



Federal Communications Commission  
Washington, D.C. 20554

January 10, 2020

ION Media Orlando License, Inc.  
601 Clearwater Park Road  
West Palm Beach, FL 33401  
Attention: Bianca Frye

Re: Request for Modification and  
Waiver of Phase Assignment  
WOPX-TV, Melbourne, FL  
Facility ID No. 67602  
LMS File No. 0000093119

Dear Licensee,

On December 11, 2019, ION Media Orlando License, Inc. (ION Media) the licensee of WOPX-TV, Melbourne, Florida (WOPX-TV or Station), filed a *Request for Modification and Waiver of Phase Assignment* requesting to modify the post-incentive auction transition phase assigned to the Station in the *Closing and Channel Reassignment Public Notice* from Phase 7 to Phase 8.<sup>1</sup> For the reasons below, we grant ION Media's request for waiver and modify the Station's phase assignment to Phase 8, as conditioned herein.

*Background.* Pursuant to the *Transition Scheduling Adoption Public Notice*, individual stations may request waiver and modification of their phase assignment.<sup>2</sup> A waiver is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis.<sup>3</sup> The Media Bureau (Bureau) has stated it will evaluate such requests on a case-by-case basis to assess the impact on the transition schedule, including the impact on other broadcasters as well as viewers, in order to facilitate a timely and orderly transition.<sup>4</sup> The Bureau determined that it would view favorably requests that are compliant with the Commission's rules and

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<sup>1</sup> See *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*, GN Docket No. 12-268 et al., Public Notice, 32 FCC Rcd 2786 (WTB & MB 2017) (*Closing and Channel Reassignment Public Notice*). See LMS File No. 0000093119, Legal STA Exhibit (Waiver Request).

<sup>2</sup> See *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, Public Notice, 32 FCC Rcd 890, 912-14, paras. 47-52 (MB 2017) (*Transition Scheduling Adoption Public Notice*).

<sup>3</sup> See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 CFR § 1.3 (waiver for good cause shown). See also *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 913-14, para. 51 and n.171.

<sup>4</sup> See *id.* at 912-14, paras. 49-52. See also *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Broadcast Transition*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 32 FCC Rcd 858, 881-82, para. 73 (MB 2017).

have little or no impact on the transition schedule.<sup>5</sup> Requests that the staff determines would be likely to delay or disrupt the transition schedule will be viewed unfavorably.<sup>6</sup>

WOPX-TV is currently licensed to operate on channel 48. It was reassigned to channel 14 in the *Closing and Channel Reassignment Public Notice* and is currently assigned to transition Phase 7, which had a phase testing period start date of October 19, 2019, and has a phase completion date of January 17, 2020. The Station is located in the Orlando-Daytona Beach-Melbourne, Florida, Designated Market Area (Orlando DMA). A total of 16 stations, including WOPX-TV, were repacked in the Orlando DMA, with 15 stations, including WOPX-TV, being assigned to transition Phase 7 and one station being assigned to Phase 9. According to ION Media, WOPX-TV will be unable to complete installation of its post-auction antenna by the Phase 7 phase completion date due to local permitting delays.<sup>7</sup> At the time of filing, WOPX-TV's tower owner had received the necessary building permits, but because of the permitting delays ION Media has been told that construction will not be complete until approximately February 4, 2020. As a result, ION Media requests that the Station's transition phase assignment be modified from Phase 7 to Phase 8, which has a testing period start date of January 18, 2020, and phase completion date of March 13, 2020.

According to ION Media, the Station operates in the 600 MHz band. While WOPX-TV is part of an existing linked-station set, the Station has no downstream dependencies that would be impacted by the change in transition phase. As a result, ION Media asserts that grant of this application would not delay other repack stations' transitions.<sup>8</sup> In order to mitigate any viewer disruption caused by the change in phase, ION Media commits to conduct additional consumer outreach beyond what is required by the Commission's rules by increasing the number of daily crawls and notifying viewers through the Station's digital and social media outlets.<sup>9</sup>

*Discussion.* Upon review of the facts and circumstances presented, we find that ION Media's request to modify the phase assignment for WOPX-TV to transition to its post-auction channel satisfies the requirement for a waiver and is in the public interest. We agree that changing the Station's transition phase to Phase 8 should not have an adverse impact on the overall transition schedule or a negative impact on other stations or viewers. WOPX-TV part of Linked-Station Set (LSS) 103 and is directly linked with station WDYB-CD, Daytona Beach, Florida (WDYB-CD).<sup>10</sup> WDYB-CD is upstream of WOPX-TV and therefore must transition at the same time as or prior to WOPX-TV. WDYB-CD was also assigned to transition Phase 7, but has requested, and concurrently herewith is being granted, a phase change to Phase 8.<sup>11</sup> As a result, WDYB-CD has committed to coordinating with and vacating channel 14 prior to WOPX-TV commencing operation on channel 14.<sup>12</sup> WDYB-CD anticipates completing

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<sup>5</sup> *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 912-13, para. 49 and n.163.

