

### **Request for Waiver of Section 73.3700(b)(1)(i)**

Pursuant to Section 1.3 of the Commission's rules, ION Media Orlando License, Inc. ("ION"), licensee of WOPX-TV, Melbourne (Orlando-Daytona Beach-Melbourne), Florida, hereby requests a waiver of the Commission's July 12, 2017, post-auction construction permit application filing deadline as established by Section 73.3700(b)(1)(i) (the "Filing Deadline"). As shown herein, good cause exists for the Commission to grant ION additional time to file its post-auction construction permit application.

WOPX currently is licensed to Channel 48 and has been reassigned to Channel 14 for permanent operations. Channel 14 is immediately adjacent to the 460-470 MHz land mobile band and broadcast television stations are required to protect existing land mobile radio facilities. Historically, this has resulted in situations in some major metropolitan areas where television broadcast stations have been unable to operate at full power on Channel 14 because of interference to land mobile facilities. Indeed, the use of Channel 14 by television broadcasters has created so many interference problems that the Commission's auction software was supposed to be optimized to *avoid* post-auction assignments of stations to Channel 14. *See* Broadcast Incentive Auction Scheduled to Begin on March 29, 2016, *Public Notice*, 30 FCC Rcd 8975, 9101 at ¶ 273 ("[T]he final television channel assignment plan selection procedure will take into account . . . prioritizing assignments . . . off of channel 14 in the UHF band.").

Channel 14 currently is used on the Florida peninsula by WDYB-CD, a low power television station based in Daytona Beach. The WDYB-CD tower is more than 60 miles away from the WOPX tower and the coverage area for WDYB-CD is significantly smaller. Accordingly, the current use of Channel 14 by WDYB-CD is in no way an indicator of whether Channel 14 can be used successfully by a full power broadcaster from a tower in the Orlando

area. In fact, if ION is forced to move to Channel 14, it could face the same problems that are currently occurring in the San Francisco market where the current use of Channel 14 has resulted in an ongoing case of unresolved interference with existing land mobile facilities, with the result being that the current licensee has not been able to operate at anywhere near full power. Despite expenditures of over \$500,000.00 over the past eight years in attempts to mitigate the interference problems, the current Channel 14 licensee in San Francisco has been forced to operate at substantially reduced power indefinitely. *See, e.g.,* NRJ TV SF License Co, LLC, *Extension of Existing Engineering STA*, FCC File No. BEDSTA-20140612ABH (filed June 12, 2014) (requesting continued authority to operate station KTNC-TV, Concord, California, at 30 percent of approved operating power due to land mobile interference issues).

WOPX should not be required to take the risk of spending the resources to move to a new channel only to find that at full power, the station causes unresolvable interference to Orlando land mobile facilities is. To avoid this potential risk, ION seeks to construct alternative facilities as designated in a construction permit application to be filed in the first priority window. *See, e.g.,* Exploring the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, *Report and Order*, 29 FCC Rcd 6567 at ¶ 546 and ¶ 554 n. 1571 (2014) (“*Incentive Auction Report and Order*”) (“We anticipate that such stations [that will file construction permit applications in the first priority window] would include those that cannot submit a construction permit application for their assigned channel because they are unable to construct at their current tower site due to technical or legal issues.”); Incentive Auction Closing and Channel Reassignment Public Notice, *Public Notice*, DA 17-314 (rel. April 13, 2017) (“*Channel Reassignment Public Notice*”).

ION currently is exploring options for alternative facilities for WOPX and will be ready to file its post-repack construction permit application in the first priority filing window. *See Channel Reassignment Public Notice* at ¶ 71. ION therefore requests that the Commission swiftly grant ION's request for an "unable to construct" waiver of the Filing Deadline so that ION can devote its internal resources to finding a technical solution to move WOPX to a different channel.