

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 Albany License, Inc. ("ION"), licensee of WYPX-TV, Amsterdam, 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 WYPX-TV faces. On January 22, 2018, WYPX-TV was granted a construction permit for post-auction operations at its current tower site. *See FCC LMS File No. 0000034884*. Subsequently, it became evident 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 Amsterdam and nearby Albany markets. 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 WYPX-TV's pre-auction or authorized post-auction operations. ION has, however, identified a tower site to the southeast of the current authorized tower 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 completion deadline. The proposed site will permit post-repack operations and preserve service to as many of WYPX-TV's current viewers as possible given the tower placement and technical constraints on ION's post-repack operations. ION has determined that the instant application will cause minimal harmful interference to low-power television stations that participated in the post-auction displacement window that occurred in 2018. The proposed operations would displace a pending construction application for a digital replacement translator for WRGB-TV (File No. 0000054859) and a displacement application for W46EW-D (File No. 0000054772).¹ However, given the exigent circumstances caused by ION's loss of access to its tower for post-auction operations, the temporary displacement of these two

¹ Facilities in this application appear to have been granted to W20EH-D under the same file number.

secondary services is necessary to ensure the continuation of ION's full-power over-the-air operations. Accordingly, the impact of granting the requested waiver will be to the benefit of all television viewers in the Albany DMA