



Federal Communications Commission  
Washington, D.C. 20554

November 21, 2018

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

Re: Request for Modification and  
Waiver of Phase Assignment  
KARZ-TV, Little Rock, AR  
Facility ID No. 37005  
LMS File No. 0000062978

Dear Licensee,

On October 18, 2018, Nexstar Broadcasting, Inc. (Nexstar), the licensee of Station KARZ-TV, Little Rock, AR (KARZ-TV 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 1 to Phase 3.<sup>1</sup> For the reasons below, we grant Nexstar's request for waiver and modify KARZ-TV's phase assignment to Phase 3, 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*, Public Notice, 32 FCC Rcd 2786 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*). See LMS File No. 0000062978, KARZ-TV STA Phase Waiver Request (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, 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*, 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>

KARZ-TV is currently licensed to operate on channel 44. It was reassigned to channel 28 as part of the post-incentive auction repacking process and assigned to transition Phase 1, which has a testing period start date of September 14, 2018, and phase completion date of November 30, 2018.<sup>7</sup> KARZ-TV is located in the Little Rock-Pine bluff, Arkansas, Designated Market Area (Little Rock DMA). A total of four stations, including KARZ-TV, were repacked in the Little Rock DMA, all assigned to Phase 1. Nexstar had initially believed it would be able to use its existing tower to accommodate its new post-auction facility. However, a structural analysis of KARZ-TV's tower in March 2018 revealed that it could not support the Station's new post-auction antenna. KARZ-TV was left with two options, either build a new tower or a relocate to a nearby tower that could support its post-auction antenna. Nexstar was able to identify a nearby tower owned by Mission Broadcasting, Inc. that could be modified to support KARZ-TV's new antenna and maintain the Station's coverage area (Mission Tower). Nexstar determined that relocating the Station's facility to the Mission Tower would be less costly, take far less time, and consume fewer resources than constructing a new tower. However, because this alternative construction plan was identified late in the station's transition timeline, the necessary modifications at the Mission Tower cannot be completed by November 30, 2018.<sup>8</sup> Because Nexstar does not have any plans to install an interim facility, if KARZ-TV were to remain in Phase 1 the Station would be required to go dark at 11:59 p.m. on November 30, 2018.<sup>9</sup> As a result, Nexstar requests that KARZ-TV's phase assignment be modified from Phase 1 to Phase 3, which has a testing period start date of April 13, 2019, and a phase completion date of June 21, 2019. Nexstar notes that modifying KARZ-TV's transition phase will ensure that the Station is able to continue to serve its community of license without interruption.<sup>10</sup>

Nexstar has provided an engineering analysis demonstrating that modifying its phase assignment to transition Phase 3 will not create any new linked-station sets or result in increased pairwise interference greater than two percent during the transition period.<sup>11</sup> While grant of the waiver will increase the number of rescan periods from one to two, Nexstar commits to conduct expanded consumer education and outreach efforts for the Station beyond what is required by Commission rules through the use of digital and social media.<sup>12</sup>

*Discussion.* Upon review of the facts and circumstances presented, we find Nexstar's request to modify its phase assignment to permit KARZ-TV to transition to its post-auction channel in Phase 3 satisfies the requirements for a waiver and is in the public interest. We agree that the change to KARZ-

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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, MB docket No. 16-306 and GN Docket No. 12-268, DA 18-884 (IATF & MB, rel. Aug. 27, 2018) (*Transition Reminder Public Notice*).

<sup>7</sup> KARZ-TV was initially reassigned to channel 14 and subsequently requested and received approval to instead be reassigned to channel 28. See LMS File No. 0000034738.

<sup>8</sup> Nexstar also does not have any plans for an interim facility.

<sup>9</sup> *Id.* at 1.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 1 and Engineering Statement.

<sup>12</sup> *Id.* at 2.



TV's transition phase should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. A staff analysis also confirms that the phase change will not result in new increased pairwise interference above the two percent permitted during the post-auction transition period.<sup>13</sup> While viewers in the Little Rock DMA will be subject to a second rescan period, this 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>14</sup> Nexstar has committed to put in place viewer outreach programs beyond those required by the Commission rules to ensure that viewers will be well-informed and can manage the additional rescan period. The phase change will prevent KARZ-TV from going dark while it executes an alternate transition plan that will be less costly, take less time, and consume fewer resources than its original plan. As a result, we find the benefits of this phase change, including keeping the Station from going dark and additional consumer education and outreach efforts Nexstar commits to conducting outweighs the viewer burden of an additional rescan period in this case and short delay in access by wireless providers to the 600 MHz band.

We caution Nexstar that any additional expenses incurred as a result of the grant of KARZ-TV's voluntary phase change may not be reimbursable from the TV Broadcasters Relocation Fund. Such additional costs might include, but may not be limited to, additional legal or engineering expenses, filing fees, and interim or additional equipment that was not contemplated when the station filed its initial estimated expenses but was subsequently necessitated to complete the transition to its post-auction channel due to its phase change. Nexstar is responsible for paying for any expenses incurred as a result of voluntarily requested changes to the station's transition schedule.

Accordingly, we **GRANT** Nexstar's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for KARZ-TV **from Phase 1 to Phase 3**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.<sup>15</sup> Testing on the Station's post-auction channel **may not begin until 12:01 am local time on April 13, 2019**, and the Station is required to cease operating on its pre-auction channel **no**

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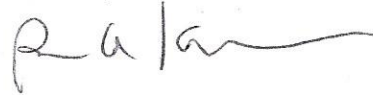
<sup>13</sup> See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16 (allowing temporary increased pairwise (station-to-station) interference of up to two percent during the transition period).

<sup>14</sup> See *id.* at 898-99, paras. 20-21.

<sup>15</sup> See generally 47 CFR § 73.3700; *Transition Reminder Public Notice*.

later than 11:59 pm local time on June 21, 2019.<sup>16</sup> The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.<sup>17</sup>

Sincerely,



Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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

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<sup>16</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 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>17</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.