

WIVB-TV
Buffalo, NY
Fac. ID 7780
Nexstar Broadcasting, Inc.
Waiver Exhibit

Nexstar Broadcasting, Inc., per FCC Rule 1.3, hereby requests waiver of Rule 73.3700(b)(4)(ii) to provide WIVB-TV with 90 additional days to file an application for a construction permit to channel share and to cease operations on its pre-auction channel.

WIVB-TV was a winning bidder in the broadcast incentive auction with a bid option to go off-air. On its FCC Form 177, the Station indicated an intent to enter into a channel sharing agreement (CSA). The Station will enter into a channel sharing arrangement with WNLO, a commonly-owned station also licensed to Nexstar Broadcasting, Inc., but it requires additional time to implement the arrangement.

Rule 73.3700(b)(4)(ii) requires a license relinquishment station indicating an intent to enter into a post-auction CSA to terminate operations on its pre-auction channel within six months of the date that the licensee receives its incentive payment. Accordingly, absent waiver, WIVB-TV 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. 47 C.F.R. § 1.3. The agency typically grants a waiver where the particular facts make strict compliance inconsistent with the public interest. *N.E. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In the *Incentive Auction Order*, the Commission specifically addressed criteria for waiver sought here, indicating that it “will view requests for up to three additional months to terminate operations most favorably.” *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, 29 FCC Rcd 6567, para. 578 (2014). Specifically, “[t]he Media Bureau will view favorably applications/requests that are otherwise compliant with our rules and have little or no impact on other stations’ transition schedule.” *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, 32 FCC Rcd 858, para. 73. (2017). As the agency has acknowledged, “the availability of waiver of up to an additional six months is unlikely to adversely affect the Commission’s post-auction transition timeline.” *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Second Order on Reconsideration, 30 FCC Rcd 12016, para. 11 (2015).

Here, grant is in the public interest. First, a grant of 90 additional days will not adversely affect the Commission’s post-auction transition timeline. The self-share channel sharing arrangement will utilize existing facilities, and grant of this waiver will not divert any additional engineering resources otherwise needed for the post-auction transition. In fact, grant of the waiver will help maximize the efficiency of Nexstar’s limited engineering resources needed to organize and implement the repack of 90 full-power and Class A stations. And, as the testing period for Phase 1 of the repack does not begin until September 14, 2018, allowing WIVB-TV 90 additional days

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

Second, permitting WIVB-TV to utilize a full 6 MHz channel for an additional 90 days will allow both WIVB-TV and WNLO to provide the best over-the-air experience to their viewers by providing a better-quality signal (with increased bandwidth and lower compression), including the continued broadcast of free multicast streams on both stations. In addition, Nexstar is attempting to obtain the highest-possible quality encoders and then configure those encoders as optimally as possible. The more time Nexstar has to optimize the configuration with live programming, the better the viewing experience will be when the channel sharing arrangement implements.

Finally, 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." *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).

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