

KPXC-TV, Denver, Colorado (Facility ID No. 68695)  
Request for Special Temporary Authority  
Exhibit 21  
February 2008

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Paxson Denver License, Inc. ("ION"), licensee of the above-referenced television station and pursuant to Section 73.1635 of the Commission's rules, hereby respectfully requests Special Temporary Authority ("STA") to commence digital operations at variance from KPXC's DTV construction permit. KPXC-TV is not operating digitally.

ION has been unable to implement KPXC's DTV construction permit due to on-going litigation regarding the proposed new tower at Mt. Morrison from which KPXC-DT would transmit. Although the would-be tower owner received initial local zoning board approval from the Board of Commissioners of Jefferson County in 2003, a local citizen's group appealed this decision to Jefferson County District Court, which later affirmed. In 2006, however, the intermediate Colorado Appeals Court overturned the District Court's decision and ordered the case back to the Board of Commissioners for additional public hearings and evaluation. Rather than comply, the Board of Commissioners and the would-be tower owner appealed to the Colorado Supreme Court, who, in late 2007, denied *certiorari*.<sup>1</sup> As such, the Board of Commissioners is compelled to start the zoning process anew and host open public meetings, which have yet to be scheduled. ION has no expectation that either the zoning process will be completed or the actual tower constructed prior to February 18, 2009. Indeed, given the posture of the Appeals Court remand and the total change in personnel on the Board of Commissioners, it is questionable whether the Board of Commissioners will approve construction of the new tower. Moreover, in the event that the tower is approved, further litigation and delay virtually is certain. Accordingly, for purposes of compliance with DTV construction obligations, ION cannot reasonably rely on the availability of a new tower at Mt. Morrison.

ION consequently is proposing to construct and operate digital facilities from an existing tower on which KDEN-DT (Longmont, Colorado) operates. ION believes this site is the best of its few alternatives. The Commission undoubtedly is familiar with the tower litigation efforts of citizen's groups in Denver, and their efforts at Mt. Morrison and elsewhere have rendered preferable alternatives unavailable.<sup>2</sup> Operation from this site – especially until the Commission lifts its freeze on service expansion<sup>3</sup> – will

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<sup>1</sup> *Bd. of County Comm'rs v. Canyon Area Residents for the Env't*, No. 06SC777, 2007 WL 4153502 (Colo. Nov. 26, 2007) (*en banc*).

<sup>2</sup> Congress, for example, intervened at nearby Lookout Mountain to ensure the timely provision of DTV service by several local Denver television stations. See A Bill to Clarify Certain Land Use in Jefferson County, Colorado, Pub. L. No. 109-466 (2006).

<sup>3</sup> The Commission scheduled the lifting of the freeze on August 18, 2008. See Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, FCC 07-228, *Report and Order*, MB Docket No. 07-91, ¶ 148 (2007) ("*Third DTV Periodic Review*").

unfortunately result in lost service due to the combination of the freeze on expansion, relocation of the site, and the shift in the service area. Based upon ION's calculations, however, the proposed operations at the KDEN-DT site (that is, once they are maximized) would have the least amount of service losses as compared to other possible sites. ION's analysis on this aspect is a matter of record.<sup>4</sup>

The tower at the proposed site has all necessary government approvals and already is constructed. This will allow ION to place the proposed facilities into operation relatively quickly (as soon as October, 2008). Operation from this tower would advance the public's interest in grouping transmission antennas. The Commission generally has supported the grouping of antennas by broadcasters in a particular market.<sup>5</sup>

Grant of the requested STA would serve the public interest by facilitating the commencement of KPXC-DT's digital service to the community. The proposed operations comply with the Commission's DTV STA standards. The station's proposed coverage meets the community of license requirements and does not exceed that resulting from the authorized parameters.<sup>6</sup> In the unlikely event that unacceptable interference is caused, ION is willing to take all reasonable steps to eliminate such prohibited interference, including modifying operating parameters or ceasing operations, if necessary. ION understands that grant of STA does not provide any permanent authority to operate the Station in the manner proposed. ION intends to submit a construction permit application for these same facilities after the Commission issues an order in response to ION's petition seeking modification of the post-transition allotment (petition filed in MB Docket No. 87-268 on October 26, 2007) but no later than March 17, 2008 (as required by the *Third DTV Periodic Review*).

For these reasons, ION respectfully requests grant of this STA.

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<sup>4</sup> See ION *Ex Parte* Letter, MB Docket No. 87-268 (Jan. 22, 2008).

<sup>5</sup> Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Sixth Report and Order*, 12 FCC Rcd 14588, 14634 (1997).

<sup>6</sup> See FCC File No. BPCDT-19990923AAM.