

Request for Waiver

WTPX-TV – Antigo, Wisconsin

Facility ID: 86496

For the reasons stated herein, ION Media Wausau License, Inc. (“ION”), licensee of television station WTPX-TV (the “Station”), seeks a waiver of any current freeze on the filing of full-power station construction permit modification applications to the extent necessary to process and approve the instant application.

Background

The Station currently is licensed to Channel 46 and has been assigned to Channel 19 for post-auction operations. In the *Closing and Reassignment Public Notice*, the Commission assigned the Station to Phase 2 of the repack with a phase completion date of April 12, 2019.¹

WTPX-TV is off the air pursuant to a Silent STA due to the unexpected physical and mechanical failure of the Station’s main transmitting antenna.² The Station last broadcast over-the-air on May 24, 2017. Due to the unusual radiation pattern of the Station’s antenna and the industry-wide repack efforts that have strained the capacity of industry antenna manufacturers, ION has been unable to find an economical, technically feasible replacement for the Station’s main antenna on the Station’s current channel.

Under the Commission’s rules, ION would be required to replace its antenna for operation on Channel 46 by May 23, 2018, and then replace that antenna with one capable of operating on Channel 19 less than one year later. Accordingly, ION first attempted to find a new antenna that could broadcast now, on Channel 46, and then be re-tuned later to Channel 19. ION found, however, that the channel spacing between Channel 46 and Channel 19 makes it all but impossible to identify an antenna capable of being retuned from Channel 46 to channel 19.

Next, ION explored the possibility of purchasing a new antenna that could accommodate both channels 19 and 46. ION did identify such an antenna but because of the large space between the two channels, the antenna would be very large and heavy. When ION did a structural analysis of its current tower, it was found that the current tower could not support such a large antenna. ION looked at other towers but ultimately determined that its current site is most suitable for post-repack operations.

Finally, ION determined to repack early and move to Channel 19 as soon as possible. Accordingly, on March 29, 2018, ION filed a request for waiver of the Station’s current transition phase assignment to permit it to construct permanent facilities and commence operation on its post-auction channel no later than May 23, 2018. The Station is not in a linked station set so grant of the phase waiver will not cause interference to any other station. ION’s waiver request remains pending.³

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*).

² See LMS File Nos. 0000037342; 0000025152.

³ See LMS File No. 0000049124.

Concurrently with preparing its phase waiver request, ION investigated the equipment it would need to move to Channel 19 by May 23. Timing was tight, but ION was able to find an antenna manufacturer that could provide an antenna on Channel 19 that largely replicates the Station's contour area. The coverage area will, however, exceed the contours of the Station's current repack construction permit in two small areas. Accordingly, ION is filing this application to modify its repack construction permit for Channel 19 to reflect the antenna that is available for use.

Interference

As indicated in the Engineering Exhibit attached to this application, ION determined using *TVStudy* version 2.2.5 that this proposed new Station contour and the early transition of the Station does not create any new interference beyond what is permitted by the Commission's rules. As such, there is no impact on any linked station set or other transitioning stations. The proposed early transition and new contour also will not result in the Station receiving new interference exceeding that permitted by the Commission's rules from any station.

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As a station that is changing channels as a result of the Incentive Auction, the Station filed a construction permit application in July of 2017 to move from Channel 46 to Channel 19.⁴ The Station was later eligible to file for expanded facilities during the second post-auction filing window that closed on November 2, 2017.⁵ The Station did file a maximization application, but ION later withdrew that application was later withdrawn.⁶ At the time of the second filing window ION did not know that it would need to change its antenna specifications in order to quickly construct on Channel 19. Had it known of the current situation then, it would have filed the instant application during the second post-auction filing window. Because, however, ION was unaware of the current situation last November, ION requests a waiver as necessary for the Commission to process and approve the instant application.

Waiver Is In the Public Interest

Since the Incentive Auction closed in 2017, the Commission has been opening filing windows for broadcasters that need to, or want to, make changes to their broadcast facilities. Because full-power stations can displace LPTV and TV translator stations, the Commission encouraged full-power stations to make their facilities changes during these filing windows to reduce the likelihood that LPTV and TV translator stations would be displaced twice – once by the repack and then again later by facilities changes made by full-power stations.⁷ The broadcast industry is now near the end of the filing window process and the Commission has opened the Special Displacement Window during which displaced LPTV and TV translator stations can file for new

⁴ See LMS File No. 0000027030.

⁵ See Incentive Auction Task Force and Media Bureau Announce the Opening of the Second Filing Window for Eligible Full Power and Class A Television Station – October 3 Through November 2, 2017; Public Notice; 32 FCC Rcd 6989 (MB 2017).

⁶ See LMS File No. 0000034927.

⁷ See, e.g., Freeze on the Filing of Modification Applications to be Lifted Temporarily to Permit Filing of Applications to Expand the Contours of Full Power and Class A Television Stations That Are Not Part of the Post Incentive Auction Repack Process; Public Notice; 32 FCC Rcd 7643 (MB 2017).

channels.⁸ Accordingly, the instant modification application should be accepted and quickly granted so that the Station's new contour can be considered by LPTV and TV translator stations as they look for new channels during the Special Displacement Window.

The Commission grants waivers for "good cause shown." The Commission will grant waivers when "(a) the particular facts make strict compliance inconsistent with the public interest, (b) special circumstances warrant a deviation from the general rule, and (c) such deviation will serve the public interest."⁹ In evaluating waiver requests, the Commission considers, among other things, whether a waiver will result in "more effective implementation of overall policy" than enforcing its rule as written.¹⁰ This waiver request meets that standard: absent grant of a waiver to amend its construction permit to allow ION to use the antenna it has available, the Station could lose its license. Grant of this waiver also will facilitate a more effective and efficient implementation of the overall policy goals of the Incentive Auction and post-auction transition, and thus is in the public interest. ION therefore requests that this waiver request, and the underlying application, be swiftly granted.

⁸ See Incentive Auction Task Force and Media Bureau Announce Post-Incentive Auction Special Displacement Window April 10, 2018, Through May 15, 2018, and Make Location and Channel Data Available, Public Notice, DA 18-124 (MB 2018).

⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159, *Northeast Cellular*, 897 F.2d at 1166.