

**Request for Waivers of Section 73.616(e)  
(Waivers of the 0.5 Percent New Interference Limit)**

Pursuant to the instant application, WBAL Hearst Television Inc. (“Hearst”), licensee of WBAL-TV, Baltimore, MD, proposes to permanently increase WBAL-TV’s maximum effective radiated power (“ERP”) to 26.6 kW ERP (“WBAL-TV’s Proposed Operation”), and in connection therewith, Hearst respectfully requests waivers of Section 73.616(e) of the Commission’s Rules to permit predicted interference in excess of the Commission’s 0.5 percent new interference limit.

Background

WBAL-TV is currently authorized on Channel 11 under program test authority to operate with 5.0 kW ERP pursuant to its construction permit in FCC File Number BPCDT-20080312AAT and pending license application in FCC File Number BLCDT-20090619ABW. WBAL-TV is presently operating with 26.6 kW ERP pursuant its experimental authorization in FCC File Number BDSTA-20090713ACP.<sup>1</sup> The instant application requests a construction permit for the same 26.6 kW ERP facilities authorized in WBAL-TV’s experimental authorization. Thus, in effect, Hearst is seeking to convert WBAL-TV’s current experimental authorization to a permanent authorization.

Hearst desires to permanently increase its ERP to 26.6 kW because of post-transition viewer reception problems experienced immediately after the digital transition on June 12, 2009. After WBAL-TV commenced its post-transition 5.0 kW ERP DTV facility on Channel 11, Hearst received numerous complaints of poor or no reception from viewers. Hearst confirmed the reception issues with multiple field tests, including some tests in coordination with the FCC’s field office.

As the Commission is aware, high-band VHF digital reception issues like those WBAL-TV is facing have been experienced by many stations across the country, particularly in the northeast, and power increases have been helpful in mitigating such problems. Pursuant to WBAL-TV’s 26.6 kW ERP experimental authorization, Hearst conducted extensive field measurement tests during August 2009, and continues to experiment with operation pursuant to the experimental parameters. Hearst’s field tests have shown that operation with an ERP of 26.6 kW has significantly improved viewers’ reception of WBAL-TV.

As explained in the Applicant’s Engineering Exhibit attached as Exhibit 43, WBAL-TV’s Proposed Operation (and current experimental operation) is predicted to cause interference in excess of the 0.5 percent limit in Section 73.616(e) of the Commission’s Rules with respect to the following four television stations:

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<sup>1</sup> A request to extend WBAL-TV’s experimental authorization is pending in FCC File No. BEDSTA-20091231AAS.

- 1) WHTM-TV, Harrisburg, PA (Harrisburg Television, Inc.)
- 2) WWPX-TV, Martinsburg, WV (Ion Media)
- 3) WVPT(TV), Staunton, VA (Shenandoah Valley Educational Television Corporation)
- 4) WBRE-TV, Wilkes-Barre, PA (Nexstar Broadcasting)

Hearst coordinated WBAL-TV's 26.6 kW ERP experimental authority operation with each of the above stations. None of the stations objected to WBAL-TV's experimental operation and none of the stations have reported any actual detrimental impact from WBAL-TV's experimental operation, which commenced on Monday, August 10, 2009.

As set forth described below, Hearst now seeks permanent authority for WBAL-TV's Proposed Operation and respectfully requests waivers of the 0.5 percent new interference limit in Section 73.616(e).

#### Request for Waivers

In accordance with Section 1.3 of the Commission's Rules, "[a] waiver is appropriate when special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Northwest Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). Hearst submits that such special circumstances are present here.

#### *A. WHTM-TV and WWPX-TV Interference Agreements*

WHTM-TV and WWPX-TV have each entered into an Interference Acceptance Agreement with Hearst consenting to the increases in predicted interference from WBAL-TV's Proposed Operation.

WHTM-TV has consented to 1.12 percent new interference to its facility authorized in FCC File Number BLCDDT-20040812AAH and 1.61 percent new interference to its facility authorized in FCC File Number BPCDDT-20080620AGL.

WWPX-TV has consented to 0.55 percent new interference to its facility authorized in BLCDDT-20021108AAX.

No monetary consideration was paid for either WHTM-TV's or WWPX-TV's consent.

Copies of the WHTM-TV and WWPX-TV Interference Acceptance Agreements are attached hereto.

