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July 1, 2005

**VIA ECFS**

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

Re: In the Matter of Second Periodic Review of the Commission's Rules and Policies  
Affecting the Conversion to Digital Television (MB Docket No. 03-15)  
Waiver of July 1, 2005 Digital Replication Deadline  
WPVI-TV, Philadelphia, Pennsylvania Facility ID No. 8616

Dear Ms. Dortch:

ABC, Inc. ("ABC"), the licensee of WPVI-TV and permittee of WPVI-DT, Philadelphia, Pennsylvania, Facility ID No. 8616, by its attorneys, hereby submits this request for a waiver and six month extension of the July 1, 2005 replication/ maximization deadline applicable to stations affiliated with a top-four network and located in a top-100 market ("Replication Deadline").<sup>1</sup> As an initial matter, WPVI-DT does not believe that it is subject to the Replication Deadline because it has not received a tentative channel designation. To the extent that the Replication Deadline applies to WPVI-DT, WPVI-DT believes that it fully replicates. However, WPVI-DT is concerned that an apparent error in a recent Federal Communications Commission ("Commission") public notice could lead the Commission to conclude that WPVI-DT is not replicating. If the Commission does in fact conclude that WPVI-DT is not replicating, then WPVI-DT requests a waiver and extension of the Replication Deadline on the grounds that: (i) it has not received a tentative channel designation; and (ii) it is committed to replicating at the end of the DTV transition.

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<sup>1</sup> See Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, *Order*, 19 FCC Rcd 18,279 (rel. Sept. 7, 2004) ("*Second Periodic Review Order*").

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A. WPVI-DT Is Not Subject to the Replication Deadline

In the *Second Periodic Review Order*, the Commission established July 1, 2005 as the Replication Deadline.<sup>2</sup> With respect to the scope of the Replication Deadline, the Commission stated that it would apply to “[t]hose licensees that receive a tentative channel designation.”<sup>3</sup> Specifically, the Commission stated:

*Those licensees that receive a tentative DTV channel designation in the channel election process on their current digital channel must construct full, authorized facilities. Those licensees that receive a tentative DTV channel designation on a channel that is not their current DTV channel must serve at least 100 percent of the number of viewers served by the 1997 facility on which their replication coverage was based.*<sup>4</sup>

WPVI-DT has not received a tentative DTV channel designation. WPVI-DT did not select a channel in the first round of channel elections because its assigned DTV channel, channel 64, was out-of-core and its NTSC channel, channel 6, was a low VHF channel. As a result, WPVI-DT elected to participate in the second round of channel elections. Because it is not one of the “licensees that receive[d] a tentative DTV channel designation,” WPVI-DT believes that it is not subject to the Replication Deadline.

B. WPVI-DT Is Replicating

To the extent that the Replication Deadline applies to WPVI-DT, WPVI-DT believes that it is replicating. According to TV\_Process, the population served by WPVI-DT’s initial DTV allotment facilities (1000 kW at 332m HAAT) is 9,061,608.<sup>5</sup> The population served by WPVI-DT’s permitted facilities is 9,072,936.<sup>6</sup> Based on these population counts, WPVI’s replication percentage is 100.13%. However, the FCC’s population count in Table II indicates that the population served by WPVI-DT’s initial DTV allotment facilities is 9,907,662, and not

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<sup>2</sup> See *Second Periodic Review Order* at ¶78.

<sup>3</sup> See *id.*

<sup>4</sup> See *id.* (emphasis added).

<sup>5</sup> See Engineering Statement (attached hereto as Exhibit A).

<sup>6</sup> See *id.*

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9,061,608.<sup>7</sup> Thus, using the Commission's population count, WPVI-DT's replication percentage is 91.57%. WPVI-DT believes that the Commission's population count is in error, perhaps due to the fact that WPVI-DT's as-built facility is not checklist-like when run in TV\_Process or due to some confusion between the population covered by WPVI-DT's allotment facilities and the population within its NTSC channel 6 Grade B contour. Ultimately, WPVI-DT believes that the Commission's population count is in error and that WPVI-DT fully replicates if the correct population count is used.

C. Good Cause for Waiver

To the extent that the Replication Deadline applies to WPVI-DT, and that the Commission's population counts are correct, WPVI-DT requests a waiver and extension for "good cause." In its June 15, 2005 public notice, the Commission stated that it may grant waivers and extensions of the Replication Deadline if "good cause is shown for stations that are unable to provide the required service by the applicable deadline because of severe financial constraints or circumstances beyond a station's control."<sup>8</sup> WPVI-DT is committed to fully replicating but is unable to do so at this time because it has not received a tentative DTV channel designation. This lack of a tentative channel is a matter beyond WPVI-DT's control; WPVI-DT was assigned an out-of-core DTV channel and its NTSC channel was low VHF. WPVI-DT has certified to the Commission that it will fully replicate and it intends to comply with this certification. Further evidence of WPVI-DT's commitment is the fact that it has been on the air with a full-power DTV signal since November 1998. For these and other reasons set forth herein, ABC submits that grant of the instant waiver request is in the public interest.

