



Federal Communications Commission
Washington, D.C. 20554

May 9, 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
WFFF-TV, Burlington, VT
Facility ID No. 10132
LMS File No. 0000029888

Dear Licensee,

On September 14, 2017, Nexstar Broadcasting, Inc. (Nexstar), licensee of Station WFFF-TV, Burlington, Vermont (Station or WFFF-TV), filed a *Request for Modification and Waiver of Phase Assignment*, requesting to modify the post-incentive auction transition phase assignment to the Station in the *Closing and Channel Reassignment Public Notice* from Phase 7 to Phase 10.¹ For the reasons below, we grant the request for modification and waiver of WFFF-TV's phase assignment.

Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waivers of their phase assignments.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 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.⁴ The Bureau determined that it would view favorably requests that are compliant with the Commission's rules and have little or no

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. 0000029888 (as amended May 3, 2018), WFFF-TV 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, 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 *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).

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

Background. WFFF-TV is currently licensed to operate on channel 43. It was reassigned to channel 16 in the *Closing and Channel Reassignment Public Notice* and assigned to transition Phase 7, which has a testing period start date of October 19, 2019 and phase completion date of January 17, 2020. WFFF-TV is located in the Burlington, Vermont – Plattsburg, New York, (Burlington DMA). A total of 9 stations, including WFFF-TV, were repacked in the Burlington DMA, with seven being assigned to Phase 7 and two to Phase 10. WFFF-TV shares a tower, antenna, transmission line, and other related equipment with full power television station WVNY(TV), Burlington, Vermont (WVNY), which is licensed to Mission Broadcasting, Inc. (Mission Broadcasting).⁷ WVNY was reassigned from channel 13 to channel 7 in the *Closing and Channel Reassignment Public Notice* and assigned to Phase 10. The joint WFFF-TV/WVNY facility is located on Mt. Mansfield, Vermont, with the WVNY antenna “located near the top of the shared tower, above the WFFF-TV antenna.”⁸ Due to the relative location of each antennae on the shared tower and the shared equipment used by the two stations, WFFF-TV represents that the current transition schedule with WFFF-TV and WVNY in different phases could result in the latter station going silent for a period as long as six months. WFFF-TV represents that replacing both WFFF-TV and WVNY’s antennas at the same time would avoid service disruptions.⁹

Nexstar also expresses concern about the ability and safety of personnel to construct WFFF-TV’s facility under the current transition schedule. Nexstar states that significant snowfall, ice, and severe winds can begin impacting the tower site in early November and create hazardous, if not impossible, conditions for technical personnel to perform the necessary work to get the Station operational by the Phase 7 phase completion deadline on January 17, 2020.¹⁰ According to Nexstar, requiring WFFF-TV to complete construction during Phase 7 “risk[s] the safety of technical personnel participating in the antenna removal process for both WVNY(TV) and WFFF-TV and installation of the new post-auction channel 16 antenna.”¹¹ Allowing both WVNY and WFFF-TV to transition at the same time not only avoids the difficulties of constructing WFFF-TV during the winter months, but helps “avoid unnecessary and redundant installation costs.”¹²

Nexstar also states that WFFF-TV’s transition date change will not result in a creation of any new linked sets and grant of the requested phase change will actually reduce the rescan process viewers must undertake from two to one.¹³ In fact, Nexstar points out that as a result of this phase change, the number of total rescans viewers will have to conduct within Phase 10 could be reduced as both WFFF-TV and

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

⁶ *Id.*

⁷ Waiver Request at 2.

⁸ *Id.*

⁹ *Id.* at 2-3.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* Nexstar states that the phase change will produce “a collective savings of approximately \$650,000 in reimbursable transition costs” and commits following grant to work with the licensee of WVNY to update their respective Form 399s to reflect the savings. *Id.* at Amendment.

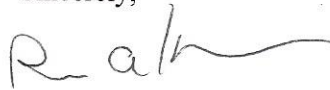
¹³ *Id.* at 3-4.

WVNY(TV) will transition at the same time.¹⁴ In order to ensure viewers are fully informed of the Station's change in transition date, Nexstar commits to conducting consumer education and outreach efforts beyond what is required by Commission rules through digital and social media campaigns, including maintaining information on the Station's website and social media pages about rescanning.¹⁵

Discussion. Upon review of the facts and circumstances presented, we find that the Licensee's request satisfies the requirements for a waiver and is in the public interest. We agree that the change to WFFF-TV's phase should not have an adverse impact on the transition schedule or a negative impact on other stations or viewers. 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.¹⁶ We find that the station has presented evidence that the phase change will facilitate an efficient transition of shared facilities on Mt. Mansfield and decreases the risk of viewer disruption. This phase change will not result in any new rescan periods in the Burlington DMA.¹⁷ 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 benefit of facilitating an efficient transition on the shared facilities on Mt. Mansfield and additional consumer education and outreach efforts 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 WFFF-TV **from Phase 7 to Phase 10**. Testing on the Station's post-auction channel may not begin until **12:01 am local time on May 2, 2020**,¹⁸ and the Station is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on July 3, 2020**.¹⁹

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

Cc:
Christine Reilly (via e-mail)

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 4 and General Information (Consumer Outreach)

¹⁶ 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).

¹⁷ See *id.* at 898-99, paras. 20-21 (permitting up to two rescan periods per DMA when assigning stations to transition phases).

¹⁸ 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.

¹⁹ 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. See *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd 2806, para. 64.