

REQUEST FOR WAIVER OF PHASE ASSIGNMENT

Nexstar Broadcasting, Inc., licensee of television broadcast station WFFF-TV, Burlington, Vermont, FAC ID 10132 (the “Station”), seeks a waiver of the Station’s Post-Incentive Auction Transition Phase assignment, and corresponding testing dates and construction completion deadlines for WFFF-TV. Pursuant to the *Closing and Reassignment Public Notice*, the Station has been assigned to Transition Phase 7, for which the Phase Completion Date is January 17, 2020.¹ Nexstar seeks modification of its current transition phase assignment to Transition Phase 10, with a Phase Completion Date of July 3, 2020, which results in a brief six-month delay in the Station’s current phase assignment.

The *Transition Scheduling Adoption Public Notice* permits stations to propose “alternative transition solutions that could create efficiencies,” and stated that a request to modify a station’s transition deadline would be viewed favorably if the request is “otherwise compliant with [FCC] rules and [has] little or no impact on the phase assignments or transition schedule.”² As demonstrated below, Nexstar’s request qualifies for such favorable treatment.

The FCC may grant a waiver for good cause shown.³ A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.⁴ In considering a

¹ *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Red 2786 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*).

² *Incentive Auction Task Force and Media Bureau Adopt A Post-Incentive Auction Transition Scheduling Plan*, MB Docket No. 16-306 and GN Docket No. 12-268, 32 FCC Rcd 890, 913 ¶ 51 (MB 2017) (*Transition Scheduling Adoption Public Notice*), citing *Incentive Auction Task Force and Media Bureau Seek Comment on Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 31 FCC Rcd 10802 (MB 2016) (*Transition Scheduling Proposal Public Notice*).

³ 47 C.F.R. § 1.3.

⁴ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

waiver, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁵ Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁶

WFFF-TV shares a tower with WVNY(TV), a high-VHF station licensed to Mission Broadcasting, Inc., at the summit of Mt. Mansfield in Vermont. The Commission assigned both stations to new channels but to separate transition phases – WFFF-TV has been assigned to Transition Phase 7; WVNY(TV) has been assigned to Transition Phase 10. Due to the existing antenna co-location sharing arrangement, the post-auction channel change facility requires a coordinated transition by both stations. Therefore, good cause exists for waiver of the assigned Transition Phase and its attendant testing and completion dates for the Station because it will serve the public interest by facilitating an orderly and efficient transition, avoid redundant expenditures and, as further explained below, eliminate the need to have a full power television station (WVNY(TV) Burlington, Vermont, FAC ID 11259)) in the same community of license go dark for approximately six months in order to prevent interference to WFFF-TV's post-auction channel 16 facilities.

The WVNY(TV) antenna is located near the top of the shared tower, above the WFFF-TV antenna. Consequently, the WVNY(TV) antenna must be uninstalled (and later reinstalled) completely in order to remove and replace the existing WFFF-TV antenna. Furthermore, the WFFF-TV post-auction channel 16 antenna is incompatible with the existing WVNY(TV) antenna and will cause significant interference to WVNY(TV)'s pre-auction channel 13. Such

⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

⁶ *Northeast Cellular*, 897 F.2d at 1166.

interference would force WVNY(TV) to cease operations (or prevent WFFF-TV from beginning operations on channel 16), until WVNY(TV)'s new post-auction channel 7 antenna is installed on or before July 3, 2020. In such a scenario, a population of approximately 719,000, would lose access to either their local ABC affiliate or their local FOX affiliate for a period of six months. Such a result does not serve the public interest. Consequently, both antennas must be replaced simultaneously in order avoid unnecessary and redundant installation costs and multiple or extended service interruptions.

In addition, the current WFFF/WVNY antenna stack is located on a shared Mt. Mansfield tower, which is subject to severe weather conditions during the winter months, including January. Significant snowfall, accumulation and/or ice and severe winds, which can begin occurring in early November, make access hazardous, if not at times impossible during the winter months. As a result, mandating a WFFF-TV construction completion date, January 17, 2020, in the dead of winter likely will force Nexstar to risk the safety of technical personnel participating in the antenna removal process (for both WVNY(TV) and WFFF-TV) and installation of the new post-auction channel 16 antenna.

Because WVNY(TV) is part of a linked set of stations assigned to Transition Phase 10, modifying or abbreviating WVNY(TV)'s transition phase is not a viable option. Conversely, delaying WFFF-TV's construction completion until Transition Phase 10 will not result in the creation of any new linked sets. Moreover, modifying WFFF-TV's transition phase will not negatively impact viewers. On the contrary, modifying WFFF-TV's transition phase allows the station to extend its community outreach efforts regarding the upcoming channel changes and ensure that WVNY(TV) and WFFF-TV are both able to continue to serve their community of license and viewers without interruption during the harsh Vermont winter months. In addition,

rather than forcing viewers to undertake the rescan process twice (once for WFFF-TV and once for WVNY(TV)), it will be necessary for viewers to undertake a rescan only one time (i.e., once fewer than contemplated in the FCC's current transition plan).

In order to ensure viewers are fully informed of the changed transition date, Nexstar pledges to mitigate any viewer confusion by increasing outreach education above and beyond the required public service announcements and crawls to notify the Station audience of the proposed transition and provide detailed instructions on the rescanning process.

Grant of the requested waiver to modify WFFF-TV's transition phase will serve the public interest by conserving resources and averting a significant disruption of service to its community of license. For the foregoing reasons, Nexstar hereby requests the Commission to amend the current phase assignment for the Station and respectfully requests that the FCC reassign WFFF-TV to Transition Phase 10 in order to coordinate construction with WVNY(TV)'s post-auction facility.

Respectfully submitted,

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