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August 15, 2005

*Via ECFS*

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

**Re: MB Docket No. 03-15  
Journal Broadcast Corporation  
FRN: 0002-7101-92  
WGBA-DT, Green Bay, Wisconsin, Facility ID No. 2708  
Request for Clarification and Limited Relief *nunc pro  
tunc* from the July 1, 2005 Interference Protection  
Deadline**

Dear Ms. Dortch:

Journal Broadcast Corporation ("JBC") licensee of NTSC television station WGBA(TV), Channel 26, and permittee of DTV television station WGBA-DT, Channel 41, both Green Bay, Wisconsin (the "Stations"), by its attorneys, hereby requests clarification and, to the extent required, limited relief *nunc pro tunc* from compliance by WGBA-DT with the July 1, 2005 replication/maximization interference protection deadline established in the *Report and Order*, "Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television," FCC 04-192 (released Sept. 7, 2004) ("*Second Periodic Review Order*"). WGBA-DT timely complied with the July 1, 2005 replication/maximization requirement applicable to its elected post-transition operation on its current NTSC channel. However, as a result of the Commission's determination that WGBA-DT's authorized facilities on its elected channel are predicted to cause impermissible interference to both a co-channel and an adjacent-channel station in adjoining markets, JBC has been required to amend its election to specify post-transition operation on WGBA-DT's assigned digital channel. For the reasons explained below, JBC requests clarification that WGBA-DT will continue to be deemed to be in

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compliance with the July 1, 2005 interference protection deadline on the basis of its currently authorized facilities.

WGBA-DT is authorized to construct "maximized" facilities to operate with a maximum effective radiated power ("ERP") of 1,000 kilowatts, using a directional antenna, at 321.3 meters above average terrain from the current WGBA(TV) transmitter site. See FCC File Nos. BPCDT-19990902AAG, BCERT-20041103AHX. WGBA-DT currently is operating pursuant to Special Temporary Authority ("STA") with an ERP of 600 kilowatts at 279 meters above average terrain utilizing a directional antenna that is side-mounted on the tower that supports the antenna for the licensed analog operation of WGBA(TV). See FCC File No. BMDSTA-20050630AGX. From its currently-authorized STA facilities, WGBA-DT is providing interference-free noise limited service to approximately 103 percent of the analog replication service population and 102 percent of the DTV replication service population specified for WGBA. Furthermore, WGBA-DT's current STA facilities are predicted to provide noise limited interference free service to 98.2 percent of the population predicted to receive service from its full facilities as authorized in its pending DTV construction permit pursuant to FCC File No. BPCDT-19990902AAG.

In its Digital Channel Election Form - First Round Election on FCC Form 382 (FCC File No. BFRECT-20050126ADY), JBC elected to conduct WGBA-DT's post-transition digital operations on WGBA(TV)'s current NTSC channel 26. Consistent with the requirements of the *Second Periodic Review Order*, as a station affiliated with one of the top-four networks in markets 1-100 that had received a tentative DTV channel designation on a channel that is not its current DTV channel, as noted above, WGBA-DT has constructed digital facilities on channel 41 that serve at least 100 percent of the population predicted to receive service from WGBA(TV)'s licensed facilities. See FCC File No. BMDSTA-20050630AGX; Journal Broadcast Corporation, "Notice of Compliance with July 1, 2005 Interference Protection Deadline" (filed *via* ECFS in MB Docket No. 03-15 on June 30, 2005).

However, by letter dated June 7, 2005 (the "June 7 Letter"), the Commission notified WGBA-DT that its election to operate on channel 26 at the end of the transition was predicted to result in impermissible interference to the digital facilities elected by two stations: WKOW-DT, channel 26, Madison, Wisconsin; and WCGV-DT, channel 25, Milwaukee, Wisconsin. Specifically, the FCC advised JBC

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that WGBA-DT's proposed digital operation on channel 26 is predicted to result in interference to 0.6 percent of the service area population of WKOW-DT's authorized facilities on its elected channel 26, and to 0.3 percent of the service area population of WCGV-DT's authorized facilities on its elected channel 25.

JBC has concluded that at least one, and likely both, of these stations are unwilling to accept the predicted interference and that it therefore will not be possible to resolve the predicted interference conflict by mutual agreement. Furthermore, JBC has determined that modifying WGBA-DT's facilities to reduce the predicted interference to WKOW-DT to below 0.1 percent would require a reduction in maximum ERP from WGBA-DT's 1,000 kW authorized facilities to 450 kW; JBC terminated its engineering analysis with respect to WCGV-DT after determining that a reduction in WGBA-DT's ERP to as low as 200 kW still would be predicted to result in new interference to WCGV-DT of 0.24 percent. Moreover, a reduction in WGBA-DT's post-transition facilities to 200 kW ERP would shrink the station's post-transition interference free service area by 24.5 percent and would reduce the population predicted to receive interference free service by 9.0 percent, affecting nearly 100,000 viewers. Such a significant reduction in post-transition service by WGBA-DT would severely impair WGBA-DT's permanent operations and would disserve the public interest. Accordingly, in a First Round Conflict Decision on FCC Form 383 filed on August 12, 2005, JBC notified the Commission that WGBA-DT is changing its election and will remain on its assigned DTV channel 41 for permanent, post-transition digital operation. See FCC File No. BFRCCCT-20050812AOS.

