



Federal Communications Commission
Washington, D.C. 20554

July 3, 2017

Nexstar Broadcasting, Inc.
Elizabeth Ryder
545 E. John Carpenter Freeway, Suite 700
Irving, TX 75062

Mission Broadcasting, Inc.
30400 Detroit Road, Suite 304
Westlake, OH 44145

Re: Request for Waiver of Initial
Construction Permit Filing Deadline
WFFF-TV, Burlington, VT
Facility ID No. 10132
LMS File No. 0000024888

WVNY(TV), Burlington, VT
Facility ID No. 11259
LMS File No. 0000024886

Dear Licensees,

On June 12, 2017, Nexstar Broadcasting, Inc. (Nexstar) and Mission Broadcasting, Inc. (Mission) (collectively, Licensees) submitted the above captioned requests for waiver of the July 12, 2017, 90-day post-incentive auction construction permit and cost estimate filing deadline for full power television stations WFFF-TV, Burlington, Vermont (WFFF-TV), and WVNY(TV) (WVNY), Burlington, Vermont (collectively, Stations), respectively. The Licensees assert that the Stations are “unable to construct” the specified facilities assigned to them in the *Closing and Channel Reassignment Public Notice* because the existing tower cannot support the increased load necessary for the Stations to operate on their post-auction channels.¹ The Licensees also seek permission to file applications for construction permit during the first priority alternate channel/expanded facilities filing window (first priority window). In addition, Nexstar seeks modification of WFFF-TV’s post-incentive auction transition phase assignment, from Phase 7 to Phase 10. For the reasons below, we grant both requests for waiver of the July 12, 2017 filing deadline and both stations are permitted to file an application for construction permit during the first priority window. We dismiss Nexstar’s request for modification of WFFF-TV’s phase assignment as premature.

Background. The Commission instructed that a reassigned station is eligible to receive a waiver of the July 12, 2017 filing deadline for its post-incentive auction construction permit if the station demonstrates that due to extraordinary technical or legal issues beyond the station’s control, it is “unable to construct” the post-auction facilities specified to it in the *Closing and Channel Reassignment Public*

¹ See *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 (MB & WTB 2017) (*Closing and Channel Reassignment Public Notice*). See LMS File No. 00024888, WFFF-TV Waiver Request at 2 (WFFF-TV Waiver Request); LMS File No. 0000024886, WVNY(TV) Waiver Request at 2 (WVNY Wavier Request).

Notice or within the permissible contour coverage variance.² If the Media Bureau (Bureau) grants a station such a waiver, the station is permitted to file a request for a construction permit in the first priority window to seek an alternate channel and/or expanded facilities.³ A station whose request to file its construction permit application in the first priority window is granted because it is “unable to construct” will also be granted additional time to submit its reimbursement cost estimate form (FCC Form 2100, Schedule 399) detailing its estimated relocation costs.⁴ The station may, however, choose to file its cost estimate form by the July 12, 2017 filing deadline so that the Commission can use that information as the basis for the initial allocation for the station’s construction project. The Commission will assign a proxy estimate for stations filing in the first priority window that do not submit cost estimate information on FCC Form 2100, Schedule 399 by July 12, 2017.⁵

Furthermore, pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waivers of their phase assignments.⁶ The Media Bureau has determined it would review such requests under the Commission’s existing good cause waiver standard⁷ and evaluate such requests on a case-by-case basis in order to facilitate a timely and orderly transition and assess the impact of such requests on the transition schedule, including the impact on other broadcasters as well as viewers.⁸ The Bureau determined that it would view favorably requests that are compliant with the Commission’s rules and have little or no impact on the transition schedule.⁹ Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.¹⁰

² *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6794, para. 554 (2014), subsequent history omitted (*Incentive Auction R&O*); 47 CFR § 73.3700(b)(1)(iv)(A). The Commission has stated that a station may be found to be “unable to construct” the facility specified in the *Closing and Channel Reassignment Public Notice*, for example, if a station is unable to construct a compliant facility on its current tower and a replacement tower cannot be constructed from which the station would be able to meet the specified technical parameters. *Incentive Auction R&O*, 29 FCC Rcd at 6791 n.1551.

