

### **Request for Waiver January 23, 2018 Off-Air Deadline**

Pursuant to Section 1.3 of the FCC's rules, ION Media Boston License, Inc. ("ION"), licensee of full power television station WDPX-TV, Woburn, MA (FCC Facility ID No. 6476) ("Station"), hereby requests waiver of the Commission's January 23, 2018 deadline for channel sharing stations to file for a license application and cease operations on their pre-auction channels.<sup>1</sup> ION hereby requests an additional 90 days to continue operations on its pre-auction channel and file a license to cover its channel sharing construction permit.

ION submitted a successful bid in the incentive auction for the Station to go off air. On its FCC Form 177, the Station indicated an intent to enter into a channel sharing agreement ("CSA"). The Station has entered into a CSA and is currently working to implement the CSA with its host station. While the Station has ordered the necessary equipment and is contracting with vendors to complete the necessary work, the Station is concerned that delays from vendors in delivering the needed hardware and equipment to the host station location may delay its plans. Accordingly, in an abundance of caution, the Station requests an additional 90 days to complete its transition to its host station.

Section 73.3700(b)(4)(ii) of the FCC's rules requires a license relinquishment station indicating an intent to enter into a post-auction CSA to terminate operations on its pre-auction channel within 180 days of the date that the licensee receives its incentive auction payment.<sup>2</sup> Additionally, Section 73.3700(b)(3) requires such licensee to file a license application for a shared channel also within 180 days of the date that the licensee receives its incentive auction payment.<sup>3</sup> Accordingly, absent waiver, the Station would be required to terminate operations on its pre-auction channel and file a license application no later than January 23, 2018.

The FCC may grant a waiver for good cause shown and where the particular facts make strict compliance inconsistent with the public interest.<sup>4</sup> In the incentive auction proceeding, the Commission recognized that parties may encounter difficulties in meeting the off-air deadline and therefore indicated that it "will view requests for up to three additional months to terminate operations most favorably."<sup>5</sup> Further, when looking at requests for waivers of post-auction deadlines generally, the FCC stated "[t]he Media Bureau will view favorably applications/requests that are otherwise compliant with our rules and have little or no impact

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<sup>1</sup> See 47 C.F.R. §§73.3700(b)(3) and (b)(4)(ii).

<sup>2</sup> 47 C.F.R. § 73.3700(b)(4)(ii).

<sup>3</sup> 47 C.F.R. § 73.3700(b)(3).

<sup>4</sup> *N.E. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>5</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 ¶ 578 (2014).

on other stations' transition schedule.”<sup>6</sup>

Here, grant of the waiver is in the public interest. First, an extension will facilitate the Station's ability to channel share successfully and without disruption, which, as the Commission has recognized, will “promote longstanding policy goals for broadcast television, including localism, viewpoint diversity, and competition.”<sup>7</sup> Moreover, a grant of 90 additional days will not adversely affect the Commission's post-auction transition timeline. As the FCC has acknowledged, “the availability of waivers [of the off-air deadline] of up to an additional six months, is unlikely to adversely affect the Commission's post-auction transition timeline.”<sup>8</sup> Indeed, as the first testing period for Phase 1 of the repack does not begin until September 14, 2018, providing the Station with 90 additional days to cease operations on its pre-auction channel and transition to shared operations will not affect other stations' transition schedules.

Accordingly, ION respectfully requests that this waiver be swiftly granted and that ION be given until April 23, 2018, to terminate operations on its pre-auction channel and file a license to cover its channel sharing construction permit.

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<sup>6</sup> *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd 858 ¶ 73(2017).

<sup>7</sup> *In the Matter of Innovation in the Broad. Television Bands: Allocations, Channel Sharing & Improvements to VHF*, Report and Order, 27 FCC Rcd 4616 ¶ 3 (2012); *see also id.* ¶ 22 (recognizing that channel sharing will extent the “important benefits to the public” of broadcast television); *In the Matter of Expanding the Econ. & Innovation Opportunities of Spectrum Through Incentive Auctions*, 30 FCC Rcd. 6668 (2015) (recognizing public interest benefits of flexible, post-auction channel sharing).

<sup>8</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Second Order on Reconsideration, 30 FCC Rcd 12016 ¶ 11 (2015).