to extend WFFP's go off-air date to April 23, 2018 (the "First Waiver Request").

As set forth in the First Waiver Request, in November 2017, Morning Star executed a channel sharing agreement and filed a minor modification application seeking a construction permit to channel share (as sharee) with station WDBJ(TV), Roanoke, Virginia (as sharer) ("WDBJ").⁷ The Commission granted Morning Star's minor modification application on November 30, 2017.⁸

Morning Star hoped to transition WFFP to its host station by the initial go off-air deadline of January 23, 2018. However, as discussed in the First Waiver Request, host station WDBJ is

¹ See *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, DA 17-106 (MB Jan. 27, 2017) (hereinafter, "*Procedures Public Notice*"); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, ¶ 578 (2014) (hereinafter, "*Report and Order*"); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Second Order on Reconsideration, 30 FCC Rcd 12016, ¶ 11 (2015) (hereinafter, "*Second Order on Reconsideration*").

² See 47 C.F.R. § 1.3.

³ See *Procedures Public Notice*, ¶¶ 69-70.

⁴ See *Incentive Auction Closing and Channel Reassignment Public Notice*, Public Notice, DA 17-314, Appendix A (MB April 13, 2017) (hereinafter, "*Auction Closing Public Notice*").

⁵ See 47 C.F.R. §§ 73.3700(b)(3), (b)(4)(ii).

⁶ See *Request for Waiver of Deadline to Implement Shared Channel Operations*, Letter Decision, LMS File No. 0000035592 (Nov. 28, 2017) ("First Waiver Grant").

⁷ Gray Television Licensee, LLC is the licensee of WDBJ ("Gray").

⁸ See LMS File No. 0000035584.

working on a significant capital upgrade to its newsroom. Most of that upgrade is complete, but WDBJ's engineers continue to dedicate much of their time to working with third-party vendors to troubleshoot and resolve various issues that have arisen in the course of the newsroom upgrade process.

Despite the challenges of implementing a channel share in the midst of the major capital project, the parties have made significant progress toward completing that implementation. As of the date hereof, however, WDBJ is still awaiting (1) the installation of a direct fiber line between WDBJ's main studio and WFFP's facilities at Liberty University, and (2) the arrival and installation of certain switching equipment required for the channel share. WDBJ continues to work diligently to complete the upgrade project, but the potential for delays beyond WDBJ's control, including as a result of third-party suppliers and/or winter weather, remains.

Morning Star and Gray are committed to implementing the channel share as soon as all necessary equipment has been installed, tested, and confirmed to be error-free. Nevertheless, to ensure a seamless transition and to avoid disruption to WFFP's viewers, Morning Star believes that an additional 90-day extension of the April 23, 2018 go off-air deadline will ensure WFFP's ability to successfully channel share—and to do so without disruption to WFFP's viewers.

Waiver of a Commission rule is appropriate where the particular facts would make strict compliance inconsistent with the public interest, and where deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis.⁹ In recognition of the fact that parties may encounter difficulties in meeting the go off-air deadline, the Commission's auction-related rules and policies specifically authorize waiver of the deadline to commence shared operations for up to two ninety-day periods.¹⁰ The Media Bureau has stated that waiver requests will be evaluated on a case-by-case basis to determine whether grant will delay or disrupt the post-auction transition schedule.¹¹ Applications or requests that are otherwise compliant with the rules and have little or no impact on other stations' transition schedules are to be viewed "favorably."¹²

Morning Star respectfully submits that grant of the instant waiver request is in and will serve the public interest. An additional 90-day extension of the go off-air deadline will cause no delay or disruption to the post-auction transition schedule. The Commission has recognized that "the availability of waivers [of the off-air deadline] of up to an additional six months, is unlikely to adversely affect the Commission's post-auction transition timeline."¹³ The first testing period for Phase 1 of the repack does not begin until September 14, 2018. Television stations in the Roanoke-

⁹ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 C.F.R. § 1.3.

¹⁰ See *Procedures Public Notice*, ¶ 69; *Report and Order*, ¶ 578; cf. First Waiver Grant, at 1 n.4.

¹¹ See *Procedures Public Notice*, ¶¶ 69, 74.

¹² *Id.*, ¶¶ 73-74.

¹³ *Second Order on Reconsideration*, ¶ 11.

Lynchburg DMA have all been assigned to Transition Phase 5 or later.¹⁴ Stations assigned to Transition Phase 5 begin their testing on August 3, 2019, and must have their construction and testing completed by September 6, 2019.¹⁵ Such dates are well beyond the maximum 180-day period WFFP may permissibly extend its go off-air date; indeed, WFFP's proposed July 22, 2018 go off-air date is more than a year earlier than the date by which remaining television stations in the Roanoke-Lynchburg DMA must transition to their post-auction, repacked facilities. Extending WFFP's go off-air deadline by another 90 days in order to ensure a smooth transition to channel sharing operations will not adversely affect other transitioning stations' schedules.¹⁶

Additionally, extension of WFFP's go off-air date will not delay or disrupt wireless providers commencing service in the 600 MHz band. WFFP's current channel designation of 24 corresponds to 530-536 MHz;¹⁷ wireless providers have acquired rights to spectrum in the 600 MHz band.¹⁸

Grant of the instant waiver request is fully in keeping with the FCC's standards for waiver of the go off-air deadline and recent decisions in analogous circumstances.¹⁹

For the reasons described above, for good cause shown, Morning Star respectfully requests waiver of the go off-air deadline for WFFP until July 22, 2018.

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¹⁴ See *Incentive Auction Task Force and Media Bureau Announce Regional Coordinators to Facilitate Post-Auction Transition for Broadcast Stations*, Public Notice, DA 17-376 (MB April 20, 2017), at Appendix B, p. 7 (listing Roanoke-Lynchburg stations and their transition phases).

¹⁵ See "Transition Schedule," available at <https://www.fcc.gov/about-fcc/fcc-initiatives/incentive-auctions/transition-schedule> (last visited Feb. 18, 2018).

¹⁶ The Bureau concluded that grant of the First Waiver Request would not adversely affect other stations' transitioning schedules. See *First Waiver Grant*, at 2.

¹⁷ See 47 C.F.R. § 73.603.

¹⁸ See, e.g., *Auction Closing Public Notice*, ¶¶ 14-16.

¹⁹ See, e.g., *Procedures Public Notice*, ¶¶ 69-74; *WECT License Subsidiary, LLC, Request for Modification and Waiver of Phase Assignment WECT(TV), Wilmington, NC*, Letter Decision (MB July 3, 2017) (waiving WECT and WWAY-TV transition phase assignments upon determination that doing so would have no adverse impact on transition schedule, including no negative impact on other stations or viewers); *Richard Van Gendern, Request for Modification and Waiver of Phase Assignment KCDT, Coeur D'Alene, ID*, Letter Decision (MB Aug. 17, 2017) (waiving KCDT phase assignment upon finding doing so would not have adverse impact on transition schedule or a negative impact on other stations or viewers).