

## **EXHIBIT 44 – APPLICATION FREEZE WAIVER**

Independence Television Company (“Independence”), licensee of television station WMYO-DT, Salem Indiana (the “Station”), hereby requests waiver of the freeze announced in the *Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes, Public Notice*, DA 04-2446 (rel. Aug. 3, 2004) (the “Application Freeze”).<sup>1</sup> The Commission indicated that it would consider requests for waiver of the Application Freeze “when a modification application is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public.”<sup>2</sup> Because the instant application is filed to protect authorized facilities to which Independence already has certified to operate, this waiver request satisfies this standard.

In its Form 381 Pre-Election Certification for the Station,<sup>3</sup> Independence certified that its post-transition operations would be the maximized facilities authorized in its construction permit.<sup>4</sup> Independence, however, subsequently determined that top-mounting the DTV antenna during the DTV transition was not feasible, although it still could top-mount the DTV antenna once the DTV transition ends and the tower load is reduced by the removal of analog equipment. Accordingly, Independence applied for and received a construction permit for a side-mounted DTV antenna for operation during the DTV transition.<sup>5</sup>

Independence still intends to implement certified facilities by installing a top-mounted DTV antenna at the close of the DTV transition. To ensure absolutely that the Commission will protect these certified facilities in the interim and to prevent the authorization of other facilities which may preclude the implementation of such certified facilities, Independence is filing anew the instant construction permit application proposing the previously authorized top-mounted DTV antenna.

To the extent that processing of an application for a previously authorized construction permit is prohibited by the Application Freeze, Independence respectfully requests waiver. Grant of the waiver would not undermine the purposes of the Application Freeze, as Independence already has notified the Commission in its pre-election certification filing and in its request for waiver of the July 1, 2006 construction deadline of its intent to operate post-transition facilities with the parameters specified in the instant application. Hence, processing of this application would not detract from the election process but would tend to facilitate it.

---

<sup>1</sup> The Application Freeze stated that the Commission would not accept any “[t]elevision modification applications that would increase a station’s analog service area in channels 2-51 in one or more directions beyond the combined area resulting from the station’s parameters as defined in the following: (1) Commission authorizations (license and/or construction permit) and (2) applications on file with the Commission prior to release of this Public Notice.”

<sup>2</sup> *Id.*

<sup>3</sup> FCC File No. BCERCT-20041105AZF.

<sup>4</sup> FCC File No. BPCDT-19991101ACP.

<sup>5</sup> FCC File No. BMPCDT-20050722ACI (granted September 26, 2005).

Moreover, the vast majority of stations already have had their post-transition channel “locked-in.” If the waiver is not granted, Independence could be precluded at the end of the DTV transition from implementing certified facilities and viewers could lose relied-upon service. Accordingly, Independence believes that waiver of the Application Freeze would serve the public interest and allow the Station to maintain quality service to the public. Accordingly, Independence requests waiver of the Application Freeze to permit acceptance and grant of the instant application.