

June 3, 2002

Trinity Broadcasting Network c/o Colby M. May, Esq. Law Offices of Colby M. May 205 Third Street, SE Washington, D.C. 20003

Re: Request for Extension of Time to Construct

Digital Facilities

KAAH-DT, Honolulu, Hawaii File No. BEPCDT-20020304AGK

Facility ID No. 3246

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Trinity Broadcasting Network ("Trinity") for an extension of time to construct the digital facilities of KAAH-DT. As originally filed, Trinity asserted that it was unable to construct facilities by the applicable deadline due to technical and other reasons. Trinity did not provide a date by which it anticipated construction would be undertaken or completed; however, in support of its request, Trinity stated that:

Coordination of the transition to digital has been extremely difficult and final equipment orders are just now being evaluated for placement with delivery to follow. Moreover, in an effort to initiate DTV service as soon as possible, focus has been on completing STA facilities based on the Commission's determination that full allocation protection for UHF facilities would be maintained beyond May 1, 2002.

By letter dated March 28, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an

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¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Trinity's extension request failed to comply with the Commission's stated policy regarding extension of DTV construction deadlines, and the instructions to FCC Form 337. Consequently, Trinity failed to justify an extension. However, Trinity was afforded the opportunity to amend its previously filed FCC Form 337 to provide the requisite information as set forth above, including: (1) a specific plan outlining how it will use the extension time to further the construction of KAAH-DT; and (2) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that given the Commission's determination on November 15, 2001 to afford full frequency allocation protection, even if there was a less than full power buildout, Trinity has determined to proceed with a two-step buildout of its DTV authorization. You assert that the first step will be to acquire the equipment necessary to permit the inauguration of service with STA facilities to ensure DTV service as soon as practicable. Following that phased buildout, you assert that full facilities will then be completed. You indicate that this process is anticipated to be completed no later than the expiration of full allocation protection, anticipated to be around January 2004. In the meantime, you contend that Trinity will complete equipment orders for STA construction within the extension term requested (i.e. October 2002), with on-air operations following thereafter. Further, you clarify in the amendment that buildout and completion of initial construction is anticipated "within the next twelve months or so."

Based upon the information before us, we find that you have not taken all reasonable steps to complete construction of KAAH-DT in an expeditious manner. Significantly, you have failed to explain why it has been "nearly impossible for [Trinity] to place orders, and receive equipment" for KAAH-DT before the May 1, 2002 construction deadline, particularly since the station's construction permit was issued over eight months ago.² Likewise, you have failed to explain why you need an additional six-month extension merely to order such equipment. Moreover, your alleged difficulty is further undermined by your own admission that "Trinity has diligently obtained the necessary equipment lists, bidding proposals, tower studies, lease negotiations, etc." in order to accommodate this process. Consequently, we find your delay in ordering the necessary equipment for KAAH-DT to be unwarranted. In addition, your assertion that completion of initial construction is anticipated "within the next twelve months or so" is too vague and, therefore, does not adequately set forth a reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Trinity should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Trinity will be required to submit a report within thirty (30) days of this letter outlining the steps

² The construction permit for KAAH-DT was issued on September 21, 2001.

it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Trinity, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Trinity Broadcasting Network IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Trinity Broadcasting Network's request to extend the construction permit for KAAH-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Terrence M. Hickey
Trinity Broadcasting Network
P.O. Box C-11949
Santa Ana, California 92711



June 3, 2002

KBSI Licensee, L.P. c/o Kathryn R. Schmeltzer, Esq. Shaw Pittman LLP 2300 N Street, NW Washington, D.C. 20037-1128

Re: Request for Extension of Time to Construct

Digital Facilities

KBSI-DT, Cape Girardeau, Missouri File No. BEPCDT-20020301AHU

Facility ID No. 19593

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of KBSI Licensee, L.P. ("KBSI Licensee") for an extension of time to construct the digital facilities of KBSI-DT. As originally filed, KBSI Licensee asserted that it was unable to construct facilities by the applicable deadline due to technical reasons. Specifically, in support of its extension request, KBSI Licensee merely stated that "a tower study is underway."

By letter dated March 27, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, KBSI's extension request was "wholly bereft of any showing whatsoever" and failed to justify an extension in this case. However, you were afforded an opportunity to amend your original FCC Form 337 and provide the requisite information as set forth above. In response to our request, you submitted an amendment indicating that, in 1998, KBSI ascertained that its current tower could not support an additional DTV antenna system. You state that the station has been exploring the possibility of constructing a community tower, but the market is too small for it. As an alternative, you state that KBSI has studied the possibility of modifying the existing antenna system to support both NTSC and DTV service.

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¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

Further, you assert that the station has contracted with an engineering consultant to conduct measurements on the existing antenna. However, you state that the station has learned that the current antenna system is not suitable for adjacent channel DTV operation and will need to be replaced. You contend that this assessment was completed in April 2002. Consequently, you assert that the station has a design in place for a new dual channel Dielectric antenna and has contracted with SpectraSite to conduct another tower study for this new antenna system.

In addition, you state that SpectraSite will not be able to complete this study until early June due to a "heavy scheduling workload." Further, you assert that the new antenna system will be ordered as soon as KBSI is able to ascertain that the tower can in fact support this new dual antenna system. Moreover, you state that the required building addition will also begin this summer to coordinate with the expected tower work. You maintain that the transmitter will be ordered in late spring "to be concurrent with the new building construction." Finally, you anticipate that KBSI-DT will be operational before November 2002.

Based on the information before us, you have failed to explain why it took approximately four years from the time KBSI found that its current tower could not support an additional DTV antenna system to also ascertain that the current antenna system was not suitable for adjacent DTV operation and would need to be replaced. Moreover, we fail to see why no feasible tower site or antenna system could be determined within this extensive four-year period. Furthermore, while you may "anticipate" that KBSI-DT will be operational before November 2002, this projected date has no reasonable basis because you don't know if KBSI's existing tower can in fact support the new antenna system that you are now proposing to use. Consequently, you cannot give a projected date as to when the station's transmitter and antenna will be ordered. Therefore, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that KBSI Licensee should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, KBSI Licensee will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against KBSI Licensee, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That KBSI Licensee, L.P. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That KBSI Licensee, L.P.'s request to extend the construction permit for KBSI-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: David B. Amy



June 3, 2002

Trinity Broadcasting Network c/o Colby M. May, Esq. Law Offices of Colby M. May 205 Third Street, SE Washington, D.C. 20003

Re: Request for Extension of Time to Construct

Digital Facilities

KDOR-DT, Bartlesville, Oklahoma File No. BEPCDT-20020304ADS

Facility ID No. 1005

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Trinity Broadcasting Network ("Trinity") for an extension of time to construct the digital facilities of KDOR-DT. As originally filed, Trinity asserted that it was unable to construct facilities by the applicable deadline due to technical and other reasons. Trinity did not provide a date by which it anticipated construction would be undertaken or completed; however, in support of its request, Trinity stated that:

Coordination of the transition to digital has been extremely difficult and final equipment orders are just now being evaluated for placement with delivery to follow. Moreover, in an effort to initiate DTV service as soon as possible, focus has been on completing STA facilities based on the Commission's determination that full allocation protection for UHF facilities would be maintained beyond May 1, 2002.

By letter dated March 28, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an

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¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Trinity's extension request failed to comply with the Commission's stated policy regarding extension of DTV construction deadlines, and the instructions to FCC Form 337. Consequently, Trinity failed to justify an extension. However, Trinity was afforded the opportunity to amend its previously filed FCC Form 337 to provide the requisite information as set forth above, including: (1) a specific plan outlining how it will use the extension time to further the construction of KDOR-DT; and (2) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that given the Commission's determination on November 15, 2001 to afford full frequency allocation protection, even if there was a less than full power buildout, Trinity has determined to proceed with a two-step buildout of its DTV authorization. You assert that the first step will be to acquire the equipment necessary to permit the inauguration of service with STA facilities to ensure DTV service as soon as practicable. Following that phased buildout, you assert that full facilities will then be completed. You indicate that this process is anticipated to be completed no later than the expiration of full allocation protection, anticipated to be around January 2004. In the meantime, you contend that Trinity will complete equipment orders for STA construction within the extension term requested (i.e. October 2002), with on-air operations following thereafter. Further, you clarify in the amendment that buildout and completion of initial construction is anticipated "within the next twelve months or so."

Based upon the information before us, we find that you have not taken all reasonable steps to complete construction of KDOR-DT in an expeditious manner. Significantly, you have failed to explain why it has been "nearly impossible for [Trinity] to place orders, and receive equipment" for KDOR-DT before the May 1, 2002 construction deadline, particularly since the station's construction permit was issued over fourteen months ago.² Likewise, you have failed to explain why you need an additional six-month extension merely to order such equipment. Moreover, your alleged difficulty is further undermined by your own admission that "Trinity has diligently obtained the necessary equipment lists, bidding proposals, tower studies, lease negotiations, etc." in order to accommodate this process. Consequently, we find your delay in ordering the necessary equipment for KDOR-DT to be unwarranted. In addition, your assertion that completion of initial construction is anticipated "within the next twelve months or so" is too vague and, therefore, does not adequately set forth a reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Trinity should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard,

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² The construction permit for KDOR-DT was issued on March 7, 2001.

Trinity will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Trinity, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Trinity Broadcasting Network IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Trinity Broadcasting Network's request to extend the construction permit for KDOR-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Terrence M. Hickey
Trinity Broadcasting Network
P.O. Box C-11949
Santa Ana, California 92711



June 3, 2002

Trinity Broadcasting Network c/o Colby M. May, Esq. Law Offices of Colby M. May 205 Third Street, SE Washington, D.C. 20003

Re: Request for Extension of Time to Construct

Digital Facilities

KDTX-DT, Dallas, Texas

File No. BEPCDT-20020304AGV

Facility ID No. 67910

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Trinity Broadcasting Network ("Trinity") for an extension of time to construct the digital facilities of KDTX-DT. As originally filed, Trinity asserted that it was unable to construct facilities by the applicable deadline due to technical and other reasons. Trinity did not provide a date by which it anticipated construction would be undertaken or completed; however, in support of its request, Trinity stated that:

Coordination of the transition to digital has been extremely difficult and final equipment orders are just now being evaluated for placement with delivery to follow. Moreover, in an effort to initiate DTV service as soon as possible, focus has been on completing STA facilities based on the Commission's determination that full allocation protection for UHF facilities would be maintained beyond May 1, 2002.

By letter dated March 28, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an

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¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Trinity's extension request failed to comply with the Commission's stated policy regarding extension of DTV construction deadlines, and the instructions to FCC Form 337. Consequently, Trinity failed to justify an extension. However, Trinity was afforded the opportunity to amend its previously filed FCC Form 337 to provide the requisite information as set forth above, including: (1) a specific plan outlining how it will use the extension time to further the construction of KDTX-DT; and (2) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that given the Commission's determination on November 15, 2001 to afford full frequency allocation protection, even if there was a less than full power buildout, Trinity has determined to proceed with a two-step buildout of its DTV authorization. You assert that the first step will be to acquire the equipment necessary to permit the inauguration of service with STA facilities to ensure DTV service as soon as practicable. Following that phased buildout, you assert that full facilities will then be completed. You indicate that this process is anticipated to be completed no later than the expiration of full allocation protection, anticipated to be around January 2004. In the meantime, you contend that Trinity will complete equipment orders for STA construction within the extension term requested (i.e. October 2002), with on-air operations following thereafter. Further, you clarify in the amendment that buildout and completion of initial construction is anticipated "within the next twelve months or so."

Based upon the information before us, we find that you have not taken all reasonable steps to complete construction of KDTX-DT in an expeditious manner. Significantly, you have failed to explain why it has been "nearly impossible for [Trinity] to place orders, and receive equipment" for KDTX-DT before the May 1, 2002 construction deadline, particularly since the station's construction permit was issued over ten months ago.² Likewise, you have failed to explain why you need an additional six-month extension merely to order such equipment. Moreover, your alleged difficulty is further undermined by your own admission that "Trinity has diligently obtained the necessary equipment lists, bidding proposals, tower studies, lease negotiations, etc." in order to accommodate this process. Consequently, we find your delay in ordering the necessary equipment for KDTX-DT to be unwarranted. In addition, your assertion that completion of initial construction is anticipated "within the next twelve months or so" is too vague and, therefore, does not adequately set forth a reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Trinity should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Trinity will be required to submit a report within thirty (30) days of this letter outlining the steps

² The construction permit for KDTX-DT was issued on July 25, 2001.

it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Trinity, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Trinity Broadcasting Network IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Trinity Broadcasting Network's request to extend the construction permit for KDTX-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Terrence M. Hickey
Trinity Broadcasting Network
P.O. Box C-11949
Santa Ana, California 92711



June 3, 2002

Warwick Communications, Inc. c/o Michael W. Richards, Esquire Shaw Pittman, LLP 2300 N Street, NW Washington, D.C. 20037-1128

Re: Request for Extension of Time to

Construct Digital Facilities KFXK-DT, Longview, TX Facility ID No. 70917

File No. BEPCDT-20020228AEV

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf Warwick Communications, Inc. ("Warwick") for an extension of time to construct the digital facilities of KFXK-DT. As originally filed, Warwick asserted that it was unable to construct facilities by the applicable deadline "because of financial constraints." Among other things, Warwick stated that it is not cost-efficient to construct a low power DTV facility with equipment that cannot be used for a subsequent higher-powered facility. Moreover, Warwick maintained that even constructing minimum build-out facilities would create an undue financial hardship inasmuch as the company was not profitable, was unable to meet its current debt service, and "has no borrowing ability." ¹

By letter dated March 28, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. That letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.² In the case of claimed financial hardship, the Commission has also determined that it would "consider, on a case-by-case basis, in addition to the extension criteria outlined in the *Fifth Report and Order*, whether a broadcaster should be afforded additional time to construct its DTV facilities because the cost of meeting the minimum build-out requirements exceeds the station's financial resources." In particular, such an applicant must provide an

¹ Warwick has sought confidential treatment of certain financial data it did submit pursuant to Section 0.459 of the Commission's Rules, 47 C.F.R. § 0.459.

² Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

³ Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 20594, 20611 (2001).

itemized cost estimate of a minimum build-out, detailed financial statements and a detailed explanation why its financial condition precludes such an expenditure, a description of its good faith efforts to meet the construction deadline, including its efforts to obtain the requisite financing and why those efforts were unsuccessful, and indicate when it reasonably expects to complete construction.⁴ In addition, FCC Form 337 requires that an applicant seeking an extension of time provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Warwick's application was incomplete with respect to these matters, and you were specifically asked in the March 28 letter to provide an itemized estimated cost of construction (*i.e.*, a price estimate for each structure, antenna or other related equipment reasonably necessary for minimum DTV operations). In addition, in order to determine whether Warwick's financial condition warrants an extension, you were asked to provide the audited income statements that cover an economically significant period of time that applicants are required to keep available, as set forth in the instructions to FCC Form 337. We also requested documentary evidence of Warwick's inability to raise capital, such as affidavits from lenders or other financial institutions.

In response to our request, you submitted an amendment to the extension application consisting of cost estimates associated with various construction "scenarios," consolidated balance sheets and related financial statements of the licensee's parent company, White Knight Holdings, Inc. ("White Knight"), and a 2001 amendment to a loan/credit agreement entered into by White Knight. We are unable to discern from these documents whether the requested extension is warranted. The materials submitted do not, of themselves, set forth adequately identifiable proposed facilities, the cost or time necessary to construct or the financial ability of this station to meet that goal. Further, you have not adequately addressed, as part of your efforts to construct this station prior and subsequent to the May 1, 2002 construction deadline, the feasibility of building a reduced facility and operating pursuant to special temporary authority. In this regard, your showing contains no plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that what amounts to an unqualified extension of this construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Warwick should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Warwick will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to

⁴ *Id.* at 20611-12.

demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, we may consider the imposition of additional sanctions. Moreover, failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Warwick, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Warwick Communications, Inc., IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Warwick Communications, Inc.'s request to extend the construction permit for KFXK-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rule as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

ce: Warwick Communications, Inc. 700 St. John Street, Suite 301 Lafayette, Louisiana 70501



June 3, 2002

LibCo, Inc. c/o Jeffrey J. Gee, Esq. Dow, Lohnes & Albertson, PLLC. 1200 New Hampshire Avenue, N.W. Suite 800 Washington, D.C. 20036

Re: Request for Extension of Time to Construct

Digital Facilities

KGBT-DT, Harlingen, Texas File No. BEPCDT-20020301ADH

Facility ID No. 34457

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of LibCo, Inc. (LibCo) for an extension of time to construct the digital facilities of KGBT-DT, Harlingen, Texas. As originally filed, LibCo asserted that it was unable to complete construction of the facilities for technical reasons. Specifically, LibCo asserted that it had been unable to construct its digital facilities until it was able to identify the legitimate tenants on the tower used by KGBT-TV and subsequently determine what modifications may be necessary to permit the existing tower to support the addition of DTV transmission equipment. LibCo also stated that an antenna design had been selected and "tower structural studies should begin in the not too distant future."

By letter dated April 2, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, LibCo's application was incomplete with respect to these matters, and you were specifically asked in the April 2nd letter to provide information regarding: (1) the dates on which the tower studies would commence and the deadline for completion of the studies; (2)

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

the dates by which LibCo anticipated ordering equipment and completing any necessary modifications to the tower; and (3) the date by which LibCo anticipated construction would be completed.

In response to our request, you submitted an amendment on April 24, 2002, stating that you had resolved all but one of the outstanding claims regarding the tower. You state that you hope to resolve that complaint within 30 days. Although you previously said an antenna design had been selected, your amendment says you have not engaged a manufacturer to propose preliminary designs. You further state that completion will be dependent on the availability of materials, qualified personnel and prevailing weather conditions. Based on your submission, we find that you have not taken all reasonable steps to complete construction of KGBT-DT in an expeditious manner. Specifically, you acquired the KGBT-TV, and an interest in the tower, in 1998, but still have not determined who all the legitimate tenants are on the tower. Although your original submission said an antenna design had been selected, you now say you have not begun the process of securing preliminary designs. You have not ordered equipment or engaged contractors and your proposed completion date is conditioned on uncertainties of personnel and weather that, although beyond your control, could have been anticipated and factored into your timeline. Thus, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that LibCo should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, LibCo will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against LibCo, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That LibCo, Inc. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That LibCo's request to extend the construction permit for KGBT-DT

IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

ce: LibCo, Inc. 639 Isbell Road, Suite 390 Reno, Nevada 89509



June 3, 2002

KLSB Acquisition Corp. c/o William M. Barnard, Esq. 5028 Wisconsin Avenue, NW Suite 301 Washington, DC 20016

Re: Request for Extension of Time to Construct

Digital Facilities

KLSB-DT, Nacogdoches, Texas File No. BEPCDT-20020301AKK

Facility ID No. 55644

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of KLSB Acquisition Corp. ("KLSB") for an extension of time to construct the digital facilities of KLSB-DT. As originally filed, KLSB asserted that it was unable to complete construction of the facilities for financial reasons. Specifically, KLSB asserted that the station is programmed pursuant to a time brokerage agreement with Communications Corporation of America ("CCA"), and that "from a practical standpoint, construction and operation of the [DTV] facility without reaching agreement with CCA is not possible," given the low level of compensation paid by CCA to KLSB. According to KLSB, "CCA has taken the position at various times that it would cooperate with KLSB in construction of a new tower and completion of the authorized DTV facilities. However, it appears that CCA is either financially incapable of such an undertaking or is unwilling, for whatever reason, to reach and implement such an agreement." Further, KLSB stated that it has informed CCA that all negotiations with respect to use of the DTV facility must be completed within 60 days, and that whatever the outcome of these negotiations, KLSB "will construct the facility either on a full power or STA basis, within six months of grant of this extension application."

By letter dated April 1, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In the case of claimed financial hardship, the Commission has also determined that it would "consider, on a case-by-case basis, in addition to the extension criteria

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¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

outlined in the *Fifth Report and Order*, whether a broadcaster should be afforded additional time to construct its DTV facilities because the cost of meeting the minimum build-out requirements exceeds the station's financial resources.² In particular, such an applicant must: (1) provide an itemized estimate of the cost of meeting the minimum build-out requirements and a detailed statement explaining why its financial condition precludes such expenditure; (2) describe its good faith efforts to meet the deadline, including the good faith efforts to obtain the requisite financing, and why those efforts were unsuccessful; and (3) indicate when it reasonably expects to complete construction.³ In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, KLSB's application was incomplete with respect to these matters, and you were specifically asked in the April 1st letter to provide an itemized estimate of the cost of construction, as set forth in the DTV proceeding. The letter indicated that the amendment would require a price estimate for each structure, antenna, or other related equipment reasonably necessary for DTV operations. In addition, you were asked to provide audited income statements that applicants are required to keep, as set forth in the instructions to the FCC Form 337. Further, the income statements should demonstrate KLSB's financial condition over an economically significant period of time. You were also requested to provide documentary evidence of KLSB's inability to raise capital, such as affidavits from lenders or other financial institutions. Finally, you were asked to provide a detailed estimate of when KLSB's financial condition would permit purchase of the necessary equipment.

In response to our request, you submitted an amendment on April 25, 2002, describing your attempts to resolve the issues arising from the time brokerage agreement with CCA and the result of those negotiations. At this point, you state that attempts by KLSB to resolve this matter have been unsuccessful. You assert that this impasse has "left KLSB with no reasonable alternative except to proceed unilaterally and take whatever action is warranted against CCA in an appropriate forum." You state that while you "do not unnecessarily wish to involve the Commission in a dispute between KLSB and CCA, it appears clear that some sort of resolution would be best for all parties involved so that KLSB may go forward with construction." Moreover, you reiterate that if no agreement is reached, KLSB will go forward with construction of the DTV facility, either utilizing the full power facilities authorized in the construction permit or the low power STA arrangement authorized by the Commission.

Based upon the information before us, we find that you have not taken all reasonable steps to complete construction of KLSB-DT in an expeditious manner. As an initial matter, the resolution of your dispute with CCA regarding the time brokerage agreement involves a contractual matter, and the Commission has consistently held that it is not the proper forum for

² Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 20594, 20611 (2001).

³ *Id.* at 20611-20612.

resolving such private matters.⁴ Moreover, while you may have a legitimate basis to pursue legal action against CCA in the appropriate forum, that in no way relieves you of your obligation as a broadcast licensee to comply with the Commission's DTV construction deadline.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that KLSB should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, KLSB will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against KLSB, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That KLSB Acquisition Corp. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That KLSB Acquisition Corp.'s request to extend the construction permit for KLSB-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: KLSB Acquisition Corp. c/o Paul T. Lucci, President 200 College Place, Suite 118 Norfolk, Virginia 23510

⁴ See, e.g., Cope Communications, Inc., 13 FCC Rcd 14564, 14567 (1998); Roy M. Speer, 11 FCC Rcd 18393, 18413 (1996).



June 3, 2002

Trinity Broadcasting Network c/o Colby M. May, Esq. Law Offices of Colby M. May 205 Third Street, SE Washington, D.C. 20003

Re: Request for Extension of Time to Construct

Digital Facilities

KNAT-DT, Albuquerque, New Mexico File No. BEPCDT-20020304ADZ

Facility ID No. 993

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Trinity Broadcasting Network ("Trinity") for an extension of time to construct the digital facilities of KNAT-DT. As originally filed, Trinity asserted that it was unable to construct facilities by the applicable deadline due to technical and other reasons. Trinity did not provide a date by which it anticipated construction would be undertaken or completed; however, in support of its request, Trinity stated that:

Coordination of the transition to digital has been extremely difficult and final equipment orders are just now being evaluated for placement with delivery to follow. Moreover, in an effort to initiate DTV service as soon as possible, focus has been on completing STA facilities based on the Commission's determination that full allocation protection for UHF facilities would be maintained beyond May 1, 2002.

By letter dated March 28, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an

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¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Trinity's extension request failed to comply with the Commission's stated policy regarding extension of DTV construction deadlines, and the instructions to FCC Form 337. Consequently, Trinity failed to justify an extension. However, Trinity was afforded the opportunity to amend its previously filed FCC Form 337 to provide the requisite information as set forth above, including: (1) a specific plan outlining how it will use the extension time to further the construction of KNAT-DT; and (2) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that given the Commission's determination on November 15, 2001 to afford full frequency allocation protection, even if there was a less than full power buildout, Trinity has determined to proceed with a two-step buildout of its DTV authorization. You assert that the first step will be to acquire the equipment necessary to permit the inauguration of service with STA facilities to ensure DTV service as soon as practicable. Following that phased buildout, you assert that full facilities will then be completed. You indicate that this process is anticipated to be completed no later than the expiration of full allocation protection, anticipated to be around January 2004. In the meantime, you contend that Trinity will complete equipment orders for STA construction within the extension term requested (i.e. October 2002), with on-air operations following thereafter. Further, you clarify in the amendment that buildout and completion of initial construction is anticipated "within the next twelve months or so."

Based upon the information before us, we find that you have not taken all reasonable steps to complete construction of KNAT-DT in an expeditious manner. Significantly, you have failed to explain why it has been "nearly impossible for [Trinity] to place orders, and receive equipment" for KNAT-DT before the May 1, 2002 construction deadline, particularly since the station's construction permit was issued over fourteen months ago.² Likewise, you have failed to explain why you need an additional six-month extension merely to order such equipment. Moreover, your alleged difficulty is further undermined by your own admission that "Trinity has diligently obtained the necessary equipment lists, bidding proposals, tower studies, lease negotiations, etc." in order to accommodate this process. Consequently, we find your delay in ordering the necessary equipment for KNAT-DT to be unwarranted. In addition, your assertion that completion of initial construction is anticipated "within the next twelve months or so" is too vague and, therefore, does not adequately set forth a reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Trinity should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Trinity will be required to submit a report within thirty (30) days of this letter outlining the steps

² The construction permit for KNAT-DT was issued on March 7, 2001.

it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Trinity, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Trinity Broadcasting Network IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Trinity Broadcasting Network's request to extend the construction permit for KNAT-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Terrence M. Hickey
Trinity Broadcasting Network
P.O. Box C-11949
Santa Ana, California 92711



June 3, 2002

National Minority T.V., Inc. c/o Kathryn R. Schmeltzer, Esq. Shaw Pittman LLP 2300 N Street, NW Washington, D.C. 20037-1128

Re: Request for Extension of Time to Construct

Digital Facilities

KNMT-DT, Portland, Oregon File No. BEPCDT-20020225ACK

Facility ID No. 47704

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of National Minority T.V., Inc. ("NMTV") for an extension of time to construct the digital facilities of KNMT-DT. As originally filed, NMTV asserted that it was unable to construct facilities for technical reasons. NMTV asserted that it was in the process of negotiating a definitive tower agreement with the tower owner. NMTV further stated that it was obtaining prices for equipment and would place orders for equipment in the near future.

By letter dated March 29, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, NMTV's application was incomplete with respect to these matters, and you were specifically asked in the March 29th letter to provide information regarding: (1) the reasons why NMTV has been unable to reach a definitive tower agreement; (2) the remaining equipment that needs to be ordered, the date such equipment will be ordered, as well as the date such equipment will be delivered; (3) the reasons why the ordering of equipment has been delayed; (4) the steps NMTV has taken to mitigate its problems; (5) a specific plan outlining how

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¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

NMTV will use the extension time to further the construction of KNMT-DT; and (6) the date upon which NMTV anticipates that construction will be complete.

