

Legal Exhibit

ION Media San Jose License, Inc., licensee of KKPX-TV, and ION Media Sacramento License, Inc., licensee of KSPX-TV (collectively, “ION”), request prompt approval of the contingent applications filed today to effectuate the move of KKPX-TV to Channel 33 in San Jose, California and KSPX-TV to Channel 21 in Sacramento California.

KKPX-TV was assigned to Channel 14 in San Jose as part of the post-auction reassignment of television channels. This channel assignment should not have been made because the Spectrum Act requires the Commission to make all reasonable efforts to ensure that KKPX-TV can replicate its pre-auction service area and population.¹ As the Commission has recognized, construction of KKPX-TV on Channel 14 will cause “unresolvable interference” to land mobile users operating in the San Francisco market, meaning that KKPX-TV will not be able to reach its pre-auction audience.² And the Commission’s assignment of KKPX-TV to Channel 14 was unreasonable because the Commission also was aware of both the land mobile interference problems created by Channel 14 assignments generally and the interference problems that KKPX-TV would face on Channel 14 due to problems experienced by a previous licensee of that channel in San Francisco.³ ION repeatedly has requested that the Commission correct this error and grant appropriate relief that would allow KKPX-TV to continue serving its viewers.

To remedy the situation the Commission identified Channel 33 for ION, and ION has worked diligently with the FCC staff to effectuate this solution that will permit KKPX-TV to

¹ See 47 U.S.C. § 1452(b)(2).

² See Letter from Barbara A. Kreisman, Chief, Video Division, to Michael Hubner, Esq., LMS File No. 0000024869 (June 28, 2017).

³ See *id.*; see also See Broadcast Incentive Auction Procedures, 30 FCC Rcd. 8975, 9101, 9105 (2015).

construct and operate the station at full power. In addition to KSPX-TV's move to Channel 21 in Sacramento, ION's operations on Channel 33 depend upon television station KDJT-CD moving to Channel 26 in Sacramento and KTXL-TV moving to Channel 22 in Sacramento. Even with all these changes, as a result of its move to Channel 33, KKPX-TV will experience a loss in interference-free service population of approximately 45,000 persons.

Nonetheless, in reliance on the Commission's representations to ION, including, without limitation, the reimbursement of expenses incurred in connection with KDJT-CD's move from Channel 33 to Channel 26 in Monterey, CA, ION is filing these applications today to accomplish what it understands is the Commission's best solution for continued operation of KKPX-TV. At the Commission's request, ION has negotiated with the licensees of both KDJT-CD and KTXL-TV and has reached separate agreements in principle with both parties that would reflect the channel moves described herein. Those agreements will be finalized shortly and submitted to the Commission as amendments to this Application.

Given the substantial public interests that will be served by permitting (1) KKPX-TV to maintain service to most of its pre-auction service area; and (2) remedying the Commission's error in assigning KKPX-TV to Channel 14, ION submits that the good cause exists for the Commission to grant the contingent applications and any waivers necessary thereto.⁴ This would include, with respect to KSPX-TV, waiver of the FCC's rules against contingent, inconsistent, or conflicting applications to preserve KSPX-TV's pending construction permit for Channel 22,⁵

⁴ See 47 C.F.R. § 1.3; *Northeast Cellular Tel. Co. v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F. 2d 1155 (D.C. Cir 1969).

⁵ See 47 C.F.R. § 73.3517, 73.3518.

and the Commission's interference rules with respect to protection of K20JX-D, Sacramento, California.⁶

⁶ See 47 C.F.R. § 73.616.