



Federal Communications Commission
Washington, D.C. 20554

June 12, 2019

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

Re: Request for Modification and
Waiver of Phase Assignment
WFRV-TV, Green Bay, WI
Facility ID No. 9635
LMS File No. 0000074641

Dear Licensee,

On June 10, 2019, Nexstar Broadcasting, Inc. (Nexstar), the licensee of WFRV-TV, Green Bay, Wisconsin (WFRV-TV Station), filed a *Request for Modification and Waiver of Phase Assignment* requesting to modify the post-incentive auction transition phase assigned to the station in the *Closing and Channel Reassignment Public Notice* from Phase 3 to Phase 6.¹ For the reasons below, we grant the Nexstar's request for waiver and modify the Station's phase assignment to Phase 6, as conditioned herein.

Background. Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waiver and modification of their phase assignment.² 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.³ The Media Bureau (Bureau) has stated it will evaluate such requests on a case-by-case basis to assess the impact on the transition schedule, including the impact on other broadcasters as well as viewers, in order to facilitate a timely and orderly transition.⁴ The Bureau determined that it would view favorably requests that are compliant with the Commission's rules and

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 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*). See LMS File No. 0000074641, WFRV Phase Waiver Request (Waiver Request).

² See *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, Public Notice, 32 FCC Rcd 890, 912-14, paras. 47-52 (MB 2017) (*Transition Scheduling Adoption Public Notice*).

³ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 CFR § 1.3 (waiver for good cause shown). See also *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 913-14, para. 51 and n.171.

⁴ See *id.* at 912-14, paras. 49-52. See also *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Broadcast Transition*, Public Notice, 32 FCC Rcd 858, 881-82, para 73 (MB 2017).

have little or no impact on the transition schedule.⁵ Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.⁶

WFRV-TV is currently licensed to operate on channel 39. The Station was reassigned to channel 22 in the *Closing and Channel Reassignment Public Notice* and assigned to transition Phase 3, which has a phase testing period start date of April 13, 2019, and a phase completion date of June 21, 2019. The Station is located in the Green Bay-Appleton, Wisconsin, Designated Market Area (Green Bay DMA). A total of seven stations, two of which, including WFRV-TV, were repacked in the Green Bay DMA, one other of which is assigned to transition Phase 3, two to Phase 9, and three have already vacated their pre-auction channel. Nexstar states that “due to unanticipated and unavoidable delays experienced by the tower rigging crew scheduled to complete the WFRV installation, the Station’s transition to its post-auction channel 22 will not occur by June 21, 2019.”⁷ According to Nexstar, a new tower crew is available to conduct the necessary tower work for WFRV in September 2019.⁸ As a result, Nexstar requests that WFRV-TV be moved from Phase 3 to Phase 6, which has a testing period start date of September 7, 2019, and a phase completion date of October 18, 2019.

The Station is currently operating in the 600 MHz band. This phase change therefore will not create any new linked-station sets or result in increased temporary pairwise interference greater than two percent during the transition period.⁹ Following grant of the waiver request, the total number of rescan periods for the Green Bay DMA will increase from three to four, which is more than the two rescan periods per DMA limitation used in the tool adopted by the Bureau in the *Transition Scheduling Adoption Public Notice* to assign stations to transition phases.¹⁰ In order to minimize viewer confusion caused by the additional rescan period, Nexstar agrees to conduct consumer education and outreach efforts beyond what is required by Commission rules through the use of the station’s digital and social media assets.¹¹

Discussion. Upon review of the facts and circumstances presented, we find that the Nexstar’s request to modify the phase assignment for WFRV-TV to transition to its post-auction channel in Phase 6 satisfies the requirement for a waiver and is in the public interest. We find that the change to the Station’s transition phase should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. Staff has confirmed that the phase change will not create any new linked station sets or direct dependencies. Although the total number of rescan periods in the Green Bay DMA will increase from three to four, Nexstar has committed to taking additional steps beyond what is required by Commission’s consumer education rules to notify viewers of its change in phase. We believe that the Station has diligently pursued vacating its pre-auction channel but delays beyond its control have prevented it from meeting its phase completion date. In the absence of a phase change, the Station would have to go dark, and over-the-air viewers would lose access to WFRV-TV.¹² Modifying WFRV-

⁵ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-13, para. 49 and n.163.

⁶ *Id.*; see *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, 33 FCC Rcd 8240, 8244-45, para. 14 (IATF & MB 2018) (*Transition Reminder Public Notice*).

⁷ Waiver Request at 2.

⁸ *Id.*

⁹ *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16.

¹⁰ *Id.* at 898-99, paras. 20-21.

¹¹ Waiver Request at 3.

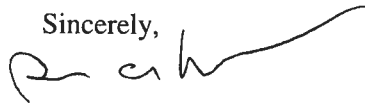
¹² *Id.* at 3.

TV's transition phase will ensure that the Station is able to continue to serve its viewers without interruption. As a result, we find the facts and circumstances discussed above outweigh any viewer burden caused by an additional rescan period in the Green Bay DMA or a short delay in access by wireless licensees to the Station's pre-auction channel

We remind Nexstar that pursuant to the Spectrum Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other." Additional expenses incurred, such as expenses resulting from changes in a Station's transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

Accordingly, we **GRANT** Nexstar's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WFRV-TV **from Phase 3 to Phase 6**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.¹³ Testing on the Station's post-auction channel **may not begin until 12:01 am local time on September 7, 2019**, and WFRV-TV is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on October 18, 2019**.¹⁴ The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.¹⁵

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc: (via electronic mail):
Christine Reilly, Esq.

¹³ See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*, 33 FCC Rcd 8240.

¹⁴ Each transition phase has a designated testing period on which a station in that phase may begin testing equipment on its new channel and a designated phase completion date when a station must cease operation on its pre-auction channel. The phase completion date is the date that will be listed in that station's construction permit as its construction deadline and is the date the station must cease operation on its pre-auction channel. See *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2806, para. 64. A station that commences testing on its post-auction channel before the beginning of its assigned testing period will be operating in violation of Commission rules.

¹⁵ *Id.* ("The phase completion date is...[also] the date listed in each station's construction permit as its construction deadline"). If a station must commence operations on its post-auction channel at variance from the parameters authorized in its construction permit, it must file for and be granted special temporary authority prior to commencing operations. See 47 CFR § 73.1635. A station that needs additional time to complete construction of its post-auction facility beyond its construction permit expiration date must file for a 180-day extension of its construction permit in accordance with Section 73.3700(b)(5)(iv). Stations needing additional time to construct after a 180-day extension is granted, will be subject to the Commission's tolling provisions. 47 CFR § 73.3700(b)(5)(iv). Grant of an extension of time to construct does not relieve a station of the requirement that it ceases operation on its pre-auction channel by its assigned phase completion date.