

## AMENDED REQUEST FOR WAIVER OF PHASE ASSIGNMENT

Nexstar Broadcasting, Inc. (“Nexstar”), licensee of WDTN(TV), Dayton, Ohio, FAC ID 65690 (“WDTN” or the “Station”), seeks to amend its pending request for a waiver of the Station’s Post-Incentive Auction Transition Phase assignment, and corresponding testing dates and construction completion deadlines, for WDTN. Pursuant to the *Closing and Reassignment Public Notice*, the Station has been assigned to Transition Phase 6, for which the Phase Completion Date is October 18, 2019.<sup>1</sup>

As the Commission is aware, Nexstar recently sought to modify its current Transition Phase 6 assignment to Transition Phase 10, with a Phase Completion Date of July 3, 2020.<sup>2</sup> Nexstar seeks to modify its pending waiver request to reflect a move from its Transition Phase 6 assignment to Transition Phase 7, with a Phase Completion Date of January 17, 2020. The requested phase change would extend the current construction period by approximately three (3) 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>3</sup>

As demonstrated below, Nexstar’s instant request qualifies for such favorable treatment. The

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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 Rcd 2786 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*).

<sup>2</sup> See FCC LMS File No. 0000081837.

<sup>3</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*).

FCC may grant a waiver for good cause shown.<sup>4</sup> A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.<sup>5</sup> In considering a waiver, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>6</sup> Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>7</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 inefficient use of already scarce rigging resources and eliminate the need to have the Station go dark unnecessarily for any length of time.

As a consequence of the Commission's Incentive Auction, the Station is required to transition from its current, pre-transition channel 50 to its post-auction Out-of-Core channel 31 by or before the conclusion of Phase 6, which is slated for October 18, 2019. The original transition proposal stipulated that the Station's new antenna, required by the FCC mandated channel change, would be positioned on the Station's existing tower. Due to unanticipated and unavoidable delays experienced by the tower rigging crew scheduled to complete the WDTN installation, the Station's transition to its post-auction channel 31 will not occur by October 18, 2019. All delays were beyond Nexstar's control.

As the Commission knows, due to the limited rigging resources available throughout the United States, installation schedules are often back to back with little or no room for delays of any nature. Nexstar seeks to avoid additional delays for its In-Core channel stations slated to transition in Phase 6 and Phase 7. Accordingly, Nexstar respectfully requests to delay WDTN's

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<sup>4</sup> 47 C.F.R. § 1.3.

<sup>5</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>6</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>7</sup> *Northeast Cellular*, 897 F.2d at 1166.

transition until a later Phase. A new tower crew is available to reschedule the WDTN rigging in November 2019. Modifying WDTN's transition phase would ensure that the Station could continue to serve its community of license without interruptions. Absent grant of the instant waiver, WDTN may be required to go dark on or after October 18, 2019.

Nexstar pledges to act to further mitigate any viewer disruption by increasing outreach education, beyond the requisite minimum consumer outreach announcements and crawls, and 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.

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