*B. WVPT(TV's) and WBRE-TV's Unreasonable Monetary Demands*

Hearst has approached both WVPT(TV) and WBRE-TV and requested consent from each on terms similar to WHTM-TV's and WWPX-TV's consents. Regrettably, however, WVPT(TV) and WBRE-TV have each asserted unreasonable monetary demands.

As explained in further detail in the Engineering Exhibit, while WBAL-TV's 26.6 kW ERP operation is predicted to cause 9.14 percent new interference to WVPT(TV)'s facility in FCC File Number BLEDT-20021220ADX, the predicted interference is substantially reduced when consideration is given to WVPT(TV)'s pending construction permit application in FCC File Number BPEDT-20081022ABK and its operation of a Distributed Transmission Service ("DTS") system pursuant to FCC File Numbers BEXP-20050128ASZ and BEXP-20020524ABA.

After factoring in WVPT(TV)'s DTS operation, the effective new interference predicted to WVPT(TV) from WBAL-TV's 26.6 kW ERP operation is below the 0.5 percent limit and thus insignificant. Notwithstanding WVPT(TV)'s cooperation with WBAL-TV's experimental operation and the lack of any actual interference concern, Shenandoah Valley Educational Television Corporation ("Shenandoah") has requested that Hearst pay Shenandoah \$35,000 for WVPT(TV)'s consent to WBAL-TV's Proposed Operation.

With respect to WBRE-TV, and as set forth in the Engineering Exhibit, WBAL-TV's Proposed Operation is predicted to cause 1.17 percent interference to WBRE-TV's facility in FCC File Number BLCDT-20051123AJX. Notwithstanding WBRE-TV's cooperation with WBAL-TV's experimental operation and the lack of any actual interference concern, Nexstar Broadcasting ("Nexstar") has requested that Hearst pay Nexstar \$420,000 for WBRE-TV's consent to WBAL-TV's Proposed Operation.

WVPT(TV)'s and WBRE-TV's monetary demands came as a surprise to Hearst. Both WVPT(TV) and WBRE-TV were very cooperative with Hearst in connection with WBAL-TV's experimental authorization. Neither WVPT(TV) nor WBRE-TV objected to the experimental authorization, and neither have reported any actual, real world, interference concerns resulting from WBAL-TV's experimental operation, which has been in operation since August 2009.

WVPT(TV)'s and WBRE-TV's positions were also surprising since the other two potentially affected stations, WHTM-TV and WWPX-TV, each consented to WBAL-TV's Proposed Operation without monetary consideration.

Nexstar's demand is particularly odd. First, the amount of money requested is overly excessive. Second, the predicted interference to WBRE-TV is minimal and within the 2.0

percent threshold previously permitted by the FCC.<sup>2</sup> Third, as explained in the Engineering Exhibit, WBRE-TV enjoys extraordinary coverage due to its authorized 30 kW ERP on Channel 11, which due to the prior 2.0 percent interference threshold and the “largest station in the market” rule, is significantly in excess of the 7.08 kW ERP limit in Section 73.622(f) which would otherwise apply and which caused 1.3 percent new interference to WBAL-TV’s, then authorized, Channel 11 facility.

It is very surprising to Hearst that Nexstar would not consent to WBAL-TV’s Proposed Operation without a significant payment. Since WBRE-TV was a beneficiary of the prior 2.0 percent interference threshold and the “largest station in the market” rule which permit it to operate with substantially increased power, and since the predicted percentage interference to WBRE-TV from WBAL-TV’s Proposed Operation is less than the predicted percentage interference that WBRE-TV has already caused to WBAL-TV, the equities of these circumstances would suggest that WBRE-TV would be cooperative and understanding of WBAL-TV’s circumstances.

*C. Waivers of Section 73.616(e) Would Serve the Public Interest*

As described earlier, all of the four potentially affected stations have cooperated with WBAL-TV’s on-going 26.6 kW ERP experimental operation and none have reported any actual interference issues in connection with such operation. As such, WBAL-TV’s experimental operation has successfully resulted in substantial improvement to viewers’ reception of WBAL-TV without causing any reported real world harm to any other station.

Hearst submits that the improvement of service to local broadcast viewers in Baltimore, which has been successfully tested under experimental authority for several months without any reports of any actual detrimental impact to any of the potentially affected stations, clearly advances the public interest.

