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Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: GN Docket No. 12-268, MB Docket No. 16-306

Dear Ms. Dortch:

ION Media Networks (“ION”), by its attorneys, is filing this letter to reiterate its pending request that the Commission immediately take steps to solve the problems created by assigning Channel 14 repack facilities to nearly three dozen stations nationwide.¹ ION supports the request for relief for Channel 14 assignees recently filed by Univision Communications, Inc. (“Univision”), among others.² But ION maintains that even grant of all of Univision’s requests would not go far enough to fulfill the Commission’s responsibilities under the Spectrum Act to ensure that all stations are granted post-auction facilities that will replicate their pre-auction service areas.³ The only practical solution to the Channel 14 problem is for the Commission to identify a new, interference-free channel for each station that is unable to construct on Channel 14.

As the Commission is aware, ION’s station KKPX-TV is assigned to Channel 14 in San Francisco,⁴ which cannot be built to full power in that market. For years prior to the auction, that channel was assigned to KTNC-TV, which, due to land mobile interference problems, was never

¹ See Comments and Petition for Reconsideration of ION Media Networks, Inc., GN Docket No. 12-268, MB Docket 16-306, filed July 31, 2017, at 6-8 (the “ION Petition”).

² See Letter from Christopher G. Wood, Senior vice President and Associate General Counsel, Univision, to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 12-268, MB Docket 16-306, filed Aug. 22, 2017 (the “Univision Letter”); and Comments of Entravision Holdings, LLC, GN Docket No. 12-268, MB Docket No. 16-306, filed August 18, 2017.

³ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6403(b)(2), 126 Stat. 156 (2012) (the “Spectrum Act”).

⁴ See Request for Waiver of Section 73.3700(b)(1)(i), filed June 12, 2017.

able to operate at more than approximately 25% of its assigned power.⁵ For these reasons, the FCC's repack plan never should have permitted an assignment to Channel 14 in San Francisco. When ION recognized that its assigned Channel 14 facilities would not be suitable for post-repack operations, it informed the Commission and sought a waiver of the deadline for filing a post-auction construction permit. In granting ION's requested waiver for KKPX-TV, the Commission concluded that "unresolvable interference is likely" if ION seeks to construct the assigned Channel 14 facilities.⁶ Despite this conclusion the Commission advised ION that it would be required to file a construction permit to build KKPX-TV by September 8, 2017.⁷ This deadline must be extended for ION while the Commission locates a new channel that can be built.

The Commission's actions to date put ION in an unfair situation and, are inconsistent with the Commission's obligations under the Spectrum Act. Both the Commission and ION know that any construction permit application ION files for Channel 14 in San Francisco will result in "unresolvable interference." But if ION fails to file the required construction permit application by the upcoming deadline, it may be alleged to be in violation of the FCC's repack rules. Since grant of the waiver, ION has diligently analyzed the land mobile and other interference issues that prevent construction of KKPX-TV's assigned facilities, and, quite honestly, no technical solution appears to exist. Service to potentially hundreds of thousands of television viewers in the San Francisco market is at risk if this issue is not resolved by the Commission. That result simply does not square with the Commission's obligation under the Spectrum Act to preserve pre-auction service levels to television viewers.

The recent Univision Letter shows that KKPX-TV is not the only major-market television station with unresolvable Channel 14 problems. As the Commission knows, and as noted in the ION Petition, dozens of other stations across the country were assigned to Channel 14.⁸ In some markets, technical solutions may present themselves. In San Francisco and San Antonio, it is clear the Univision and ION stations cannot reach full power consistent with the FCC's rules.

⁵ See *id.* See also Attachment A (ION engineering statement regarding historical and current difficulties with San Francisco Channel 14 assignment).

⁶ See Letter from Barbara A. Kreisman, Chief, Video Division, to Michael Hubner, Esq., at 3 (June 28, 2017) (granting 90 day extension of time to file post-auction construction permits).

⁷ See *id.*

⁸ See Request for Waiver of Section 73.3700(b)(1)(i), filed June 12, 2017 by University Broadcasting Inc. in respect of KGEB, Tulsa, Oklahoma; Request for Waiver of Section 73.3700(b)(1)(i), filed June 9, 2017 by Greater Washington Educational Telecommunications Association, Inc. in respect of WETA-TV, Washington, DC; and Request for Waiver of Section 73.3700(b)(1)(iv)(A), filed June 9, 2017 by Nexstar Broadcasting Inc. in respect of KSEE(TV), Fresno, California (where Nexstar faces interference issues with land mobile systems in San Francisco and Los Angeles from post-auction Channel 16 in Fresno).

ION supports Univision's proposals to: (1) give priority status to Channel 14 assignees during its construction permit filing windows to locate alternative channels; (2) permit operation on interim facilities while technical solutions are being developed; (3) waive service rules that stand in the way of technical solutions; and (4) develop a long-term plan for clearing land mobile users from frequencies close to the 470 MHz frequencies. Each of these sensible steps will provide some measure of medium-term and long-term relief to stations with Channel 14 assignments that will not permit operation at full power.