In response to our request, you submitted an amendment on April 26, 2002,² stating that you have had difficulty negotiating with Sylvan Tower Company ("Sylvan"), the manager of the tower on which you propose to locate your digital facility, because you have been unable to obtain a response that your proposal was satisfactory. However, you assert that Sylvan has advised you that the KNMT-DT technical proposal looks feasible, subject to its administrator's approval. In addition, you state that you have ordered the antenna for the DTV facility and it is projected to be delivered within 2-3 weeks. You further assert that you intend to order the transmitter in the next week. You state that you anticipate delivery of the transmitter in approximately 60 days and that it will take approximately 30 days for installation. You contend that if you can reach a definitive tower agreement in the near future, you anticipate that you could commence operation of your digital facility in early August.

We find that you have not taken all reasonable steps to complete construction of KNMT-DT in an expeditious manner. Although you "anticipate" that you could commence operation of your digital facility in early August, this projected date has no reasonable basis because you have not yet reached a definitive tower agreement with Sylvan, nor do you know if Sylvan's administrator will even approve the agreement. Furthermore, you have failed to provide any information regarding the use of alternative tower sites. Therefore, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that NMTV should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, NMTV will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against NMTV, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

² On April 15, 2002, NMTV requested an extension of time, until April 30, 2002, to respond to the staff's March 29, 2002 letter.

In light of the above discussion, IT IS ORDERED That National Minority T.V., Inc.. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That National Minority T.V., Inc.'s request to extend the construction permit for KNMT-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: National Minority T.V., Inc. 14252 Culver Drive A, PMB 831 Irvine, California 92604 Attn: Ms. Jane Duff, President



June 3, 2002

KOCB Licensee, L.P. c/o Kathryn R. Schmeltzer, Esq. Shaw Pittman LLP 2300 N Street, NW Washington, D.C. 20037-1128

Re: Request for Extension of Time to Construct

Digital Facilities

KOCB-DT, Oklahoma City, Oklahoma File No. BEPCDT-20020301AKH

Facility ID No. 50710

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of KOCB Licensee, L.P. ("KOCB Licensee") for an extension of time to construct the digital facilities of KOCB-DT. As originally filed, KOCB Licensee asserted that it was unable to construct facilities by the applicable deadline due to technical reasons. Specifically, KOCB Licensee stated that its current tower was unable to support a DTV antenna, and that it was working with station KOKH(TV) to study the feasibility of using the KOKH tower. KOCB Licensee further stated that once the tower was completed, it would then ascertain whether the KOKH tower could support its DTV system.

By letter dated March 27, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, KOCB's application was incomplete with respect to these matters, and you were specifically asked in the March 27th letter to provide information regarding: (1) the reasons why KOCB Licensee has been unable to determine a tower site (i.e., an explanation as to why tower studies have not been conducted prior to May 1, 2002); (2) the date upon which the joint tower study will be finished; (3) a specific plan outlining how KOCB Licensee will use the

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¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

extension time to further the construction of KOCB-DT; and (4) the date upon which KOCB Licensee anticipates that construction will be complete.

In response to our request, you submitted an amendment indicating that, in 1998, KOCB ascertained that its current tower could not support a second DTV antenna without reduction of loads from existing tenants. You state that the tower manufacturer, SpectraSite, has just completed a study, which may allow replacement of the existing NTSC antenna with an adjacent channel antenna. You assert that this may allow the station to build out a maximized high power DTV facility without resorting to the construction of a new tower. Further, you indicate that the final report from SpectraSite is expected to be available by April 30th; therefore, the tower studies will be completed before May 1, 2002. You assert that the new Dielectric antenna will be ordered as soon as the station has assurances that the tower will support the new antenna system. Moreover, you state that the building will need to be expanded to house the new DTV transmitter and support equipment. You aver that construction is expected to begin by August 2002. In addition, you state that the DTV transmitter will be ordered when construction of the building has begun to insure that KOCB will not have to store the transmitter off site until the building is completed. Finally, you anticipate that KOCB-DT will be operational before November 2002.

Based on the information before us, you have failed to explain why it took approximately four years from the time KOCB found that its current tower could not support a second DTV antenna for SpectraSite to complete its current tower study for a new antenna system. Moreover, we fail to see why no feasible tower site or antenna system could be determined within this extensive, four-year period. Furthermore, while you may "anticipate" that KOCB-DT will be operational before November 2002, this projected date has no reasonable basis because you do not yet know if KOCB's existing tower can in fact support the new antenna system that you are now proposing to use. Consequently, you cannot give a projected date as to when the station's transmitter and antenna will be ordered. Therefore, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that KOCB Licensee should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, KOCB Licensee will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV

facilities by December 1, 2002, will result in a monetary forfeiture against KOCB Licensee, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That KOCB Licensee, L.P. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That KOCB Licensee, L.P.'s request to extend the construction permit for KOCB-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: David B. Amy



June 3, 2002

KOKH Licensee, L.P. c/o Kathryn R. Schmeltzer, Esq. Shaw Pittman LLP 2300 N Street, NW Washington, D.C. 20037-1128

Re: Request for Extension of Time to Construct

Digital Facilities

KOKH-DT, Oklahoma City, Oklahoma File No. BEPCDT-20020301AKG

Facility ID No. 35388

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of KOKH Licensee, L.P. ("KOKH Licensee") for an extension of time to construct the digital facilities of KOKH-DT. As originally filed, KOKH Licensee asserted that it was unable to construct facilities by the applicable deadline due to technical reasons. Specifically, KOKH Licensee stated that its current tower was unable to support a DTV antenna, and that it was working with station KOCB(TV) to perform a joint tower study at the KOKH tower. KOKH Licensee further stated that once the tower study was completed, it would then ascertain whether the KOKH tower could support its DTV system.

By letter dated March 27, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, KOKH's application was incomplete with respect to these matters, and you were specifically asked in the March 27th letter to provide information regarding: (1) the reasons why KOKH Licensee has been unable to determine a tower site (i.e., an explanation as to why tower studies have not been conducted prior to May 1, 2002); (2) the date upon which the joint tower study will be finished; (3) a specific plan outlining how KOKH Licensee will use the

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¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

extension time to further the construction of KOKH-DT; and (4) the date upon which KOKH Licensee anticipates that construction will be complete.

In response to our request, you submitted an amendment indicating that, in 1998, KOKH ascertained that its current tower could not support a second DTV antenna without reduction of loads from existing tenants. You state that the tower manufacturer, SpectraSite, has just completed a study, which may allow replacement of the existing NTSC antenna with an adjacent channel antenna. You assert that this may allow the station to build out a maximized high power DTV facility without resorting to the construction of a new tower. Further, you indicate that the final report from SpectraSite is expected to be available by April 30th; therefore, the tower studies will be completed before May 1, 2002. You assert that the new Dielectric antenna will be ordered as soon as the station has assurances that the tower will support the new antenna system. Moreover, you state that the building will need to be expanded to house the new DTV transmitter and support equipment. You aver that construction is expected to begin by August 2002. In addition, you state that the DTV transmitter will be ordered when construction of the building has begun to insure that KOKH will not have to store the transmitter off site until the building is completed. Finally, you anticipate that KOKH-DT will be operational before November 2002.

Based on the information before us, you have failed to explain why it took approximately four years from the time KOKH found that its current tower could not support a second DTV antenna for SpectraSite to complete its current tower study for a new antenna system. Moreover, we fail to see why no feasible tower site or antenna system could be determined within this extensive, four-year period. Furthermore, while you may "anticipate" that KOKH-DT will be operational before November 2002, this projected date has no reasonable basis because you do not yet know if KOKH's existing tower can in fact support the new antenna system that you are now proposing to use. Consequently, you cannot give a projected date as to when the station's transmitter and antenna will be ordered. Therefore, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that KOKH Licensee should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, KOKH Licensee will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV

facilities by December 1, 2002, will result in a monetary forfeiture against KOKH Licensee, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That KOKH Licensee, L.P. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That KOKH Licensee, L.P.'s request to extend the construction permit for KOKH-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: David B. Amy



June 3, 2002

Trinity Broadcasting Network c/o Colby M. May, Esq. Law Offices of Colby M. May 205 Third Street, SE Washington, D.C. 20003

Re: Request for Extension of Time to Construct

Digital Facilities

KPAZ-DT, Phoenix, Arizona File No. BEPCDT-20020304AGL

Facility ID No. 67868

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Trinity Broadcasting Network ("Trinity") for an extension of time to construct the digital facilities of KPAZ-DT. As originally filed, Trinity asserted that it was unable to construct facilities by the applicable deadline due to technical and other reasons. Trinity did not provide a date by which it anticipated construction would be undertaken or completed; however, in support of its request, Trinity stated that:

Coordination of the transition to digital has been extremely difficult and final equipment orders are just now being evaluated for placement with delivery to follow. Moreover, in an effort to initiate DTV service as soon as possible, focus has been on completing STA facilities based on the Commission's determination that full allocation protection for UHF facilities would be maintained beyond May 1, 2002.

By letter dated March 28, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an

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¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Trinity's extension request failed to comply with the Commission's stated policy regarding extension of DTV construction deadlines, and the instructions to FCC Form 337. Consequently, Trinity failed to justify an extension. However, Trinity was afforded the opportunity to amend its previously filed FCC Form 337 to provide the requisite information as set forth above, including: (1) a specific plan outlining how it will use the extension time to further the construction of KPAZ-DT; and (2) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that given the Commission's determination on November 15, 2001 to afford full frequency allocation protection, even if there was a less than full power buildout, Trinity has determined to proceed with a two-step buildout of its DTV authorization. You assert that the first step will be to acquire the equipment necessary to permit the inauguration of service with STA facilities to ensure DTV service as soon as practicable. Following that phased buildout, you assert that full facilities will then be completed. You indicate that this process is anticipated to be completed no later than the expiration of full allocation protection, anticipated to be around January 2004. In the meantime, you contend that Trinity will complete equipment orders for STA construction within the extension term requested (i.e. October 2002), with on-air operations following thereafter. Further, you clarify in the amendment that buildout and completion of initial construction is anticipated "within the next twelve months or so."

Based upon the information before us, we find that you have not taken all reasonable steps to complete construction of KPAZ-DT in an expeditious manner. Significantly, you have failed to explain why it has been "nearly impossible for [Trinity] to place orders, and receive equipment" for KPAZ-DT before the May 1, 2002 construction deadline, particularly since the station's construction permit was issued over nine months ago.² Likewise, you have failed to explain why you need an additional six-month extension merely to order such equipment. Moreover, your alleged difficulty is further undermined by your own admission that "Trinity has diligently obtained the necessary equipment lists, bidding proposals, tower studies, lease negotiations, etc." in order to accommodate this process. Consequently, we find your delay in ordering the necessary equipment for KPAZ-DT to be unwarranted. In addition, your assertion that completion of initial construction is anticipated "within the next twelve months or so" is too vague and, therefore, does not adequately set forth a reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Trinity should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Trinity will be required to submit a report within thirty (30) days of this letter outlining the steps

² The construction permit for KPAZ-DT was issued on August 10, 2001.

it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Trinity, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Trinity Broadcasting Network IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Trinity Broadcasting Network's request to extend the construction permit for KPAZ-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Terrence M. Hickey
Trinity Broadcasting Network
P.O. Box C-11949
Santa Ana, California 92711



June 3, 2002

LibCo, Inc. c/o Jeffrey J. Gee, Esq. Dow, Lohnes & Albertson, PLLC. 1200 New Hampshire Avenue, N.W. Suite 800 Washington, D.C. 20036

Re: Request for Extension of Time to Construct

Digital Facilities

KPLC-DT, Lake Charles, Louisiana File No. BEPCDT-20020301ADG

Facility ID No. 13994

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of LibCo, Inc. (LibCo) for an extension of time to construct the digital facilities of KPLC-DT, Lake Charles, Louisiana. As originally filed, LibCo asserted that it was unable to complete construction of the facilities for technical reasons. Specifically, LibCo asserted that engineering studies as early as 1998 indicated that its existing tower would not be able to support both analog and digital signals. LibCo's parent company originally anticipated replacing KPLC's existing tower with a tower that was to be taken down at commonly-owned WIS-TV, Columbia, South Carolina. According to the submission, it was determined by January 31, 2002 that tower would be unavailable for KPLC. KPLC stated that it had commissioned a study of its existing tower to determine if it could be modified to support digital operations. LibCo indicated that if the existing tower could not support digital operations a new tower would be ordered.

By letter dated March 29, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

As initially filed, LibCo's application was incomplete with respect to these matters, and you were specifically asked in the March 29th letter to provide information regarding: (1) the equipment that needed to be ordered (for reinforcement of the existing tower or for a new tower), the date such equipment would be ordered, as well as the date such equipment would be delivered; (2) the reasons why the ordering of equipment had been delayed; (3) the steps LibCo took to mitigate its problems; (4) a specific plan outlining how LibCo would use the extension time to further the construction of KPLC-DT; and (5) the date by which LibCo anticipated construction would be completed.

In response to our request, you submitted an amendment on April 24, 2002, stating that tower design studies have not completed. You also state that equipment cannot be ordered until those studies are complete. You go on to say that the entire project may have to restart from the beginning if any problems or objections are raised at any time during the process. You say tower modifications may be completed in 180 days if you decide to use your existing tower. After that, additional months will be needed to order equipment and construct the facilities which you anticipate will be done by May 1, 2003. Based on your submission, we find that you have not taken all reasonable steps to complete construction of KPLC-DT in an expeditious manner. Specifically, your parent company was integrally involved in the decisions concerning the Columbia, South Carolina tower. Therefore, you had reason to be aware of potential problems with the availability of the planned tower and at least could have begun looking at alternatives in advance of January 2002. Furthermore, you state that you have not even decided whether to use your existing tower or to construct a new one. You do not indicate whether you are undertaking alternate design studies to be utilized if your existing tower is unusable, even though you determined in 1998 that it was unsuitable for both analog and digital signals. You also state that the process might have to be started anew because of any problems or objections at any stage. Thus, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that LibCo should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, LibCo will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each Absent extraordinary and compelling circumstances, the of these construction milestones. construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against LibCo, and the initiation of a six-month

process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That LibCo, Inc. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That LibCo's request to extend the construction permit for KPLC-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: LibCo, Inc. 639 Isbell Road, Suite 390 Reno, Nevada 89509



June 3, 2002

KCRA Hearst-Argyle Television, Inc. c/o Mark J. Prak, Esq.
Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.
P.O. Box 1800
Raleigh, North Carolina 27602

Re: Request for Extension of Time to Construct

Digital Facilities

KQCA-DT, Stockton, California File No. BEPCDT-20020304AKJ

Facility ID No. 10242

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of KCRA Hearst-Argyle Television, Inc. ("Hearst") for an extension of time to construct the digital facilities of KQCA-DT. As originally filed, Hearst asserted that it was unable to complete construction of the facilities for technical reasons. Specifically, Hearst asserted that its construction permit contemplated the use of a tower owned by KQCA's operating company. Further, Hearst stated that KQCA subsequently learned that a third party tower company, Richland, had determined that it would not build a tower in proximity to the tower from which KQCA intended to broadcast its DTV signal and KQCA's operating company contacted Richland regarding the management of its tower. Hearst maintained that the parties have been negotiating a management agreement since August 2001, and that under the terms of the agreement, Richland would be responsible for the modification of the tower to support DTV equipment for KQCA and other prospective stations.

By letter dated April 2, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

As initially filed, Hearst's application was incomplete with respect to these matters, and you were specifically asked in the April 2nd letter to provide updated information on the status of the tower modifications. In addition, you were asked to state what other tower sites, if any, you considered and why such sites were deemed unacceptable. Further, you were asked to clarify whether the reference in your extension request to "KQCA's operating company" refers to a third party owner of KQCA's existing tower or to some other entity. We also sought information regarding: (1) the steps Hearst has taken to mitigate its problems; (2) a specific plan outlining how you will use the extension time to further the construction of KQCA-DT; and (3) the date upon which you anticipate that construction will be complete.

In response to our request, you submitted an amendment on April 26, 2002, stating that the tower is owned by KQCA's operating company, Hearst Argyle Stations, Inc., which is an affiliated, 100% sister corporation of KCRA Hearst-Argyle Television, Inc. Regarding the tower management agreement, you state that negotiations between your operating company and Richland are still continuing. Further, you assert that as soon as the tower site modifications are made and the antenna installed, KQCA-DT will complete construction of its DTV facility. However, we find that you have not taken all reasonable steps to complete construction of KQCA-DT in an expeditious manner. Specifically, you have not given any information regarding the steps you have taken to mitigate your problems. In this regard, while the negotiations concerning the tower management agreement may not be within your control, you have failed to provide any information regarding what other tower sites, if any, you have considered and why such sites were deemed unacceptable. Thus, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Hearst should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Hearst will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Hearst, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That KCRA Hearst-Argyle Television, Inc. IS HEREBY ADMONISHED for its failure to comply with its DTV construction

obligations. Moreover, IT IS FURTHER ORDERED That KCRA Hearst-Argyle Television's request to extend the construction permit for KQCA-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: KCRA Hearst-Argyle Television, Inc. P.O. Box 1800 Raleigh, North Carolina 27602



June 4, 2002

White Knight Broadcasting of Shreveport License Corp. c/o Michael W. Richards, Esquire Shaw Pittman, LLP 2300 N Street, NW Washington, D.C. 20037-1128

Re: Request for Extension of Time to

Construct Digital Facilities KSHV-DT, Shreveport, LA Facility ID No. 73706

File No. BEPCDT-20020228AFN

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf White Knight Broadcasting of Shreveport License Corp. ("White Knight") for an extension of time to construct the digital facilities of KSHV-DT. As originally filed, White Knight asserted that it was unable to construct facilities by the applicable deadline because it would create an "undue financial hardship." Among other things, White Knight stated that it is not cost-efficient to construct a low power DTV facility with equipment that cannot be used for a subsequent higher-powered facility. Moreover, White Knight maintained that even constructing minimum build-out facilities would create an undue financial hardship inasmuch as the company was not profitable, was unable to meet its current debt service, and "has no borrowing ability." I

By letter dated March 28, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. That letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.² In the case of claimed financial hardship, the Commission has also determined that it would "consider, on a case-by-case basis, in addition to the extension criteria outlined in the *Fifth Report and Order*, whether a broadcaster should be afforded additional time to construct its DTV facilities because the cost of meeting the minimum build-out requirements exceeds the station's financial resources." In particular, such an applicant must provide an

¹ White Knight has sought confidential treatment of certain financial data it did submit pursuant to Section 0.459 of the Commission's Rules, 47 C.F.R. § 0.459.

² Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

itemized cost estimate of a minimum build-out, detailed financial statements and a detailed explanation why its financial condition precludes such an expenditure, a description of its good faith efforts to meet the construction deadline, including its efforts to obtain the requisite financing and why those efforts were unsuccessful, and indicate when it reasonably expects to complete construction. In addition, FCC Form 337 requires that an applicant seeking an extension of time provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, White Knight's application was incomplete with respect to these matters, and you were specifically asked in the March 28 letter to provide an itemized estimated cost of construction (*i.e.*, a price estimate for each structure, antenna or other related equipment reasonably necessary for minimum DTV operations). In addition, in order to determine whether White Knight's financial condition warrants an extension, you were asked to provide the audited income statements that cover an economically significant period of time that applicants are required to keep available, as set forth in the instructions to FCC Form 337. We also requested documentary evidence of White Knight's inability to raise capital, such as affidavits from lenders or other financial institutions.

In response to our request, you submitted an amendment to the extension application consisting of cost estimates associated with various construction "scenarios," consolidated balance sheets and related financial statements of the licensee's parent company, White Knight Holdings, Inc. ("White Knight Holdings"), and a 2001 amendment to a loan/credit agreement entered into by White Knight Holdings. We are unable to discern from these documents whether the requested extension is warranted. The materials submitted do not, of themselves, set forth adequately identifiable proposed facilities, the cost or time necessary to construct or the financial ability of this station to meet that goal. Further, you have not adequately addressed, as part of your efforts to construct this station prior and subsequent to the May 1, 2002 construction deadline, the feasibility of building a reduced facility and operating pursuant to special temporary authority. In this regard, your showing contains no plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that what amounts to an unqualified extension of this construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that White Knight should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, White Knight will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be

³ Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 20594, 20611 (2001).

⁴ *Id.* at 20611-12.

required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, we may consider the imposition of additional sanctions. Moreover, failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against White Knight, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That White Knight Broadcasting of Shreveport License Corporation, IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That White Knight Broadcasting of Shreveport License Corporation's request to extend the construction permit for KSHV-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rule as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: White Knight Broadcasting of Shreveport License Corp.
 700 St. John Street, Suite 301
 Lafayette, Louisiana 70501



June 3, 2002

Trinity Broadcasting Network c/o Colby M. May, Esq. Law Offices of Colby M. May 205 Third Street, SE Washington, D.C. 20003

Re: Request for Extension of Time to Construct

Digital Facilities

KTAJ-DT, St. Joseph, Missouri File No. BEPCDT-20020304ADP

Facility ID No. 999

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Trinity Broadcasting Network ("Trinity") for an extension of time to construct the digital facilities of KTAJ-DT. As originally filed, Trinity asserted that it was unable to construct facilities by the applicable deadline due to technical and other reasons. Trinity did not provide a date by which it anticipated construction would be undertaken or completed; however, in support of its request, Trinity stated that:

Coordination of the transition to digital has been extremely difficult and final equipment orders are just now being evaluated for placement with delivery to follow. Moreover, in an effort to initiate DTV service as soon as possible, focus has been on completing STA facilities based on the Commission's determination that full allocation protection for UHF facilities would be maintained beyond May 1, 2002.

By letter dated March 28, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Trinity's extension request failed to comply with the Commission's stated policy regarding extension of DTV construction deadlines, and the instructions to FCC Form 337. Consequently, Trinity failed to justify an extension. However, Trinity was afforded the opportunity to amend its previously filed FCC Form 337 to provide the requisite information as set forth above, including: (1) a specific plan outlining how it will use the extension time to further the construction of KTAJ-DT; and (2) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that given the Commission's determination on November 15, 2001 to afford full frequency allocation protection, even if there was a less than full power buildout, Trinity has determined to proceed with a two-step buildout of its DTV authorization. You assert that the first step will be to acquire the equipment necessary to permit the inauguration of service with STA facilities to ensure DTV service as soon as practicable. Following that phased buildout, you assert that full facilities will then be completed. You indicate that this process is anticipated to be completed no later than the expiration of full allocation protection, anticipated to be around January 2004. In the meantime, you contend that Trinity will complete equipment orders for STA construction within the extension term requested (i.e. October 2002), with on-air operations following thereafter. Further, you clarify in the amendment that buildout and completion of initial construction is anticipated "within the next twelve months or so."

Based upon the information before us, we find that you have not taken all reasonable steps to complete construction of KTAJ-DT in an expeditious manner. Significantly, you have failed to explain why it has been "nearly impossible for [Trinity] to place orders, and receive equipment" for KTAJ-DT before the May 1, 2002 construction deadline, particularly since the station's construction permit was issued over fifteen months ago.² Likewise, you have failed to explain why you need an additional six-month extension merely to order such equipment. Moreover, your alleged difficulty is further undermined by your own admission that "Trinity has diligently obtained the necessary equipment lists, bidding proposals, tower studies, lease negotiations, etc." in order to accommodate this process. Consequently, we find your delay in ordering the necessary equipment for KTAJ-DT to be unwarranted. In addition, your assertion that completion of initial construction is anticipated "within the next twelve months or so" is too vague and, therefore, does not adequately set forth a reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Trinity should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Trinity will be required to submit a report within thirty (30) days of this letter outlining the steps

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² The construction permit for KTAJ-DT was issued on February 8, 2001.

it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Trinity, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Trinity Broadcasting Network IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Trinity Broadcasting Network's request to extend the construction permit for KTAJ-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Terrence M. Hickey
Trinity Broadcasting Network
P.O. Box C-11949
Santa Ana, California 92711



June 3, 2002

Trinity Broadcasting Network c/o Colby M. May, Esq. Law Offices of Colby M. May 205 Third Street, SE Washington, D.C. 20003

Re: Request for Extension of Time to Construct

Digital Facilities

KTBO-DT, Oklahoma City, Oklahoma File No. BEPCDT-20020304AGU

Facility ID No. 67999

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Trinity Broadcasting Network ("Trinity") for an extension of time to construct the digital facilities of KTBO-DT. As originally filed, Trinity asserted that it was unable to construct facilities by the applicable deadline due to technical and other reasons. Trinity did not provide a date by which it anticipated construction would be undertaken or completed; however, in support of its request, Trinity stated that:

Coordination of the transition to digital has been extremely difficult and final equipment orders are just now being evaluated for placement with delivery to follow. Moreover, in an effort to initiate DTV service as soon as possible, focus has been on completing STA facilities based on the Commission's determination that full allocation protection for UHF facilities would be maintained beyond May 1, 2002.

By letter dated March 28, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Trinity's extension request failed to comply with the Commission's stated policy regarding extension of DTV construction deadlines, and the instructions to FCC Form 337. Consequently, Trinity failed to justify an extension. However, Trinity was afforded the opportunity to amend its previously filed FCC Form 337 to provide the requisite information as set forth above, including: (1) a specific plan outlining how it will use the extension time to further the construction of KTBO-DT; and (2) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that given the Commission's determination on November 15, 2001 to afford full frequency allocation protection, even if there was a less than full power buildout, Trinity has determined to proceed with a two-step buildout of its DTV authorization. You assert that the first step will be to acquire the equipment necessary to permit the inauguration of service with STA facilities to ensure DTV service as soon as practicable. Following that phased buildout, you assert that full facilities will then be completed. You indicate that this process is anticipated to be completed no later than the expiration of full allocation protection, anticipated to be around January 2004. In the meantime, you contend that Trinity will complete equipment orders for STA construction within the extension term requested (i.e. October 2002), with on-air operations following thereafter. Further, you clarify in the amendment that buildout and completion of initial construction is anticipated "within the next twelve months or so."

Based upon the information before us, we find that you have not taken all reasonable steps to complete construction of KTBO-DT in an expeditious manner. Significantly, you have failed to explain why it has been "nearly impossible for [Trinity] to place orders, and receive equipment" for KTBO-DT before the May 1, 2002 construction deadline, particularly since the station's construction permit was issued over twelve months ago.² Likewise, you have failed to explain why you need an additional six-month extension merely to order such equipment. Moreover, your alleged difficulty is further undermined by your own admission that "Trinity has diligently obtained the necessary equipment lists, bidding proposals, tower studies, lease negotiations, etc." in order to accommodate this process. Consequently, we find your delay in ordering the necessary equipment for KTBO-DT to be unwarranted. In addition, your assertion that completion of initial construction is anticipated "within the next twelve months or so" is too vague and, therefore, does not adequately set forth a reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Trinity should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Trinity will be required to submit a report within thirty (30) days of this letter outlining the steps

² The construction permit for KTBO-DT was issued on May 7, 2001.

it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Trinity, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Trinity Broadcasting Network IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Trinity Broadcasting Network's request to extend the construction permit for KTBO-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Terrence M. Hickey
Trinity Broadcasting Network
P.O. Box C-11949
Santa Ana, California 92711



June 3, 2002

Reiten Television, Inc. c/o Brendan Holland, Esquire Shaw Pittman, LLP 2300 N Street, NW Washington, D.C. 20037-1128

Re: Request for Extension of Time to

Construct Digital Facilities KXMC-DT, Minot, ND, TX Facility ID No. 55685 File No. BEPCDT-20020226ADQ

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf Reiten Television, Inc. ("Reiten") for an extension of time to construct the digital facilities of KXMC-DT. As originally filed, Reiten asserted that it was unable to construct facilities by the applicable deadline because it is unable to make the substantial capital investment necessary to construct digital facilities for the remaining three stations as it would create an undue financial hardship." Further, Reiten asserts that due to the market's size and diffused population, it will incur four times the cost of implementing even minimum DTV build-out for these stations, a "potentially financially devastating task."

