



Federal Communications Commission  
Washington, D.C. 20554

October 15, 2019

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

Re: Request for Modification and  
Waiver of Phase Assignment  
WDTN(TV), Dayton, OH  
Facility ID No. 65690  
LMS File No. 0000081837

Dear Licensee,

On October 4, 2019, Nexstar Broadcasting, Inc. (Nexstar) the licensee of WDTN(TV), Dayton, OH (WDTN or 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 6 to Phase 7.<sup>1</sup> For the reasons below, we grant Nexstar's request for waiver and modify the Station's phase assignment to Phase 7, as conditioned herein.

*Background.* Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waiver and modification of their phase assignment.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> The Bureau determined that it would view favorably requests that are compliant with the Commission's rules and

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<sup>1</sup> 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*, GN Docket No. 12-268 et al., Public Notice, 32 FCC Rcd 2786 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*). See LMS File No. 0000081837 (Waiver Request).

<sup>2</sup> 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*).

<sup>3</sup> 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.

<sup>4</sup> 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*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 32 FCC Rcd 858, 881-82, para. 73 (MB 2017).

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

WDTN is currently licensed to operate on channel 50. It was reassigned to channel 31 in the *Closing and Channel Reassignment Public Notice* and is currently assigned to transition Phase 6, which has a phase testing period start date of September 7, 2019, and a phase completion date of October 18, 2019. The Station is located in the Dayton, Ohio, Designated Market Area (Dayton DMA). A total of five stations were repacked in the Dayton DMA, with all stations, including WDTN, being assigned to transition Phase 6. According to Nexstar, WDTN will be unable to complete installation of its post-auction antenna by the Phase 6 phase completion date due to tower rigging delays.<sup>7</sup> A tower rigging crew has been scheduled to conduct the necessary construction work in November 2019.<sup>8</sup> As a result, Nexstar requests that the Station's transition phase assignment be modified from Phase 6 to Phase 7, which has a testing period start date of October 19, 2019, and a phase completion date of January 17, 2020. In order to mitigate any viewer disruption caused by the change in phase, Nexstar commits to conduct additional consumer outreach beyond what is required by the Commission's rules through the use of its digital and social media outlets.<sup>9</sup>

*Discussion.* Upon review of the facts and circumstances presented, we find that Nexstar's request to modify the phase assignment for WDTN to transition to its post-auction channel satisfies the requirement for a waiver and is in the public interest. We agree that changing the Station's transition phase to Phase 7 should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. The station is currently operating in the 600 MHz band. Staff has confirmed that the phase change will not create any new linked-station sets or increased temporary pairwise interference. By moving WDTN to Phase 7, the total number of rescan periods in the Dayton DMA will increase from one to two, which is still within 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.<sup>10</sup> To ensure that viewers are fully informed about the repack and to minimize any viewer confusion caused by the Station's change in phase, Nexstar has agreed to increase consumer education and outreach beyond what is required by the Commission's rules. Modifying WDTN'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 a change in the station's transition plans 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

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

<sup>6</sup> *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*).

<sup>7</sup> Waiver Request at 2.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.*

<sup>10</sup> *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 898-99, paras. 20-21.

to relocate its television service from one channel to the other.”<sup>11</sup> 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 WDTN **from Phase 6 to Phase 7**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.<sup>12</sup> Testing on the Station’s post-auction channel **may not begin until 12:01 am local time on October 19, 2019**, and WDTN is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on January 17, 2020**.<sup>13</sup> The Station’s construction permit expiration date will also be modified to correspond to its new phase completion date.<sup>14</sup>

Sincerely,

A handwritten signature in black ink, appearing to read 'B A K', followed by a horizontal line.

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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

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<sup>11</sup> 47 U.S.C. § 1452(b)(4)(A)(i). *See also Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 (“The appropriate scope of ‘costs reasonably incurred’ necessarily will have to be decided on a case-by-case basis.”).

<sup>12</sup> *See generally* 47 CFR § 73.3700 and *Transition Reminder Public Notice*, 33 FCC Rcd 8240.

<sup>13</sup> 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.

<sup>14</sup> *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.