



Federal Communications Commission
Washington, D.C. 20554

June 28, 2017

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

Re: Request for Waiver of Initial
Construction Permit Filing Deadline
KSEE(TV), Fresno, CA
Facility ID No. 35594
LMS File No. 0000024894

Dear Licensee,

On June 12, 2017, Nexstar Broadcasting, Inc. (Nexstar) submitted the above-captioned request for waiver of the July 12, 2017, 90-day post-incentive auction construction permit and cost estimate filing deadline for full power television station KSEE(TV), Fresno, California (KSEE or Station), asserting that the Station is "unable to construct" the specified facilities assigned to it in the *Closing and Channel Reassignment Public Notice*¹ due to land mobile (LM) interference and other related technical reasons. Nexstar also seeks permission to file an application for construction permit during the first priority alternate channel/expanded facilities filing window (first priority window). For the reasons below, we grant the request for waiver and Nexstar is permitted to file an application for construction permit for KSEE during the first priority window.

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 Notice* or the permissible contour coverage variance.² If the Media 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

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. 0000024894, KSEEE June 12 2017 Waiver Request (Waiver Request).

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.

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

KSEE is currently licensed to operate on channel 38 and was reassigned to channel 16 in the *Closing and Channel Reassignment Public Notice*. Nexstar argues that its inability to construct facilities on channel 16 is a matter of Commission record and demonstrably beyond its control.⁶ Nexstar notes that, in 2004, in response to claims of unintentional but destructive interference to primary public safety and other important land mobile (LM) systems in the San Francisco and Los Angeles markets, the Commission approved a rulemaking request and changed the Station to channel 38.⁷ At that time, the Commission recognized that filtering techniques and reducing power were not options that would cure the interference issues.⁸ Nexstar states that the Station continues to operate from the same transmitter site as considered in the above referenced 2004 proceeding. Consequently, Nexstar concludes that there are no mitigation techniques that would resolve the anticipated post-incentive auction channel 16 interference and an antenna modification would destroy the station’s over-the-air coverage.⁹

Nexstar also notes that the County of Los Angeles (County) has submitted an Informal Petition requesting that the Commission reconsider its reassignment of the Station to channel 16.¹⁰ Based on the facts, if the Station were to commence operations on channel 16, Nexstar believes it would again unintentionally cause interference and disrupt the vital public safety LM operations in the San Francisco and Los Angeles markets. Nexstar argues that such interference is beyond its control and as such warrants waiver of the July 12, 2017 construction permit filing deadline.

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*, 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 Waiver Request at 2.

⁷ See *id.* at 2.

⁸ See *id.* (citing *Amendment of Section 73.6229b, Table of Allotments, Digital Television Broadcast Stations (Fresno, California)*, Report and Order, 19 FCC Rcd 21891 (Vid. Div. 2004)).

⁹ See Waiver Request at Attachment A.

¹⁰ See Informal Petition filed by the County of Los Angeles, MB Docket No. 16-306 (May 15, 2017). See also Waiver Request at 2-3.

Discussion. A waiver is appropriate “where the particular facts make strict compliance inconsistent with the public interest” and a deviation from the general rule would relieve hardship or produce a “more effective implementation of overall policy on an individual basis.”¹¹ In this case, we find that it would not be consistent with the public interest to require Nexstar to apply for post-incentive auction facilities that their engineering analysis shows and the Commission has previously determined cannot be constructed without causing prohibited interference to existing public safety LM facilities. A staff analysis of Nexstar’s claims confirms that that unresolvable interference is likely.¹² Based on the foregoing, we find that Nexstar has demonstrated that it is unable to construct its post-auction facility as assigned to it in the *Closing and Channel Reassignment Public Notice* and conclude that it is in the public interest to allow Nexstar to apply for an alternate facility for KSEE during the first priority window.

We remind Nexstar, when filing in the first priority window, it 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*.¹³ 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.¹⁴ The facilities proposed in applications filed during the first priority window will be entitled to interference protection from subsequently-filed applications and amendments thereto.¹⁵ We also remind Nexstar that our action does not change the transition schedule, including the station’s phase assignment, testing period, or phase completion date.¹⁶

The above facts considered, Nexstar’s request for waiver **IS GRANTED** and the July 12, 2017, deadline for submission of both an application for post-incentive auction construction permit (FCC Form 2100, Schedule A) and reimbursement cost estimate form (FCC Form 2100, Schedule 399) **IS WAIVED**. Furthermore, Nexstar is instructed to submit an application for construction permit for KSEE in the first priority window, which will be announced by Public Notice and commence shortly after conclusion of the

¹¹ 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).

¹² See Waiver Request, Attachment A.

¹³ See *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 867, para. 30.

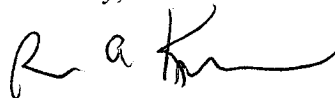
¹⁴ See *Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Station Modification Applications, Effective Immediately, and Reminds Stations of Spectrum Act Preservation Mandate*, Public Notice, 28 FCC Rcd 4364 (MB 2013).

¹⁵ 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)).

¹⁶ See *Incentive Auction R&O*, 29 FCC Rcd at 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.

initial 90-day filing period.¹⁷ Nexstar is also instructed to submit its reimbursement cost estimate form for KSEE within 30 days of receiving a construction permit for an alternate channel or expanded facility.

Sincerely,

A handwritten signature in black ink, appearing to read 'B A Kreisman', with a stylized flourish at the end.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁷ 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)).