Univision's proposals, however, do not address the immediate dilemma faced by Channel 14 assignees that must file construction permits on September 8, 2017. As it stands, stations like KKPX-TV risk violating the repack rules unless they file for Channel 14 facilities that they know are not technically feasible. ION urges the FCC to provide immediate relief to Channel 14 assignees like ION so that the FCC can identify long-term solutions to these channel assignments.

Toward that end, ION proposes that the Commission:

- (1) Waive the September 8, 2017 filing deadline for Channel 14 assignees to permit more time to allow the Commission to locate suitable channels or identify technical solutions, but continue to provide interference protection to those channel assignments so that stations like KKPX-TV are not further damaged by not filing;
- (2) Commit to identifying alternative channels for all stations that have been assigned to Channel 14 and to making any necessary changes to other stations' post-repack assignments pursuant to Section 316 of the Act to ensure that all stations can equitably continue to serve their pre-auction service population;⁹ and
- (3) Announce that expenses incurred in connection with technical solutions like tower site moves and other remedial measures to alleviate Channel 14 land mobile interference will be fully reimbursable and available to channel 14 assignees on a priority basis outside the Form 399 reimbursement process.

First, waiving the September 8, 2017 filing deadline for Channel 14 assignees to file construction permits will remove the immediate dilemma such stations currently face. There is no reason for the Commission to require stations like KKPX-TV to file construction permits for facilities that cannot serve their current viewers. This will permit additional time to identify elusive technical solutions, which has been difficult to do while the Commission has further strained ION's limited internal resources by simultaneously requiring stations to develop requests for reimbursement of repack-related expenses. At the same time, the FCC should maintain interference protection for the current Channel 14 assignments as it analyzes construction

⁹ See 47 U.S.C. § 316.

permits filed in the first and second filing windows. Choosing not to file should not further compromise the already problematic Channel 14 facilities assigned for the repack.

Second, the Commission should acknowledge that stations should not have been assigned to Channel 14 in the first place – particularly not in large markets like San Francisco and San Antonio – and assume its proper responsibility for fixing this problem. The Commission should take an active role in identifying alternative channels for stations currently assigned to Channel 14 and proposing those alternative channels to stations like KKPX-TV. If the Commission is unable to identify alternative channels that will allow stations to reach their current service areas, the Commission should explore the use of Section 316 of the Act to reconfigure channel assignments to ensure that all stations in a market are equitably able to maintain as much of their current service area as possible. For example, in San Francisco, it is unconscionable that KKPX-TV could be forced to operate at as little as 25% power while all other stations maintain their pre-auction service areas.¹⁰ This result would hardly satisfy the FCC's responsibility to make "all reasonable efforts" to preserve all stations' pre-auction service population. The Commission has the necessary authority under Section 316 of the Act and the responsibility under the Spectrum Act to ensure that any diminution of pre-auction service areas required by the repack is borne equitably by all stations in a market. If that requires revisiting the post-auction channel assignments for multiple changes in the San Francisco market or other problematic Channel 14 markets, then the Commission should undertake that process sooner rather than later.

Third, the Commission should announce that technical solutions to land mobile interference issues for Channel 14 stations will be fully reimbursable and that the Commission will give affected stations priority access to repack reimbursement funds to pursue such solutions. Different solutions to land mobile interference present themselves in different markets. In some markets, a tower site move could solve the problem; in others, signal filtering and other remediation measures are necessary. In many cases, these solutions are extraordinarily expensive. Yet, if these solutions have not been identified to date, stations will be unable to receive upfront reimbursement allocations to pursue them. Moreover, if and when stations submit these costs for reimbursement following the Commission's initial disbursement of funds, affected stations will have no idea whether the funds are actually deemed reimbursable by the Commission and, if so, whether funds will even be available in the Commission's subsequent allocation. For example, a site move would involve not only capital expenditures for additional equipment and facilities, but also early termination liability for breaking an existing tower lease; no station would actually take such a step until it could be assured that it would be reimbursed for the costs of doing so. The Commission should create a process outside the standard repack reimbursement procedures to give stations like KKPX-TV immediate approval for identified expenditures and access to the funds necessary to pursue new solutions.

¹⁰ ION's challenges in the San Francisco market are made all the more objectionable by the fact that the pre-repack Channel 14 licensee in San Francisco, KTNC-TV, is operating on post-repack Channel 32.



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As matters stand, the Commission is sacrificing stations like KKPX-TV so that other stations in Channel 14 markets can serve their entire service areas. That is both arbitrary and capricious and blatantly discriminatory against companies like ION. ION's proposed changes to the Commission's repack procedures would begin to remedy the unfairness of the Commission's current arrangements. ION strongly urges the Commission to expeditiously grant the relief requested herein and in the Univision Letter.

Very Truly Yours,

/s/

John R. Feore
Counsel for ION Media Networks

cc: Michelle Carey
Barbara Kreisman
Jean Kiddoo