By letter dated April 1, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. That letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.³ In the case of claimed financial hardship, the Commission has also determined that it would "consider, on a case-by-case basis, in addition to the extension criteria outlined in the *Fifth Report and Order*, whether a broadcaster should be afforded additional time to construct its DTV facilities because the cost of meeting the minimum build-out requirements

¹ Reiten is also the licensee of KXMA-TV, Dickinson, KXMB-TV, Bismarck, and KXMD-TV, Williston, North Dakota, which all operate as satellites of KXMC-TV. It states that it has constructed the digital facilities of KXMB-DT, which is operating pursuant to Special Temporary Authority.

² Reiten has sought confidential treatment of certain financial data it did submit pursuant to Section 0.459 of the Commission's Rules, 47 C.F.R. § 0.459.

³ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

exceeds the station's financial resources." In particular, such an applicant must provide an itemized cost estimate of a minimum build-out, detailed financial statements and a detailed explanation why its financial condition precludes such an expenditure, a description of its good faith efforts to meet the construction deadline, including its efforts to obtain the requisite financing and why those efforts were unsuccessful, and indicate when it reasonably expects to complete construction. In addition, FCC Form 337 requires that an applicant seeking an extension of time provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Reiten's application was incomplete with respect to these matters, and in the April 1 letter you were asked, among other things, to provide documentary evidence of Reiten's claimed financial condition and its inability to raise capital for constructing its DTV facilities.

In response to our request, you submitted an amendment to the extension application stating that Reiten intends to pursue a partner to share the cost of constructing KXMC-DT's digital facilities. It expects to know whether that approach is feasible within 60 days, but that even if such a partnership does not materialize, it has planned to order equipment and anticipates that construction of these facilities will be completed by May 1, 2003. Reiten asserts that it plans to fund these projects by utilizing monies available from its operating budget. No additional information was submitted with respect to the financial condition of the station or its ability to raise the necessary capital for constructing its DTV facilities.

We are unable to discern from these documents whether the requested extension is warranted. The materials submitted do not, of themselves, set forth adequately Reiten's financial condition or its financial ability to meet its construction goals. Further, you have not adequately addressed, as part of your efforts to construct this station prior and subsequent to the May 1, 2002 construction deadline, the feasibility of building a reduced facility and operating pursuant to special temporary authority.

For these reasons, we conclude that the application for an extension of this construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Reiten should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Reiten will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002.

⁴ Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 20594, 20611 (2001).

⁵ *Id.* at 20611-12.

⁶ Reiten states that it successfully used such a partnership to construct the digital facilities of KXMB-DT.

Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, we may consider the imposition of additional sanctions. Moreover, failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Reiten, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Reiten Television, Inc., IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Reiten Television, Inc.'s request to extend the construction permit for KXMC-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rule as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Reiten Television, Inc. c/o David M. Reiten P.O. Box 1686 Minot, ND 58702



June 3, 2002

LibCo, Inc. c/o Jeffrey J. Gee, Esq. Dow, Lohnes & Albertson, PLLC. 1200 New Hampshire Avenue, N.W. Suite 800 Washington, D.C. 20036

> Re: Request for Extension of Time to Construct Digital Facilities WALB-DT, Albany, Georgia File No. BEPCDT-20020301ADP Facility ID No. 70713

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of LibCo, Inc. (LibCo) for an extension of time to construct the digital facilities of WALB-DT, Albany, Georgia. As originally filed, LibCo asserted that it was unable to complete construction of the facilities for technical reasons. Specifically, LibCo asserted that it had been unable to construct its digital facilities because it was required to file a maximization request with the Commission and because of an ongoing dispute between LibCo's parent company and a tower construction company regarding the physical condition of WALB-TV's current transmitting tower.

By letter dated April 2, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, LibCo's application was incomplete with respect to these matters, and you were specifically asked in the April 2nd letter to provide information regarding: (1) past and current negotiations regarding the existing analog tower, and a date by which such negotiations would be concluded; (2) the steps LibCo had taken to locate an alternative tower site; and (3) a

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¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

specific plan outlining how LibCo would use the extension of time to further the construction of WALB-DT, including a date by which the station's DTV equipment would be ordered.

In response to our request, you submitted an amendment on April 24, 2002, stating that the issue of the tower's condition is still unresolved after 10 years of problems. You do not state whether you have contacted engineers other than the ones who installed the tower in regard to correcting the problems. You assert that you have identified an alternative tower site, but do not indicate whether any engineering work has been done in regard to that site. Due to the ongoing problems with the tower, you are unable to give anything other than vague estimates regarding completion of your DTV facilities. Based on your submission, we find that you have not taken all reasonable steps to complete construction of WALB-DT in an expeditious manner. Specifically, you have known since 1992 that your tower had problems serious enough to put the station off the air several times. In that time, you have not called in different engineers for an independent analysis and apparently have not made an effort to build or lease space on a different tower. You have not engaged an antenna manufacturer for preliminary designs in case your tower is deemed suitable for use. Your construction timeline does not even contemplate beginning the design and construction process until June 2002, rendering your anticipated completion date of May 2003 doubtful. Thus, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that LibCo should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, LibCo will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against LibCo, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That LibCo, Inc. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT

IS FURTHER ORDERED That LibCo's request to extend the construction permit for WALB-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: LibCo, Inc.

639 Isbell Road, Suite 390 Reno, Nevada 89509



June 3, 2002

Trinity Broadcasting Network c/o Colby M. May, Esq. Law Offices of Colby M. May 205 Third Street, SE Washington, D.C. 20003

Re: Request for Extension of Time to Construct

Digital Facilities

WBUY-DT, Holly Springs, Mississippi File No. BEPCDT-20020304ADQ

Facility ID No. 60830

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Trinity Broadcasting Network ("Trinity") for an extension of time to construct the digital facilities of WBUY-DT. As originally filed, Trinity asserted that it was unable to construct facilities by the applicable deadline due to technical and other reasons. Trinity did not provide a date by which it anticipated construction would be undertaken or completed; however, in support of its request, Trinity stated that:

Coordination of the transition to digital has been extremely difficult and final equipment orders are just now being evaluated for placement with delivery to follow. Moreover, in an effort to initiate DTV service as soon as possible, focus has been on completing STA facilities based on the Commission's determination that full allocation protection for UHF facilities would be maintained beyond May 1, 2002.

By letter dated March 28, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Trinity's extension request failed to comply with the Commission's stated policy regarding extension of DTV construction deadlines, and the instructions to FCC Form 337. Consequently, Trinity failed to justify an extension. However, Trinity was afforded the opportunity to amend its previously filed FCC Form 337 to provide the requisite information as set forth above, including: (1) a specific plan outlining how it will use the extension time to further the construction of WBUY-DT; and (2) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that given the Commission's determination on November 15, 2001 to afford full frequency allocation protection, even if there was a less than full power buildout, Trinity has determined to proceed with a two-step buildout of its DTV authorization. You assert that the first step will be to acquire the equipment necessary to permit the inauguration of service with STA facilities to ensure DTV service as soon as practicable. Following that phased buildout, you assert that full facilities will then be completed. You indicate that this process is anticipated to be completed no later than the expiration of full allocation protection, anticipated to be around January 2004. In the meantime, you contend that Trinity will complete equipment orders for STA construction within the extension term requested (i.e. October 2002), with on-air operations following thereafter. Further, you clarify in the amendment that buildout and completion of initial construction is anticipated "within the next twelve months or so."

Based upon the information before us, we find that you have not taken all reasonable steps to complete construction of WBUY-DT in an expeditious manner. Significantly, you have failed to explain why it has been "nearly impossible for [Trinity] to place orders, and receive equipment" for WBUY-DT before the May 1, 2002 construction deadline, particularly since the station's construction permit was issued over fourteen months ago.² Likewise, you have failed to explain why you need an additional six-month extension merely to order such equipment. Moreover, your alleged difficulty is further undermined by your own admission that "Trinity has diligently obtained the necessary equipment lists, bidding proposals, tower studies, lease negotiations, etc." in order to accommodate this process. Consequently, we find your delay in ordering the necessary equipment for WBUY-DT to be unwarranted. In addition, your assertion that completion of initial construction is anticipated "within the next twelve months or so" is too vague and, therefore, does not adequately set forth a reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Trinity should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Trinity will be required to submit a report within thirty (30) days of this letter outlining the steps

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² The construction permit for WBUY-DT was issued on March 7, 2001.

it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Trinity, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Trinity Broadcasting Network IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Trinity Broadcasting Network's request to extend the construction permit for WBUY-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Terrence M. Hickey
Trinity Broadcasting Network
P.O. Box C-11949
Santa Ana, California 92711



June 3, 2002

Trinity Broadcasting Network c/o Colby M. May, Esq. Law Offices of Colby M. May 205 Third Street, SE Washington, D.C. 20003

Re: Request for Extension of Time to Construct

Digital Facilities

WCLJ-DT, Bloomington, Indiana File No. BEPCDT-20020304AGQ

Facility ID No. 68007

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Trinity Broadcasting Network ("Trinity") for an extension of time to construct the digital facilities of WCLJ-DT. As originally filed, Trinity asserted that it was unable to construct facilities by the applicable deadline due to technical and other reasons. Trinity did not provide a date by which it anticipated construction would be undertaken or completed; however, in support of its request, Trinity stated that:

Coordination of the transition to digital has been extremely difficult and final equipment orders are just now being evaluated for placement with delivery to follow. Moreover, in an effort to initiate DTV service as soon as possible, focus has been on completing STA facilities based on the Commission's determination that full allocation protection for UHF facilities would be maintained beyond May 1, 2002.

By letter dated March 28, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Trinity's extension request failed to comply with the Commission's stated policy regarding extension of DTV construction deadlines, and the instructions to FCC Form 337. Consequently, Trinity failed to justify an extension. However, Trinity was afforded the opportunity to amend its previously filed FCC Form 337 to provide the requisite information as set forth above, including: (1) a specific plan outlining how it will use the extension time to further the construction of WCLJ-DT; and (2) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that given the Commission's determination on November 15, 2001 to afford full frequency allocation protection, even if there was a less than full power buildout, Trinity has determined to proceed with a two-step buildout of its DTV authorization. You assert that the first step will be to acquire the equipment necessary to permit the inauguration of service with STA facilities to ensure DTV service as soon as practicable. Following that phased buildout, you assert that full facilities will then be completed. You indicate that this process is anticipated to be completed no later than the expiration of full allocation protection, anticipated to be around January 2004. In the meantime, you contend that Trinity will complete equipment orders for STA construction within the extension term requested (i.e. October 2002), with on-air operations following thereafter. Further, you clarify in the amendment that buildout and completion of initial construction is anticipated "within the next twelve months or so."

Based upon the information before us, we find that you have not taken all reasonable steps to complete construction of WCLJ-DT in an expeditious manner. Significantly, you have failed to explain why it has been "nearly impossible for [Trinity] to place orders, and receive equipment" for WCLJ-DT before the May 1, 2002 construction deadline, particularly since the station's construction permit was issued over fourteen months ago.² Likewise, you have failed to explain why you need an additional six-month extension merely to order such equipment. Moreover, your alleged difficulty is further undermined by your own admission that "Trinity has diligently obtained the necessary equipment lists, bidding proposals, tower studies, lease negotiations, etc." in order to accommodate this process. Consequently, we find your delay in ordering the necessary equipment for WCLJ-DT to be unwarranted. In addition, your assertion that completion of initial construction is anticipated "within the next twelve months or so" is too vague and, therefore, does not adequately set forth a reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Trinity should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Trinity will be required to submit a report within thirty (30) days of this letter outlining the steps

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² The construction permit for WCLJ-DT was issued on March 2, 2001.

it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Trinity, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Trinity Broadcasting Network IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Trinity Broadcasting Network's request to extend the construction permit for WCLJ-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Terrence M. Hickey
Trinity Broadcasting Network
P.O. Box C-11949
Santa Ana, California 92711



June 3, 2002

WDKA Acquisition Corp. c/o William M. Barnard, Esq. 5028 Wisconsin Avenue, NW Washington, DC 20016

Re: Request for Extension of Time to Construct

Digital Facilities

WDKA-DT, Paducah, Kentucky File No. BEPCDT-20020301AIS

Facility ID No. 39561

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of WDKA Acquisition Corp. ("WDKA") for an extension of time to construct the digital facilities of WDKA-DT. As originally filed, WDKA asserted that it was unable to complete construction of the facilities for legal and financial reasons. Specifically, WDKA asserted that the station is programmed pursuant to a time brokerage agreement with Sinclair Properties, LLC, and that "from a practical standpoint, construction and operation of the [DTV] facility without reaching agreement with Sinclair is not possible," given the low level of compensation paid by Sinclair to WDKA. According to WDKA, Sinclair indicated that it was "not interested in contributing to the construction and operation of the [DTV facility] . . [but instead] takes the position that the licensee is required to construct and operate the channel at its own expense and to simulcast Sinclair's DTV programming without compensation." Further, WDKA stated that it has informed Sinclair that all negotiations with respect to use of the DTV facility must be completed within 60 days, and that whatever the outcome of these negotiations, WDKA "will construct the facility either on a full power or STA basis, within six months of grant of this extension application."

By letter dated April 2, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In the case of claimed financial hardship, the Commission has also determined that it would "consider, on a case-by-case basis, in addition to the extension criteria outlined in the *Fifth Report and Order*, whether a broadcaster should be afforded additional time

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

to construct its DTV facilities because the cost of meeting the minimum build-out requirements exceeds the station's financial resources.² In particular, such an applicant must: (1) provide an itemized estimate of the cost of meeting the minimum build-out requirements and a detailed statement explaining why its financial condition precludes such expenditure; (2) describe its good faith efforts to meet the deadline, including the good faith efforts to obtain the requisite financing, and why those efforts were unsuccessful; and (3) indicate when it reasonably expects to complete construction.³ In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, WDKA's application was incomplete with respect to these matters, and you were specifically asked in the April 2nd letter to: (1) more fully describe your earlier efforts to meet the deadline, including the timing and substance of your negotiations with Sinclair regarding construction of the DTV facility, as well as your efforts to obtain outside financing sufficiently prior to the original May 1, 2002 DTV construction deadline, so as to permit timely construction, and why those efforts were unsuccessful; (2) explain the result of your negotiations with Sinclair regarding construction of WDKA-DT; and (3) provide a specific plan outlining how you will use the extension of time to further the construction of WDKA-DT.

In response to our request, you submitted an amendment on April 25, 2002, describing your attempts to resolve the issues arising from the time brokerage agreement with Sinclair and the result of those negotiations. At this point, you state that attempts by WDKA to resolve this matter have been unsuccessful. You assert that this impasse has "left WDKA with no reasonable alternative except to proceed unilaterally and take whatever action is warranted against Sinclair in an appropriate forum." You state that while you "do not unnecessarily wish to involve the Commission in a dispute between WDKA and Sinclair, it appears clear that some sort of resolution would be best for all parties involved so that WDKA may go forward with construction." Moreover, you reiterate that if no agreement is reached, WDKA will go forward with construction of the DTV facility, either utilizing the full power facilities authorized in the construction permit or the low power STA arrangement authorized by the Commission.

Based on the information before us, we find that you have not taken all reasonable steps to complete construction of WDKA-DT in an expeditious manner. As an initial matter, the resolution of your dispute with Sinclair regarding the time brokerage agreement involves a contractual matter, and the Commission has consistently held that it is not the proper forum for resolving such private matters.⁴ Moreover, while you may have a legitimate basis to pursue legal

² Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 20594, 20611 (2001).

³ *Id.* at 20611-20612.

⁴ See, e.g., Cope Communications, Inc., 13 FCC Rcd 14564, 14567 (1998); Roy M. Speer, 11 FCC Rcd 18393, 18413 (1996).

action against Sinclair in an appropriate forum, that in no way relieves you of your obligation as a broadcast licensee to comply with the Commission's DTV construction deadline.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that WDKA should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, WDKA will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against WDKA, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That WDKA Acquisition Corp. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That WDKA Acquisition Corp.'s request to extend the construction permit for WDKA-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: WDKA Acquisition Corp. c/o Paul T. Lucci, President 200 College Place Suite 118 Norfolk, Virginia 23510



June 3, 2002

Trinity Broadcasting Network c/o Colby M. May, Esq. Law Offices of Colby M. May 205 Third Street, SE Washington, D.C. 20003

Re: Request for Extension of Time to Construct

Digital Facilities

WDLI-DT, Canton, Ohio

File No. BEPCDT-20020304ADE

Facility ID No. 67893

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Trinity Broadcasting Network ("Trinity") for an extension of time to construct the digital facilities of WDLI-DT. As originally filed, Trinity asserted that it was unable to construct facilities by the applicable deadline due to technical and other reasons. Trinity did not provide a date by which it anticipated construction would be undertaken or completed; however, in support of its request, Trinity stated that:

Coordination of the transition to digital has been extremely difficult and final equipment orders are just now being evaluated for placement with delivery to follow. Moreover, in an effort to initiate DTV service as soon as possible, focus has been on completing STA facilities based on the Commission's determination that full allocation protection for UHF facilities would be maintained beyond May 1, 2002.

By letter dated March 28, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Trinity's extension request failed to comply with the Commission's stated policy regarding extension of DTV construction deadlines, and the instructions to FCC Form 337. Consequently, Trinity failed to justify an extension. However, Trinity was afforded the opportunity to amend its previously filed FCC Form 337 to provide the requisite information as set forth above, including: (1) a specific plan outlining how it will use the extension time to further the construction of WDLI-DT; and (2) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that given the Commission's determination on November 15, 2001 to afford full frequency allocation protection, even if there was a less than full power buildout, Trinity has determined to proceed with a two-step buildout of its DTV authorization. You assert that the first step will be to acquire the equipment necessary to permit the inauguration of service with STA facilities to ensure DTV service as soon as practicable. Following that phased buildout, you assert that full facilities will then be completed. You indicate that this process is anticipated to be completed no later than the expiration of full allocation protection, anticipated to be around January 2004. In the meantime, you contend that Trinity will complete equipment orders for STA construction within the extension term requested (i.e. October 2002), with on-air operations following thereafter. Further, you clarify in the amendment that buildout and completion of initial construction is anticipated "within the next twelve months or so."

Based upon the information before us, we find that you have not taken all reasonable steps to complete construction of WDLI-DT in an expeditious manner. Significantly, you have failed to explain why it has been "nearly impossible for [Trinity] to place orders, and receive equipment" for WDLI-DT before the May 1, 2002 construction deadline, particularly since the station's construction permit was issued over fifteen months ago.² Likewise, you have failed to explain why you need an additional six-month extension merely to order such equipment. Moreover, your alleged difficulty is further undermined by your own admission that "Trinity has diligently obtained the necessary equipment lists, bidding proposals, tower studies, lease negotiations, etc." in order to accommodate this process. Consequently, we find your delay in ordering the necessary equipment for WDLI-DT to be unwarranted. In addition, your assertion that completion of initial construction is anticipated "within the next twelve months or so" is too vague and, therefore, does not adequately set forth a reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Trinity should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Trinity will be required to submit a report within thirty (30) days of this letter outlining the steps

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² The construction permit for WDLI-DT was issued on February 1, 2001.

it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Trinity, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Trinity Broadcasting Network IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Trinity Broadcasting Network's request to extend the construction permit for WDLI-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Terrence M. Hickey
Trinity Broadcasting Network
P.O. Box C-11949
Santa Ana, California 92711



June 3, 2002

Trinity Broadcasting Network c/o Colby M. May, Esq. Law Offices of Colby M. May 205 Third Street, SE Washington, D.C. 20003

Re: Request for Extension of Time to Construct

Digital Facilities

WHFT-DT, Miami, Florida

File No. BEPCDT-20020304AGM

Facility ID No. 67971

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Trinity Broadcasting Network ("Trinity") for an extension of time to construct the digital facilities of WHFT-DT. As originally filed, Trinity asserted that it was unable to construct facilities by the applicable deadline due to technical and other reasons. Trinity did not provide a date by which it anticipated construction would be undertaken or completed; however, in support of its request, Trinity stated that:

Coordination of the transition to digital has been extremely difficult and final equipment orders are just now being evaluated for placement with delivery to follow. Moreover, in an effort to initiate DTV service as soon as possible, focus has been on completing STA facilities based on the Commission's determination that full allocation protection for UHF facilities would be maintained beyond May 1, 2002.

By letter dated March 28, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Trinity's extension request failed to comply with the Commission's stated policy regarding extension of DTV construction deadlines, and the instructions to FCC Form 337. Consequently, Trinity failed to justify an extension. However, Trinity was afforded the opportunity to amend its previously filed FCC Form 337 to provide the requisite information as set forth above, including: (1) a specific plan outlining how it will use the extension time to further the construction of WHFT-DT; and (2) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that given the Commission's determination on November 15, 2001 to afford full frequency allocation protection, even if there was a less than full power buildout, Trinity has determined to proceed with a two-step buildout of its DTV authorization. You assert that the first step will be to acquire the equipment necessary to permit the inauguration of service with STA facilities to ensure DTV service as soon as practicable. Following that phased buildout, you assert that full facilities will then be completed. You indicate that this process is anticipated to be completed no later than the expiration of full allocation protection, anticipated to be around January 2004. In the meantime, you contend that Trinity will complete equipment orders for STA construction within the extension term requested (i.e. October 2002), with on-air operations following thereafter. Further, you clarify in the amendment that buildout and completion of initial construction is anticipated "within the next twelve months or so."

Based upon the information before us, we find that you have not taken all reasonable steps to complete construction of WHFT-DT in an expeditious manner. Significantly, you have failed to explain why it has been "nearly impossible for [Trinity] to place orders, and receive equipment" for WHFT-DT before the May 1, 2002 construction deadline, particularly since the station's construction permit was issued over eight months ago.² Likewise, you have failed to explain why you need an additional six-month extension merely to order such equipment. Moreover, your alleged difficulty is further undermined by your own admission that "Trinity has diligently obtained the necessary equipment lists, bidding proposals, tower studies, lease negotiations, etc." in order to accommodate this process. Consequently, we find your delay in ordering the necessary equipment for WHFT-DT to be unwarranted. In addition, your assertion that completion of initial construction is anticipated "within the next twelve months or so" is too vague and, therefore, does not adequately set forth a reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Trinity should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Trinity will be required to submit a report within thirty (30) days of this letter outlining the steps

² The construction permit for WHFT-DT was issued on September 12, 2001.

it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Trinity, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Trinity Broadcasting Network IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Trinity Broadcasting Network's request to extend the construction permit for WHFT-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Terrence M. Hickey
Trinity Broadcasting Network
P.O. Box C-11949
Santa Ana, California 92711



June 3, 2002

Trinity Broadcasting Network c/o Colby M. May, Esq. Law Offices of Colby M. May 205 Third Street, SE Washington, D.C. 20003

Re: Request for Extension of Time to Construct

Digital Facilities

WHSG-DT, Monroe, Georgia File No. BEPCDT-20020304AFZ

Facility ID No. 68058

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Trinity Broadcasting Network ("Trinity") for an extension of time to construct the digital facilities of WHSG-DT. As originally filed, Trinity asserted that it was unable to construct facilities by the applicable deadline due to technical and other reasons. Trinity did not provide a date by which it anticipated construction would be undertaken or completed; however, in support of its request, Trinity stated that:

Coordination of the transition to digital has been extremely difficult and final equipment orders are just now being evaluated for placement with delivery to follow. Moreover, in an effort to initiate DTV service as soon as possible, focus has been on completing STA facilities based on the Commission's determination that full allocation protection for UHF facilities would be maintained beyond May 1, 2002.

By letter dated March 28, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an

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¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

As initially filed, Trinity's extension request failed to comply with the Commission's stated policy regarding extension of DTV construction deadlines, and the instructions to FCC Form 337. Consequently, Trinity failed to justify an extension. However, Trinity was afforded the opportunity to amend its previously filed FCC Form 337 to provide the requisite information as set forth above, including: (1) a specific plan outlining how it will use the extension time to further the construction of WHSG-DT; and (2) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that given the Commission's determination on November 15, 2001 to afford full frequency allocation protection, even if there was a less than full power buildout, Trinity has determined to proceed with a two-step buildout of its DTV authorization. You assert that the first step will be to acquire the equipment necessary to permit the inauguration of service with STA facilities to ensure DTV service as soon as practicable. Following that phased buildout, you assert that full facilities will then be completed. You indicate that this process is anticipated to be completed no later than the expiration of full allocation protection, anticipated to be around January 2004. In the meantime, you contend that Trinity will complete equipment orders for STA construction within the extension term requested (i.e. October 2002), with on-air operations following thereafter. Further, you clarify in the amendment that buildout and completion of initial construction is anticipated "within the next twelve months or so."

Based upon the information before us, we find that you have not taken all reasonable steps to complete construction of WHSG-DT in an expeditious manner. Significantly, you have failed to explain why it has been "nearly impossible for [Trinity] to place orders, and receive equipment" for WHSG-DT before the May 1, 2002 construction deadline, particularly since the station's construction permit was issued over twelve months ago. Likewise, you have failed to explain why you need an additional six-month extension merely to order such equipment. Moreover, your alleged difficulty is further undermined by your own admission that "Trinity has diligently obtained the necessary equipment lists, bidding proposals, tower studies, lease negotiations, etc." in order to accommodate this process. Consequently, we find your delay in ordering the necessary equipment for WHSG-DT to be unwarranted. In addition, your assertion that completion of initial construction is anticipated "within the next twelve months or so" is too vague and, therefore, does not adequately set forth a reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Trinity should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Trinity will be required to submit a report within thirty (30) days of this letter outlining the steps

² The construction permit for WHSG-DT was issued on May 9, 2001.

In light of the above discussion, IT IS ORDERED That Trinity Broadcasting Network IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Trinity Broadcasting Network's request to extend the construction permit for WHSG-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau



June 3, 2002

LibCo, Inc. c/o Jeffrey J. Gee, Esq. Dow, Lohnes & Albertson, PLLC. 1200 New Hampshire Avenue, N.W. Suite 800 Washington, D.C. 20036

> Re: Request for Extension of Time to Construct Digital Facilities WIS-DT, Columbia, South Carolina File No. BEPCDT-20020301ADN Facility ID No. 13990

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of LibCo, Inc. (LibCo) for an extension of time to construct the digital facilities of WIS-DT, Columbia, South Carolina. As originally filed, LibCo asserted that it was unable to complete construction of the facilities for technical reasons. Specifically, LibCo asserted that over the past three years it had worked with other stations in the market to construct a new community tower, but that in June 2001, the tower consolidator/contractor unexpectedly withdrew from the project and the community tower project dissolved. According to LibCo, it had to choose either to (1) incur the expense of a major restructuring of its current analog tower to support both digital and analog transmissions, or (2) keep its analog signal on the current tower and enter into a lease agreement on another tower in the market for its digital signal. LibCo said that it was then running engineering models on both scenarios and would proceed with the final design and purchase of equipment once those studies were completed.

By letter dated April 2, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

As initially filed, LibCo's application was incomplete with respect to these matters, and you were specifically asked in the April 2nd letter to provide information regarding: (1) the "final tower result" referred to in the FCC Form 337; (2) the dates by which LibCo anticipated ordering equipment and completing any necessary modification to the tower; and (3) the date by which LibCo anticipated construction would be completed.