<sup>6</sup> *Id.*; see *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, 33 FCC Rcd 8240, 8244-45, para. 14 (IATF & MB 2018) (*Transition Reminder Public Notice*).

<sup>7</sup> Waiver Request at 1-2.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 1-2. WDYB-CD is licensed to Latina Broadcasters of Daytona Beach, LLC.

<sup>11</sup> See LMS File No. 0000096186.

<sup>12</sup> *Id.*

construction by the end of January 2020. WOPX-TV is currently operating in the 600 MHz band. Staff has confirmed that the phase change will not create any new linked-station sets or increased temporary pairwise interference so long as it coordinates with WDYB-CD.<sup>13</sup> By moving WOPX-TV (and concurrently WDYB-CD) to Phase 8, the total number of rescan periods in the Orlando DMA will increase from two to three, which will be one more than the two rescan periods per DMA limitation used in the tool adopted by the Bureau in the *Transition Scheduling Adoption Public Notice* to assign stations to transition phases.<sup>14</sup> To ensure that viewers are fully informed about the repack and to minimize any viewer confusion caused by the Station's change in phase, ION Media has agreed to increase consumer education and outreach beyond what is required by the Commission's rules. Moreover, WDYB-CD, which is also in the Orlando DMA, has also been granted a modification of its phase assignment to phase 8. We believe this factor will further reduce viewer confusion. Further, modifying WOPX-TV's transition phase will ensure that the Station is able to continue to serve its viewers without interruption. As a result, we find the facts and circumstances discussed above outweigh any viewer burden caused by an increase in the number of rescan periods in the Orlando DMA and a short delay in access by wireless licensees to the Station's pre-auction channel.

We remind ION Media that pursuant to the Spectrum Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other."<sup>15</sup> Additional expenses incurred, such as expenses resulting from changes in a Station's transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

Accordingly, we **GRANT** ION Media's *Request for Modification and Waiver of Phase Assignment* and modify the transition phase assignment for WOPX-TV **from Phase 7 to Phase 8**, subject to all the commitments made in its waiver request and compliance with all Commission rules applicable to transitioning stations.<sup>16</sup> Testing on the Station's post-auction channel **may not begin until 12:01 am local time on January 18, 2020**, and WOPX-TV is required to cease operating on its pre-auction channel **no later than 11:59 pm local time on March 13, 2020**.<sup>17</sup> The Station's construction permit expiration date will also be modified to correspond to its new phase completion date.<sup>18</sup>

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<sup>13</sup> See *Transition Scheduling Adoption Public Notice*, 32 FCC Rcd at 897, para. 16 (allowing temporary increased pairwise (station-to-station) interference of up to two percent during the transition period).

<sup>14</sup> *Id.* at 898-99, paras. 20-21.

<sup>15</sup> 47 U.S.C. § 1452(b)(4)(A)(i). See also *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

<sup>16</sup> See generally 47 CFR § 73.3700 and *Transition Reminder Public Notice*, 33 FCC Rcd 8240.

<sup>17</sup> Each transition phase has a designated testing period on which a station in that phase may begin testing equipment on its new channel and a designated phase completion date when a station must cease operation on its pre-auction channel. The phase completion date is the date that will be listed in that station's construction permit as its construction deadline and is the date the station must cease operation on its pre-auction channel. See *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2806, para. 64. A station that commences testing on its post-auction channel before the beginning of its assigned testing period will be operating in violation of Commission rules.

<sup>18</sup> *Id.* ("The phase completion date is...[also] the date listed in each station's construction permit as its construction deadline"). If a station must commence operations on its post-auction channel at variance from the parameters authorized in its construction permit, it must file for and be granted special temporary authority prior to commencing operations. See 47 CFR § 73.1635. A station that needs additional time to complete construction of its post-auction facility beyond its construction permit expiration date must file for a 180-day extension of its construction permit in

Sincerely,

A handwritten signature in blue ink that reads "David Brown For 1". The signature is written in a cursive style.

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

Cc: (via electronic mail): Terri Santisi

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accordance with Section 73.3700(b)(5)(iv). Stations needing additional time to construct after a 180-day extension is granted, will be subject to the Commission's tolling provisions. 47 CFR § 73.3700(b)(5)(iv). Grant of an extension of time to construct does not relieve a station of the requirement that it ceases operation on its pre-auction channel by its assigned phase completion date.