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<sup>7</sup> See Table II of 1998 Station NTSC and DTV Replication Information, at 29 (rel. Dec. 21, 2004).

<sup>8</sup> See DTV Channel Election Issues – Compliance with the July 1, 2005 Replication/Maximization Interference Protection Deadline; Stations Seeking Extension of the Deadline, *Public Notice*, at 3 (rel. June 15, 2005).

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Please direct any questions or inquiries regarding this matter to the undersigned.

Respectfully submitted,

/s/

Tom W. Davidson, Esq.

cc: Shaun Maher, Esq. (via e-mail)

**EXHIBIT A**

**ENGINEERING STATEMENT**



**ENGINEERING STATEMENT  
OF ALFRED E. RESNICK**

**CALCULATION OF  
PERCENTAGE OF REPLICATION  
ON BEHALF OF THE  
ABC OWNED TELEVISION STATIONS**

I am a consulting engineer, an employee of the Carl. T. Jones Corporation, with offices in Springfield, Virginia. My education and experience are a matter of record with the Federal Communications Commission. I am a Registered Professional Engineer in the Commonwealth of Pennsylvania, Registration Number PE-027589E.

The ABC Owned Television Station Group has authorized this office to calculate the percentage of replication of service as required by the Commission on July 1, 2005. For each station studied, the FCC database was used to obtain operating parameters of presently licensed facilities. These licensed facilities parameters were entered into a data input file and the FCC program TV\_Process was then used to calculate the population, based on year 2000 US Census data.

The FCC Public Notice of December 21, 2004 instructed those desiring to calculate the percentage replication for a particular station, to use the attached Table II as the basis for determining compliance with the Commission's 100 percent replication requirements discussed in paragraphs 78 through 87 of the Second DTV Periodic Review Report and Order, released September 7, 2004 (19FCC Rcd 18,279)("Order").

The numbers that were taken for each station studied from Table II as instructed above, are shown below. The Initial Allotment facilities, and the population receiving service from this facility, and the parameters of the present operation are shown below as well.

The text also contains the fraction showing the exact numbers used in the computation with the result expressed as a percentage.

Several entries in the December 21, 2004 Table II may contain typographical errors, in particular, the entry that shows the WPVI-DT population served by the WPVI DTV Initial Allotment. The noise limited contours of the WPVI-DT Initial Allotment and the WPVI-DT facilities described in the pending application for license, BLCDT-1998112KE (500 kW at 390 meters HAAT), are almost congruent. In several places the Noise Limited contour of the Application for License, exceeds the Noise Limited contour of the Initial Allotment. Indeed, this is the case, as the FCC TV\_Process program will not pass this facility as 'checklist-like.'

TV\_Process produces an output when given the presently operating facilities (500 kW at 390 m HAAT) and shows a total of 9,072,936 persons that receive service. When entered as an application, the Initial Allotment facilities (1000kW at 332 meters HAAT) show a total of 9,061,608 persons that would be served by the Initial Allotment. TV\_Process also shows a total population of 9,287,573 persons within the Noise Limited Contour (with no exclusion of those affected by terrain). The population within the Noise Limited Contour is the

absolute maximum number of persons that can possibly be served by the Initial Allotment Facility. As the entry in the December 21, 2004 Table II states a number that is larger than this (9,907,662), the entry in Table II is suspected to be in error.

As a verification of population within the WPVI Initial Allotment Noise Limited Contour, distances to this contour were determined and the WPVI-DT Noise Limited Contour was generated on a mapping program that can count population within specified areas. The population count obtained in this manner again was less than the number that is found in the December 21, 2004 Table II, lending further belief that the entry in Table II is in error.

The only means of obtaining a population count to equal or approach the number in Table II is to count the persons served by the WPVI channel 6 analog Grade B contour, which is 10,006,913, as determined by TV\_Process.

### **Conclusion**

Because the population within the Initial Allotment Noise Limited Contour is the largest number of persons that could be served by the WPVI-DT Initial Allotment, and this population as counted by TV\_Process has been shown to be well below the entry that is found in Table II, and because the population served by the presently operating facilities exceeds that which TV\_Process shows would be served by the WPVI-DT Initial Allotment, it is believed that WPVI-DT as presently operating, meets its July 1, 2005 replication requirement.

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The population shown by TV\_Process that is served by the presently operating facilities (500 kW at 390 meters HAAT) is: 9,072,936 persons.

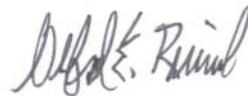
The population shown by TV\_Process that is served by the WPVI-DT Initial Allotment (1000 kW at 322 meters HAAT) is: 9,061,608 persons.

The fraction  $9,0672,936 / 9,061,608$  equals 100.13%.

To the extent that the Table II population number must be used, then this engineering statement and the calculations and conclusions that it contains are supplied in support of a waiver request for the July 1, 2005 replication deadline.

This statement and the population numbers it contains were obtained directly by me or under my immediate supervision. The TV\_Process runs and input data file construction were performed by Mr. Zar B. Aung (EIT). I verily believe the results shown herein to be true and correct.

Dated: July 1, 2005



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Alfred E. Resnick, P. E.

