

Request for Waiver of Minor Modification Filing Freeze

To the extent necessary to process and approve the instant application, and pursuant to Section 1.3 of the Commission's rules, ION Media Buffalo License, Inc. ("ION"), licensee of WPXJ-TV, Batavia, New York, hereby requests waiver of the Media Bureau's 2013 freeze on the filing and processing of minor modification applications. *See Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Station Modification Applications, Effective Immediately, and Reminds Stations of Spectrum Act Preservation Mandate, Public Notice, 28 FCC Rcd 4364 (MB 2013) ("April 2013 Freeze Public Notice")*.

In the *April 2013 Freeze Public Notice* the Media Bureau stated that it would consider, on a case-by-case basis, requests for waivers of the processing freeze when unforeseen events occur that require a station to relocate to a new tower site. 28 FCC Rcd at 4365. This is the situation that WPXJ-TV faces. On January 25, 2018, WPXJ-TV was granted a construction permit for post-auction operations at its current tower site. *See FCC LMS File No. 0000034885*. It has become evident, however, that ION's current tower will not be available for post-repack operations. ION sought unsuccessfully to negotiate lease terms with the owner of its current tower that would have accommodated ION's post-repack operations. Due to the unreasonable demands of the tower owner, those negotiations have failed, and ION does not have access to the tower for post-repack facilities.

To determine available tower sites that would permit continued operations, ION performed a comprehensive analysis of the Buffalo market. In the immediate vicinity of the current tower site, ION's analysis found no acceptable alternatives that would provide equivalent interference-free coverage as compared to WPXJ's pre-auction or authorized post-auction operations. ION determined that the proposed tower site was the closest site that would provide comparable service coverage with minimal or no interference to other broadcast stations. To move to this new tower site, ION requires an amendment to its post-auction construction permit, which modification is requested in the attached application.

Grant of the requested waiver satisfies the Commission's standards laid out in the *April 2013 Freeze Public Notice* and plainly is in the public interest. ION's current tower is unavailable for post-auction operations. Absent grant of this request and the accompanying construction permit application, ION will be unable to construct post-auction facilities by the August 2, 2019 Phase 4 transition deadline. The proposed site will permit post-repack operations and preserve service to as many of WPXJ-TV's current viewers as possible given the tower placement and technical constraints on ION's post-repack operations. In addition, ION has determined that the instant application will not cause harmful interference to any low-power television station that participated in the post-auction displacement window that occurred in 2018. Accordingly, the impact of granting the requested waiver will be to the benefit of all television viewers in the Buffalo DMA.