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June 28, 2005

**VIA ECFS**

Marlene H. Dortch, Esq.  
Secretary  
Federal Communications Commission  
Washington, D.C. 20554

**Re: MB Docket No. 03-15  
WSBT-TV, South Bend, Indiana, Facility ID No. 73983  
FCC File No. BPCDT-19990927AAZ  
Request for Extension of the July 1, 2005 Interference  
Protection Deadline**

Dear Ms. Dortch:

In response to the *Public Notice*, "DTV Channel Election Issues – Compliance with the July 1, 2005 Replication/Maximization Interference Protection Deadline; Stations Seeking Extension of the Deadline," DA-05-1636 (June 15, 2005) (the "Public Notice"), WSBT, Inc. ("Licensee"), licensee of analog (NTSC) television station WSBT-TV, Channel 22, and digital television station (DTV) WSBT-DT, Channel 30, both South Bend, Indiana, hereby requests limited relief from the interim digital construction deadline and replication requirement established in *Report and Order*, "Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television," FCC 04-192 (Sept. 7, 2004) ("*Second Periodic Review Order*").

As the Commission is aware, Licensee submitted applications to modify both WSBT-TV's licensed analog facilities and the construction permit for WSBT-DT on June 13, 2005 – just two days before the Public Notice was released. See FCC File Nos. BPCT-20050613AFT and BMPCDT-20050613AFU (the "Modification Applications"). As described herein, this request is necessary, first, because Licensee can not complete the build-out of its digital facilities until the Modification Applications have been granted. Second, even after it has activated a maximum "checklist" digital facility as proposed in the Modification Applications, Licensee -- which has elected to return to its current analog channel 22 for post-

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transition digital operation -- will not be able to achieve full population replication on its assigned digital channel 30 during the balance of the transition period.

The WSBT-TV and WSBT-DT antennas are located on a shared tower; currently the WSBT-DT antenna is side-mounted 86 meters below the top-mounted WSBT-TV antenna. Via this configuration, Licensee has been providing the residents of the South Bend-Elkhart market with digital television service over reduced facilities since May 2002 pursuant to Special Temporary Authority. See FCC File Nos. BDSTA-20020514AAK, *et al.* Meanwhile, Licensee has elected to migrate its digital facilities back to its current NTSC channel 22 for post-transition operation. See FCC File No. BIRECT-20050208AGL (Form 382, "Digital Channel Election Form First Round Election"). Therefore, by July 1, 2005, WSBT-DT "must serve at least 100 percent of the number of viewers served by the 1997 facility on which [its] replication coverage was based." See *Second Periodic Review Order* at par. 3; *Public Notice* at 1.

After the Commission released the *Second Periodic Review Order* last fall, Licensee engaged a consulting engineer to evaluate WSBT-DT's operations in light of the interim digital construction deadline. An engineering analysis determined that, even when operated at the maximum permitted effective radiated power, WSBT-DT's current channel 30 side-mount configuration would not allow it to achieve a power level sufficient to cover more than 89.1 percent of the applicable WSBT-TV service area population (the presently authorized power level would achieve an 84.2 percent population match), and thus would not enable it to satisfy the replication requirements established by the Commission in the *Second Periodic Review Order*. Instead, in order to achieve a full replication facility on channel 30, the DTV antenna must be relocated to a top-mount position. Licensee also determined, however, that such a configuration will require a reduction in the effective radiated power of WSBT-TV, resulting, in turn, in a reduction in that station's Grade B coverage area and the potential creation of an analog "loss area."

Concerned that its compliance options presented it with an anomalous "Hobson's choice," Licensee informally consulted with Commission staff in an effort to identify a manner by which Licensee could satisfy the July 1, 2005 "use-it-or-lose-it" requirement that would not result in a temporary loss of service for analog viewers. Those discussions, however, provided no clear guidance, and no formal direction from the Commission was forthcoming. Accordingly, Licensee concluded in good faith that, in order to comply with *Second Periodic Review Order*, it had only

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one option -- to deploy a common antenna that would enable Licensee to top-mount its DTV antenna and thereby attempt to achieve full replication on channel 30.

Licensee ordered and took delivery of a "common" antenna that will accommodate both the WSBT-TV and WSBT-DT facilities for the duration of the digital transition. Licensee conducted additional engineering analysis in order to determine the modifications of its NTSC facility that will be necessitated by the relocation of the DTV antenna to a top-mount position. Licensee strengthened the stations' existing tower in order to accommodate installation of the common antenna and related facilities. Then, on June, 13, 2005, Licensee filed the Modification Applications.

Two days later, more than nine months after the release of the *Second Periodic Review Order*, and just two weeks before the July 1, 2005 replication deadline, the Commission released the *Public Notice* establishing a procedure for licensees seeking relief from the deadline, and specifically addressing the problems confronting stations, like WSBT-DT, operating with side-mount digital antennas. The *Public Notice*, however, provides little comfort to stations in a position similar to that of Licensee. It merely states that stations that "come close" to meeting the applicable replication or maximization requirements may "request" a waiver. There is no suggestion of how "close" is close enough -- and, in any case, no certainty that any request for a waiver will be granted.

Between the release of the *Second Periodic Review Order* and the release of the *Public Notice* on June 15, Licensee incurred expenses in the amount of approximately \$1 million in order to comply with the July 1, 2005 replication requirement. Meanwhile, Licensee has already demonstrated the "impact on viewers" of compliance with the build-out requirement. The adjustment of analog power necessitated by the relocation of the WSBT-DT antenna will result in a reduction in service to nearly 9 percent of the area and population currently served by WSBT-TV. See FCC File No. BPCT-20050613AFT (WSBT-TV Modification Application).

Meanwhile, even though Licensee is proposing to activate a maximum "checklist" digital facility on channel 30, *i.e.*, at its allotted height and power, Licensee has determined that it will be impossible for the interim WSBT-DT operation to achieve 100 percent population replication because the channel 30 facility is subject to additional interference from other stations authorized after the initial Table of DTV Allotments was promulgated. Licensee's analysis indicates that the population reached even with a top-mount checklist facility will be

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96.4 percent of WSBT-TV's covered population. The inability to achieve 100 percent population match with a full allotment facility results from modifications by other nearby stations taking advantage of the 2 percent *de minimis* interference allowance (§ 73.623(c)(2)), which have chipped away at the total WSBT-DT interference-free population.

Licensee attempted to secure guidance from the Commission before incurring the substantial expense and making the significant commitment of personnel and other resources necessary in order to comply with the build-out requirement. But Licensee is too far down the road toward modification of its facilities to turn back. Having elected to proceed, it is now awaiting Commission action on the regulatory approvals necessary to complete its build-out on channel 30. Accordingly, the public interest would be served by grant of an extension of the replication deadline pending processing and grant of the Modification Applications and construction and activation of Licensee's modified analog and digital facilities. Furthermore, the public interest would be served by, and fundamental fairness requires, grant of a limited exemption to the "use-it-or-lose-it" benchmark so that WSBT-DT may retain and "carry over" interference protection to its full authorized service area following the digital transition and its return to current analog channel 22.

In view of the circumstances described above, by this letter, Licensee also requests an extension of its current STA to operate WSBT-DT at reduced facilities. See FCC File No. BEDSTA-20050128ATA (granted May 6, 2005; expiring July 1, 2005). The undersigned is authorized to certify that no party to this request is subject to a denial of federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998, 21 U.S.C. § 862A.

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Please direct any questions regarding this submission to the undersigned.

Respectfully submitted,

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