In response to our request, you submitted an amendment on April 24, 2002, stating that the tower design studies had been completed and the existing tower can be modified to support both analog and digital transmissions. You also state that LibCo is reviewing plans to accommodate two additional broadcasters on the tower. After that process, you state that contracts for the tower modifications and the antenna will be awarded. You further state that subsequent completion will be dependent on the availability of materials, qualified personnel and prevailing weather conditions. Based on your submission, we find that you have not taken all reasonable steps to complete construction of WIS-DT in an expeditious manner. Specifically, you waited until April of this year to decide whether to use your existing tower and you have not yet determined who will be located on it. You have not ordered equipment or engaged contractors and your proposed completion date is conditioned on uncertainties of personnel and weather that, although beyond your control, could have been anticipated and factored into your timeline. Thus, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that LibCo should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, LibCo will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against LibCo, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That LibCo, Inc. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That LibCo's request to extend the construction permit for WIS-DT

IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

ce: LibCo, Inc. 639 Isbell Road, Suite 390 Reno, Nevada 89509



June 3, 2002

Trinity Broadcasting Network c/o Colby M. May, Esq. Law Offices of Colby M. May 205 Third Street, SE Washington, D.C. 20003

Re: Request for Extension of Time to Construct

Digital Facilities

WKOI-DT, Richmond, Indiana File No. BEPCDT-20020304AGP

Facility ID No. 67869

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Trinity Broadcasting Network ("Trinity") for an extension of time to construct the digital facilities of WKOI-DT. As originally filed, Trinity asserted that it was unable to construct facilities by the applicable deadline due to technical and other reasons. Trinity did not provide a date by which it anticipated construction would be undertaken or completed; however, in support of its request, Trinity stated that:

Coordination of the transition to digital has been extremely difficult and final equipment orders are just now being evaluated for placement with delivery to follow. Moreover, in an effort to initiate DTV service as soon as possible, focus has been on completing STA facilities based on the Commission's determination that full allocation protection for UHF facilities would be maintained beyond May 1, 2002.

By letter dated March 28, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

As initially filed, Trinity's extension request failed to comply with the Commission's stated policy regarding extension of DTV construction deadlines, and the instructions to FCC Form 337. Consequently, Trinity failed to justify an extension. However, Trinity was afforded the opportunity to amend its previously filed FCC Form 337 to provide the requisite information as set forth above, including: (1) a specific plan outlining how it will use the extension time to further the construction of WKOI-DT; and (2) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that given the Commission's determination on November 15, 2001 to afford full frequency allocation protection, even if there was a less than full power buildout, Trinity has determined to proceed with a two-step buildout of its DTV authorization. You assert that the first step will be to acquire the equipment necessary to permit the inauguration of service with STA facilities to ensure DTV service as soon as practicable. Following that phased buildout, you assert that full facilities will then be completed. You indicate that this process is anticipated to be completed no later than the expiration of full allocation protection, anticipated to be around January 2004. In the meantime, you contend that Trinity will complete equipment orders for STA construction within the extension term requested (i.e. October 2002), with on-air operations following thereafter. Further, you clarify in the amendment that buildout and completion of initial construction is anticipated "within the next twelve months or so."

Based upon the information before us, we find that you have not taken all reasonable steps to complete construction of WKOI-DT in an expeditious manner. Significantly, you have failed to explain why it has been "nearly impossible for [Trinity] to place orders, and receive equipment" for WKOI-DT before the May 1, 2002 construction deadline, particularly since the station's construction permit was issued over fourteen months ago.² Likewise, you have failed to explain why you need an additional six-month extension merely to order such equipment. Moreover, your alleged difficulty is further undermined by your own admission that "Trinity has diligently obtained the necessary equipment lists, bidding proposals, tower studies, lease negotiations, etc." in order to accommodate this process. Consequently, we find your delay in ordering the necessary equipment for WKOI-DT to be unwarranted. In addition, your assertion that completion of initial construction is anticipated "within the next twelve months or so" is too vague and, therefore, does not adequately set forth a reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Trinity should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Trinity will be required to submit a report within thirty (30) days of this letter outlining the steps

² The construction permit for WKOI-DT was issued on March 2, 2001.

In light of the above discussion, IT IS ORDERED That Trinity Broadcasting Network IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Trinity Broadcasting Network's request to extend the construction permit for WKOI-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau



Federal Communications Commission Washington, D.C. 20554 June 3, 2002

LibCo, Inc. c/o Jeffrey J. Gee, Esq. Dow, Lohnes & Albertson, PLLC. 1200 New Hampshire Avenue, N.W. Suite 800 Washington, D.C. 20036

> Re: Request for Extension of Time to Construct Digital Facilities WLOX-DT, Biloxi, Mississippi File No. BEPCDT-20020301ADM Facility ID No. 13995

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of LibCo, Inc. (LibCo) for an extension of time to construct the digital facilities of WLOX-DT, Biloxi, Mississippi. As originally filed, LibCo asserted that it was unable to complete construction of the facilities for technical reasons. Specifically, LibCo asserted that its parent company planned to replace the WLOX tower with a tower that was to be taken down near Wilmington, North Carolina. LibCo stated that the partnership involved in using the Wilmington tower decided in December 2001 that it could utilize the existing tower, making it unavailable for WLOX-DT. LibCo went on to state that, following the tower decision, it "renewed its efforts to find an economically viable solution to building a new structure [and] believes it has now found two new digital antenna designs which would keep the current tower in service." LibCo said that it was awaiting structure load information from its equipment vendors before a new tower study could be done, and at the completion of the study, reinforcement of the tower would begin and equipment orders would be placed.

By letter dated April 1, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an

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¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

As initially filed, LibCo's application was incomplete with respect to these matters, and you were specifically asked in the April 1st letter to provide a specific plan outlining how you would use the extension time to further the construction of WLOX-DT, including a firm date for completion of the necessary tower study, reinforcement of the tower, and installation of the DTV equipment.

In response to our request, you submitted an amendment on April 24, 2002, stating that you can only estimate the dates for the completion of any specific phase of the construction process due to the "complex, iterative process of design and construction." You further stated that LibCo was still in the process of gathering information necessary to begin the process. Although you estimate that the design process might be complete by October 2002 and construction could begin at that time, you assert that at any time the process may have to be restarted from the beginning. You also state that you anticipate construction will be completed by May 1, 2003, but your submission demonstrates that date is contingent on completion of the interim phases of the process. Based on your submission, we find that you have not taken all reasonable steps to complete construction of WLOX-DT in an expeditious manner. Specifically, your parent company was integrally involved in the decisions concerning the Wilmington tower. Therefore, you had reason to be aware of potential problems with the availability of the planned tower and at least could have begun looking at alternatives in advance of December 2001. Furthermore, you state that you are gathering information just to begin the design and construction process, although it had been determined in December 2001 that your originally planned tower would be unavailable. You also state that this process might have to be started anew because of any problems or objections at any stage. Thus, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that LibCo should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, LibCo will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against LibCo, and the initiation of a six-month

process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That LibCo, Inc. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That LibCo's request to extend the construction permit for WLOX-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: LibCo, Inc. 639 Isbell Road, Suite 390 Reno, Nevada 89509



June 3, 2002

Trinity Broadcasting Network c/o Colby M. May, Esq. Law Offices of Colby M. May 205 Third Street, SE Washington, D.C. 20003

Re: Request for Extension of Time to Construct

Digital Facilities

WMCF-DT, Montgomery, Alabama File No. BEPCDT-20020304ADJ

Facility ID No. 60829

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Trinity Broadcasting Network ("Trinity") for an extension of time to construct the digital facilities of WMCF-DT. As originally filed, Trinity asserted that it was unable to construct facilities by the applicable deadline due to technical and other reasons. Trinity did not provide a date by which it anticipated construction would be undertaken or completed; however, in support of its request, Trinity stated that:

Coordination of the transition to digital has been extremely difficult and final equipment orders are just now being evaluated for placement with delivery to follow. Moreover, in an effort to initiate DTV service as soon as possible, focus has been on completing STA facilities based on the Commission's determination that full allocation protection for UHF facilities would be maintained beyond May 1, 2002.

By letter dated March 28, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

As initially filed, Trinity's extension request failed to comply with the Commission's stated policy regarding extension of DTV construction deadlines, and the instructions to FCC Form 337. Consequently, Trinity failed to justify an extension. However, Trinity was afforded the opportunity to amend its previously filed FCC Form 337 to provide the requisite information as set forth above, including: (1) a specific plan outlining how it will use the extension time to further the construction of WMCF-DT; and (2) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that given the Commission's determination on November 15, 2001 to afford full frequency allocation protection, even if there was a less than full power buildout, Trinity has determined to proceed with a two-step buildout of its DTV authorization. You assert that the first step will be to acquire the equipment necessary to permit the inauguration of service with STA facilities to ensure DTV service as soon as practicable. Following that phased buildout, you assert that full facilities will then be completed. You indicate that this process is anticipated to be completed no later than the expiration of full allocation protection, anticipated to be around January 2004. In the meantime, you contend that Trinity will complete equipment orders for STA construction within the extension term requested (i.e. October 2002), with on-air operations following thereafter. Further, you clarify in the amendment that buildout and completion of initial construction is anticipated "within the next twelve months or so."

Based upon the information before us, we find that you have not taken all reasonable steps to complete construction of WMCF-DT in an expeditious manner. Significantly, you have failed to explain why it has been "nearly impossible for [Trinity] to place orders, and receive equipment" for WMCF-DT before the May 1, 2002 construction deadline, particularly since the station's construction permit was issued over sixteen months ago.² Likewise, you have failed to explain why you need an additional six-month extension merely to order such equipment. Moreover, your alleged difficulty is further undermined by your own admission that "Trinity has diligently obtained the necessary equipment lists, bidding proposals, tower studies, lease negotiations, etc." in order to accommodate this process. Consequently, we find your delay in ordering the necessary equipment for WMCF-DT to be unwarranted. In addition, your assertion that completion of initial construction is anticipated "within the next twelve months or so" is too vague and, therefore, does not adequately set forth a reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Trinity should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Trinity will be required to submit a report within thirty (30) days of this letter outlining the steps

² The construction permit for WMCF-DT was issued on January 11, 2001.

In light of the above discussion, IT IS ORDERED That Trinity Broadcasting Network IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Trinity Broadcasting Network's request to extend the construction permit for WMCF-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau



June 3, 2002

Trinity Broadcasting Network c/o Colby M. May, Esq. Law Offices of Colby M. May 205 Third Street, SE Washington, D.C. 20003

Re: Request for Extension of Time to Construct

Digital Facilities

WMPV-DT, Mobile, Alabama File No. BEPCDT-20020304AEC

Facility ID No. 60827

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Trinity Broadcasting Network ("Trinity") for an extension of time to construct the digital facilities of WMPV-DT. As originally filed, Trinity asserted that it was unable to construct facilities by the applicable deadline due to technical and other reasons. Trinity did not provide a date by which it anticipated construction would be undertaken or completed; however, in support of its request, Trinity stated that:

Coordination of the transition to digital has been extremely difficult and final equipment orders are just now being evaluated for placement with delivery to follow. Moreover, in an effort to initiate DTV service as soon as possible, focus has been on completing STA facilities based on the Commission's determination that full allocation protection for UHF facilities would be maintained beyond May 1, 2002.

By letter dated March 28, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

As initially filed, Trinity's extension request failed to comply with the Commission's stated policy regarding extension of DTV construction deadlines, and the instructions to FCC Form 337. Consequently, Trinity failed to justify an extension. However, Trinity was afforded the opportunity to amend its previously filed FCC Form 337 to provide the requisite information as set forth above, including: (1) a specific plan outlining how it will use the extension time to further the construction of WMPV-DT; and (2) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that given the Commission's determination on November 15, 2001 to afford full frequency allocation protection, even if there was a less than full power buildout, Trinity has determined to proceed with a two-step buildout of its DTV authorization. You assert that the first step will be to acquire the equipment necessary to permit the inauguration of service with STA facilities to ensure DTV service as soon as practicable. Following that phased buildout, you assert that full facilities will then be completed. You indicate that this process is anticipated to be completed no later than the expiration of full allocation protection, anticipated to be around January 2004. In the meantime, you contend that Trinity will complete equipment orders for STA construction within the extension term requested (i.e. October 2002), with on-air operations following thereafter. Further, you clarify in the amendment that buildout and completion of initial construction is anticipated "within the next twelve months or so."

Based upon the information before us, we find that you have not taken all reasonable steps to complete construction of WMPV-DT in an expeditious manner. Significantly, you have failed to explain why it has been "nearly impossible for [Trinity] to place orders, and receive equipment" for WMPV-DT before the May 1, 2002 construction deadline, particularly since the station's construction permit was issued over four months ago.² Likewise, you have failed to explain why you need an additional six-month extension merely to order such equipment. Moreover, your alleged difficulty is further undermined by your own admission that "Trinity has diligently obtained the necessary equipment lists, bidding proposals, tower studies, lease negotiations, etc." in order to accommodate this process. Consequently, we find your delay in ordering the necessary equipment for WMPV-DT to be unwarranted. In addition, your assertion that completion of initial construction is anticipated "within the next twelve months or so" is too vague and, therefore, does not adequately set forth a reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Trinity should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Trinity will be required to submit a report within thirty (30) days of this letter outlining the steps

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² The construction permit for WMPV-DT was issued on January 15, 2002.

In light of the above discussion, IT IS ORDERED That Trinity Broadcasting Network IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Trinity Broadcasting Network's request to extend the construction permit for WMPV-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau



June 3, 2002

Trinity Broadcasting Network c/o Colby M. May, Esq. Law Offices of Colby M. May 205 Third Street, SE Washington, D.C. 20003

Re: Request for Extension of Time to Construct

Digital Facilities

WPGD-DT, Hendersonville, Tennessee File No. BEPCDT-20020304ADH

Facility ID No. 60820

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Trinity Broadcasting Network ("Trinity") for an extension of time to construct the digital facilities of WPGD-DT. As originally filed, Trinity asserted that it was unable to construct facilities by the applicable deadline due to technical and other reasons. Trinity did not provide a date by which it anticipated construction would be undertaken or completed; however, in support of its request, Trinity stated that:

Coordination of the transition to digital has been extremely difficult and final equipment orders are just now being evaluated for placement with delivery to follow. Moreover, in an effort to initiate DTV service as soon as possible, focus has been on completing STA facilities based on the Commission's determination that full allocation protection for UHF facilities would be maintained beyond May 1, 2002.

By letter dated March 28, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an

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¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

As initially filed, Trinity's extension request failed to comply with the Commission's stated policy regarding extension of DTV construction deadlines, and the instructions to FCC Form 337. Consequently, Trinity failed to justify an extension. However, Trinity was afforded the opportunity to amend its previously filed FCC Form 337 to provide the requisite information as set forth above, including: (1) a specific plan outlining how it will use the extension time to further the construction of WPGD-DT; and (2) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that given the Commission's determination on November 15, 2001 to afford full frequency allocation protection, even if there was a less than full power buildout, Trinity has determined to proceed with a two-step buildout of its DTV authorization. You assert that the first step will be to acquire the equipment necessary to permit the inauguration of service with STA facilities to ensure DTV service as soon as practicable. Following that phased buildout, you assert that full facilities will then be completed. You indicate that this process is anticipated to be completed no later than the expiration of full allocation protection, anticipated to be around January 2004. In the meantime, you contend that Trinity will complete equipment orders for STA construction within the extension term requested (i.e. October 2002), with on-air operations following thereafter. Further, you clarify in the amendment that buildout and completion of initial construction is anticipated "within the next twelve months or so."

Based upon the information before us, we find that you have not taken all reasonable steps to complete construction of WPGD-DT in an expeditious manner. Significantly, you have failed to explain why it has been "nearly impossible for [Trinity] to place orders, and receive equipment" for WPGD-DT before the May 1, 2002 construction deadline, particularly since the station's construction permit was issued over fifteen months ago.² Likewise, you have failed to explain why you need an additional six-month extension merely to order such equipment. Moreover, your alleged difficulty is further undermined by your own admission that "Trinity has diligently obtained the necessary equipment lists, bidding proposals, tower studies, lease negotiations, etc." in order to accommodate this process. Consequently, we find your delay in ordering the necessary equipment for WPGD-DT to be unwarranted. In addition, your assertion that completion of initial construction is anticipated "within the next twelve months or so" is too vague and, therefore, does not adequately set forth a reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Trinity should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Trinity will be required to submit a report within thirty (30) days of this letter outlining the steps

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² The construction permit for WPGD-DT was issued on February 8, 2001.

In light of the above discussion, IT IS ORDERED That Trinity Broadcasting Network IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Trinity Broadcasting Network's request to extend the construction permit for WPGD-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau



June 3, 2002

Trinity Broadcasting Network c/o Colby M. May, Esq. Law Offices of Colby M. May 205 Third Street, SE Washington, D.C. 20003

Re: Request for Extension of Time to Construct

Digital Facilities

WTBY-DT, Poughkeepsie, New York File No. BEPCDT-20020304AGT

Facility ID No. 67993

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Trinity Broadcasting Network ("Trinity") for an extension of time to construct the digital facilities of WTBY-DT. As originally filed, Trinity asserted that it was unable to construct facilities by the applicable deadline due to technical and other reasons. Trinity did not provide a date by which it anticipated construction would be undertaken or completed; however, in support of its request, Trinity stated that:

Coordination of the transition to digital has been extremely difficult and final equipment orders are just now being evaluated for placement with delivery to follow. Moreover, in an effort to initiate DTV service as soon as possible, focus has been on completing STA facilities based on the Commission's determination that full allocation protection for UHF facilities would be maintained beyond May 1, 2002.

By letter dated March 28, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

As initially filed, Trinity's extension request failed to comply with the Commission's stated policy regarding extension of DTV construction deadlines, and the instructions to FCC Form 337. Consequently, Trinity failed to justify an extension. However, Trinity was afforded the opportunity to amend its previously filed FCC Form 337 to provide the requisite information as set forth above, including: (1) a specific plan outlining how it will use the extension time to further the construction of WTBY-DT; and (2) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that given the Commission's determination on November 15, 2001 to afford full frequency allocation protection, even if there was a less than full power buildout, Trinity has determined to proceed with a two-step buildout of its DTV authorization. You assert that the first step will be to acquire the equipment necessary to permit the inauguration of service with STA facilities to ensure DTV service as soon as practicable. Following that phased buildout, you assert that full facilities will then be completed. You indicate that this process is anticipated to be completed no later than the expiration of full allocation protection, anticipated to be around January 2004. In the meantime, you contend that Trinity will complete equipment orders for STA construction within the extension term requested (i.e. October 2002), with on-air operations following thereafter. Further, you clarify in the amendment that buildout and completion of initial construction is anticipated "within the next twelve months or so."

Based upon the information before us, we find that you have not taken all reasonable steps to complete construction of WTBY-DT in an expeditious manner. Significantly, you have failed to explain why it has been "nearly impossible for [Trinity] to place orders, and receive equipment" for WTBY-DT before the May 1, 2002 construction deadline, particularly since the station's construction permit was issued over eight months ago.² Likewise, you have failed to explain why you need an additional six-month extension merely to order such equipment. Moreover, your alleged difficulty is further undermined by your own admission that "Trinity has diligently obtained the necessary equipment lists, bidding proposals, tower studies, lease negotiations, etc." in order to accommodate this process. Consequently, we find your delay in ordering the necessary equipment for WTBY-DT to be unwarranted. In addition, your assertion that completion of initial construction is anticipated "within the next twelve months or so" is too vague and, therefore, does not adequately set forth a reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Trinity should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Trinity will be required to submit a report within thirty (30) days of this letter outlining the steps

² The construction permit for WTBY-DT was issued on September 12, 2001.

In light of the above discussion, IT IS ORDERED That Trinity Broadcasting Network IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Trinity Broadcasting Network's request to extend the construction permit for WTBY-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau



June 3, 2002

Trinity Broadcasting Network c/o Colby M. May, Esq. Law Offices of Colby M. May 205 Third Street, SE Washington, D.C. 20003

Re: Request for Extension of Time to Construct

Digital Facilities

WTJP-DT, Gadsden, Alabama File No. BEPCDT-20020304ADG

Facility ID No. 1002

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Trinity Broadcasting Network ("Trinity") for an extension of time to construct the digital facilities of WTJP-DT. As originally filed, Trinity asserted that it was unable to construct facilities by the applicable deadline due to technical and other reasons. Trinity did not provide a date by which it anticipated construction would be undertaken or completed; however, in support of its request, Trinity stated that:

Coordination of the transition to digital has been extremely difficult and final equipment orders are just now being evaluated for placement with delivery to follow. Moreover, in an effort to initiate DTV service as soon as possible, focus has been on completing STA facilities based on the Commission's determination that full allocation protection for UHF facilities would be maintained beyond May 1, 2002.

By letter dated March 28, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

As initially filed, Trinity's extension request failed to comply with the Commission's stated policy regarding extension of DTV construction deadlines, and the instructions to FCC Form 337. Consequently, Trinity failed to justify an extension. However, Trinity was afforded the opportunity to amend its previously filed FCC Form 337 to provide the requisite information as set forth above, including: (1) a specific plan outlining how it will use the extension time to further the construction of WTJP-DT; and (2) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that given the Commission's determination on November 15, 2001 to afford full frequency allocation protection, even if there was a less than full power buildout, Trinity has determined to proceed with a two-step buildout of its DTV authorization. You assert that the first step will be to acquire the equipment necessary to permit the inauguration of service with STA facilities to ensure DTV service as soon as practicable. Following that phased buildout, you assert that full facilities will then be completed. You indicate that this process is anticipated to be completed no later than the expiration of full allocation protection, anticipated to be around January 2004. In the meantime, you contend that Trinity will complete equipment orders for STA construction within the extension term requested (i.e. October 2002), with on-air operations following thereafter. Further, you clarify in the amendment that buildout and completion of initial construction is anticipated "within the next twelve months or so."

Based upon the information before us, we find that you have not taken all reasonable steps to complete construction of WTJP-DT in an expeditious manner. Significantly, you have failed to explain why it has been "nearly impossible for [Trinity] to place orders, and receive equipment" for WTJP-DT before the May 1, 2002 construction deadline, particularly since the station's construction permit was issued over fifteen months ago.² Likewise, you have failed to explain why you need an additional six-month extension merely to order such equipment. Moreover, your alleged difficulty is further undermined by your own admission that "Trinity has diligently obtained the necessary equipment lists, bidding proposals, tower studies, lease negotiations, etc." in order to accommodate this process. Consequently, we find your delay in ordering the necessary equipment for WTJP-DT to be unwarranted. In addition, your assertion that completion of initial construction is anticipated "within the next twelve months or so" is too vague and, therefore, does not adequately set forth a reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Trinity should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Trinity will be required to submit a report within thirty (30) days of this letter outlining the steps

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² The construction permit for WTJP-DT was issued on January 26, 2001.

In light of the above discussion, IT IS ORDERED That Trinity Broadcasting Network IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Trinity Broadcasting Network's request to extend the construction permit for WTJP-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau



June 3, 2002

Knight Communications, Inc. c/o Michael W. Richards, Esquire Shaw Pittman, LLP 2300 N Street, NW Washington, D.C. 20037-1128

Re: Request for Extension of Time to

Construct Digital Facilities WVLA-DT, Baton Rouge. LA Facility ID No. 70021

File No. BEPCDT-20020228AFA

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf Knight Broadcasting of Baton Rouge Licensee Corp. ("Knight") for an extension of time to construct the digital facilities of WVLA-DT. As originally filed, Knight asserted that it was unable to construct facilities by the applicable deadline "because of financial constraints." Among other things, Knight stated that it is not cost-efficient to construct a low power DTV facility with equipment that cannot be used for a subsequent higher-powered facility. Moreover, Knight maintained that even constructing minimum build-out facilities would create an undue financial hardship inasmuch as the company was not profitable, was unable to meet its current debt service, and "has no borrowing ability."

By letter dated March 28, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. That letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.² In the case of claimed financial hardship, the Commission has also determined that it would "consider, on a case-by-case basis, in addition to the extension criteria outlined in the *Fifth Report and Order*, whether a broadcaster should be afforded additional time to construct its DTV facilities because the cost of meeting the minimum build-out requirements exceeds the station's financial resources." In particular, such an applicant must provide an

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¹ Knight has sought confidential treatment of certain financial data it did submit pursuant to Section 0.459 of the Commission's Rules, 47 C.F.R. § 0.459.

² Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

³ Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 20594, 20611 (2001).

itemized cost estimate of a minimum build-out, detailed financial statements and a detailed explanation why its financial condition precludes such an expenditure, a description of its good faith efforts to meet the construction deadline, including its efforts to obtain the requisite financing and why those efforts were unsuccessful, and indicate when it reasonably expects to complete construction. In addition, FCC Form 337 requires that an applicant seeking an extension of time provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Knight's application was incomplete with respect to these matters, and you were specifically asked in the March 28 letter to provide an itemized estimated cost of construction. In addition, in order to determine whether Knight's financial condition warrants an extension, you were asked to provide the audited income statements that cover an economically significant period of time that applicants are required to keep available, as set forth in the instructions to FCC Form 337. We also requested documentary evidence of Knight's inability to raise capital, such as affidavits from lenders or other financial institutions.

In response to our request, you submitted an amendment to the extension application consisting of cost estimates associated with various construction "scenarios," consolidated balance sheets and related financial statements of the licensee's parent company, White Knight Holdings, Inc. ("White Knight"), and a 2001 amendment to a loan/credit agreement entered into by White Knight. We are unable to discern from these documents whether the requested extension is warranted. The materials submitted do not, of themselves, set forth adequately identifiable proposed facilities, the cost or time necessary to construct or the financial ability of this station to meet that goal. Further, you have not adequately addressed, as part of your efforts to construct this station prior and subsequent to the May 1, 2002 construction deadline, the feasibility of building a reduced facility and operating pursuant to special temporary authority. In this regard, your showing contains no plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that what amounts to an unqualified extension of this construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Knight should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Knight will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith,

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⁴ *Id.* at 20611-12.

we may consider the imposition of additional sanctions. Moreover, failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Knight, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Knight Broadcasting of Baton Rouge Licensee Corp. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Knight Broadcasting of Baton Rouge Licensee Corp.'s request to extend the construction permit for WVLA-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rule as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Knight Broadcasting of Baton Rouge Licensee Corp.
 c/o Sheldon Galloway, President
 700 St. John Street, Suite 301
 Lafayette, Louisiana 70501



June 3, 2002

LibCo, Inc. c/o Jeffrey J. Gee, Esq. Dow, Lohnes & Albertson, PLLC. 1200 New Hampshire Avenue, N.W. Suite 800 Washington, D.C. 20036

> Re: Request for Extension of Time to Construct Digital Facilities WWAY-DT, Wilmington, North Carolina File No. BEPCDT-20020301ADJ Facility ID No. 12033

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of LibCo, Inc. (LibCo) for an extension of time to construct the digital facilities of WWAY-DT, Wilmington, North Carolina. As originally filed, LibCo asserted that it was unable to complete construction of the facilities for technical reasons. Specifically, LibCo asserted that over the past two years, it worked with other stations in the market to construct a new community tower in Wilmington. According to LibCo's submission, this was after initial engineering studies concluded that the existing WWAY-TV tower could not accommodate the needs of all the local stations searching for a tower site. LibCo stated that in June 2001, the tower consolidator/contractor unexpectedly withdrew from the project. According to LibCo, the community tower project was then abandoned, and LibCo's parent company, through further analysis and new antenna designs, determined it could salvage the existing tower by strengthening and other means. LibCo concluded by saying that contracts would be awarded once the necessary studies were complete and that the "process of reinforcing, ordering new antenna and transmission lines and installing all other DTV equipment" would take eighteen months.

