



Federal Communications Commission
Washington, D.C. 20554

April 25, 2019

ION Media Buffalo License, Inc.
601 Clearwater Park Road
West Palm Beach, Florida 33401

ION Media Syracuse License, Inc.
601 Clearwater Park Road
West Palm Beach, Florida 33401

ION Media Albany License, Inc.
601 Clearwater Park Road
West Palm Beach, Florida 33401

Re: WPXJ-TV, Batavia, New York
Facility ID No. 2325
File No. 0000064525

WSPX-TV, Syracuse, New York
Facility ID No. 64352
File No. 00000068027

WYPX-TV, Amsterdam, New York
Facility ID No. 13933
File No. 00000068031

Dear Licensees:

This is with respect to the above referenced minor modification applications filed by ION Media Buffalo License, Inc., ION Media Syracuse License, Inc., and ION Media Albany License, Inc. (ION) for stations WPXJ-TV, Batavia, New York, WSPX-TV, Syracuse, New York, and WYPX-TV, Amsterdam, New York. ION proposes to relocate the stations to new tower sites and requests waivers of the current freeze on the filing of minor modification applications for changes to existing television service areas that would increase a full power television station's noise-limited contour.¹ For the reasons set forth below, we grant the requested waivers and the minor modification applications.

In the *April 2013 Freeze Public Notice*, the Bureau explained that the freeze was necessary to (1) create a stable database of full power and Class A facilities that would allow for the development and analysis of potential repacking methodologies to be used in connection with the Incentive Auction authorized by the Spectrum Act; and (2) avoid further expansion of broadcast television stations' use of

¹ *Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Stations 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*).

spectrum.² The Incentive Auction closed with the issuance of the *Closing and Channel Reassignment Public Notice* on April 13, 2017, and the transition is underway.³ All three stations were reassigned to a new channel⁴ and must complete construction of their new facilities by August 2, 2019.

In support of its waiver requests, ION states that the current tower sites for the stations will not be available for post-auction operations due to failed negotiations with the tower owners. ION further states that it conducted a comprehensive analysis in each station's market and was unable to identify a tower in the immediate vicinity of the current tower sites. ION also points out that the *April 2013 Freeze Public Notice* stated that the Bureau would consider requests for waiver of the filing limitations when a modification application is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public, including the loss of a station's tower.⁵

For WPXJ-TV, ION proposes a tower 38 kilometers to the southwest of its current site, which would result in a shift of the station's noise limited contour to the southwest and create areas of service loss. While 196,496 persons would lose service from WPXJ-TV, ION states that all but 2,801 persons in the loss area will continue to be served by five or more full power television station and that the 2,801 persons will continue to be served by four full power television stations. For WSPX-TV, ION proposes a tower 40 kilometers to the southeast of the current site, which would result in a shift of the station's noise limited contour to the southeast and create areas of service loss. While 19,764 persons would lose service from WSPX-TV, ION states that all but 5,901 persons will continue to be served by five or more full power stations, and that the 5,901 persons will continue to be served by three or four stations. For WYPX-TV, ION proposes a tower 41 kilometers to the southeast of the current site, which would result in a shift of the station's noise limited contour to the southeast and create areas of service loss. While 51,531 persons would lose service from WYPX-TV, ION states that all but 129 persons will continue to be served by five or more full power stations, and that the 129 persons will continue to be served by three or four stations.

In addition, in connection with the transition, the Bureau temporarily lifted the April 2013 Freeze for full power and Class A stations that had not been reassigned to a new channel.⁶ The Bureau did so to decrease the possibility that low power television, television translator, and analog-to-digital replacement translator stations (LPTV/translator stations) that file to modify their facilities during a later Special Displacement Window available to LPTV/translator stations displaced by the Incentive Auction would subsequently be displaced again by full power stations that file applications after the freeze is permanently lifted.⁷ ION states that it reviewed the impact of its applications on LPTV/translator stations in the area and that the facilities proposed for WPXJ-TV and WSPX-TV "[do] not create harmful

² *Id.* at 4364-65.

³ 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 (2017) (*Closing and Channel Reassignment Public Notice*).

⁴ WPXJ-TV was reassigned from channel 23 to channel 24, WSPX-TV from channel 15 to channel 36, and WYPX-TV from channel 50 to channel 19.

⁵ *April 2013 Freeze Public Notice*, 28 FCC Rcd at 4365.

⁶ *Media Bureau Temporarily Lifts the Freeze on the Filing of Minor Modification Applications That Expand the Contour of Full Power and Class A Television Stations From November 28 Through December 7, 2017*, Public Notice, 32 FCC Rcd 9328 (MB 2017).