WHTM-TV’s and WWPX-TV’s cooperation and consents to the predicted interference from WBAL-TV’s Proposed Operation further demonstrate that WBAL-TV’s Proposed Operation is consistent with the public interest.

On the other hand, WVPT(TV)’s and WBRE-TV’s refusals to consent to WBAL-TV’s Proposed Operation under reasonable terms are contrary to the public interest as such refusals effectively attempt to ransom improved television service to the public in exchange for private monetary gain. In each case, a waiver would not be contrary to the public interest because there are no reports of any actual interference from WBAL-TV’s experimental operation. Furthermore, a waiver with respect to WVPT(TV) would not be contrary to the public interest because the

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<sup>2</sup> WBAL-TV was allotted out-of-core Channel 59 for its pre-transition digital operation. Because the 0.5 percent interference limit was adopted in connection with the same Report and Order that permitted WBAL-TV to apply for post-transition operation on Channel 11, WBAL-TV was never afforded the opportunity to maximize its post-transition Channel 11 facility under the prior 2.0 percent interference threshold. *See Third Periodic Review, Report and Order, MB Docket No. 07-91, FCC 07-228 (2007).*

effective predicted interference to WVPT(TV), when considering WVPT(TV)'s DTS operations, is below the 0.5 percent limit. And, with respect to WBRE-TV, a waiver would not be contrary to the public interest also because WBRE-TV already enjoys an extraordinary power increase which resulted in more percentage interference to WBAL-TV than WBAL-TV's Proposed Operation is predicted to cause to WBRE-TV.

\* \* \*

Hearst respectfully submits that the instant request satisfies the Commission's waiver standard. WBAL-TV's high-band VHF digital reception issues, the success of WBAL-TV's experimental operation, the lack of complaints from potentially affected stations, and the equities of WBAL-TV's situation are special circumstances that warrant deviation from Section 73.616(e), and such deviation will serve the public interest by improved television service to the public.

For the foregoing reasons, Hearst respectfully requests that the Commission waive Section 73.616(e) with respect to WHTM-TV, WWPX-TV, WVPT(TV), and WBRE-TV, and grant the instant application.

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## INTERFERENCE ACCEPTANCE AGREEMENT

THIS INTERFERENCE ACCEPTANCE AGREEMENT (the "Agreement") is made as of November 10, 2009, between WBAL Hearst Television Inc. ("Hearst") and Harrisburg Television, Inc. ("Harrisburg Television").

1. Hearst is the licensee of digital television broadcast station WBAL-TV, Baltimore, Maryland, and is authorized by the Federal Communications Commission ("FCC") under program test authority to operate its post-transition digital facility on VHF Channel 11 with 5.0 kW effective radiated power ("ERP") pursuant to its construction permit in FCC File Number BPCDT-20080312AAT (the "WBAL-TV Facility") (Hearst's digital license application for this facility is pending in FCC File Number BLCDT-20090619ABW).

2. Harrisburg Television is the licensee of digital television broadcast station WHTM-TV, Harrisburg, Pennsylvania, and is authorized to operate its post-transition digital facility on VHF Channel 10 with 16.2 kW ERP pursuant to its license in FCC File Number BLCDT-20040812AAH (the "WHTM-TV Facility"). WHTM-TV also has a construction permit to increase its ERP to 19.7 kW pursuant to FCC File Number BPCDT-20080620AGL (the "WHTM-TV CP Facility").

3. Hearst commenced operation of the WBAL-TV Facility on June 12, 2009, in connection with the national DTV transition, at which time Hearst started receiving numerous complaints of poor or no reception from viewers. In coordination with the FCC, Harrisburg Television, and others, during August 2009, Hearst conducted field tests with WBAL-TV operating at 26.6 kW ERP pursuant to an experimental authorization in FCC File Number BDSTA-20090713ACP (the "Field Tests") and concluded that the increased ERP significantly improved viewers' reception of WBAL-TV. Accordingly, Hearst desires to seek a construction permit to permanently increase WBAL-TV's power to 26.6 kW ERP. The technical details of WBAL-TV's 26.6 kW ERP proposal are set forth in Exhibit A (the "WBAL-TV Proposed Facility").