By letter dated April 2, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

As initially filed, LibCo's application was incomplete with respect to these matters, and you were specifically asked in the April 2nd letter to provide information regarding: (1) the dates on which the structural studies would commence and the deadline for completion of the studies; (2) the dates by which LibCo anticipated ordering equipment and completing any necessary modifications to the tower; and (3) the date by which LibCo anticipated construction would be completed.

In response to our request, you submitted an amendment on April 24, 2002, stating that structural studies had been completed, but that negotiations were still underway with a local noncommercial broadcaster to keep its station on the tower. Depending on the outcome of those negotiations, you state that the structural studies may need revision. You estimate that such revisions would be complete within 30 days, but you do not state whether that would mean 30 days from the date of your letter or 30 days from the completion of negotiations. In regard to a timeline, you anticipate that it will take six months after hiring tower contractors to complete the tower modifications, depending on the available personnel, materials and the weather. You state that you expect to order the necessary equipment by July 2002 and to complete construction by May 1, 2003. Based on your submission, we find that you have not taken all reasonable steps to complete construction of WWAY-DT in an expeditious manner. Specifically, you have not yet resolved who will be located on a tower that you own, even though you have known since December 2001 that you would be utilizing that tower for WWAY-DT. Resolution of that issue may require revision of the structural studies that you have completed. Even though you have been aware for some time that the tower will either proceed with the existing committed occupants or with one additional occupant whose identity is known, you have not engaged the necessary contractors for construction. You have not ordered any equipment for your own use, nor do you indicate whether you have even contacted equipment suppliers. You do not anticipate even ordering equipment until July 2002. Thus, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that LibCo should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, LibCo will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of

additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against LibCo, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That LibCo, Inc. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That LibCo's request to extend the construction permit for WWAY-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: LibCo, Inc. 639 Isbell Road, Suite 390 Reno, Nevada 89509



June 3, 2002

Trinity Broadcasting Network c/o Colby M. May, Esq. Law Offices of Colby M. May 205 Third Street, SE Washington, D.C. 20003

Re: Request for Extension of Time to Construct

Digital Facilities

WWTO-DT, La Salle, Illinois File No. BEPCDT-20020304ADW

Facility ID No. 998

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Trinity Broadcasting Network ("Trinity") for an extension of time to construct the digital facilities of WWTO-DT. As originally filed, Trinity asserted that it was unable to construct facilities by the applicable deadline due to technical and other reasons. Trinity did not provide a date by which it anticipated construction would be undertaken or completed; however, in support of its request, Trinity stated that:

Coordination of the transition to digital has been extremely difficult and final equipment orders are just now being evaluated for placement with delivery to follow. Moreover, in an effort to initiate DTV service as soon as possible, focus has been on completing STA facilities based on the Commission's determination that full allocation protection for UHF facilities would be maintained beyond May 1, 2002.

By letter dated March 28, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

As initially filed, Trinity's extension request failed to comply with the Commission's stated policy regarding extension of DTV construction deadlines, and the instructions to FCC Form 337. Consequently, Trinity failed to justify an extension. However, Trinity was afforded the opportunity to amend its previously filed FCC Form 337 to provide the requisite information as set forth above, including: (1) a specific plan outlining how it will use the extension time to further the construction of WWTO-DT; and (2) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that given the Commission's determination on November 15, 2001 to afford full frequency allocation protection, even if there was a less than full power buildout, Trinity has determined to proceed with a two-step buildout of its DTV authorization. You assert that the first step will be to acquire the equipment necessary to permit the inauguration of service with STA facilities to ensure DTV service as soon as practicable. Following that phased buildout, you assert that full facilities will then be completed. You indicate that this process is anticipated to be completed no later than the expiration of full allocation protection, anticipated to be around January 2004. In the meantime, you contend that Trinity will complete equipment orders for STA construction within the extension term requested (i.e. October 2002), with on-air operations following thereafter. Further, you clarify in the amendment that buildout and completion of initial construction is anticipated "within the next twelve months or so."

Based upon the information before us, we find that you have not taken all reasonable steps to complete construction of WWTO-DT in an expeditious manner. Significantly, you have failed to explain why it has been "nearly impossible for [Trinity] to place orders, and receive equipment" for WWTO-DT before the May 1, 2002 construction deadline, particularly since the station's construction permit was issued over fourteen months ago.² Likewise, you have failed to explain why you need an additional six-month extension merely to order such equipment. Moreover, your alleged difficulty is further undermined by your own admission that "Trinity has diligently obtained the necessary equipment lists, bidding proposals, tower studies, lease negotiations, etc." in order to accommodate this process. Consequently, we find your delay in ordering the necessary equipment for WWTO-DT to be unwarranted. In addition, your assertion that completion of initial construction is anticipated "within the next twelve months or so" is too vague and, therefore, does not adequately set forth a reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Trinity should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Trinity will be required to submit a report within thirty (30) days of this letter outlining the steps

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² The construction permit for WWTO-DT was issued on March 7, 2001.

In light of the above discussion, IT IS ORDERED That Trinity Broadcasting Network IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Trinity Broadcasting Network's request to extend the construction permit for WWTO-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau



June 5, 2002

Polarcomm Corporation c/o Robert Goldstein P.O. Box 1471 Evergreen, Colorado 80135

Re: Request for Extension of Time to Construct

Digital Facilities

KUBD-DT, Ketchikan, Alaska File No. BEPCDT-20020228ACY

Facility ID No. 60520

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Polarcomm Corporation ("Polarcomm") for an extension of time to construct the digital facilities of KUBD-DT. As originally filed, Polarcomm asserted that it was unable to construct facilities by the applicable deadline due to technical and legal reasons. Specifically, Polarcomm asserted that it faced "substantial geographical complications" and that it was in the process of making an offer to purchase a low power television station and obtaining the rights to that station's mountain tower site. Polarcomm further stated that it was planning to prepare an application to change the site of KUBD-DT to the mountain location.

By letter dated April 1, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Polarcomm's application was incomplete with respect to these matters, and you were specifically asked in the April 1st letter to explain what "substantial geographical complications" have delayed your construction. Polarcomm was also asked to: (1) provide a detailed discussion of its proposal to purchase a low power television station in Ketchikan,

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

including the status of its negotiations;² (2) clarify the status of its equipment orders and state what equipment, if any, it has ordered; (3) state when and if delivery of such equipment has been scheduled; (4) state whether it has had any engineering studies prepared that analyze the suitability of its proposed new tower site; and (5) discuss what other tower sites, if any, it has considered and why any such tower sites were deemed to be unacceptable. We also sought information regarding: (1) the steps Polarcomm has taken to mitigate its problems; (2) a specific plan outlining how it will use the extension time to further the construction of KUBD-DT; and (3) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that Ketchikan, Alaska, is located "in a relatively remote area, essentially accessible only by boat or plane." You, therefore, assert that it can be difficult to receive supplies, materials and equipment. You state that the city is surrounded by mountains and is extremely close to the Canadian border, making engineering very difficult. You indicate that the entire borough of Ketchikan has a population of approximately 14,000 people and cable penetration rates are extremely high.

Further, you state that while you had been engaging in discussions to purchase a low power television station in Ketchikan, the negotiations recently broke down. You aver that you had intended to purchase KJMW-LP and then move KUBD-DT to the mountain site occupied by the low power television station. You assert that as a result of the potential purchase discussions and the expected move of KUBD's digital station, you have not ordered any digital television equipment, as the equipment is dependent on the antenna location. You contend that Polarcomm did not consider other tower sites because it anticipated that it would be successful in purchasing the low power station and obtaining access to "what appeared to be an ideal site for KUBD-DT."

Since the talks with the owners of KJMW-LP broke down, you indicate that you have engaged in more detailed discussions with digital television equipment suppliers and plan to purchase the equipment necessary to build KUBD-DT at the presently permitted location. You contend that you have requested specific price quotes from Superior Broadcast Products for the required equipment. Further, you assert that you will use the extension time to finalize purchase decisions regarding required equipment, order the equipment and physically build out the station. Finally, you assert that while the anticipated date that construction will be complete is dependent on the availability and receipt of the equipment, you anticipate that construction could be completed by November 2002.

Based on the information before us, you have failed to sufficiently explain your previous efforts to meet the May 1, 2002 DTV construction deadline. In this regard, we fail to see why no feasible tower site or antenna system could be completed before the May 1st deadline, particularly since you received the construction permit for KUBD-DT over two years ago.³ While you indicate that you did not consider other tower sites because you anticipated that you would be successful in purchasing KJMW-LP, we find it unreasonable for you to have

² The letter indicated that this discussion should include whether Polarcomm has made a formal offer, whether such an offer has been accepted and whether and when it will be filing an application to assign the license of the station.

³ The construction permit for KUBD-DT was issued on March 16, 2000.

pursued only one tower site during an entire two year period. Consequently, you cannot give a projected date as to when the station's transmitter and antenna will be ordered. Therefore, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Polarcomm should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Polarcomm will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Polarcomm, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Polarcomm Corp. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Polarcomm Corp.'s request to extend the construction permit for KUBD-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Polarcomm Corp.
P.O. Box 348
2539 North Highway 67
Sedalia, Colorado 80135



June 5, 2002

Morris Network of Alabama, Inc. c/o Vincent J. Curtis, Jr., Esq. Fletcher, Heald & Hildreth, PLC 1300 North 17th Street, 11th Floor Arlington, Virginia 22209

Re: Request for Extension of Time to Construct Digital Facilities
WDHN-DT, Dothan, Alabama
File No. BEPCDT-20020301AJA
Facility ID No. 43846

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Morris Network of Alabama, Inc. ("Morris") for an extension of time to construct the digital facilities of WDHN-DT. As originally filed, Morris asserted that it was unable to construct facilities by the applicable deadline due to technical reasons. Specifically, Morris asserted that both its tower company and associated equipment supplier have indicated that the companies will be unable to deliver and install the DTV transmission facilities for WDHN-DT prior to May 1, 2002.

By letter dated April 2, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Morris's application was incomplete with respect to these matters, and you were specifically asked in the April 2nd letter to provide information regarding: (1) a specific plan outlining how Morris will use the extension time to further the construction of WDHN-DT; and (2) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that Morris "has taken every effort to ensure that the communities served by its stations will receive digital service as soon as possible." Your amendment included a letter from the Harris Corporation, dated April 12, 2002, confirming that the digital transmitter for WDHN-DT has been ordered, and stating that delivery has been scheduled for November 27, 2002. In addition, the amendment included a letter from H&H Tower Services, dated February 21, 2002, stating that the company would not be able to install the transmitter until early 2003 due to its "heavy workload." You assert that as soon as H&H

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

Tower Services is able to install the transmitter, you will move swiftly to commence program tests on the stations. Based on the information before us, you have failed to sufficiently explain your previous efforts to meet the May 1, 2002 DTV construction deadline. In this regard, we fail to see why the station's transmitter was not ordered and installed before the May 1st deadline, particularly since you received the construction permit for WDHN-DT over two years ago.² Furthermore, you have not shown that there are no other equipment suppliers who could have delivered and installed the station's transmitter earlier than the dates you have indicated.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Morris should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Morris will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Morris, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Morris Network of Alabama, Inc. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Morris Network of Alabama Inc.'s request to extend the construction permit for WDHN-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

² The construction permit for WDHN-DT was issued on November 30, 1999.

cc: H. Dean Hinson

Morris Network of Alabama, Inc. P.O. Box 748

Little Rock, Arkansas 72203



June 5, 2002

WDKY Licensee, LP c/o Kathryn R. Schmeltzer, Esq. Shaw Pittman LLP 2300 N Street, NW Washington, D.C. 20037-1128

Re: Request for Extension of Time to Construct Digital Facilities

WDKY-DT, Danville, Kentucky File No. BEPCDT-20020301AJW

Facility ID No. 64017

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of WDKY Licensee, LP ("WDKY Licensee") for an extension of time to construct the digital facilities of WDKY-DT. As originally filed, WDKY Licensee asserted that it was unable to construct facilities by the applicable deadline due to technical reasons. Specifically, WDKY Licensee stated that it had not yet located a suitable site for WDKY-DT and was considering using its existing NTSC tower. Further, WDKY Licensee asserted that a tower study was scheduled to begin in late March and once the feasibility of utilizing the NTSC tower was determined, equipment would be ordered.

By letter dated March 27, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, WDKY Licensee's application was incomplete with respect to these matters, and you were specifically asked in the March 27th letter to provide information regarding: (1) the reasons why WDKY Licensee has been unable to determine a tower site (*i.e.*, the exact nature of the work done with American Tower Company, including a list of sites

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

considered and rejected); (2) the date upon which your tower study will be finished; (3) a specific plan outlining how WDKY Licensee will use the extension time to further the construction of WDKY-DT; and (4) the date upon which WDKY Licensee anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that you had been working with American Tower to determine whether it could locate a suitable site to construct a stronger and taller tower. You explain that when you filed your extension request, you had not been able to locate a suitable site and were considering whether there was any way to use your existing tower. Moreover, you assert that recently you have had discussions with World Tower Company about the possibility of constructing a smaller-sized broadcast tower on which you could place your DTV facilities. To this end, you indicate that the station has conducted engineering studies to ascertain the technical limitations of the proposed World Tower Company facility and that there is an initial finding of suitability. Therefore, you state that you have now entered into negotiations with World Tower Company to place your DTV facility on the proposed tower. You state that you anticipate completing your contract negotiations by June 2002. Further, you explain that a modification application will need to be filed, and you anticipate filing in June. You contend that you plan to order the antenna and transmitter as soon as the modification is granted. Finally, you state that you anticipate that WDKY-DT can be operational by the second quarter of 2003 or sooner if the modification application can be processed quickly.

Based on the information before us, you have failed to sufficiently explain your previous efforts to meet the May 1, 2002 DTV construction deadline. In this regard, we fail to see why no feasible tower site or antenna system could be determined before the May 1st deadline, particularly since you received the construction permit for WDKY-DT over eight months ago.² Furthermore, while you may "anticipate" that WDKY-DT will be operational by the second quarter of 2003, this projected date has no reasonable basis because you don't know if your negotiations with the World Tower Company will be completed by June 2002. Consequently, you cannot give a projected date as to when the station's transmitter and antenna will be ordered. Therefore, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that WDKY Licensee should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, WDKY Licensee will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction

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² The construction permit for WDKY-DT was issued on September 26, 2001.

milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against SCI and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That WDKY Licensee, LP IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That WDKY Licensee, LP's request to extend the construction permit for WDKY-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: David B. Amy



June 5, 2002

WEMT Licensee, L.P. c/o Kathryn R. Schmeltzer, Esq. Shaw Pittman LLP 2300 N Street, NW Washington, D.C. 20037-1128

Re: Request for Extension of Time to Construct Digital Facilities

WEMT-DT, Greenville, Tennessee File No. BEPCDT-20020301ALZ

Facility ID No. 40761

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of WEMT Licensee, L.P. ("WEMT Licensee") for an extension of time to construct the digital facilities of WEMT-DT. As originally filed, WEMT Licensee asserted that it was unable to construct facilities by the applicable deadline due to technical reasons. Specifically, WEMT Licensee stated that:

The current owned tower supporting the antenna system of WEMT is not capable of supporting a full size DTV antenna system. The station is considering alternative lighter weight antenna systems.

By letter dated April 1, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, WEMT Licensee's extension request failed to comply with the Commission's stated policy regarding extension of DTV construction deadlines, and the instructions to FCC Form 337. Consequently, WEMT Licensee failed to justify an extension. However, it was afforded the opportunity to amend its previously filed FCC Form 337 to provide

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

the requisite information as set forth above, including: (1) previous efforts taken by WEMT Licensee to meet the May 1, 2002 DTV build-out deadline; (2) a specific plan outlining how it will use the extension time to further the construction of WMET-DT; (3) a schedule of equipment ordered by WEMT Licensee with estimated delivery dates; and (4) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment indicating that, in 1998, you ascertained that the WEMT tower could not support an additional high power DTV antenna system. You assert that, after extensive studies, a lower power DTV antenna system has been designed for WEMT-DT. Further, you state that a tower study is now underway with Pi-Rod, the tower manufacturer, to mount a smaller DTV antenna. You indicate that this final tower study is needed before the antenna can be ordered, as it is expected that major tower modifications will be needed to support this new antenna system. Moreover, you state that Pi-Rod has a heavy workload and has informed WEMT Licensee that it expects to have the study complete by June 15th. You aver that building construction is expected to take place late this summer, and delivery of the transmitter is expected in September. Finally, you anticipate that WEMT-DT will be operational by November 2002.

Based on the information before us, you have failed to sufficiently explain your previous efforts to meet the May 1, 2002 DTV construction deadline. In this regard, we fail to see why no feasible tower site or antenna system could be completed before the May 1st deadline, particularly since it has been approximately four years since you have learned that your current tower could not support a full size DTV antenna. Moreover, you received the construction permit for WEMT over twelve months ago.² Furthermore, while you may anticipate that WEMT-DT will be operational by November 2002, this projected date has no reasonable basis because you do not know if WEMT's existing tower can, in fact, support the new antenna system that you are now proposing to use. Consequently, you cannot give a projected date as to when the station's antenna will be ordered. Therefore, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that WEMT Licensee should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, WEMT Licensee will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be

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² The construction permit for WEMT-DT was issued on May 24, 2001.

subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against WEMT Licensee, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That WEMT Licensee, L.P. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That WEMT Licensee, L.P.'s request to extend the construction permit for WEMT-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: David B. Amy WEMT Licensee, L.P.



June 5, 2002

Morris Network, Inc. c/o Vincent J. Curtis, Jr., Esq. Fletcher, Heald & Hildreth, PLC 1300 North 17th Street, 11th Floor Arlington, Virginia 22209

Re: Request for Extension of Time to Construct Digital Facilities

WMGT-DT, Macon, Georgia
File No. BEPCDT-20020301AKL
Facility ID No. 43847

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Morris Network, Inc. ("Morris") for an extension of time to construct the digital facilities of WMGT-DT. As originally filed, Morris asserted that it was unable to construct facilities by the applicable deadline due to technical reasons. Specifically, Morris asserted that both its tower company and associated equipment supplier have indicated that the companies will be unable to deliver and install the DTV transmission facilities for WMGT-DT prior to May 1, 2002.

By letter dated April 1, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Morris's application was incomplete with respect to these matters, and you were specifically asked in the April 1st letter to provide information regarding: (1) previous efforts taken by Morris to meet the May 1, 2002 DTV build-out deadline, including the dates on which it ordered its equipment and scheduled installation; (2) letters from the tower company and equipment suppliers referred to in its FCC Form 337; and (3) the date upon which Morris anticipates that construction of the digital facilities will be completed.

In response to our request, you submitted an amendment stating that Morris "has taken every effort to ensure that the communities served by its stations will receive digital service as soon as possible." Your amendment included a letter from the Harris Corporation, dated April 12, 2002, confirming that the digital transmitter for

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

WMGT-DT has been ordered, and stating that delivery has been scheduled for November 27, 2002. In addition, the amendment included a letter from H&H Tower Services, dated February 21, 2002, stating that the company would not be able to install the transmitter until early 2003 due to its "heavy workload." You assert that as soon as H&H Tower Services is able to install the transmitter, you will move swiftly to commence program tests on the stations. Based on the information before us, you have failed to sufficiently explain your previous efforts to meet the May 1, 2002 DTV construction deadline. In this regard, we fail to see why the station's transmitter was not ordered and installed before the May 1st deadline, particularly since you received the construction permit for WMGT-DT over two years ago.² Furthermore, you have not shown that there are no other equipment suppliers who could have delivered and installed the station's transmitter earlier than the dates you have indicated.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Morris should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Morris will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Morris, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Morris Network, Inc. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Morris Network, Inc.'s request to extend the construction permit for WMGT-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

² The construction permit for WMGT-DT was issued on March 13, 2000.

W. Kenneth Ferree Chief, Media Bureau

cc: H. Dean Hinson Morris Network, Inc.

P.O. Box 748 Little Rock, Arkansas 72203



June 5, 2002

WMMP Licensee, LP c/o Kathryn R. Schmeltzer, Esq. Shaw Pittman LLP 2300 N Street, NW Washington, D.C. 20037

> Re: Request for Extension of Time to Construct Digital Facilities WMMP-DT, Charleston, South Carolina File No. BEPCDT-20020301ALT Facility ID No. 9015

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of WMMP Licensee, LP ("WMMP") for an extension of time to construct the digital facilities of WMMP-DT. As originally filed, WMMP asserted that it was unable to construct facilities by the applicable deadline due to technical and other reasons. Specifically, WMMP asserted that its current tower was not capable of supporting a DTV antenna without modification, and that the tower owner was "in the process of conducting a formal tower study." In addition, WMMP stated that "once the tower issues have been worked out, the antenna system will be ordered." WWMP did not provide a date by which it anticipated construction would be undertaken or completed.

By letter dated March 29, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, WMMP's extension request failed to comply with the Commission's stated policy regarding extension of DTV construction deadlines, and the instructions to FCC Form

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

337. Thus, WMMP failed to justify an extension in this case. However, you were afforded an opportunity to amend your original FCC Form 337 and provide the requisite information as set forth above, including: (1) a specific plan outlining how WMMP will use the extension time to further the construction of WMMP-DT; and (2) the date upon which WMMP anticipates that construction of the digital facilities will be completed.

In response to our request, WMMP submitted an amendment stating that it has been working closely with Media General Corp. to locate on that company's tall tower. WMMP asserts that an agreement in principle is in place but a contract cannot be completed until Media General completes its tower study. In this regard, WMMP states that it has been working with Media General since 1998 but could not come up with final antenna loads until the Commission granted the construction permits for WMMP for maximized facilities. WMMP indicates that it has recently been advised by Media General that "our phase of the tower study should be completed by June 30, 2002." WMMP explains that the project has been delayed because the tower owner is not able to come to agreement with the tower manufacturer about the specific tower design criteria. However, WMMP states that it has learned that Media General has contracted with a second structural engineering group to "break up this bottleneck." WMMP states that it is "very hopeful" that a final structural assessment will be available by June 1, 2002, and that the antenna system and transmitter will be ordered at that time. WMMP avers that a new transmitter building will be constructed this summer with expected completion by October 1, 2002. WMMP anticipates that WMMP-DT will be operational by December 2002.

Based on the information before us, you have failed to sufficiently explain your previous efforts to meet the May 1, 2002 DTV construction deadline. In this regard, we fail to see why the tower study has not yet been completed, particularly since you received the construction permit for WMMP-DT over fifteen months ago.² Moreover, you have failed to explain why no alternative tower site could be determined before the May 1st deadline, considering that you have apparently been exploring this issue since 1998. Furthermore, while you may "anticipate" that WMMP-DT will be operational by December 2002, this projected date has no reasonable basis because you do not know if or when an agreement concerning the tower design criteria will be reached. Consequently, you cannot give a projected date as to when the station's transmitter and antenna will be ordered.³ Therefore, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that WMMP should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, WMMP will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to

² The construction permit for WWMP-DT was issued on February 1, 2001.

³ Further, your response contradicts your original FCC Form 337, wherein you stated that you anticipated that the necessary equipment would be ordered within two to three weeks.

reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against WMMP, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That WMMP Licensee, LP IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That WMMP Licensee, LP's request to extend the construction permit for WMMP-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: David B. Amy 10706 Beaver Dam Road Cockeysville, Maryland 21030



June 5, 2002

SCI Indiana Licensee, LLC c/o Kathryn R. Schmeltzer, Esq. Shaw Pittman LLP 2300 N Street, NW Washington, D.C. 20037-1128

Re: Request for Extension of Time to Construct Digital Facilities WTTK-DT, Kokomo, Indiana File No. BEPCDT-20020301AJZ Facility ID No. 56526

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of SCI Indiana Licensee, LLC ("SCI") for an extension of time to construct the digital facilities of WTTK-DT. As originally filed, SCI asserted that it was unable to construct facilities by the applicable deadline due to technical reasons. Specifically, SCI asserted that the current tower was not capable of supporting a DTV antenna system. In addition, SCI stated that it was "working . . . to develop a community tower" and was awaiting cost estimates for two such towers.

By letter dated March 29, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, SCI's application was incomplete with respect to these matters, and you were specifically asked in the March 29th letter to provide information regarding: (1) when these claimed difficulties occurred; (2) what equipment has been ordered and received, and when any necessary equipment not on hand is to be delivered; (3) the steps it has taken to mitigate its problems; (4) a specific plan outlining how it will be use the extension time to

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¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

further the construction of WTTK-DT; and (5) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment indicating that "a planned community tower arrangement appears to have fallen apart because local broadcasters are not able to decide on a specific area to locate the new tower." You indicate that WTTK quickly switched to another plan involving just its station. Further, you assert that the station has designed an antenna system (Dielectric DSB directional) of low power that can be side mounted on the existing WTTK tower.² You stated that a formal tower study was underway, and anticipated that it would be completed by May 15, 2002. You aver that the new antenna system will be ordered as soon as you have assurances that the tower can support this specific load. You estimate that tower modifications and installation of the new antenna system can be completed before November 2002. Further, you state that the transmitter building will need to be expanded to house the new high power DTV transmitter, and that this building should be complete by November 2002. You maintain that the transmitter will be ordered in late spring, but delivery will be delayed until the new transmitter building is completed. Finally, you anticipate that WTTK-DT will be operational before December 2002.

Based on the information before us, you have failed to sufficiently explain your previous efforts to meet the May 1, 2002 DTV construction deadline. In this regard, we fail to see why no feasible tower site or antenna system could be determined before the May 1st deadline, particularly since you received the construction permit for WTTK-DT over sixteen months ago.³ Furthermore, while you may "anticipate" that WTTK-DT will be operational before December 2002, this projected date has no reasonable basis because you don't know if WTTK's existing tower can in fact support the new antenna system that you are now proposing to use. Consequently, you cannot give a projected date as to when the station's transmitter and antenna will be ordered. Therefore, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that SCI should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, SCI will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will

² You state that the antenna selected is a side mounted Dielectric DSB series medium power DTV antenna system.

³ The construction permit for WTTK-DT was issued on January 16, 2001.

be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against SCI, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That SCI Licensee, LLC IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That SCI Licensee, LLC's request to extend the construction permit for WTTK-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: SCI Indiana Licensee, LLC c/o David B. Amy 10706 Beaver Dam Road Cockeysville, Maryland 21030



June 5, 2002

SCI-Indiana Licensee, LLC c/o Kathryn R. Schmeltzer, Esq. Shaw Pittman LLP 2300 N Street, NW Washington, D.C. 20037-1128

Re: Request for Extension of Time to Construct

Digital Facilities

WTTV-DT, Bloomington, Indiana File No. BEPCDT-20020301AKV

Facility ID No. 56523

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of SCI-Indiana Licensee, LLC ("SCI") for an extension of time to construct the digital facilities of WTTV-DT. As originally filed, WTTV Licensee asserted that it was unable to construct facilities by the applicable deadline due to technical reasons, stating that:

The current tower supporting WTTV is not capable of supporting a DTV antenna system. The station is currently working with two companies (American Tower and SpectraSite) to develop a community tower near the current location of WTTV, and awaits cost estimates for two possible community towers.

By letter dated April 1, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, WTTV's extension request failed to comply with the Commission's stated policy regarding extension of DTV construction deadlines, and the instructions to FCC Form

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

337. Thus, SCI failed to justify an extension in this case. However, you were afforded an opportunity to amend your original FCC Form 337 and provide the requisite information as set forth above, including: (1) previous efforts taken by SCI to meet the May 1, 2002 DTV build-out deadline; (2) the dates by which construction of the new tower will commence and be completed, supported by the affidavit of the tower construction company chosen by SCI; (3) a specific plan outlining how SCI will use the extension time to further the construction of WTTV-DT; (4) a schedule of equipment ordered by SCI with estimated delivery dates; and (5) the date upon which it anticipates that construction of the digital facilities will be completed.

