



Federal Communications Commission
Washington, D.C. 20554

March 27, 2019

ION Media Lexington License, LLC
601 Clearwater Park Road
West Palm Beach, Florida 33401

Re: WUPX-TV, Richmond, Kentucky
Facility ID No. 23128
File No. 0000064267

Dear Licensee:

This is with respect to the above referenced minor modification application filed by ION Media Lexington License, LLC (ION) for station WUPX-TV, Richmond, Kentucky. ION proposes to relocate the station to a new tower site and requests a waiver of the current freeze on the filing of minor modification applications for changes to existing television service areas that would increase a full power television station's noise-limited contour.¹ For the reasons set forth below, we grant the requested waiver and minor modification application.

In the *April 2013 Freeze Public Notice*, the Bureau explained that the freeze was necessary to (1) create a stable database of full power and Class A facilities that would allow for the development and analysis of potential repacking methodologies to be used in connection with the Incentive Auction authorized by the Spectrum Act; and (2) avoid further expansion of broadcast television stations' use of spectrum.² The Incentive Auction closed with the issuance of the *Closing and Channel Reassignment Public Notice* on April 13, 2017, and the transition is underway.³ WUPX-TV was reassigned to a new channel⁴ and must complete construction of the new facility by June 21, 2019.

In support of its waiver request, ION states that the current tower site will not be available for post-auction operations due to failed negotiations with the tower owner. ION further states that it conducted a comprehensive analysis in the station's market and was unable to identify a tower in the immediate vicinity of the current tower site. ION also points out that the *April 2013 Freeze Public Notice* stated that the Bureau would consider requests for waiver of the filing limitations when a modification application is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public, including the loss of a station's tower.⁵

¹ *Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Stations 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*).

² *Id.* at 4364-65.

³ *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*, Public Notice, 32 FCC Rcd 2786 (2017).

⁴ WUPX-TV was reassigned from channel 21 to channel 25.

⁵ *April 2013 Freeze Public Notice*, 28 FCC Rcd at 4365.

ION proposes a tower located 93.3 kilometers southwest of its current site, which would result in a shift of the station's noise limited contour to the southwest and areas of service loss. While 383,833 persons would lose service from WUPX-TV, ION states that the majority of the loss area would remain well served by five or more full power television stations. There is presently a small gray area in the northeast area of WUPX-TV's contour, and according to ION, after all repacked stations are constructed, the population in this area will be reduced from 506 to 143 persons. In addition, the proposed facility would eliminate a gray area to the southwest of 9,994 persons.

In addition, in connection with the transition, the Bureau temporarily lifted the April 2013 Freeze for full power and Class A stations that had not been reassigned to a new channel.⁶ The Bureau did so to decrease the possibility that low power television, television translator, and analog-to-digital replacement translator stations (LPTV/translator stations) that file to modify their facilities during a later Special Displacement Window available to LPTV/translator stations displaced by the Incentive Auction would subsequently be displaced again by full power stations that file applications after the freeze is permanently lifted.⁷ ION states that it reviewed the impact of its application on LPTV/translator stations in the area and it "does not create harmful interference to any low-power television station that participated in the post-auction displacement window that occurred in 2018."

We agree that the public interest would be served by granting a waiver of the freeze. Because ION's current tower is unavailable for post-auction operation, absent a waiver the station could be required to cease operation or receive significant interference from other stations' post-auction facilities until the freeze is permanently lifted and ION able to file a minor modification application for its proposed new site.⁸ Moreover, the station is already required to construct a new facility on its reassigned channel, so granting a waiver will not increase the number of stations needing to acquire equipment or use other construction resources during the post-auction transition period. In addition, ION has demonstrated that the facility proposed in the minor modification application will not displace any LPTV/translator stations that filed in the Special Displacement Window, and thus will not frustrate the underlying purpose for the Bureau's decision to briefly lift and then reimpose the April 2013 Freeze.

While proposed technical changes that would result in a loss of television service are generally considered *prima facie* inconsistent with the public interest,⁹ the majority of the WUPX-TV loss area will remain well served and currently underserved areas will receive an additional service when ION constructs the proposed modification. Moreover, the proposed modification is necessitated by the station's need to change tower locations in order to continue to provide service to the vast majority of persons within its current noise limited contour.

⁶ *Media Bureau Temporarily Lifts the Freeze on the Filing of Minor Modification Applications That Expand the Contour of Full Power and Class A Television Stations From November 28 Through December 7, 2017*, Public Notice, 32 FCC Rcd 9328 (MB 2017).

⁷ *Freeze on the Filing of Modification Applications to be Lifted Temporarily to Permit Filing of Applications to Expand the Contours of Full Power and Class A Television Stations That Are Not Part of the Post-Incentive Auction Repack Process*, Public Notice, 32 FCC Rcd 7643 (MB 2017).

⁸ WUPX-TV is in a linked station set which requires that it coordinate and agree upon a transition schedule for testing and commencing operations on post-auction channels with all stations with which it is directly linked. 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, 8242 & n.12 (IATF/MB 2018).

⁹ See, e.g., *Amendment of Section 76.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Fond du Lac, Wisconsin)*, Memorandum Opinion and Order, 26 FCC Rcd 12712, 12714-15 (MB 2011).

In view of the forgoing, the request filed by ION Media Lexington License, LLC for station WUPX-TV, Richmond, Kentucky for waiver of the April 2013 freeze and the minor modification application ARE HEREBY GRANTED. We caution that any additional expenses incurred as a result of the grant of the station's minor modification application may not be reimbursable from the TV Broadcasters Relocation Fund. Such additional costs might include, but may not be limited to, additional legal or engineering expenses; filing fees; and interim or additional equipment that was not contemplated when the station filed its initial estimated expenses but was subsequently necessary to complete the transition to its post-auction channel due to modification of its post-auction facilities.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. A. Kreisman', with a long horizontal flourish extending to the right.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Shea Clark
ION Media Networks, Inc.
14444 66th Street N
Clearwater, Florida 33764