4. The WBAL-TV Proposed Facility is predicted to cause 1.12% new interference to the WHTM-TV Facility and 1.61% new interference to the WHTM-TV CP Facility (the "Predicted Interference"). In connection with the Field Tests, no actual detrimental impact to WHTM-TV's viewers was reported. Accordingly, Harrisburg Television hereby agrees that WHTM-TV will accept the Predicted Interference from WBAL-TV, and Harrisburg Television hereby consents to the grant of a permanent increase in WBAL-TV's power to 26.6 kW ERP and the WBAL-TV Proposed Facility as an important step toward solving the significant reception problems faced by local broadcast viewers in the Baltimore market.

5. Each of Harrisburg Television and Hearst shall take all commercially reasonable steps to satisfy any questions or concerns raised by the FCC with respect to any regulatory filings implicated by this Agreement, notify the other of any such FCC inquiries, and furnish all information requested by the FCC with respect thereto. Neither Harrisburg Television nor Hearst shall take any action that is inconsistent with its obligations under this Agreement or that could hinder or delay the other party's enjoyment of its rights and interests contemplated by this Agreement. WBAL-TV will not seek a change in the WBAL-TV Proposed Facility that increases the predicted interference to the WHTM-TV Facility without the prior written consent of Harrisburg Television.

6. No amendment or waiver of compliance with any provision hereof shall be effective unless in a writing signed by the party against whom enforcement is sought. Neither party may assign this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld. Notwithstanding the foregoing, it is understood that the acceptance of interference levels

agreed to herein shall continue to run with the station, not the licensee, and shall be binding on future successors or assigns (without the need for consent) in the event of assignment of a station's license or a change in control of a licensee. This Agreement constitutes the entire agreement and understanding of the parties hereto and supersedes all prior agreements and understandings with respect to the subject matter hereof. Nothing in this Agreement expressed or implied is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their respective successors and permitted assigns. This Agreement shall be governed by the laws of the State of New York without giving effect to the choice of law provisions thereof. Each party shall bear all of its expenses incurred in connection with the transactions contemplated by this Agreement, including without limitation engineering, accounting and legal fees incurred in connection herewith. Except for the consent set forth above, no consideration is being paid by either party in connection with this Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first set forth above.

WBAL HEARST TELEVISION INC.

HARRISBURG TELEVISION, INC.

By: *John G. Smith*  
Name:

By: *H. Joseph Len*  
Name:

Title: *President - General Manager*

Title: *PRESIDENT / GEN. MGR.*

**EXHIBIT A**

**WBAL-TV Proposed Facility Parameters**

Channel: 11

Geographic Coordinates (NAD 27): 39-20-05 North Latitude, 76-39-03 West Longitude

Antenna Structure Registration: 1035558

Overall Tower Heights: 304 meters AGL

Ground Elevation: 97 meters AMSL

Height of Radiation Center: 286 meters AGL  
299 meters HAAT

Antenna Type: Non-Directional

Maximum Effective Radiated Power: 26.6 kW

## INTERFERENCE ACCEPTANCE AGREEMENT

THIS INTERFERENCE ACCEPTANCE AGREEMENT is made as of October 2, 2009 between ION Media Martinsburg License, Inc., Debtor-in-Possession (“ION”) and WBAL Hearst Television Inc. (“Hearst”).

ION is the licensee of digital television broadcast station WWPX-TV, VHF Channel 12, Martinsburg, West Virginia (“WWPX”), pursuant to authorization received from the Federal Communications Commission (“FCC”) in FCC File Number BLCDDT-20021108AAX (the “WWPX Facility”). ION has filed with the FCC a request for Special Temporary Authorization (“STA”) to operate a translator on VHF Channel 12 with facilities having technical parameters specified therein, except that, as noted in the exhibit thereto, the translator would operate with a “full service” mask instead of a “stringent” mask (the “Translator”). See FCC File No. BDSTA-20090821AAV (the “WWPX Application”). ION also proposed to operate WWPX with on-channel transmitting facilities using Distributed Transmission Service (“DTS”) technology in FCC File Number BPCDDT-20090513ACL (the “WWPX DTS Application”).

Hearst is the licensee of digital television broadcast station WBAL-TV, Baltimore, Maryland, and is authorized under program test authority to operate its post-transition digital facility on VHF Channel 11 with 5.0 kW effective radiated power (“ERP”) pursuant to its construction permit in FCC File Number BPCDDT-20080312AAT (the “WBAL-TV Facility”) (Hearst’s digital license application for this facility is pending in FCC File Number BLCDDT-20090619ABW).