In response to our request, you submitted an amendment indicating that "a planned community tower arrangement appears to have fallen apart because local broadcasters are not able to decide on a specific area to locate the new tower." You indicate that WTTV quickly switched to another plan involving just its station. Further, you assert that the station has designed an antenna system (Dielectric DSB directional) of low power that can be side mounted on the existing WTTV tower.² You state that a formal tower study is now underway, and is expected to be completed by May 15, 2002. You aver that the new antenna system will be ordered as soon as you have assurances that the tower can support this specific load. You estimate that tower modifications and the installation of the new antenna system can be completed before November 2002. Further, you state that the transmitter building will need to be expanded to house the new high power DTV transmitter, and that this building should be complete by November 2002. You maintain that the transmitter will be ordered in late spring, but delivery will be delayed until the new transmitter building is completed. Finally, you anticipate that WTTV-DT will be operational before December 2002.

Based on the information before us, you have failed to sufficiently explain your previous efforts to meet the May 1, 2002 DTV construction deadline. In this regard, we fail to see why no feasible tower site or antenna system could be determined before the May 1st deadline, particularly since you received the construction permit for WTTV-DT eight months ago.³ Furthermore, while you may "anticipate" that WTTV-DT will be operational before December 2002, this projected date has no reasonable basis because you don't know if WTTV's existing tower can in fact support the new antenna system that you are now proposing to use. Consequently, you cannot give a projected date as to when the station's transmitter and antenna will be ordered. Therefore, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that SCI should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard,

² You state that the antenna selected is a side mounted Dielectric DSB series medium power DTV antenna system.

³ The construction permit for WTTV-DT was issued on September 27, 2001.

SCI will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against SCI and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That SCI Licensee, LLC IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That SCI Licensee, LLC's request to extend the construction permit for WTTV-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: David B. Amy



June 5, 2002

Morris Network of Mississippi, Inc. c/o Vincent J. Curtis, Jr., Esq. Fletcher, Heald & Hildreth, PLC 1300 North 17th Street, 11th Floor Arlington, Virginia 22209

Re: Request for Extension of Time to Construct Digital Facilities

WXXV-DT, Gulfport, Mississippi
File No. BEPCDT-20020301AKM
Facility ID No. 53517

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Morris Network of Mississippi, Inc. ("Morris") for an extension of time to construct the digital facilities of WXXV-DT. As originally filed, Morris asserted that it was unable to construct facilities by the applicable deadline due to technical reasons. Specifically, Morris asserted that both its tower company and associated equipment supplier have indicated that the companies will be unable to deliver and install the DTV transmission facilities for WXXV-DT prior to May 1, 2002.

By letter dated April 1, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Morris's application was incomplete with respect to these matters, and you were specifically asked in the April 1st letter to provide information regarding: (1) previous efforts taken by Morris to meet the May 1, 2002 DTV build-out deadline, including the dates on which it ordered its equipment and scheduled installation; (2) letters from the tower company and equipment suppliers referred to in its FCC Form 337; and (3) the date upon which Morris anticipates that construction of the digital facilities will be completed.

In response to our request, you submitted an amendment stating that Morris "has taken every effort to ensure that the communities served by its stations will receive digital service as soon as possible." Your amendment included a letter from the Harris Corporation, dated April 12, 2002, confirming that the digital transmitter for

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¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

WXXV-DT has been ordered, and stating that delivery has been scheduled for November 27, 2002. In addition, the amendment included a letter from H&H Tower Services, dated February 21, 2002, stating that the company would not be able to install the transmitter until early 2003 due to its "heavy workload." You assert that as soon as H&H Tower Services is able to install the transmitter, you will move swiftly to commence program tests on the stations. Based on the information before us, you have failed to sufficiently explain your previous efforts to meet the May 1, 2002 DTV construction deadline. In this regard, we fail to see why the station's transmitter was not ordered and installed before the May 1st deadline, particularly since you received the construction permit for WXXV-DT over sixteen months ago.² Furthermore, you have not shown that there are no other equipment suppliers who could have delivered and installed the station's transmitter earlier than the dates you have indicated.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Morris should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Morris will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Morris, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Morris Network of Mississippi, Inc. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Morris Network of Mississippi Inc.'s request to extend the construction permit for WXXV-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

² The construction permit for WXXV-DT was issued on January 11, 2001.

W. Kenneth Ferree Chief, Media Bureau

cc: H. Dean Hinson

Morris Network of Mississippi, Inc.

P.O. Box 748

Little Rock, Arkansas 72203



June 5, 2002

WYZZ Licensee, Inc. c/o Kathryn R. Schmeltzer, Esq. Shaw Pittman LLP 2300 N Street, NW Washington, D.C. 20037-1128

Re: Request for Extension of Time to Construct

Digital Facilities

WYZZ-DT, Bloomington, Illinois File No. BEPCDT-20020301ALS

Facility ID No. 5875

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of WYZZ Licensee, Inc. ("WYZZ Licensee") for an extension of time to construct the digital facilities of WYZZ-DT. As originally filed, WYZZ Licensee asserted that it was unable to construct facilities by the applicable deadline due to technical reasons. Specifically, WYZZ Licensee stated that its current tower was not capable of supporting a DTV antenna system. Further, WYZZ Licensee asserted that a third party, SpectraSite, Inc., had proposed a community tower to be constructed at the current WYZZ tower site, and that it was in the final stages of project planning.

By letter dated April 2, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, WYZZ Licensee's application was incomplete with respect to these matters, and you were specifically asked in the April 2nd to provide updated information on the status of the proposed new tower. You were also asked to state what other tower sites, if any, you considered and why such sites were deemed unacceptable. We also requested that WYZZ Licensee provide information regarding: (1) the steps it has taken to mitigate its problems; (2) a

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

specific plan outlining how it will use the extension time to further the construction of WYZZ-DT; and (3) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment, stating that in 1999 you determined that the current tower was not capable of supporting an additional high power DTV antenna system. You state that you initially considered replacing the existing tower but judged that this would not be economically practical because of the small size of the market. You indicate that, instead, the station began working with American Tower and SpectraSite Tower concerning the possible construction of a new community tower on land owned by WYZZ. Moreover, you assert that SpectraSite is now in serious planning with most of the stations in the market to develop a final antenna configuration. Further, you state that FAA approval has been received for a taller tower, and that SpectrSite is developing a shared panel antenna system. You aver that SpectraSite is planning to begin construction on the new community tower this summer, and they anticipate completion of the tower and transmitter building in November 2002. Finally, you assert that you anticipate ordering the DTV transmitter in July for delivery as soon as the building is complete, and you anticipate that WYZZ-DT will be operational before January 2003.

Based on the information before us, you have failed to sufficiently explain your previous efforts to meet the May 1, 2002 DTV construction deadline. In this regard, we fail to see why no feasible tower site or antenna system could be completed before the May 1st deadline, particularly since it has been approximately three years since you have learned that your current tower could not support a full size DTV antenna system. Moreover, you received the construction permit for WYZZ-DT over fifteen months ago.² Furthermore, while you may anticipate that WYZZ-DT will be operational before January 2003, this projected date has no reasonable basis because you do not know when the shared panel antenna system will be completed. Therefore, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that WYZZ Licensee should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, WYZZ Licensee will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV

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² The construction permit for WYZZ-DT was issued on February 23, 2001.

facilities by December 1, 2002, will result in a monetary forfeiture against WYZZ Licensee, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That WYZZ Licensee, Inc. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That WYZZ Licensee, Inc.'s request to extend the construction permit for WYZZ-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau



June 5, 2002

KTVT Broadcasting Company, L.P. Howard Jaeckel 2000 K St., N.W., Suite 725 Washington, D.C. 20006

Re: Request for Extension of Time to Construct

Digital Facilities

KEYE-DT, Austin, Texas

File No. BEPCDT-20020304ACI

Facility ID No. 33691

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of KTVT Broadcasting Corporation, L.P. (KTVT) for an extension of time to construct the digital facilities of KEYE-DT, Austin, Texas. As originally filed, KTVT asserted that it was unable to complete construction of the facilities for legal and technical reasons. Specifically, KTVT stated that its analog tower was unable to accommodate its DTV facilities and it had reached an agreement in principle with the Belo Corporation to form a partnership to construct a new tower. KTVT asserted that additional time was needed to finalize the agreement and construct the tower. Also, KTVT asserted that Belo did not receive the necessary environmental and zoning permits for the new tower until December 2001 and that Belo was awaiting Commission action on its amended application for a digital construction permit, which was delayed because of a pending, mutually exclusive application.

By letter dated March 29, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, KTVT's application was incomplete with respect to these matters, and you were specifically asked in the March 29 letter to provide information regarding: (1) the steps

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

KTVT had taken to mitigate its problems; (2) a specific plan outlining how KTVT would use the extension time to further the construction of KEYE-DT; and (3) the date upon which KTVT anticipated that construction would be complete.

In response to our request, you submitted an amendment dated April 30, 2002 stating that Belo was still experiencing delays and that KTVT was in the process of negotiating with the owner of its analog tower to secure space for a small UHF antenna that could initiate low power television service. Based on your submission, we find that you have not taken all reasonable steps to complete construction of KEYE-DT in an expeditious manner. The delays experienced by Belo do not excuse KTVT from compliance. You do not indicate what steps, if any, you have taken to secure an alternative site should Belo continue to experience delays. You also do not indicate when you expect negotiations with your analog tower lessor to be concluded and what alternatives you have explored should those negotiations prove unsuccessful. Thus, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that KTVT should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, KTVT will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against KTVT, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That KTVT Broadcasting Company, L.P. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That KTVT's request to extend the

construction permit for KEYE-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau



June 5, 2002

Four Seasons Peoria, LLC c/o Gregory L. Masters, Esq. Wiley, Rein & Fielding, LLP 1776 K Street, N.W. Washington, D.C. 20006

Re: Request for Extension of Time to Construct

Digital Facilities

WAOE, Peoria, Illinois

File No. BEPCDT-20020301ABT

Facility ID No. 55280

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Four Seasons Peoria, LLC (Four Seasons) for an extension of time to construct the digital facilities of WAOE-DT, Peoria, Illinois. As originally filed, Four Seasons asserted that it was unable to complete construction of the facilities for technical reasons. Specifically, Four Seasons asserted that its existing tower could not support digital operations and other towers in the area are either overstressed or in poor condition. Four Seasons also indicated that two other entities have proposed to build towers in the area, but their plans are on hold until they find tenants to justify their expenses. If one of those two entities chooses to build a tower, Four Seasons asserts that it will be able to construct WAOE-DT within one year.

By letter dated April 2, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Four Seasons' application was incomplete with respect to these matters, and you were specifically asked in the April 2nd letter to provide information regarding: (1) what steps Four Seasons has taken to build its own tower rather than lease space on another tower in

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

the area; (2) what specific contingency plans Four Seasons has made should either of the other two entities choose not to build a tower in its area; and (3) a specific plan outlining how Four Seasons would use the extension of time to further the construction of WAOE-DT, including a date by which Four Season's anticipates construction will be complete.

In response to our request, you submitted an amendment on April 22, 2002, stating that discussions with the two entities proposing to build a tower in the Peoria area are continuing. You state that Four Seasons has not seriously considered construction of its own tower. Finally, you provide no construction timeline or projected date of completion for your facility. Based on your submission, we find that you have not taken all reasonable steps to complete construction of WAOE-DT in an expeditious manner. Specifically, you do not know for certain if either proposed tower will actually be built and you do not indicate that you have undertaken or concluded any actual lease negotiations for space on either tower. You indicate you have not seriously considered the possibility of building your own tower and you do not have any plan regarding the timeline for construction of your facility. Thus, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Four Seasons should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Four Seasons will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Four Seasons, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Four Seasons, Inc. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Four Seasons' request to extend the construction permit for

WAOE-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Four Seasons Peoria, LLC 5670 Wilshire Boulevard, Suite 1300 Los Angeles, California 90036



June 5, 2002

Western Broadcasting Corporation Of Puerto Rico, Inc. c/o Thomas F. Bardo, Esq. Carter, Ledyard & Milburn 1401 Eye St., N.W., Suite 300 Washington, D.C. 20005

Re: Request for Extension of Time to Construct
Digital Facilities
WOLE DT Agnadilla Puerto Piece

WOLE-DT, Aguadilla, Puerto Rico File No. BEPCDT-20020227ADU

Facility ID No. 71725

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Western Broadcasting Corporation of Puerto Rico, Inc. (Western) for an extension of time to construct the digital facilities of WOLE-DT, Aguadilla, Puerto Rico. As originally filed, Western asserted that it was unable to complete construction of the facilities for technical reasons. Specifically, Western said that a structural analysis of its proposed tower indicated that the tower might be at its maximum loading capacity and unable to support Western's DTV equipment. Western stated that it was in the process of obtaining a structural analysis for the antenna and expected the results within 30 days of the date of its extension request.

By letter dated April 2, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Western's application was incomplete with respect to these matters, and you were specifically asked in the April 2nd letter to provide information regarding: (1) the steps Western had taken to mitigate its problems; (2) a specific plan outlining how it would use the

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

extension time to further the construction of WOLE-DT; and (3) the date upon which Western anticipated that construction would be complete.

In response to our request, you submitted an amendment on April 30, 2002, stating that Western retained SpectraSite Broadcast Group (SpectraSite) to perform the structural study, but that SpectraSite examined the wrong tower. You go on to say that SpectraSite has informed Western that it will complete a full structural analysis of the correct tower within six weeks of the date of your amendment. You assert that you are considering alternative tower sites, including land that you own, and are pursuing discussions regarding their possible use. Based on your submission, we find that you have not taken all reasonable steps to complete construction of WOLE-DT in an expeditious manner. You do not indicate whether you have undertaken any studies regarding the suitability of the land you own for use as a tower site. You also do not indicate whether you have had any substantive discussions with the owners of the other potential sites that you have identified or whether you have performed any preliminary studies on the suitability of those sites for DTV use. Thus, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Western should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Western will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Western, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Western Broadcasting Corporation of Puerto Rico, Inc. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Western's request

to extend the construction permit for WOLE-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Western Broadcasting Corporation
Of Puerto Rico, Inc.
P.O. Box 1200
Mayagüez, Puerto Rico 00681



June 5, 2002

SAH Acquisition Corporation II c/o Dorann Bunkin, Esq. Wiley, Rein & Fielding 1776 K St., N.W. Washington, D.C. 20006

Re: Request for Extension of Time to Construct

Digital Facilities

WRAY-DT, Wilson, North Carolina File No. BEPCDT-20020301ABY

Facility ID No. 10133

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of SAH Acquisition Corporation (SAH) for an extension of time to construct the digital facilities of WRAY-DT, Wilson, North Carolina. As originally filed, SAH asserted that it was unable to complete construction of the facilities for technical reasons. Specifically, SAH stated that it was awaiting delivery of equipment, including its antenna, and was awaiting consent from the tower owner to mount the DTV equipment.

By letter dated April 1, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, SAH's application was incomplete with respect to these matters, and you were specifically asked in the April 1st letter to provide information regarding: (1) the steps SAH had taken to mitigate its problems; (2) a specific plan outlining how SAH would use the extension time to further the construction of WRAY-DT; and (3) the date upon which SAH anticipated that construction would be complete.

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

In response to our request, you submitted an amendment stating SAH requires the consent of its landlord in order to begin construction. You state that the existing transmitter building, which houses both the WRAY-TV facilities and the landlord's FM station, is not large enough to also house the DTV facilities. You go on to state that SAH will need to construct a new building adjacent to the current transmitter building and that SAH cannot undertake such construction without the landlord's consent. You assert that consent is dependent on a structural analysis of your proposed tower. According to your submission, the analysis indicates that the tower has a pre-existing windloading problem, but that your proposed WRAY-DT antenna has less windloading. You contend that the landlord nevertheless has withheld the necessary consent until the windloading problem is remedied and the cost is apportioned. Based on your submission, we find that you have not taken all reasonable steps to complete construction of WRAY-DT in an expeditious manner. You do not indicate when you expect to resolve the existing conflict with the landlord. You also do not indicate, what steps, if any, you have undertaken to secure an alternative tower if the landlord continues to withhold his consent to construction at the existing site. Thus, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that SAH should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, SAH will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against SAH, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That SAH Acquisition Corporation IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That SAH's request to extend the construction permit

for WRAY-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: SAH Acquisition Corporation II P.O. Box 305249 Nashville, Tennessee 37230



June 12, 2002

Wyoming Channel 2, Inc. #1 Shackleford Drive, Suite 400 Little Rock, Arkansas 72211

Re: Request for Extension of Time to Construct

Digital Facilities

KKTU-DT, Cheyenne, Wyoming File No. BEPCDT-20020301AAN

Facility ID No. 18287

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Wyoming Channel 2, Inc. (Wyoming) for an extension of time to construct the digital facilities of KKTU-DT, Cheyenne, Wyoming. As originally filed, Wyoming asserted that it was unable to complete construction of the facilities for technical and legal reasons. Specifically, Wyoming stated that following its acquisition of the station, it discovered the previous licensee had entered into a digital antenna agreement with the site owner for a price that Wyoming characterized as exorbitant. Wyoming further asserted that it was pursuing legal remedies concerning this agreement and looking for a replacement tower site.

By letter dated March 29, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Wyoming's application was incomplete with respect to these matters, and you were specifically asked in the March 29th letter to provide information regarding: (1) what steps Wyoming had taken to mitigate its problems; (2) a specific plan outlining how it would use the extension time to further the construction of KKTU-DT; and (3) the date upon which it anticipated construction will be complete.

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

In response to our request, you submitted an amendment dated April 22, 2002 stating that Wyoming had entered into a financial settlement with the tower owner to terminate the previous tower agreement. You further state that Wyoming had reached a tentative agreement with Benedek License Corporation for a new site, but that Benedek had recently declared bankruptcy and ended all negotiations. You assert that Wyoming continues to negotiate with Benedek and its creditors to secure space on its towers. You indicate that Wyoming has made preliminary agreements for its antenna, transmitter and transmission line and will file the necessary modification or STA applications once a suitable tower site is secured. Finally, you state that Wyoming should be able to complete construction within a six-month extension window depending on the weather and other factors beyond its control. Based on your submission, we find that you have not taken all reasonable steps to complete construction of KKTU-DT in an expeditious manner. Wyoming still does not have a tower lease signed and does not appear near to completing negotiations for such a lease. It is unclear from the amendment whether Wyoming intends to operate at full-power or to file for an STA to operate at reduced power. amendment indicates that no equipment has been ordered and no contractors engaged. Thus, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Wyoming should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Wyoming will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Wyoming, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Wyoming Channel 2, Inc. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Wyoming's request to extend the construction

permit for KKTU-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau



June 12, 2002

WTXX, Inc. c/o Thomas P. Van Wazer Sidley, Austin, Brown & Wood, LLP 1501 K St., N.W. Washington, D.C. 20005

> Re: Request for Extension of Time to Construct Digital Facilities WTXX-DT, Waterbury, Connecticut File No. BEPCDT-20020304ABG Facility ID No. 14050

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of WTXX, Inc. (WTXX) for an extension of time to construct the digital facilities of WTXX-DT, Austin, Texas. As originally filed, WTXX asserted that it was unable to complete construction of the facilities for legal reasons. Specifically, WTXX stated that its proposed DTV landlord had been unable to secure zoning approval to construct WTXX's proposed tower. According to WTXX, the local zoning board in Farmington, where the tower would be located, effectively created and enforced a limit of two towers within its borders. According to the request, WTXX's landlord, who already owns one tower in Farmington, has attempted to negotiate an ownership or leasing arrangement with the owner of the second tower. WTXX stated that the landlord broke off those negotiations as "fruitless" and was proposing to accommodate additional users by strengthening its existing tower.

By letter dated March 28, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

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¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

As initially filed, WTXX's application was incomplete with respect to these matters, and you were specifically asked in the March 28 letter to provide information regarding: (1) the steps WTXX had taken to mitigate its problems; (2) a specific plan outlining how WTXX would use the extension time to further the construction of WTXX-DT; and (3) the date upon which WTXX anticipated that construction would be complete.

In response to our request, you submitted an amendment dated April 29, 2002 stating that WTXX would renew its request to its tower owner, CSM, to pursue the necessary paperwork to secure the local approvals to strengthen its existing tower to accommodate WTXX's DTV facility. You go on to state that you will encourage CSM to pursue its application vigorously and to provide an updated estimate of the cost of tower strengthening within 60 days of the date of your amendment. You also indicate that WTXX was recently approached by the owner of a new tower that is located on Avon Mountain, approximately 9 miles from the CSM tower, but that these negotiations are preliminary. Based on your submission, we find that you have not taken all reasonable steps to complete construction of WTXX-DT in an expeditious manner. You do not indicate what alternatives you have explored should CSM be unable to strengthen its tower and the Avon Mountain tower site be deemed unsuitable. You amendment also seems to indicate that no studies have been done to determine whether the Avon Mountain site could provide adequate coverage. Furthermore, you do not supply any projected construction completion date. Thus, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that WTXX should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, WTXX will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against WTXX, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That WTXX, Inc. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That WTXX's request to extend the construction permit for WTXX-

DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

ce: WTXX, Inc.
One Corporate Center
Hartford, Connecticut 06103



June 14, 2002

California Broadcasting, Inc. c/o Arthur B. Goodkind, Esq. Holland & Knight LLP 2099 Pennsylvania Ave., N.W., Suite 100 Washington, D.C. 20036-6801

Re: Request for Extension of Time to Construct

Digital Facilities

KAEF-DT, Arcata, California File No. BEPCDT-20020215ABP

Facility ID No. 8263

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of California Broadcasting, Inc. ("CBI") for an extension of time to construct the digital facilities of KAEF-DT. As originally filed, CBI asserted that it was unable to construct facilities by the applicable deadline due to legal reasons. Specifically, CBI stated that it was unable to reach an agreement with its landlord to locate KAEF-DT on the same tower as its analog station. Further, CBI stated that it was looking into other possible tower locations for KAEF-DT, and that once a tower site was secured, it would determine what equipment was necessary and place orders accordingly.

By letter dated March 22, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, CBI's application was incomplete with respect to these matters, and you were specifically asked in the March 22nd letter to provide information regarding the nature of your tower lease negotiations, including when said negotiations took place, the entities involved in such negotiations, and what issues have prevented an agreement from being reached. You were also asked to provide specific information concerning the status of CBI's "investigation" into other tower locations, including the names of any parties contacted by CBI, any quotes

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¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

given by such parties, and any studies which indicate the viability of alternative sites. In addition, you were asked to provide a specific plan outlining how CBI will use the extension period to further the construction of station KAEF-DT.

In response to our request, you submitted an amendment on April 5, 2002,² stating that communications with your landlord to locate KAEF-DT at the same tower as your analog station have been exchanged since approximately December 2000. You asserted that the issue that has prevented agreement has been the landlord's demand that the tower rent be doubled. Regarding your investigation of alternative tower sites, you stated that approximately one year ago you negotiated an agreement in principle with the licensee of noncommercial station KEET(TV), Eureka, under which KAEF-DT would have been located on a new tower to have been constructed for the noncommercial station. Shortly thereafter, however, you stated that the Board responsible for KEET's operation refused to approve the agreement. You asserted that this action resulted in the termination of further discussions between the parties until recently. You further stated that you are currently discussing the possible relocation of both your analog and digital antennas to the new KEET tower. You asserted that you expected the tower to be completed by June 2002. You also stated that the discussions, thus far, have focused on your desire to multiplex the signals of KAEF and KAEF-DT into a single panel antenna on the new tower, a matter about which you have received inconsistent engineering advice.

On April 19, 2002, you submitted a further response to your April 5, 2002 letter, stating that while you did not obtain further information concerning the use of a single panel antenna, you are now satisfied that the use of a joint antenna is feasible. You stated that you and the chief engineer for KAEF were scheduled to meet with representatives of KEET to discuss the potential costs of such collocation on May 1, 2002. On the basis of the ultimate cost determinations with respect to such a move, you asserted that you would either locate the KAEF analog and digital transmission facility on the KEET tower or you would pursue less expensive alternatives. You explained that less expensive alternatives included broadcasting the KAEF-DT signal from the tower now used for your analog facility or constructing a low power DTV facility elsewhere that would place a requisite signal over the city of Arcata. In any event, you stated that you expected that you would be able to commence KAEF-DT operations by May 1, 2003. You also stated that you would supplement this response with a further status report, which you anticipated would be made within the next sixty days.

We find that you have not taken all reasonable steps to complete construction of KAEF-DT in an expeditious manner due to your failure to reasonably and expeditiously investigate alternative tower sites for the station. Significantly, you assert that you are still considering the tower site for KAEF(TV) after you have explained that communications regarding this site began more than two years ago, and that you apparently do not agree to pay the landlord the rent he demands. Furthermore, you have been in unsuccessful negotiations with the licensee for KEEF(TV) for approximately one year, and have failed to explain why you decided to

² The April 5, 2002 letter was submitted on behalf of CBI by its counsel as an interim response to the Commission's March 22, 2002 letter. Counsel requested an extension of time, until April 19, 2002, for CBI to provide a further, substantive response.

recommence negotiations regarding this site after the board refused to approve an agreement in principle that you reached with the licensee last year. Consequently, you cannot give a projected date as to when the station's transmitter and antenna will be ordered. Therefore, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that CBI should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, CBI will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of Absent extraordinary and compelling circumstances, the these construction milestones. construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against CBI, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That California Broadcasting, Inc. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That California Broadcasting, Inc.'s request to extend the construction permit for KAEF-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Marshall R. Noecker



June 14, 2002

KGAN Licensee, LLC c/o Kathryn R. Schmeltzer, Esq. Shaw Pittman LLP 2300 N Street, NW Washington, D.C. 20037-1128

> Re: Request for Extension of Time to Construct Digital Facilities KGAN-DT, Cedar Rapids, IA File No. BEPCDT-20020301AKS Facility ID No. 25685

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of KGAN Licensee, LLC ("KGAN Licensee") for an extension of time to construct the digital facilities of KGAN-DT. As originally filed, KGAN Licensee asserted that it was unable to construct facilities by the applicable deadline due to technical reasons. Specifically, in support of its extension request, KGAN Licensee stated that its current tower did not have the capacity to support a DTV antenna system. It reported that it was "working . . . to join a community antenna system" and that an agreement was under negotiation."

By letter dated March 29, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, KGAN Licensee's application was incomplete with respect to these matters, and you were specifically asked in the March 29th letter to provide information as to the reasons why construction of KGAN-DT has been delayed and when such construction will be completed. We also sought information regarding: (1) when these claimed difficulties occurred;

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

(2) what equipment has been ordered and received, and when any necessary equipment not on hand will be delivered; (3) the steps it has taken to mitigate its problems; (4) a specific plan outlining how it will use the extension time to further the construction of KGAN-DT; and (5) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that the existing KGAN tower was studied for its ability to support a low power DTV antenna system. You asserted that, under these loading conditions, the tower would not comply with current structural standards. You stated that this assessment was completed in 1998. Further, you asserted that KGAN immediately began working with American Tower to ascertain the feasibility of constructing a community tower. However, you asserted that there was little interest in the market for a new tower, and KGAN began exploring the possibility of joining KCRG and the local PBS station immediately thereafter.