³ See 47 CFR § 73.3700(b)(1)(iv)(A). Applications filed during the first priority window will be treated as filed on the last day of that window for purposes of determining mutual exclusivity and will be given a 90-day period to resolve the MX by proposing a technical solution or settlement in an amendment to their pending applications. See *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition Procedures*, Public Notice, 32 FCC Rcd 858, 870, para. 36 (MB 2017) (*Broadcast Transition Procedures Public Notice*).

⁴ See *id.* at 884 n.180 (citing *Incentive Auction R&O*, 29 FCC Rcd at 6823 n.1754).

⁵ *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2815, para. 86 (“The Commission will assign a proxy estimate using, for instance, the cost estimates of similarly situated stations, in order to provide those stations with an initial allocation.”).

⁶ See *Incentive Auction Task Force and Media Bureau Adopt A Post-Incentive Auction Transition Scheduling Plan*, 32 FCC Rcd 890, 912-14, paras. 47-52 (MB 2017) (*Transition Scheduling Adoption Public Notice*).

⁷ See *id.* at 913-14, para. 51 and n.171; 47 CFR § 1.3 (waiver for good cause shown).

⁸ See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-14, paras. 49-52. See also *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Broadcast Transition*, 32 FCC Rcd 858, 881-82, para 73 (MB 2017).

⁹ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd 912-13, para. 49 and n.163.

¹⁰ *Id.*

WVNY is currently licensed to operate on channel 13 and WFFF is licensed to operate on channel 43. The Stations were reassigned in the *Closing and Channel Reassignment Public Notice* to channels 7 and 16, respectively. The Commission also assigned WFFF-TV to transition phase seven and WVNY to transition phase 10. The Licensees state that the Stations share a “relatively short 42.2-meter tower” on Mt. Mansfield, in Burlington, Vermont.¹¹ They claim that they are unable to modify their existing tower to support the equipment necessary to operate on their new channels noting that, taken together, such equipment would add over five tons of weight to the tower and increase its wind load by approximately 100 percent.¹² The Licensees contend that this increased load would “compound existing issues on the shared antenna”¹³ as the current antenna stack already has issues with “vortexing and must withstand the harsh winter temperatures, ice, snow, and wind that the area experiences annually.”¹⁴

Nexstar and Mission posit that grant of the requested waivers would serve the public interest by allowing the Stations to continue broadcasting uninterrupted and allow them to explore alternative transition solutions that would reduce the structural impact on their shared tower, such as alternative antenna designs and alternate channel allotments.¹⁵ The Licensees request that both Stations be permitted to file in the first priority so they can fully coordinate their post-auction plans and allow both stations to remain on the current tower. To further facilitate coordination between the Stations Nexstar also requests to modify WFFF-TV’s transition phase assignment from Phase 7 to Phase 10.¹⁶

Discussion. A waiver is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis.¹⁷ In this case, we find that it would not be consistent with the public interest to require Mission and Nexstar to apply for post-incentive auction facilities that cannot be supported by the Stations current tower, especially when there are likely alternative solutions that could permit both stations to remain at their existing tower site. While the Licensees do not address whether a new tower could be constructed that could replicate the Stations post-auction technical parameters, in the incentive auction proceeding the difficulty of constructing on Mount Mansfield, both due to weather and necessary zoning, permitting and environmental clearances, was clearly established.¹⁸ In fact, according to the Licensees it took 10 years to negotiate a lease and obtain the required zoning and environmental approvals to construct the current tower site.¹⁹ Based on the foregoing, we find that Mission and Nexstar have demonstrated that they are

¹¹ WFFF-TV Waiver Request at 2 and WVNY Waiver Request at 2.

¹² *Id.*

¹³ WFFF-TV Waiver Request at 2.

¹⁴ WVNY Waiver Request at 2.

¹⁵ WFFF-TV Waiver Request at 2; WVNY(TV) Waiver Request at 2.

¹⁶ WFFF-TV Waiver Request at 2.

¹⁷ *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 CFR § 1.3 (waiver for good cause shown).

