

Request for Waiver
Waiver of Phase Assignment
WLPX-TV – Charleston, West Virginia
Facility ID: 73189

ION Media Charleston License, Inc. (ION), licensee of WLPX-TV, Charleston, West Virginia (FCC Facility ID No. 73189), seeks a waiver of the post-Incentive Auction Transition Phase assignment and corresponding testing dates and construction completion deadlines for WLPX-TV, Charleston, WV (the “Station”). Pursuant to the Closing and Reassignment Public Notice, the Commission assigned the Station to Transition Phase 6 of the repack with a Phase Completion Date of October 18, 2019.¹ ION seeks re-assignment to Transition Phase 10, with an expected transition completion on or before July 3, 2020.

In the *Transition Scheduling Adoption Public Notice*,² the Commission anticipated that there would be circumstances where a station would need to seek a waiver of the phase construction deadline, including authority to continue operating on its current channel. The Commission indicated that it would consider these requests on a “case-by-case basis,” by evaluating the impact to viewers and the transition schedule.³ As demonstrated below, re-assigning the Station to a later transition phase will allow it to remain on the air and continue to serve its viewers until it can move to its post-transition channel.

ION has a Construction Permit for the Station’s post repack operations (FCC LMS File No. 0000069627), which permits the Station to relocate to a new tower. The Station and WOWK-TV will be co-located on this tower. WOWK-TV was assigned to Transition Phase 10 of the repack. As indicated herein, good cause exists for waiver of WLPX-TV’s assigned Transition Phase and corresponding testing and completion dates because it would allow the Station to align with WOWK-TV’s repack transition plan and construction work.

¹ *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 Red 2786 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*).

² *Incentive Auction Task Force and Media Bureau Adopt A Post-Incentive Auction Transition Scheduling Plan*, MB Docket No. 16-306 and GN Docket No. 12-268, 32 FCC Rcd 890 (MB 2017) (*Transition Scheduling Adoption Public Notice*).

³ *Transition Scheduling Adoption Public Notice*, ¶ 49.

Under the current repack transition plan, ION's main antenna would be installed near the top of the tower during Phase 6. In order for WOWK-TV to change out its antenna for Phase 10, a gin pole will need to be installed. Since the Station's antenna would otherwise be in the way of the gin pole, ION would need to install a temporary interim antenna and operate at reduced power and height beginning with Phase 6 (deadline: October 18, 2019) until the completion of WOWK-TV's Phase 10 transition (deadline: July 3, 2020).

If this request for waiver of phase assignment is approved, it would facilitate ION's repack transition efforts and drastically minimize the amount of time the Station would have to operate from an interim facility, which could otherwise last up to eight and a half months. Moreover, ION would be able to perform its tower work at the same time as WOWK-TV in Phase 10, reducing the number of riggings on the tower and resulting in a more efficient and cost-effective repack transition. As indicated in the attached letter, dated May 31, 2019, the tower owner supports ION's request for this phase assignment change. Accordingly, ION requests the Station be reassigned to Transition Phase 10, allowing it to continue operating from its existing site on its pre-auction Channel 39 until the Station and WOWK-TV complete construction work at the new site for Phase 10.

The Station operates in the 600 MHz band and is part of a linked set, however it does not require coordination with any of the upstream dependencies to complete its transition. Furthermore, the Station has no downstream dependencies. As a result, grant of this application would not delay other repack stations' transitions.

ION believes any disruption to viewers will be minimized. The Station's request for a phase assignment change will not increase the total number of times a viewer would need to rescan equipment in order to receive all reassigned stations in the Charleston market. Under the original FCC transition plan, there are two scheduled rescans for Station's DMA and the granting of the proposed transition would not change the number of rescans. The two rescans are within the cap (two rescans) established by the Transition PN,⁴ therefore, grant of this phase waiver request is appropriate. To help mitigate any viewer disruption, ION will notify MVPDs of the proposed transition change. ION also pledges to perform all required consumer outreach education to notify the Station's viewers of the proposed transition and provide detailed instructions on the rescanning.

⁴ See *Transition PN* at ¶¶ 20 and 21.

The FCC may grant a waiver for good cause shown.⁵ A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.⁶ In considering a waiver, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁷ Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁸ Here, the grant of this waiver request will serve the public interest by facilitating a more effective and efficient implementation of the overall policy goals of the Incentive Auction and post-auction transition.

⁵ 47 C.F.R. § 1.3.

⁶ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

⁸ *Northeast Cellular*, 897 F.2d at 1166.