In addition, you stated that KGAN was very close to completion of a contract with KCRG-TV to modify the KCRG tower and install a multi-channel UHF community DTV antenna system. You stated that this contract was expected to be completed by May 1, 2002. You also stated that the new multi-channel DTV antenna had been delivered and was awaiting installation on the tower. Moreover, you asserted that KCRG had already contracted with SpectraSite Broadcast Group to begin the necessary modifications on the KCRG tower. You stated that this work was scheduled to begin in May and to be completed by August, 2002. You further stated that KGAN had begun work to design the required transmitter building expansion, and that construction would begin in June 2002, with an estimated completion date of August 15, 2002. You asserted that the transmitter had been ordered and would be installed as soon as the building was complete. Finally, you anticipated that KGAN-DT would be on the air by October, 2002.

Based on the information before us, you have failed to sufficiently explain your previous efforts to meet the May 1, 2002 DTV construction deadline. In this regard, we fail to see why you have not been able to finalize a lease agreement with KCRG-TV regarding the tower and community antenna system before the May 1st deadline, particularly since you have been on notice for approximately four years that your current tower could not support a DTV antenna system. Furthermore, while you may "anticipate" that KGAN-DT will be operational by October 2002, this projected date has no reasonable basis because you don't know if KCRG-TV's existing tower can in fact support the new antenna system that you are now proposing to use. Therefore, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that KGAN Licensee should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, KGAN Licensee will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to

reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against KGAN Licensee, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That KGAN Licensee, LLC IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That KGAN Licensee, LLC's request to extend the construction permit for KGAN-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: KGAN Licensee, LLC c/o David B. Amy 10706 Beaver Dam Road Cockeysville, Maryland 21030



June 14, 2002

Word of God Fellowship, Inc. c/o Robert L. Olender, Esq. Koerner & Olender, PC 5809 Nicholson Lane, Suite 124 North Bethesda, Maryland 20852-5706

Re: Request for Extension of Time to Construct

Digital Facilities

KMPX-DT, Decatur, Texas

File No. BEPCDT-20020228AFS

Facility ID No. 73701

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Word of God Fellowship, Inc. ("WGD") for an extension of time to construct the digital facilities of KMPX-DT. As originally filed, WGD asserted that it had taken a great deal of time to finalize a lease for the station's tower site, which had just been completed. In addition, WGD asserted that it could not order equipment until it knew that it would have the tower site for which it filed. Furthermore, WGD stated that broadcast equipment companies had been swamped with trying to fill orders for the May 1, 2002 deadline for DTV transition. As a result, WGD stated that it had been "put off". Finally, WGD asserted that, as a non-profit organization, it had tried to do research to find out what would be the most suitable equipment for the station at the best prices.

By letter dated April 2, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the

Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, WGD's extension request failed to comply with the Commission's stated policy regarding extension of DTV construction deadlines, and the instructions to FCC Form 337. Consequently, WGD failed to justify an extension. However, WGD was afforded the opportunity to amend its previously filed FCC Form 337 to provide the requisite information as set forth above, including: (1) a specific plan outlining how it will use the extension time to further the construction of KMPX-DT; and (2) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that the construction permit for KMPX-DT was issued late, and was not received until February 2001. You stated that you were not able to finalize a tower lease with American Tower Company for the proposed site until November 2001. Further, you asserted that you could not begin to seriously consider equipment until you had the tower lease finished so you would know for certain what height and distance from your city of license the proposed tower site would be. You indicated that this would affect the pattern of the antenna, the output power of the transmitter and the length of the transmission line. Furthermore, you asserted that you are a non-profit corporation. You, therefore, explained that you had to "do much research to find the best prices possible to try and afford the DTV transition." You asserted that this research has taken time as DTV equipment has evolved. By this time, you asserted that television equipment companies were swamped with orders from companies trying to make the May 1, 2002 deadline. Moreover, you stated that they put their largest customers first, and that you are a small customer.

You further stated that, in 2001, you ordered a new 60 kW transmitter from ADC, which has been completed, except for the DTV exciter. To further prepare for the digital transition, you indicated that, in 2001 and 2002, you also brought and installed "digital cameras, audio boards, tape machines, editing, servers, automation and satellite uplink." You stated that you have ordered the DTV antenna and the transmission line for DTV through NIA Broadcasting of San Antonio, Texas. You also indicated that the manufacturer is SWR in Pennsylvania. However, you stated that the equipment has not been completed. In short, you asserted that you have ordered all of the DTV equipment, but need time for the manufacturers to finish making the equipment and get it shipped to you.

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¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

Based on the information before us, you have failed to sufficiently explain your previous efforts to meet the May 1, 2002 DTV construction deadline. Specifically, we fail to see why the station's equipment could not be ordered and delivered before the May 1st deadline, particularly since you received the construction permit for KMPX-DT over fifteen months ago.² In this regard, you have not adequately shown that there was no equipment supplier available who could have delivered the necessary equipment to you before the May 1st deadline. Furthermore, while you have now ordered the station's transmitter and antenna, you have no idea when this equipment will be completed or delivered. Therefore, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that WGD should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, WGD will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against WGD, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Word of God Fellowship, Inc. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Word of God Fellowship, Inc.'s request to extend the construction permit for KMPX-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

² The construction permit for KMPX-DT was issued on February 8, 2001.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Word of God Fellowship, Inc. P.O. Box 612066 Dallas, Texas 75261-2066



June 14, 2002

Wyoming Channel 2, Inc. #1 Shackleford Drive, Suite 400 Little Rock, Arkansas 72211

Re: Request for Extension of Time to Construct

Digital Facilities

KTWO-DT, Casper, Wyoming File No. BEPCDT-20020301AA)

Facility ID No. 18286

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Wyoming Channel 2, Inc. (Wyoming) for an extension of time to construct the digital facilities of KTWO-DT, Cheyenne, Wyoming. As originally filed, Wyoming asserted that it was unable to complete construction of the facilities for technical and legal reasons. Specifically, Wyoming stated that following its acquisition of the station, it discovered the previous licensee had entered into a digital antenna agreement with the site owner for a price that Wyoming characterized as exorbitant. Wyoming further asserted that it was pursuing legal remedies concerning this agreement and looking for a replacement tower site.

By letter dated March 29, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Wyoming's application was incomplete with respect to these matters, and you were specifically asked in the March 29th letter to provide information regarding: (1) what steps Wyoming had taken to mitigate its problems; (2) a specific plan outlining how it would use the extension time to further the construction of KTWO-DT; and (3) the date upon which it anticipated construction will be complete.

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

In response to our request, you submitted an amendment dated April 22, 2002 stating that Wyoming had entered into a financial settlement with the tower owner to terminate the previous tower agreement. You further state that Wyoming had reached a tentative agreement with Benedek License Corporation for a new site, but that Benedek had recently declared bankruptcy and ended all negotiations. You assert that Wyoming continues to negotiate with Benedek and its creditors to secure space on its towers. You indicate that Wyoming has made preliminary agreements for its antenna, transmitter and transmission line and will file the necessary modification or STA applications once a suitable tower site is secured. Finally, you state that Wyoming should be able to complete construction within a six-month extension window depending on the weather and other factors beyond its control. Based on your submission, we find that you have not taken all reasonable steps to complete construction of KTWO-DT in an expeditious manner. Wyoming still does not have a tower lease signed and does not appear near to completing negotiations for such a lease. It is unclear from the amendment whether Wyoming intends to operate at full-power or to file for an STA to operate at reduced power. amendment indicates that no equipment has been ordered and no contractors engaged. Thus, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Wyoming should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Wyoming will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Wyoming, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Wyoming Channel 2, Inc. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Wyoming's request to extend the construction

permit for KTWO-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau



June 14, 2002

Channel 49 Acquisition Corporation. c/o Mark J. Prak, Esq. Brooks, Pierce, McLendon, Humphrey, & Leonard, L.L.P P.O. Box 1800 Raleigh, North Carolina 27602

> Re: Request for Extension of Time to Construct Digital Facilities KTEN-DT, Ada, Oklahoma File No. BEPCDT-20020304AKY Facility ID No. 35666

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Channel 49 Acquisition Corporation (Channel 49) for an extension of time to construct the digital facilities of KTEN-DT, Ada, Oklahoma. As originally filed, Channel 49 asserted that it was unable to complete construction of the facilities for "other" reasons. Specifically, Channel 49 stated that it anticipated being on the air by the May 1, 2002 deadline pending delivery of DTV equipment, tower crew scheduling and installation of the DTV equipment. Channel 49 also indicated that it intended to file a request for special temporary authority to operate with a minimum initial facility.

By letter dated April 3, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Channel 49's application was incomplete with respect to these matters, and you were specifically asked in the April 3rd letter to provide information regarding: (1) the date it ordered its DTV equipment; (2) the date the tower crew was scheduled to work on the

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

tower; (3) the date upon which Channel 49 anticipated that construction would be complete; and (4) the date by which Channel 49 intends to file for an STA with the Commission.

In response to our request, you submitted an amendment dated April 25, 2002 stating that Channel 49 did not order its equipment until the day before filing its amendment, April 24, 2002. Your letter indicates that no tower crew had been hired and no STA request had been filed. Furthermore, you amend your application to state that "technical" reasons now will delay construction because you have recently learned that your tower may not be able to support your DTV equipment. Based on your submission, we find that you have not taken all reasonable steps to complete construction of KTEN-DT in an expeditious manner. Your original submission stated that you believed you would be on the air by May 1, but you did not even order your equipment until April 24. As of the date of your amendment, you did not have a tower crew under contract and had not filed for an STA to operate at a lower power. Finally, you have only now learned that your tower may have to be strengthened before it can support the DTV equipment, but you have not even received the necessary studies to confirm or refute that possibility. Thus, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Channel 49 should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Channel 49 will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Channel 49, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Channel 49 Acquisition Corporation IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Channel 49's request to extend the

construction permit for KTEN-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau



June 14, 2002

Centex Television Limited Partnership c/o David Oxenford, Esq. Shaw Pittman LLP 2300 N Street, NW Washington, DC 20037

> Re: Request for Extension of Time to Construct Digital Facilities KXXV-DT, Waco, Texas File No. BEPCDT-20020301AJL Facility ID No. 9781

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Centex Television Limited Partnership ("Centex") for an extension of time to construct the digital facilities of KXXV-DT. As originally filed, Centex asserted that it was unable to construct facilities by the applicable deadline due to technical reasons. Specifically, Centex asserted that it was in the process of reviewing a proposal that would allow it to use existing equipment and tower space already owned by the station to combine its analog and digital operations. According to Centex's request, it was in the process of negotiating the purchase of the necessary equipment to convert its digital facilities and it would order the equipment within three weeks of its extension request.

By letter dated April 2, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Centex's application was incomplete with respect to these matters, and you were specifically asked in the April 1st letter to provide information regarding whether you have decided to use KXXV's existing tower or to pursue other alternative. You were also asked

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

to provide an update on the status of your purchase of digital equipment. We also requested information regarding: (1) the steps Centex has taken to mitigate its problems; (2) a specific plan outlining how Centex will use the extension time to further the construction of KXXV-DT; and (3) the date upon which you anticipate that construction will be complete.

In response to our request, Centex submitted an amendment stating that it had determined that it would be able to use its existing broadcast tower for KXXV's DTV facilities. Moreover, Centex asserted that it could use a single, common antenna to broadcast the analog and digital signals of the station. Centex indicated that while it had previously been informed that it could use the current antenna plate to bolt the new common antenna to the existing tower, further analysis determined that the current plate holding the current antenna could not support the new antenna necessary for digital operations. Centex asserted that it was only made aware of this information as the station prepared to order its digital equipment in February 2002. Centex asserted that, at that time, it was informed that the antenna wind loading standards had changed. Thus, Centex stated that it became necessary to thicken the design of the antenna and to modify the bolt pattern for mounting the antenna on the tower. Centex explained that in order to review the impact of mounting a heavier antenna on the tower and to determine the proper bolt configuration for the manufacture of the plate to hold the new antenna, it was necessary to perform an engineering study. Centex stated that, in February 2002, it retained Kline Towers to conduct the study. According to Centex, Kline Towers estimated that it would take approximately 6 to 8 weeks from mid-February to complete the study. Centex, therefore, expected that Kline Towers would be able to complete the study by April 30, 2002. In addition, Centex anticipated that it would be able to order the antenna by May 1, 2002.

Furthermore, Centex stated that earlier this year it sought and obtained an estimate from the Harris Corporation ("Harris") for the manufacture, delivery and installation of all the other necessary digital equipment for KXXV-TV, including the transmitter and the RF system. Centex stated that it would submit this order at the same time that it submitted the order for the antenna. In this regard, Centex explained that in order to avoid having to make payments on equipment that could not be used until the antenna was ready, it had not formally placed an order with Harris. However, Centex stated that KXXV-TV already had a transmission line that had been evaluated and found satisfactory for the combined analog and digital use. Centex asserted that it also had a 500 kW electric generator installed at the site, as well as a building to accommodate the new digital equipment. While Centex stated that it had made arrangements with Coast to Coast Towers ("Coast") to install the antenna on KXXV-TV's tower once it arrived, it explained that Coast would not schedule an installation date until the station had received notice of a firm delivery date for the antenna. Centex stated that based on the estimates it had received from the third parties mentioned above, and barring any unforeseen complications, it anticipated that construction of KXXV-DT would be completed by November 1, 2002.

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² According to Centex, Harris has guaranteed that it will be able to deliver the transmitter within 120 days of ordering and the antenna will be delivered within 150 days of ordering.

Based on the information before us, you have failed to sufficiently explain your previous efforts to meet the May 1, 2002 DTV construction deadline. In this regard, we fail to see why no feasible tower site or antenna system could be determined before the May 1st deadline, particularly since you received the construction permit for KXXV-DT over eleven months ago.³ Furthermore, while you may "anticipate" that KXXV-DT will be operational before November 1, 2002, this projected date has no reasonable basis because you don't know if KXXV's existing tower can in fact support the new antenna system that you are now proposing to use. Consequently, you cannot give a projected date as to when the station's transmitter and antenna will be ordered.⁴ Therefore, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Centex should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Centex will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Centex, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

³ The construction permit for KXXV-DT was issued on June 6, 2001.

⁴ Furthermore, your response contradicts your original FCC Form 337, wherein you stated that you anticipated that the necessary equipment would be ordered within two to three weeks.

In light of the above discussion, IT IS ORDERED That Centex Television Limited Partnership IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Centex Television Limited Partnership's request to extend the construction permit for KXXV-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Centex Television Limited Partnership P.O. Box 2522 Waco, Texas 76702



June 14, 2002

Anderson (WFBC-TV) Licensee, Inc. c/o Clifford M. Harrington, Esq. Shaw Pittman, LLP 1650 Tysons Boulevard, 14th Floor McLean, Virginia 22102

Re: Request for Extension of Time to Construct Digital Facilities WBSC-DT, Anderson, South Carolina File No. BEPCDT-20020301ADB Facility ID No. 56548

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Anderson (WFBC-TV) Licensee, Inc. (Anderson) for an extension of time to construct the digital facilities of WBSC-DT, Anderson, South Carolina. As originally filed, Anderson asserted that it was unable to complete construction of the facilities for technical reasons. Specifically, Anderson stated that its existing tower structure could not support a DTV antenna. Anderson also indicated that it would study in the future whether a side-mounted DTV antenna system could work on its existing tower.

By letter dated March 29, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Anderson's application was incomplete with respect to these matters, and you were specifically asked in the March 29 letter to provide information regarding: (1) what work had been done to create a new antenna design and the date on which the new design would be complete; (2) a timeline as to when the tower would be finished; (3) a specific plan outlining

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¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

how Anderson would use the extension time to further the construction of WBSC-DT; and (4) the date upon which Anderson anticipated that construction would be complete.

In response to our request, you submitted an amendment dated April 29, 2002 stating that Anderson has developed an alternative antenna system which it believes can be supported by the new tower. Although the antenna design is complete, you state Anderson's contractor still has to study the tower to determine whether it can accommodate the new antenna. You assert that the study will begin no later than June. Based on your submission, we find that you have not taken all reasonable steps to complete construction of WBSC-DT in an expeditious manner. You have not indicated what alternatives, if any, you have considered should the new antenna design prove unusable. You also have not indicated whether you have explored the possibility of constructing a new tower or locating another tower site should Anderson's existing tower prove unable to support any DTV antenna. Thus, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Anderson should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Anderson will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Anderson, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Anderson (WFBC-TV) Licensee, Inc. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Anderson's request to extend the construction permit for WBSC-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Anderson (WFBC-TV) Licensee, Inc. 2000 W. 41st St. Baltimore, Maryland 21211



June 14, 2002

WCHS Licensee, LLC c/o Kathryn R. Schmeltzer, Esq. Shaw Pittman LLP 2300 N Street, NW Washington, D.C. 20037-1128

Re: Request for Extension of Time to Construct

Digital Facilities

WCHS-DT, Charleston, West Virginia File No. BEPCDT-20020301AKP

Facility ID No. 71280

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of WCHS Licensee, LLC ("WCHS Licensee") for an extension of time to construct the digital facilities of WCHS-DT. As originally filed, WCHS Licensee asserted that it was unable to construct facilities by the applicable deadline due to technical reasons. Specifically, WCHS Licensee stated that its current tower was overloaded and required a structural study. Further, it reported that it was "working on the development of a smaller wind load antenna" which would not require "as much" tower modification as might be required with more typical designs.

By letter dated March 29, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, WCHS Licensee's application was incomplete with respect to these matters, and it was specifically asked in the March 29th letter to provide information regarding: (1) when these claimed difficulties occurred; (2) what equipment has been ordered and received, and when any necessary equipment not on hand is to be delivered; (3) the steps it has taken to mitigate its problems; (4) a specific plan outlining how it will use the extension time to further the construction of WCHS-DT; and (4) the date upon which it anticipates that construction will be complete.

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

In response to our request, you submitted an amendment indicating that preliminary tower assessments completed in 1998 show the WCHS tower to be overloaded and incapable of supporting a full size DTV antenna. You stated that in December 2001, the station completed the design of a lower power side mounted antenna system (Dielectric DSB). Furthermore, you asserted that a tower study was underway to consider this smaller, lighter antenna system for DTV, and that you expected the tower study to be completed by June 2002. Moreover, you stated that the new DTV antenna and the transmitter would be ordered as soon as the assessment was made that the tower could support this new, additional load. You stated that building modifications would be needed to support the new DTV transmitter but the building would not need to be expanded in size. Finally, you asserted that "there is a good possibility that WCHS-DT can be operational by December, 2002, if a tower crew can be contracted before winter weather conditions limit construction."

Based on the information before us, you have failed to explain why approximately four years have passed from the time you found that your current tower could not support a full size DTV antenna and a tower study has still not been completed. Moreover, we fail to see why no feasible tower site or antenna system could be determined within this extensive, four-year period. Furthermore, while you may anticipate that WCHS-DT will be operational by December 2002, this projected date has no reasonable basis because you do not yet know if WCHS's existing tower can, in fact, support the new antenna system that you are now proposing to use. Consequently, you cannot give a projected date as to when the station's transmitter and antenna will be ordered. Therefore, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that WCHS Licensee should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, WCHS Licensee will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against WCHS Licensee, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That WCHS Licensee, LLC IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That WCHS Licensee, LLC's request to extend the construction permit for WCHS-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: WCHS Licensee, LLC c/o David B. Amy 10706 Beaver Dam Road Cockeysville, Maryland 21030



June 14, 2002

Independence Television Company, Inc. c/o Scott S. Patrick, Esq.
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W..
Washington, D.C. 20036

Re: Request for Extension of Time to Construct

Digital Facilities

WDRB-DT, Louisville, Kentucky File No. BEPCDT-20020304AIH

Facility ID No. 28476

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Independence Television Company, Inc. (Independence) for an extension of time to construct the digital facilities of WDRB-DT, Louisville, Kentucky. As originally filed, Independence asserted that it was unable to complete construction of the facilities for financial reasons.¹

By letter dated April 1, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. That letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.² In the case of claimed financial hardship, the Commission has also determined that it would "consider, on a case-by-case basis, in addition to the extension criteria outlined in the *Fifth Report and Order*, whether a broadcaster should be afforded additional time to construct its DTV facilities because the cost of meeting the minimum build-out requirements exceeds the station's financial resources." In particular, such an applicant must provide an itemized cost estimate of a minimum build-out, detailed financial statements and a detailed

¹ Independence has sought confidential treatment of certain financial data it did submit pursuant to Section 0.459 of the Commission's Rules, 47 C.F.R. § 0.459.

² Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

³ Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 20594, 20611 (2001).

explanation why its financial condition precludes such an expenditure, a description of its good faith efforts to meet the construction deadline, including its efforts to obtain the requisite financing and why those efforts were unsuccessful, and indicate when it reasonably expects to complete construction.⁴ In addition, FCC Form 337 requires that an applicant seeking an extension of time provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Independence's application was incomplete with respect to these matters, and you were specifically asked in the April 1st letter to provide the audited income statements that applicants are required to keep available, as set forth in the instructions to the FCC Form 337. Those income statements should reflect Independence's financial condition over an economically significant period of time. We also requested documentary evidence of Independence's inability to raise capital, such as affidavits from lenders or other financial institutions. Finally, we requested a detailed estimate of when Independence's financial condition would permit purchase of the necessary equipment.

In response to our request, you submitted amendments on April 29, 2002 and May 15, 2002. In the May 15 amendment, you indicated that Independence now had the financial resources to construct its DTV facilities. You then stated that, after the funding was received, Independence's parent company, Block Communications, Inc., authorized its consulting engineers to reexamine its existing DTV plans to ensure that the Block television stations implemented the most efficient means of inaugurating digital service to their communities. You asserted that Block would proceed with construction following completion of that analysis. Based on your submission, we find that you have not taken all reasonable steps to complete construction of WDRB-DT in an expeditious manner. Your various submissions do not demonstrate that you have done anything more than preliminary design work. You do not appear to have ordered any equipment or to have determined what equipment you need to order. Your submissions do not indicate that you have engaged contractors for construction or that you have any sort of construction timeline prepared. Thus, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Independence should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Independence will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking

⁴ *Id.* at 20611-12.

all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Independence, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Independence Television Company, Inc. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Independence's request to extend the construction permit for WDRB-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Independence Television Company, Inc. 624 W. Muhammad Ali Boulevard Louisville, Kentucky 28476



June 14, 2002

Global Communications, Inc. c/o John M. Burgett, Esq. Wiley, Rein & Fielding LLP 1776 K Street, NW Washington, DC 20006

Re: Request for Extension of Time to Construct

Digital Facilities

WGBC-DT, Meridian, Mississippi File No. BEPCDT-20020228ADH

Facility ID No. 24314

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Global Communications, Inc. ("Global") for an extension of time to construct the digital facilities of WGBC-DT. As originally filed, Global asserted that it was unable to construct facilities by the applicable deadline due to "other" reasons. Specifically, Global asserted that its president and single majority shareholder, Alex Shields, died in September 2001. Global reported that Mr. Shields assumed sole responsibility for managing WGBC's affairs, including working with WMDN, Inc., licensee of WMDN-TV, Meridian ("WMDN"), to develop collaborative DTV facilities. It further stated that after Mr. Shield's death, Global's remaining officers were advised that WMDN was not planning to assist with the construction of WGBC-DT. Moreover, Global advised that Mr. Shield's widow, as the executor of his estate, had been unexpectantly thrust into the position of running the television station, and was in the process of convening shareholders to elect new officers and directors and to place a general manager to oversee the station's day-to-day operations. Finally, Global asserted that since these basic organizational matters had begun to settle, it had recommenced negotiations with WMDN in an effort to resume focusing on the construction of WGBC-DT's digital facilities.

By letter dated March 29, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an

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¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Global's application was incomplete with respect to these matters, and you were specifically asked in the March 29th letter to provide more detailed information regarding: (1) a specific plan outlining how you will use the extension time to further the construction of WGBC-DT; and (2) the date upon which you anticipate that construction will be complete. In response to our request, you submitted an amendment stating that you have decided to construct temporary reduced power facilities. To this end, you asserted that the station's new general manager met with antenna and transmitter manufacturers during the NAB convention during the week of April 8, 2002. Further, you stated that you have selected the type of antenna, transmitter, transmission line, and filters you will use with WGBC-DT, and a representative of the manufacturing company was scheduled to visit the station to settle the remaining details of the package. You stated that you anticipated placing your equipment order no later than the middle of May. Moreover, you asserted that you had been advised that you could expect delivery within 90-120 days of the order placement. In addition, you stated that you were preparing to conduct a loading study on the station's existing tower to determine if it could bear the added weight of the digital antenna. You also asserted that you were "fairly confident" that the tower would be suitable for the digital facilities after the rented space had been cleared. In the event that a new tower was required, you stated that you owned enough land to accommodate that tower. Finally, you anticipated that WGBC-DT would be on the air prior to November 1, 2002.

Based on the information before us, you have failed to sufficiently explain your previous efforts to meet the May 1, 2002 DTV construction deadline. In this regard, we fail to see why, at a minimum, the tower study could not be completed before the May 1st deadline, particularly since approximately ten months has elapsed since the death of Mr. Shields. Moreover, while you may "anticipate" that WGBC-DT will be operational by November 1, 2002, this projected date has no reasonable basis because you do not know if the station's existing tower can in fact support the new antenna system that you are now proposing to use. Consequently, you cannot give a projected date as to when the station's transmitter and antenna will be ordered. Therefore, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Global should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Global will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps

to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Global, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Global Communications, Inc. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Global Communications, Inc.'s request to extend the construction permit for WGBC-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Global Communications, Inc. c/o Phyllis Shields 116 Skyland Drive Meridian, MS 39301



Federal Communications Commission Washington, D.C. 20554 June 14, 2002

Brunson Communications, Inc. c/o Paul H. Brown, Esquire Word, Maines & Brown 1827 Jefferson Place, NW Washington, D.C. 20036

Re: Request for Extension of Time to

Construct Digital Facilities WGTW-DT, Burlington, NJ Facility ID No. 7623

File No. BEPCDT-20020228AFC

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf Brunson Communications, Inc. ("Brunson") for an extension of time to construct the digital facilities of WGTW-DT. As originally filed, Brunson asserted that it was unable to construct facilities by the applicable deadline because of "financial reasons." Among other things, Brunson states that it is a relatively new station and it has suffered a shortfall in revenues as a result of the recession. In addition, Brunson states that it has not concluded negotiations with the site owner regarding placement of a DTV antenna on the station's tower. Brunson maintains that the tower on which WGTW's antenna is placed has no room for an additional antenna for WGTW-DT.