⁷ *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).

interference to any low-power television station that participated in the post-auction displacement window that occurred in 2018.” According to ION, the facility proposed for WYPX-TV would displace a pending construction permit for a digital replacement translator for WRGB-TV, Schenectady, New York and a displacement construction permit for television translator station W20EH-D in Vermont. ION asserts, however, that “given the exigent circumstances caused by ION’s loss of access to its tower for post-auction operations, the temporary displacement of these two secondary services is necessary to ensure the continuation of ION’s full-power over-the-air operations.”

We agree that the public interest would be served by granting ION waivers of the freeze. Because ION’s current towers for the three stations are unavailable for post-auction operation, absent a waiver the stations could be required to cease operations or receive significant interference from other stations’ post-auction facilities until the freeze is permanently lifted and ION is able to file minor modification applications for the proposed new sites.⁸ Moreover, because the three stations are already required to construct new facilities on their reassigned channels, granting waivers will not increase the number of stations needing to acquire equipment or use other construction resources during the post-auction transition period.

In addition, while ION has demonstrated that the facilities proposed for WPXJ-TV and WSPX-TV will not displace any LPTV/translator stations that filed in the Special Displacement Window, and thus will not frustrate the underlying purpose for the Bureau’s decision to briefly lift and then reimpose the April 2013 Freeze, it admits that the proposal for WYPX-TV will displace a pending displacement application and a granted displacement construction permit. We agree with ION that continuation of its full power operations takes precedence over the displacement of these two secondary services. Moreover, under different scenarios produced by TVStudy, the unique interference from the WYPX-TV proposed facilities to WRGB-TV’s pending application⁹ could range from 0.3 percent to 5.32 percent, and from 0.11 percent to 8.79 percent to the W20EH-D construction permit,¹⁰ an amount which the secondary stations may not find objectionable. In any event, the Media Bureau recently lifted its freeze on the filing of displacement applications¹¹ and these secondary stations may immediately file displacement applications if they wish.

While proposed technical changes that would result in a loss of television service are generally considered *prima facie* inconsistent with the public interest, unless outweighed by countervailing factor,¹² the loss areas are necessitated by the stations’ need to change tower locations in order to continue to provide service to the vast majority of persons within their current noise limited contours. Moreover, the vast majority of the loss areas will continue to be well-served by other full power television stations,¹³ and the loss areas that would continue to receive service from only four or three full power television stations are small.

⁸ The three stations are in linked station sets which requires that they coordinate and agree upon a transition schedule for testing and commencing operations on post-auction channels with all stations with which they are directly linked. See *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, 33 FCC Rcd 8240, 8242 & n.12 (IATF/MB 2018).

⁹ File No. 00000054859.

¹⁰ File No. 00000064537. W20EH-D is authorized to Vermont ETV, Inc.

¹¹ See *Media Bureau Lifts LPTV and TV Translator Application Filing Freeze Effective April 18, 2019*, Public Notice, DA-193 (rel. Mar. 19, 2019).

¹² See, e.g., *Amendment of Section 76.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Fond du Lac, Wisconsin)*, Memorandum Opinion and Order, 26 FCC Rcd 12712, 12714-15 (MB 2011).

¹³ An area that receives at least five other existing services is considered well-served. See *KVMD Licensee Co., LLC*, 23 FCC Rcd 15748, 15749, n.9 (Vid. Div. 2008).

In view of the forgoing, the requests filed by ION Media Buffalo License, Inc., ION Media Syracuse License, Inc., and ION Media Albany License, Inc. for stations WPXJ-TV, Batavia, New York, WSPX-TV, Syracuse, New York, and WYPX-TV, Amsterdam, New York. for waiver of the April 2013 freeze and the minor modification applications ARE HEREBY GRANTED. We caution that any additional expenses incurred as a result of the grant of the stations' minor modification applications may not be reimbursable from the TV Broadcasters Relocation Fund. Such additional costs might include, but may not be limited to, additional legal or engineering expenses; filing fees; and interim or additional equipment that was not contemplated when the stations filed their initial estimated expenses but was subsequently necessary to complete the transition to their post-auction channels due to modification of their post-auction facilities.

Sincerely,

A handwritten signature in black ink, appearing to read 'Barbara A. Kreisman', with a long horizontal stroke extending to the right.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Shea Clark
ION Media Networks, Inc.
14444 66th Street N
Clearwater, Florida 33764