



Federal Communications Commission  
Washington, D.C. 20554

May 10, 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  
WAVY-TV, Portsmouth, VA  
Facility ID No. 71127  
LMS File No. 0000040313

Dear Licensee,

On January 17, 2018, Nexstar Broadcasting, Inc. (Nexstar), licensee of Station WAVY-TV, Portsmouth, Virginia (Station or WAVY-TV), filed a *Request for Modification and Waiver of Phase Assignment*, requesting to modify the post-incentive auction transition phase assignment assigned to the Station in the *Closing and Channel Reassignment Public Notice* from Phase 9 to Phase 7.<sup>1</sup> For the reasons below, we grant the request for modification and waiver of WAVY-TV's phase assignment.

*Background.* Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waivers of their phase assignments.<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 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.<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. 0000040313 (as amended May 10, 2018), WAVY-TV 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 *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*, MB Docket No. 16-306 and GN Docket No. 12-268, 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>

WAVY-TV is currently licensed to operate on channel 31. It was reassigned to channel 19 in the *Closing and Channel Reassignment Public Notice* and assigned to Phase 9, which has a testing period start date of March 14, 2020 and phase completion date of May 1, 2020. WAVY-TV is located in the Norfolk-Portsmouth-Newport News, Virginia, Designated Market Area (Norfolk DMA). A total of 12 stations including WAVY-TV, were repacked in the Norfolk DMA, with seven stations being assigned to Phase 7 and five being assigned to Phase 9. WAVY-TV shares a tower, antenna, transmission line, and other related equipment with full power television station WVBT(TV), Virginia Beach, Virginia (WVBT), which is also licensed to Nexstar.<sup>7</sup> WVBT(TV) was reassigned from channel 29 to channel 21 in the *Closing and Channel Reassignment Public Notice* and assigned to Phase 7, which has a testing period start date of October 19, 2019, and phase completion date of January 17, 2020. Because both stations are located on the same tower, the WVBT antenna must be completely uninstalled and then reinstalled in order for Nexstar to install WAVY-TV's new post-auction antenna.<sup>8</sup> Therefore, Nexstar must coordinate the transition of both stations. Nexstar states that grant of its waiver request will benefit the public interest by ensuring that WVBT does not go silent and help "avoid unnecessary and redundant installation costs."<sup>9</sup>

Nexstar also provides an engineering analysis demonstrating that its early transition will not create any new linked station sets or result in impermissible interference during the transition period.<sup>10</sup> Nexstar goes on to state that the phase change will not create an additional rescan period because the Norfolk DMA already has transitioning stations assigned to Phase 7.<sup>11</sup> Nexstar will ensure viewers are fully informed of the change in transition date by conducting consumer education and outreach efforts beyond what is required by Commission rules including through the use of digital and social media.<sup>12</sup>

*Discussion.* Upon review of the facts and circumstances presented, we find that Nexstar's request to modify its phase assignment to permit WAVY-TV to transition to its post-auction channel during Phase 7 satisfies the requirements for a waiver and is in the public interest. We agree that the change to WAVY-TV's phase should not have an adverse impact on the transition schedule or a negative impact on other stations or viewers. Nexstar has provided evidence that the resources necessary to support its early transition are available and will not delay other transitioning stations' access to resources. A staff analysis confirms that the phase change does not create any new linked station sets and will not result in new interference above the two percent permitted during the transition.<sup>13</sup> Prior to this phase change

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

<sup>6</sup> *Id.*

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

<sup>8</sup> *Id.* at 2-3.

<sup>9</sup> *Id.* at 3 and Amendment (estimating the phase change will produce a savings of approximately \$200,000 in reimbursable transition costs).

<sup>10</sup> *Id.* at 3, WAVY-TV Phase Waiver Engineering Exhibit, and WAVY-TV Phase Waiver tvixstudy.

<sup>11</sup> *Id.* at 4.

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

<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).

request, the transition schedule included two rescan periods in the Norfolk DMA, and that will remain the same following grant.<sup>14</sup> Nexstar has also committed to put in place viewer outreach programs beyond those required by the Commission rules to ensure that viewers will be well-informed about the change in channel and transition schedule. As a result, we find on balance that the ability to vendors to support the WAVY-TV's phase change, additional consumer education and outreach efforts, and ensuring the station does not go silent during the transition outweighs any negative impact that could result from modification of the transition schedule.

Accordingly, we **GRANT** the Licensee's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WAVY-TV **from Phase 9 to Phase 7**. Testing on the Station's post-auction channel may not begin until 12:01 am local time on **October 19, 2019**,<sup>15</sup> and the Station is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on January 17, 2020**.<sup>16</sup>

Sincerely,



Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

Cc:  
Christine Reilly (via e-mail)

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<sup>14</sup> See *id* at 898-99, paras. 20-21 (permitting up to two rescan periods per DMA when assigning stations to transition phases).

<sup>15</sup> 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>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.