

## REQUEST FOR WAIVER OF PHASE ASSIGNMENT

Nexstar Broadcasting, Inc. (“Nexstar”), licensee of WAVY-TV, Portsmouth, Virginia, FAC ID 71127 (the “Station”), seeks waiver of the Station’s Post-Incentive Auction Transition Phase assignment, and corresponding testing dates and construction completion deadlines for WAVY-TV. Pursuant to the *Closing and Reassignment Public Notice*, the Station has been assigned to Transition Phase 9, for which the Phase Completion Date is May 1, 2020.<sup>1</sup> Nexstar seeks modification of its current transition phase assignment to Transition Phase 7, with a Phase Completion Date of January 17, 2020, which would expedite the Station’s transition by approximately three and one-half (3.5) months.

The *Transition Scheduling Adoption Public Notice* permitted stations to propose “alternative transition solutions that could create efficiencies,” and held 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.”<sup>2</sup> As demonstrated below, Nexstar’s instant request qualifies for such favorable treatment. The FCC may grant a waiver for good cause shown.<sup>3</sup> A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.<sup>4</sup> In considering a

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<sup>1</sup> *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*).

<sup>2</sup> *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*).

<sup>3</sup> 47 C.F.R. § 1.3.

<sup>4</sup> *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.<sup>5</sup> Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>6</sup>

As demonstrated herein, good cause exists for waiver of the assigned Transition Phase and its attendant testing and completion dates because it will serve the public interest by facilitating an orderly and efficient transition, avoid redundant expenditures, inefficient use of already scarce rigging resources and eliminate the need to have a full power television station (WVBT(TV)), Virginia Beach, Virginia, FAC ID 65387)) go dark unnecessarily for any length of time.

As the Federal Communications Commission's ("FCC" or "Commission") is aware, WVBT(TV) and WAVY-TV are commonly owned by Nexstar, within the Norfolk-Portsmouth-Newport News, VA designated market area (the "DMA"), and co-located on the same tower. The Commission assigned both stations new channels and separate transition phases. As mentioned above, WAVY-TV has been assigned to Transition Phase 9. WVBT(TV) has been assigned to Transition Phase 7. Due to the existing antenna co-location sharing arrangement, the post-auction channel change facilities will require a coordinated transition by both stations. As such, Nexstar seeks to amend its current station phase assignment and respectfully requests that the FCC reassign WAVY-TV to Transition Phase 7 in order to coordinate construction with WVBT(TV)'s post-auction facility.

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<sup>5</sup> *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.

<sup>6</sup> *Northeast Cellular*, 897 F.2d at 1166.

The WVBT(TV) antenna is located above the WAVY-TV antenna. Consequently, under the current Phase Transition Plan, the pre-transition channel 29 WVBT(TV) antenna must be *uninstalled and reinstalled* completely in order for Nexstar to install the post-transition channel 19 WAVY-TV antenna. Such a result does not serve the public interest. Consequently, both antennas should be replaced simultaneously in order avoid unnecessary and redundant installation costs and multiple or extended service interruptions.

WAVY-TV, which must transition from channel 31 to channel 19, is part of a linked set of stations in the same DMA, which includes WHRO-TV<sup>7</sup> and WTKR(TV)<sup>8</sup>. WHRO-TV must transition from channel 16 to channel 31. WTKR(TV) must transition from channel 40 to channel 16. Although WAVY-TV is part of a linked set of stations assigned to the Transition Phase 10, modifying or abbreviating WAVY-TV's transition phase would adversely affect the two remaining stations within the linked set since WAVY-TV must clear channel 31 before WHRO-TV can complete its transition to channel 31, which will then accommodate WTKR(TV)'s transition to channel 16. Expediting WAVY-TV's construction completion in Transition Phase 7 will not result in the creation of any new linked sets. Modifying WAVY-TV's transition phase would not negatively impact the viewers. On the contrary, modifying WAVY-TV's transition phase would ensure that WVBT(TV) could continue to serve its community of license without interruptions. Nexstar pledges to act to further mitigate any viewer disruption by increasing outreach education, and in addition to the consumer outreach program service announcements and crawls committed to within the attached Phase Waiver

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<sup>7</sup> WHRO-TV, FAC ID 25932, is located in Hampton-Norfolk, Virginia and licensed to Hampton Roads Educational Telecommunications Association, Inc.

<sup>8</sup> WTKR(TV), FAC ID 47401, is located in Norfolk, Virginia and licensed to Local TV Virginia License, LLC.

Request, Nexstar Broadcasting, Inc., the applicant, proposes to expand its educational and informative outreach to include digital and social media campaigns. Nexstar will maintain a link on the station's website regarding when and how to rescan. Additionally, transition and rescanning information will also be posted to the station's social media pages. Additionally, viewers would not be forced to undertake any additional scans not already contemplated in the FCC's current transition plan.

Based on the facts above, grant of the requested waiver to modify WAVY-TV's transition phase serves the public interest by conserving resources and averting a significant disruption of service to its community of license.

Respectfully submitted,

**Nexstar Broadcasting, Inc.**

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