By letter dated April 1, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. That letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. In the case of claimed financial hardship, the Commission has also determined that it would "consider, on a case-by-case basis, in addition to the extension criteria outlined in the *Fifth Report and Order*, whether a broadcaster should be afforded additional time to construct its DTV facilities because the cost of meeting the minimum build-out requirements exceeds the station's financial resources." In particular, such an applicant must provide an itemized cost estimate of a minimum build-out, detailed financial statements and a detailed explanation why its financial condition precludes such an expenditure, a description of its good faith efforts to meet the construction deadline, including its efforts to obtain the requisite financing and why those efforts were unsuccessful, and indicate when it reasonably expects to

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

² Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 20594, 20611 (2001).

complete construction.³ In addition, FCC Form 337 requires that an applicant seeking an extension of time provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Brunson's application was incomplete with respect to these matters, and you were specifically asked in the April 1st letter to provide an itemized estimated cost of construction (*i.e.*, a price estimate for each structure, antenna or other related equipment reasonably necessary for minimum DTV operations). In addition, in order to determine whether Brunson's financial condition warrants an extension, you were asked to provide the audited income statements that cover an economically significant period of time that applicants are required to keep available, as set forth in the instructions to FCC Form 337. We also requested documentary evidence of Brunson's inability to raise capital, such as affidavits from lenders or other financial institutions

In response to our request, you submitted a letter on May 17, 2002 requesting additional time to assemble the requested information. On June 10, 2002, you provided, via facsimile, draft audited financial statements for Brunson for the year ending December 31, 2001. We are unable to discern from these documents whether the requested extension is warranted. The materials submitted do not, of themselves, set forth adequately identifiable proposed facilities, the cost or time necessary to construct or the financial ability of this station to meet that goal. Furthermore, we fail to see why tower negotiations with the site owner could be completed before the May 1st deadline, particularly since you received the construction permit for WGTW two years ago. It is unclear whether you considered other tower sites because you anticipated that you would be successful in negotiations with the site owner for the station's tower. We find it unreasonable for you to have pursued only one tower site during an entire two year period. Finally, you have not adequately addressed, as part of your efforts to construct this station prior and subsequent to the May 1, 2002 construction deadline, the feasibility of building a reduced facility and operating pursuant to special temporary authority. In this regard, your showing contains no plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that what amounts to an unqualified extension of this construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Brunson should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Brunson will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith,

³ *Id.* at 20611-12.

we may consider the imposition of additional sanctions. Moreover, failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Brunson, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Brunson Communications, Inc., IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Brunson Communications, Inc.'s request to extend the construction permit for WGTW-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rule as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Brunson Communications, Inc. c/o Dorothy E. Brunson, Esq. 3900 Main Street Philadelphia, PA 19127



June 14, 2002

WICS Licensee, LLC c/o Kathryn R. Schmeltzer, Esq. Shaw Pittman LLP 2300 N Street, NW Washington, D.C. 20037-1128

Re: Request for Extension of Time to Construct Digital Facilities

WICS-DT, Springfield, IL File No. BEPCDT-20020301AJC

Facility ID No. 25686

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of WICS Licensee, LLC ("WICS") for an extension of time to construct the digital facilities of WICS-DT. As originally filed, WICS asserted that it was unable to construct facilities by the applicable deadline due to technical reasons. Specifically, WICS stated that its tower was not capable of supporting a full-size DTV antenna. Furthermore, WICS reported that the station was considering a "smaller and lower power solution" which would allow the commencement of DTV operations, and that a second tower study would be required as soon as the antenna design was completed.

By letter dated March 28, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, WICS's application was incomplete with respect to these matters, and you were specifically asked in the March 28th letter to provide information as to the reasons why construction of WICS-DT had been delayed and when such construction would be completed. You were also asked to provide specific information regarding: (1) when these claimed difficulties occurred; (2) what equipment had been ordered and received, and when any

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¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

necessary equipment not on hand was to be delivered; (3) the steps you have taken to mitigate your problems; (4) a specific plan outlining how you will use the extension time to further the construction of WICS-DT; and (5) the date upon which you anticipate that construction will be complete.

In response to our request, you submitted an amendment indicating that in 1998, WICS ascertained that its current tower could not support a full size DTV antenna. You state that in the fall of 2001, the station commissioned the design of a lower power DTV antenna, and that the design specifications were completed in November 2001. You assert that the WICS tower is an older tower made by a company which is no longer in business. You explain that the structural drawings for the tower are hard to obtain and that many engineers are not familiar with the tower design. You assert that you found that Spectrasite was one of the few companies that had access to the drawings and has an engineer who is familiar with this kind of tower. You aver that in February-March 2002, WICS contracted with SpectraSite to complete another structural study for the smaller, lighter antenna system. However, you indicate that Spectrasite has not yet started the study because "they are very busy with other pending projects and they have not provided WICS with the date when the structural study will commence."

Furthermore, you state that you anticipate that it may be necessary to apply for a minor modification of the facility and, if so, you will order the transmitter and antenna as soon as the minor modification application is granted. Finally, you assert that you hope the tower assessment will be completed by July 2002, and that you anticipate that the facility will not be operational until sometime in 2003. However, you have failed to explain why it took approximately three years from the time WICS learned that its current tower could not support a full size DTV antenna to commission the design of a low power DTV antenna. Further, although you state that you "hope" the tower assessment will be completed by July 2002, this projected date has no reasonable basis because you don't know when Spectrasite will even commence the study. Consequently, you cannot give a projected date as to when the station's transmitter and antenna will be ordered. Therefore, while you may "anticipate" that the facility will not be operational until sometime in 2003, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that WICS should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, WICS will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise

find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against WICS, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That WICS Licensee, LLC IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That WICS Licensee, LLC.'s request to extend the construction permit for WISC-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: WISC Broadcasting Company III, Inc. c/o David B. Amy 10706 Beaver Dam Road Cockeysville, Maryland 21030



June 14, 2002

Lima Communications Corporation c/o Scott S. Patrick, Esq. Dow, Lohnes & Albertson, PLLC 1200 New Hampshire Avenue, N.W.. Washington, D.C. 20036

Re: Request for Extension of Time to Construct Digital Facilities

WLIO-DT, Lima, Ohio

File No. BEPCDT-20020304AIJ

Facility ID No. 37503

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of Lima Communications Corporation (Lima) for an extension of time to construct the digital facilities of WLIO-DT, Lima, Ohio. As originally filed, Lima asserted that it was unable to complete construction of the facilities for financial reasons.¹

By letter dated March 29, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. That letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.² In the case of claimed financial hardship, the Commission has also determined that it would "consider, on a case-by-case basis, in addition to the extension criteria outlined in the *Fifth Report and Order*, whether a broadcaster should be afforded additional time to construct its DTV facilities because the cost of meeting the minimum build-out requirements exceeds the station's financial resources." In particular, such an applicant must provide an itemized cost estimate of a minimum build-out, detailed financial statements and a detailed

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¹ Lima has sought confidential treatment of certain financial data it did submit pursuant to Section 0.459 of the Commission's Rules, 47 C.F.R. § 0.459.

² Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

³ Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 20594, 20611 (2001).

explanation why its financial condition precludes such an expenditure, a description of its good faith efforts to meet the construction deadline, including its efforts to obtain the requisite financing and why those efforts were unsuccessful, and indicate when it reasonably expects to complete construction.⁴ In addition, FCC Form 337 requires that an applicant seeking an extension of time provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, Lima's application was incomplete with respect to these matters, and you were specifically asked in the March 29th letter to provide the audited income statements that applicants are required to keep available, as set forth in the instructions to the FCC Form 337. Those income statements should reflect Lima's financial condition over an economically significant period of time. We also requested documentary evidence of Lima's inability to raise capital, such as affidavits from lenders or other financial institutions. Finally, we requested a detailed estimate of when Lima's financial condition would permit purchase of the necessary equipment.

In response to our request, you submitted amendments on April 29, 2002 and May 15, 2002. In the May 15 amendment, you indicated that Lima now had the financial resources to construct its DTV facilities. You then stated that, after the funding was received, Lima's parent company, Block Communications, Inc., authorized its consulting engineers to reexamine its existing DTV plans to ensure that the Block television stations implemented the most efficient means of inaugurating digital service to their communities. You asserted that Block would proceed with construction following completion of that analysis. Based on your submission, we find that you have not taken all reasonable steps to complete construction of WLIO-DT in an expeditious manner. Your various submissions do not demonstrate that you have done anything more than preliminary design work. You do not appear to have ordered any equipment or to have determined what equipment you need to order. Your submissions do not indicate that you have engaged contractors for construction or that you have any sort of construction timeline prepared. Thus, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Lima should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Lima will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps

⁴ *Id.* at 20611-12.

to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Lima, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Lima Communications Corporation IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Lima's request to extend the construction permit for WLIO-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Lima Communications Corporation 1424 Rice Avenue Lima, Ohio 48505



June 14, 2002

Beach TV Properties, Inc. c/o Henry A. Solomon, Esq. Garvey, Schubert & Barer 1000 Potomac Street, NW Washington, D.C. 20007

Re: Request for Extension of Time to Construct Digital

Facilities

WPCT-DT, Panama City Beach, Florida File No. BEPCDT-20020411AAH

Facility ID No. 4354

Dear Permittee:

This letter concerns the above-referenced request for extension of time to construct digital facilities, filed on behalf of Beach TV Properties, Inc. ("Beach"), licensee of station WPCT(TV), Panama City Beach, Florida. Beach certifies that construction could not be completed by the applicable May 1, 2002 deadline due to technical inability. Furthermore, Beach requests an extension of time until November 1, 2002 to construct the station's DTV facilities.

In support of its request, Beach asserted that it fully expected to activate WPCT-DT before the end of April, 2002, but recently became aware that it would be unable to complete its DTV build out by the May 1st deadline. Beach stated that its engineering consultant has recommended that Beach use a single antenna, the one it currently uses for NTSC broadcasts, for the station's digital and analog operations. Beach asserted that modification of the existing antenna would cost far less than purchasing a separate antenna. Moreover, Beach stated that it has been informed by its consultant that the WPCT(TV) tower cannot accommodate another antenna due to wind-loading considerations.

In its April request, Beach stated that it previously instructed its consultant to prepare an application to modify the WPCT-DT antenna so as to permit analog and digital transmissions. Beach asserted that it intended to seek an STA, if necessary, to activate digital operations by the applicable deadline. However, Beach explained that its consultant has not been able to complete the modification application because of workload considerations and a NAB commitment. Beach "assured" the Commission that its modification application would be filed within the next 30 days, if not sooner, and that it would accelerate the construction process. Further, Beach stated that as soon as the modification application has been approved, all of the necessary parts to modify the antenna would be ordered. Beach estimated that the entire process (preparation, filing and grant of the application; delivery of parts; and installation) would be accomplished within the next 90-120 days. Out of an abundance of caution, however, Beach stated that it was requesting the "usual" six-month extension.

In the DTV proceeding, the Commission expressed its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.\(^1\) In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems. Based on the information before us, you have failed to sufficiently explain your previous efforts to meet the May 1, 2002 DTV construction deadline. In this regard, we fail to see why no feasible antenna system could be completed before the May 1st deadline, particularly since you received the construction permit for WPCT-DT over two years ago.\(^2\) Moreover, you have failed to explain why you only recently became aware that you would be unable to complete your DTV build out by the construction deadline.\(^3\)

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that Beach should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, Beach will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against Beach, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

² The construction permit for WPCT-DT was issued on March 16, 2000.

³ We also note that a review of the Commission's records does not reflect the filing of any modification application on behalf of WPCT(TV).

In light of the above discussion, IT IS ORDERED That Beach TV Properties, Inc. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Beach TV Properties, Inc.'s request to extend the construction permit for WPCT-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Beach TV Properties, Inc. 8317 Front Beach Road Suite 23 Panama City, Florida 32407



June 14, 2002

WSTR Licensee, LLC c/o Kathryn R. Schmeltzer, Esq. Shaw Pittman LLP 2300 N Street, NW Washington, D.C. 20037-1128

Re: Request for Extension of Time to Construct

Digital Facilities

WSTR-DT, Cincinnati, Ohio File No. BEPCDT-20020301AKD

Facility ID No. 11204

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of WSTR Licensee, LLC ("WSTR") for an extension of time to construct the digital facilities of WSTR-DT. As originally filed, WSTR asserted that it was unable to construct facilities by the applicable deadline due to technical reasons. Specifically, WSTR stated that the current tower was under study to determine the compatibility of a DTV antenna system with existing uses. Further, it reported that the current tower would need modifications. It also stated that an alternate antenna system had been designed which the tower could support, and would be ordered once the results of the tower study were received.

By letter dated March 29, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, WSTR's application was incomplete with respect to these matters, and you were specifically asked in the March 29th letter to provide information as to the reasons why construction of WSTR-DT had been delayed and when such construction would be completed. You were also asked to provide specific information regarding: (1) when these claimed difficulties occurred; (2) what equipment had been ordered and received, and when any necessary equipment not on hand was to be delivered; (3) the steps you have taken to mitigate

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¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

your problems; (4) a specific plan outlining how you will use the extension time to further the construction of WSTR-DT; and (5) the date upon which you anticipate that construction will be complete.

In response to our request, you submitted an amendment indicating that the existing tower has tenants that could not be relocated to free up tower loading to support the new DTV antenna system. You explained that you needed to "design an antenna system, which could be mounted between two of the current tenant antenna systems." You asserted that the design was completed early last year. Further, you stated that the tower manufacturer was completing this specific study. You asserted that you were "hopeful" that the tower could be strengthened to support the WSTR-DT antenna system. Moreover, you stated that the new antenna system would be ordered as soon as you received confirmation of the tower's ability to support this load. In addition, you stated that the transmitter had been ordered and would be installed as soon as it was manufactured. You indicated that you have located free space in the current building, so building expansion was not needed. Moreover, you stated that the transmitter system layout and design was taking place. You stated that building modifications for electrical and HVAC systems were expected to begin by May 30, 2002. Also, you asserted that tower work and antenna installation are tentatively scheduled to take place in late July. Finally, you anticipated that WSTR-DT would be operational before November 2002.

Based upon the information before us, you have failed to sufficiently explain your previous efforts to meet the May 1, 2002 DTV construction deadline. In this regard, we fail to see why no feasible tower site or antenna system could be completed before the May 1st deadline, particularly since you received the construction permit for WSTR over twelve months ago.² Furthermore, while you may anticipate that WSTR-DT will be operational before November 2002, this projected date has no reasonable basis because you do not know if WSTR's existing tower can, in fact, support the new antenna system that you are now proposing to use. Consequently, you cannot give a projected date as to when the station's antenna will be ordered. Therefore, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that WSTR should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, WSTR will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise

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² The construction permit for WSTR-DT was issued on May 4, 2001

find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against WSTR, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That WSTR Licensee, LLC IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That WSTR Licensee, LLC's request to extend the construction permit for WSTR-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: WSTR Licensee, LLC c/o David B. Amy 10706 Beaver Dam Road Cockeysville, Maryland 21030



June 14, 2002

WSYT Licensee, L.P. c/o Kathryn R. Schmeltzer, Esq. Shaw Pittman LLP 2300 N Street, NW Washington, D.C. 20037-1128

> Re: Request for Extension of Time to Construct Digital Facilities WSYT-DT, Syracuse, NY File No. BEPCDT-20020301AKO Facility ID No. 40758

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of WSYT Licensee, L.P. ("WSYT Licensee") for an extension of time to construct the digital facilities of WSYT-DT. As originally filed, WSYT Licensee asserted that it was unable to construct facilities by the applicable deadline due to technical reasons. Specifically, WSYT Licensee asserted that the current tower was "not suitable for DTV use" and that a new community tower had recently received local construction authorizations. It also reported that issues relating to Canadian concurrence remain unresolved. WSYT Licensee stated that it hoped to begin construction by late spring.

By letter dated March 29, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously.¹ In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, WSYT Licensee's application was incomplete with respect to these matters, and it was specifically asked in the March 29th letter to provide information regarding: (1) when these claimed difficulties occurred; (2) what equipment has been ordered and received, and when any necessary equipment not on hand is to be delivered; (3) the steps it has taken to

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

mitigate its problems; (4) a specific plan outlining how it will use the extension time to further the construction of WSYT-DT; and (5) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that you signed a formal letter of intent with Raycom Media to join them at a new community tower. You asserted that your engineering consultants were in the process of preparing an application to modify the construction permit, since WSYT would be relocating about six miles closer to the city of Syracuse. You indicated that this application would be filed by May 15, 2002. Further, you asserted that tower construction had begun, and the building plans had been finalized and sent out for bid. You also stated that the tower would be completed by August 2002. Moreover, you asserted that WSYT-DT would order the antenna and transmitter as soon as the modified construction permit was granted. Finally, you stated that it was possible that WSYT-DT would be operational by December 2002.

Based on the information before us, you have failed to sufficiently explain your previous efforts to meet the May 1, 2002 DTV construction deadline. In this regard, we fail to see why no feasible tower site could be determined before the May 1st deadline, particularly since you received the construction permit for WSYT-DT over eight months ago.² Furthermore, while you may anticipate that WSYT-DT will be operational by December 2002, this projected date has no reasonable basis because you do not know when the community tower will be completed. Consequently, you cannot give a projected date as to when the station's transmitter and antenna will be ordered. Therefore, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that WSYT Licensee should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, WSYT Licensee will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against WSYT Licensee, and the initiation of a six-month process, at the

² The construction permit for WSYT-DT was issued on September 25, 2001.

end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That WSYT Licensee, L.P. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That WSYT Licensee L.P.'s request to extend the construction permit for WSYT-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: WSYT Licensee, L.P. c/o David B. Amy 10706 Beaver Dam Road Cockeysville, Maryland 21030



June 14, 2002

Believers Broadcasters Corporation P.O. Box 1189 Quincy, Illinois, 62306

Re: Request for Extension of Time to Construct Digital

Facilities

WTJR-DT, Quincy, Illinois

File No. BEPCDT-20020424ABP

Facility ID No. 4593

Dear Permittee:

This letter concerns the above-referenced request for extension of time to construct digital facilities, filed on behalf of Believers Broadcasters Corporation ("BBC"), licensee of station WTJR(TV), Quincy, Illinois. BBC certifies that construction could not be completed by the applicable May 1, 2002 deadline due to technical and financial inability, as well as other reasons. To explain the reasons for its inability to complete construction, BBC merely writes "tower & \$". Similarly, BBC simply writes "911" as an "other" reason. Finally, BBC requests an extension of time until 2008 to construct the station's DTV facilities.

In the DTV proceeding, the Commission expressed its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

Based on the information before us, your extension request is bereft of any meaningful showing that would justify an extension in this case. For this reason, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that BBC should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, BBC will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against BBC, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That Believers Broadcasters Corporation IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That Believers Broadcasters Corporation's request to extend the construction permit for WTJR-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau



June 14, 2002

WTOV-TV Holdings, Inc. c/o Jeffrey J. Gee, Esq. Dow, Lohnes & Albertson, PLLC 1200 New Hampshire Ave., NW, Suite 800 Washington, D.C. 20036

Re: Request for Extension of Time to Construct Digital

Facilities

WTOV-DT, Steubenville, Ohio File No. BEPCDT-20020301AEF

Facility ID No. 74122

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of WTOV-TV Holdings, Inc. ("WTOV-TV Holdings") for an extension of time to construct the digital facilities of WTOV-DT. As originally filed, WTOV-TV Holdings asserted that it was unable to construct facilities by the applicable deadline due to technical reasons. Specifically, WTOV-TV Holdings stated that it had originally planned to place its DTV antenna on its current tower. However, it explained that two "recent" tower studies indicated that the existing tower structure would not support a DTV antenna and could not be modified to do so. Thus, WTOV-TV Holdings asserted that it would have to identify a new location for its DTV antenna and construct a new tower capable of supporting additional facilities. In addition, WTOV-TV Holdings stated that its main studio was not large enough to accommodate both analog and digital transmitter facilities and that a new building would be required.

By letter dated March 29, 2002, the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, WTOV-TV Holdings' application was incomplete with respect to these matters, and it was specifically asked in the March 29th letter to provide information regarding:

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

(1) what efforts it has made in its "active pursuit" of locating a new tower site (*i.e.*, list of locations examined and the reasons for rejection); (2) the date upon which identification of a new tower site will be complete; (3) what sites have been explored for a new transmitter building and any justification for rejection of such sites; (4) a specific plan as to how it will use the extension time to further the construction of WTOV-DT; and (5) the date upon which it anticipates that construction will be complete.

In response to our request, you submitted an amendment stating that you have determined that you will locate the new tower adjacent to the station's existing tower, and the new transmitter will be located at the base of the tower. Further, you indicate that you are working with your tower and building contractors to determine the final designs of the new tower and transmitter building, and you anticipate completion of the final designs by June 30, 2002. You assert that you intend to use the new tower and transmitter building for both the station's analog and digital facilities. Further, you state that, to make the most efficient use of the tower contractors, who will be needed to take down the existing analog tower after the new tower is completed, you cannot begin construction of the new tower until construction of the new transmitter building is complete.

Moreover, you assert that, assuming there are no zoning issues or other unforeseen delays, you anticipate beginning the construction of the transmitter building by September 1, 2002. You state that the station's digital antenna and transmitter have been ordered and paid for, and that you anticipate taking delivery of the equipment as soon as the transmitter building is complete. You assert that the process of constructing the new tower and installing the transmission facilities should begin by December 1, 2002. Finally, you state that you anticipate that the facilities will be completed by February 1, 2003. Based on the information before us, you have failed to sufficiently explain your previous efforts to meet the May 1, 2002 DTV construction deadline. In this regard, we fail to see why no feasible tower site or transmitter building could be completed before the May 1st deadline, particularly since you received the construction permit for WTOV-DT over two years ago.² Moreover, you have failed to explain why you were only "recently" made aware that your existing tower could not support a DTV antenna, when tower studies could have been performed long before this time.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that WTOV-TV Holdings should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, WTOV-TV Holdings will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any

² The construction permit for WTOV-DT was issued on June 2, 2000.

delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against WTOV-TV Holdings, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

In light of the above discussion, IT IS ORDERED That WTOV-TV Holdings, Inc. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That WTOV-TV Holdings, Inc.'s request to extend the construction permit for WTOV-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: Richard F. Klumpp



June 14, 2002

WEYS Television Corporation c/o Robert Goldstein P.O. Box 1471 Evergreen Colorado 80437

Re: Request for Extension of Time to Construct

Digital Facilities

WEYS-DT, Key West, Florida File No. BEPCDT-20020228ACS

Facility ID No. 72053

Dear Permittee:

This letter concerns the application on FCC Form 337 filed on behalf of WEYS Television Corp. ("WEYS") for an extension of time to construct the digital facilities of WEYS-DT. As originally filed, WEYS asserted that it was unable to construct facilities by the applicable deadline due to technical and legal reasons. Specifically, WEYS asserted that, following the filing of the application for WEYS-DT, the tower owner discovered that the tower would not be able to support the additional antenna required for digital broadcasting. WEYS further stated that it was in the process of preparing to petition the Commission for rulemaking to change WEYS-DT's channel in order to avoid man-made noise and long distance signal skip.

By letter dated March 29, 2002 the Chief, Video Division, Media Bureau, sought additional information concerning your application. The letter explained that in the *Fifth Report and Order* in its DTV proceeding, the Commission announced its willingness to grant, on a case-by-case basis, an extension of the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. In addition, FCC Form 337 requires that an applicant seeking an extension of time must provide specific reasons in support of an extension, as well as the specific steps it has taken to mitigate any problems.

As initially filed, WEYS's application was incomplete with respect to these matters, and you were specifically asked in the March 29th letter to provide updated information regarding the status of your proposed petition for a channel change and whether alternative sites were considered. We also sought information regarding: (1) a specific plan outlining how WEYS will use the extension time to further the construction of WEYS-DT; and (2) the date upon which it anticipates that construction will be complete.

¹ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809 (1997).

In response to our request, you submitted an amendment stating that you could not complete construction of WEYS-DT because of the necessity of changing WEYS-DT from channel 3 to a channel in the UHF spectrum. You indicated that this change of channel was required primarily for two reasons. First, you stated that there is increasing concern among engineering professionals as to the viability of low band VHF TV channels for digital television signal transmission due to man-made noise and "skip" interference. Further, you stated that since the allotted effective radiated power ("ERP") of WEYS-DT is only 1 kW, the noise and interference factors weigh especially heavily in having an effective DTV station in the Key West, Florida market. You explained that substituting a UHF television channel reduces the possibility of interference with the DTV signal reception, since man-made noise is greatly diminished in the UHF spectrum and "skip" interference is not probable.

Second, you asserted that after the application for a construction permit on channel 3 was filed, the third party tower owner determined that the existing tower could not safely accommodate another antenna. You stated that the tower owner has obtained a permit to construct a stronger tower, but has not established a time schedule for replacing the existing tower. With the proposed change in WEYS-DT's channel to one in the UHF spectrum, you asserted that the WEYS digital and analog signals (proposed digital channel 20 & existing analog channel 22) could be multiplexed into the same antenna, thus solving the existing tower space problem regardless of when the new, stronger tower is built. Further, you indicated that appropriate, alternative tower sites for WEYS-DT were not practical or in the public interest. You asserted that in order to put a signal over the area of license, potential locations were severely limited and Monroe County issued a moratorium on the building of new towers. You further stated that the tower housing the WEYS analog antenna is in downtown Key West and provides a superior location. You asserted that it would be in the public interest to keep the WEYS-DT antenna at this location, if at all possible.

In addition, you stated that WEYS has engaged a consulting engineer, Byron St. Clair, to prepare the engineering studies required to petition for a rule making to move WEYS-DT to a more suitable channel in the UHF band. Since the filing of the FCC Form 337, you stated that Mr. St. Clair has identified channel 20 as an appropriate and available alternative to channel 3, and has completed all of the required engineering materials. Further, you stated that you were preparing the Petition for Rule Making to Amend the Table of Allotments as well as the accompanying FCC Form 301, and would file these documents as expeditiously as possible. You anticipated that these filings would be completed no later than April 30, 2002.

Moreover, you asserted that you would use the extension time to complete the regulatory work required to change WEYS-DT's channel from 3 to 20, order the appropriate digital equipment and build the station. You stated that because WEYS' ability to build WEYS-DT on channel 20 was dependent on action by the Commission, it was impossible to anticipate when construction would be completed. However, you asserted that, provided the change to channel 20 was approved, you anticipated that you would be able to expeditiously complete construction of WEYS-DT following regulatory approval. Finally, you stated that you have had discussions

with equipment suppliers, but cannot finalize purchase decisions until the rule making is resolved and the FCC Form 301 is acted upon.

Based on the information before us, you have failed to sufficiently explain your previous efforts to meet the May 1, 2002 DTV construction deadline. In this regard, we fail to see why no feasible tower site or antenna system could be completed before the May 1st deadline, particularly since you received the construction permit for WEYS-DT over two years ago.² Although you indicate that your ability to build WEYS-DT on channel 20 is dependent on action by the Commission, we find it unreasonable that you did not file the petition for rulemaking to move WEYS-DT to the UHF band during this entire two-year period.³ Consequently, you cannot give a projected date as to when the station's transmitter and antenna will be ordered. Therefore, your showing contains no reasonable plan or projected date by which any DTV facility might be constructed and placed into operation.

For these reasons, we conclude that an extension of the construction permit in this case is not justified and must be denied, with the permittee admonished for its failure to comply with its DTV construction obligations. We believe, however, that WEYS should be afforded until December 1, 2002, to come into compliance with the DTV construction rule. In this regard, WEYS will be required to submit a report within thirty (30) days of this letter outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than December 1, 2002. Sixty (60) days after submitting its initial report, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or we otherwise find that the permittee has acted in bad faith, the permittee will be subject to the imposition of additional sanctions. Failure to complete construction of its DTV facilities by December 1, 2002, will result in a monetary forfeiture against WEYS, and the initiation of a six-month process, at the end of which, if the DTV facilities still have not been constructed, absent good cause shown, the subject DTV construction permit will be rescinded.

² The construction permit for WEYS-DT was issued on March 3, 2000.

³ While you asserted in the amendment that you anticipated filing this petition no later than April 30, 2002, to date, it has still not been filed.

In light of the above discussion, IT IS ORDERED That WEYS Television Corp. IS HEREBY ADMONISHED for its failure to comply with its DTV construction obligations. Moreover, IT IS FURTHER ORDERED That WEYS Television Corp.'s request to extend the construction permit for WEYS-DT IS DENIED, and the applicant is afforded until December 1, 2002 in which to come into compliance with the DTV construction rules as set forth herein.

Sincerely,

W. Kenneth Ferree Chief, Media Bureau

cc: WEYS Television Corp. 2539 North Highway 67 Sedalia, Colorado 80135