

**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, KBWB License LLC ("Licensee"), licensee of full power television station KOFY-TV, San Francisco, CA (Fac. ID 51189) ("Station"), hereby requests waiver of Sections 73.3700(b)(3) and (b)(4)(ii) of the Commission's rules to provide Station with an additional 90 days to discontinue operations on its pre-auction channel and file a license to cover its channel sharing construction permit.¹

On November 21, 2017, Licensee filed a Request for Special Temporary Authority in which it sought a waiver of the January 23, 2018, deadline to commence channel sharing and discontinue operations on its pre-auction channel, File No. 0000035548 (the "Initial STA"). The Video Division granted the Initial STA on November 27, 2017, by letter from Barbara A. Kreisman, Chief, Video Division. As a result, Licensee now has until April 23, 2018, to discontinue operations on its pre-auction channel and file a license to cover its channel sharing construction permit.

On October 30, 2017, the FCC issued a construction permit for Station to channel share with KCNZ-CD. See LMS File No. 0000034083. The parties were initially unable to commence channel sharing due to unexpected delays in the third-party installation of a dedicated fiber-optic data circuit to deliver Station's programming content between Station's current facilities at the Mt. Sutro Tower and KCNZ-CD's transmitter site on San Bruno Mountain. Although that issue appears to have been resolved, the licensee of KCNZ-CD is continuing to work to maximize the shared channel's availability over-the-air and on cable/satellite, including through the installation of a replacement antenna, which it is obtaining from Radio Frequency Systems ("RFS") in Australia. The current antenna is not performing as expected, and its manufacturer no longer makes a version that would match its directional pattern. The antenna from RFS comes closest of any available to matching Station's licensed azimuth pattern. Efforts by the licensee of KCNZ-CD to replace the antenna and work with MVPDs will minimize viewer disruption

¹ In the *Incentive Auction Report and Order*, the Commission did not set a deadline for winning channel sharing bidders to submit their waiver requests. See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd. 6567 ¶ 578 (2014). Although the Commission has subsequently directed each licensee to seek an extension "as soon as it becomes apparent that it requires additional time prior to discontinuing operations, and in no event later than 60 days prior to its deadline for discontinuing operations," *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, 32 FCC Rcd. 858 ¶ 70 (2017), it only recently became apparent to Licensee that additional time might be required. To the extent necessary, Licensee seeks a waiver of the uncodified deadline for submitting a request for additional time.

related to the transition to channel sharing. Although Licensee has commenced its viewer and MVPD notifications with the expectation that sharing will begin prior to April 23, 2018, Licensee seeks this extension out of an abundance of caution, given the number of potential issues outside Licensee's control.

The FCC may grant a waiver for good cause shown.² The agency typically grants a waiver where the particular facts make strict compliance inconsistent with the public interest.³ In the *Second Order on Reconsideration*, the Commission recognized that certain winning channel sharing bidders may require an additional three months beyond the initial extension, declaring that it "will view the additional requests favorably as well so long as we determine that grant of the 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 90 days 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 The lack of a dedicated fiber optic circuit and/or the failure of the licensee of KCNZ-CD to maximize the shared channel's availability over-the-air and on cable/satellite could result in unnecessary disruption to the Station's viewers. Delaying the commencement of channel sharing may be necessary to reduce or eliminate this disruption.⁷

Second, permitting the Station to utilize a full 6 MHz channel for an additional 90 days 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 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-

² 47 C.F.R. § 1.3.

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

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*").

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* File No. 0000036896 (recognizing public interest in minimizing viewer disruption).

auction transition. Furthermore, 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. Finally, to the extent it is relevant, providing the Station with 90 additional days also will not delay the launch of service by winning 600 MHz bidders given that the Station's RF channel (19) is within the post-auction broadcast television band.⁸

Accordingly, the Media Bureau should provide the Station until July 23, 2018, to terminate operations on its pre-auction channel.

⁸ See File No. 0000040617.