¹⁸ *See* Reply Comments of Mt. Mansfield Television Inc., Vermont Public Television, Nexstar Broadcasting, Inc. and Mission Broadcasting, Inc., GN Docket No. 12-268 (filed March 12, 2013) (Vermont Reply Comments); Letter from Jack Goodman, Counsel for Mt. Mansfield Television, Inc., to Marlene H. Dortch, Secretary, FCC, GN docket No. 12-268 (filed Nov. 21, 2014). *See also* Comments of New York State Broadcasters Association, Inc., GN Docket No. 12-268 at 18 (filed Jan. 25, 2013);

¹⁹ Vermont Reply Comments at 2.

unable to construct the post-auction facilities as assigned to them in the *Closing and Channel Reassignment Public Notice* and conclude that it is in the public interest to allow the Licensees to apply for alternate facilities for WFFF-TV and WVNY during the first priority window.

As to Nexstar request to modify WFFF-TV's transition phase, we find such request premature. Nexstar, admittedly, has not finalized its post-incentive auction transition solution and therefore cannot demonstrate whether or not a modification of WFFF-TV's transition phase would have an adverse impact on the transition schedule, including other stations or viewers.

We remind the Licensees that, when filing in the first priority window, they must protect the construction permit facilities of reassigned stations and band changing stations filed in the initial 90-day period if those stations' applications have been granted or remain pending. Otherwise, applicants in the first priority window must protect the facilities specified in the *Closing and Channel Reassignment Public Notice*.²⁰ In addition, all applications filed in the first priority window must protect the facilities specified in applications filed before the April 2013 freeze with "cut-off" protection.²¹ The facilities proposed in applications filed during the first priority window will be entitled to interference protection from subsequently-filed applications and amendments thereto.²² We also remind the Licensees that our action does not change the transition schedule, including the station's phase assignment, testing period, or phase completion date.²³

The above facts considered, Nexstar's and Mission's requests request for waiver **IS GRANTED** and the July 12, 2017 deadline for submission of their applications for post-incentive auction construction permit (FCC Form 2100, Schedule A) and reimbursement cost estimate form (FCC Form 2100, Schedule 399) **ARE WAIVED**. Nexstar and Mission are instructed to submit an application for construction permit for WFFF-TV and WVNY in the first priority window, which will be announced by Public Notice and commence shortly after conclusion of the initial 90-day filing period.²⁴ The Licensees are also instructed to submit their reimbursement cost estimate form for the Stations within 30 days of receiving a

²⁰ See *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 867, para. 30.

²¹ See *Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Station Modification Applications, Effective Immediately, and Reminds Stations of Spectrum Act Preservation Mandate*, Public Notice, 28 FCC Rcd 4364 (MB 2013).

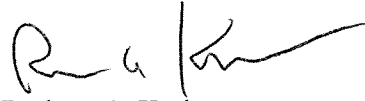
²² See *Incentive Auction R&O*, 29 FCC Rcd at 6794 n.1573 (citing *Commission Lifts Freeze on Filing of Maximization Applications and Petitions for Digital Channel Substitutions, Effective Immediately*, Public Notice, 23 FCC Rcd 8330 (2008)).

²³ See *Incentive Auction R&O*, 29 FCC Rcd at 6791 n.1551. To make a change to a station's phase assignment and corresponding transition deadlines, a licensee must file a Request for Modification and Waiver of its phase assignment by filing a Legal STA in LMS. See *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 887, Appx. A (providing instructions for filing a Legal STA in LMS). The Bureau will evaluate such requests on a case-by-case basis in order to facilitate a timely and orderly transition and assess the impact of such requests on the transition schedule, including the impact on other broadcasters as well as viewers. See *Incentive Auction Task Force and Media Bureau Adopt Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 32 FCC Rcd 890, 912-14, paras. 49-52 (MB 2017); see also *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 881-82, para. 73. No fee is required to file a Legal STA that contains a request for modification and waiver of a station's phase assignment.

²⁴ See *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 867, para. 30 and n.49 (citing *Incentive Auction R&O*, 29 FCC Rcd at 6795, para. 556 (delegating authority to the Bureau to issue public notices announcing filing opportunities for alternate channels and expanded facilities and stating that the staff will open the first priority window after it substantially completes its processing of initial minor change construction permits)).

construction permit for an alternate channel or expanded facility. Furthermore, Nexstar's request for modification of WFFF-TV's transition phase assignment **IS DISMISSED**.

Sincerely,

A handwritten signature in black ink, appearing to read 'Barbara A. Kreisman', with a long horizontal flourish extending to the right.

Barbara A. Kreisman
Chief, Video Division
Media Bureau