Hearst commenced operation of the WBAL-TV Facility on June 12, 2009, in connection with the national DTV transition, at which time Hearst started receiving numerous complaints of poor or no reception from viewers. In coordination with the FCC, ION, and others, during August 2009, Hearst conducted field tests with WBAL-TV operating at 26.6 kW ERP pursuant to an experimental authorization in FCC File Number BDSTA-20090713ACP (the “Field Tests”) and concluded that the increased ERP significantly improved viewers’ reception of WBAL-TV. Accordingly, Hearst desires to seek a construction permit to permanently increase WBAL-TV’s power to 26.6 kW ERP.

### Consent of Hearst

According to informal statements provided by a member of the FCC’s staff, ION’s proposed use of a “full service” mask requires the consent of the licensee of any station whose consent would be required if such mask was not used. ION has determined that the consent of Hearst accordingly is required before the FCC would authorize the facilities proposed in the WWPX Application.

Consistent with the FCC’s rules and for the purposes of facilitating processing of the WWPX Application, Hearst hereby consents to the facilities proposed in the WWPX Application. Hearst understands that ION intends in the future to submit an application to the FCC seeking a construction permit for the same facilities specified in the WWPX Application so that ION has authorization to operate the Translator beyond the time period that an STA ordinarily allows, and Hearst hereby consents to the use of facilities proposed in such a construction permit application so long as the proposed facilities are the same as those proposed in the WWPX Application. In the event ION submits a construction permit application that would modify in any way the facilities specified in the WWPX Application in a manner such that the FCC’s rules and policies would require the consent of Hearst, the further written consent of Hearst shall be required.

Consent of ION

WBAL-TV's proposed 26.6 kW ERP operation is predicted to cause 0.55% new interference to the WWPX Facility (the "Predicted Interference"). In connection with the Field Tests, no actual detrimental impact to WWPX's viewers was reported. Accordingly, ION hereby agrees that WWPX will accept the Predicted Interference and any interference from WBAL-TV to the operations of WWPX as a result of the facilities proposed in the WWPX Application and the WWPX DTS Application, and ION will consent to the grant of a permanent increase in WBAL-TV's power to 26.6 kW ERP as an important step toward solving the significant reception problems faced by local broadcast viewers in the Baltimore market.

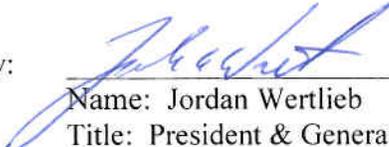
Each of ION and Hearst shall take all commercially reasonable steps to satisfy any questions or concerns raised by the FCC with respect to any regulatory filings implicated by this Agreement, notify the other of any such FCC inquiries, and furnish all information requested by the FCC with respect thereto. Neither ION nor Hearst shall take any action that is inconsistent with its obligations under this Agreement or that could hinder or delay the other party's enjoyment of its rights and interests contemplated by this Agreement.

No amendment or waiver of compliance with any provision hereof shall be effective unless in a writing signed by the party against whom enforcement is sought. Neither party may assign this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld. Notwithstanding the foregoing, it is understood that the acceptance of interference levels agreed to herein shall continue to run with the station, not the licensee, and shall be binding on future successors or assigns (without the need for consent) in the event of assignment of a station's license or a change in control of a licensee. This Agreement constitutes the entire agreement and understanding of the parties hereto and supersedes all prior agreements and understandings with respect to the subject matter hereof. Nothing in this Agreement expressed or implied is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their respective successors and permitted assigns. This Agreement shall be governed by the laws of the State of New York without giving effect to the choice of law provisions thereof. Each party shall bear all of its expenses incurred in connection with the transactions contemplated by this Agreement, including without limitation engineering, accounting and legal fees incurred in connection herewith. Except for the consent set forth above, no consideration is being paid by either party in connection with this Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[Signatures Appear on the Following Page]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first set forth above.

WBAL HEARST TELEVISION INC.

By:   
Name: Jordan Wertlieb  
Title: President & General Manager

ION MEDIA MARTINSBURG LICENSE, INC., DEBTOR-IN-POSSESSION

By:   
Name: William L. Watson  
Title: Secretary