JBC seeks clarification that, even though it appears that WGBA-DT now will receive a tentative DTV channel designation on its current digital channel as a result of the change of election necessitated by the June 7 Letter, it nonetheless will be afforded interference protection to the same extent as if it had completed construction of its full authorized facilities by July 1, 2005. Given JBC's good-faith reliance on the channel election procedures established by the Commission in the *Second Periodic Review Order*, its compliance with the interference protection requirements applicable to its election of NTSC channel 26, and the extent of coverage achieved by WGBA-DT from its current STA facilities, as described above, JBC believes that such a result is mandated by both the public interest and basic fairness.

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Alternatively, because WGBA-DT is unable to complete construction of its full authorized facilities, JBC believes that the public interest similarly mandates a waiver of the July 1, 2005 interference protection deadline *nunc pro tunc*. As explained above and in FCC File No. BMDSTA-20050630AGX, WGBA-DT is operating at reduced power with a side-mounted antenna located on the WGBA(TV) tower pursuant to STA. Accordingly, if WGBA-DT were deemed now to be subject to the requirement that it construct the full facilities authorized by its digital construction permit, WGBA-DT would have to relocate its digital antenna to the top-mount position currently occupied by the WGBA(TV) antenna. This could be achieved either by installing a "common" antenna capable of simultaneously transmitting the channel 26 analog and channel 41 digital signals, or by relocating the WGBA(TV) antenna from the top of the tower to a side-mount position. Either approach would require significant expenditures which, in view of JBC's good-faith election of channel 26 for post-transition operation, could not reasonably have been anticipated. Moreover, either approach would result in a reduction of WGBA(TV)'s current level of analog service.

WGBA-DT currently is operating with the facilities that provide service to 98.2 percent of the population predicted to receive service from its full authorized facilities. At the end of the transition, JBC will replace WGBA(TV)'s top-mounted analog antenna with WGBA-DT's digital antenna and thereby provide service to its full maximized DTV contour. Grant of the requested waiver would ensure that WGBA-DT is afforded interference protection to the full extent of the maximized service area authorized for its post-transition operation while avoiding any reduction in analog service during the remainder of the transition. Furthermore, grant of a waiver is necessary to ensure that JBC is not penalized for its good-faith election of WGBA(TV)'s analog channel 26 for WGBA-DT's post-transition digital operation, which JBC has been required to amend as a result of the Commission's analysis set out in the June 7 Letter. Under all these circumstances, JBC respectfully submits that a waiver *nunc pro tunc* of the July 1, 2005 replication/maximization interference protection deadline is warranted.

The Commission consistently has recognized the need for flexibility in the enforcement of digital transition mileposts. For example, in the *Fifth Report and Order*, "Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service," 12 FCC Rcd 12809, 12841-42 (1997), the Commission stated that it would be prepared to extend applicable construction deadlines where a broadcaster had been unable to complete construction due to circumstances

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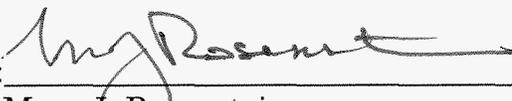
“beyond the licensee’s control if the licensee has taken all reasonable steps to resolve the problem expeditiously.” The Commission has granted extensions of interim DTV build-out deadlines to stations that were subject to “uncontrollable” circumstances; such circumstances have been deemed to include, for example, delays in receipt of required land-use approvals, insufficiency of the available electrical grid, and defective equipment. *See DTV Build-Out Requests for Extension of the Digital Television Construction Deadline, Commercial Stations with May 1, 2002 Deadline*, FCC 05-67 (2005); *DTV Build-Out Requests for Extension of the Digital Television Construction Deadline, Commercial Stations with May 1, 2002 Deadline*, FCC 04-124 (2004). Specifically with respect to the “use-it-or-lose-it” regimen, the *Second Periodic Review Order* (at par. 87) establishes a waiver process for stations incapable of meeting the build-out deadlines due to, among other things, “circumstances beyond a station’s control.”

WGBA-DT is facing precisely the type of “uncontrollable” circumstances that would appropriately be addressed by forbearance from the replication/maximization interference protection requirement. WGBA-DT’s demonstrable good faith in designating NTSC channel 26 during the channel election process and in achieving compliance with the applicable requirements of the July 1, 2005 build-out deadline, combined with the unforeseen complications resulting from the Commission’s determination that its channel election is predicted to result in impermissible interference, warrant the relief requested herein.

Please direct any questions regarding this submission to the undersigned.

Respectfully submitted,

HOGAN & HARTSON, L.L.P.

By:   
Mace J. Rosenstein  
Attorneys for Journal Broadcast Corporation

cc: Shaun Maher, Media Bureau