

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 License Company, LLC ("ION"), licensee of WPXH-TV, Hoover, Alabama, 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 WPXH-TV faces. On February 18, 2018, WPXH-TV was granted a construction permit for post-auction operations at its current tower site. *See FCC LMS File No. 0000034874*. 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 identify available tower sites that would permit continued operations, ION performed a comprehensive analysis of the Birmingham market. ION's market analysis found no acceptable alternatives in the immediate vicinity of the current site. ION has determined that the proposed site, located to the southwest of the current site, provides the best option due to its structural capability and coverage performance, with minimal or no interference to other full-power 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 September 6, 2019 Phase 5 completion deadline. The proposed site will permit post-repack operations and preserve service to as many of WPXH-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 additional interference to low-power television station that participated in the post-auction displacement window that occurred in 2018. The proposed operations would displace a construction permit for digital low power television station WBMA-LD (File No. 0000052973). However, given the exigent circumstances caused by ION's loss of access to its tower for post-auction operations, the temporary displacement of this secondary service 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 Birmingham DMA