

June 23, 2005

FILED ELECTRONICALLY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Waiver of July 1, 2005 Replication and Maximization Deadline
MB Docket No. 03-15**

Mt. Mansfield Television, Inc.
WCAX-DT, Burlington, VT
Facility ID # 46728

Lambert Broadcasting of Burlington, LLC
WVNY-DT, Burlington, VT
Facility ID # 11259

Hearst-Argyle Stations, Inc.
WPTZ-DT, North Pole, NY
Facility ID # 57476

Smith Media License Holdings, LLC
WFFF-DT, Burlington, VT
Facility ID # 10132

Dear Ms. Dortch:

Pursuant to the instructions set forth in Public Notice DA 05-1636, the above-referenced licensees respectfully request a waiver of the Commission's July 1, 2005, replication and maximization deadline, which applies to all top four network affiliates in the largest 100 markets.¹ These four licensees (along with Vermont ETV, Inc., the licensee of noncommercial

¹ See *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd 18279 (2004), at ¶¶ 78, 83. We note that

educational station WETK in Burlington) have proposed co-locating their DTV facilities atop Mt. Mansfield, the highest peak in Vermont, on land owned by the University of Vermont. WCAX will be constructing a facility for use by all four of the stations requesting this waiver.

As the Commission is aware,² these four stations have experienced significant delays in completing construction of their digital facilities due to circumstances beyond their control. In WCAX's most recent construction permit extension application, for example, it noted the difficulties arising out of the State of Vermont's requirement that all DTV applicants (and other communications facility owners) present a single joint proposal designed to minimize the number of antennas and towers.³ At that time, WCAX outlined the numerous steps taken with the State of Vermont, the Governor's environmental advisors, and the University of Vermont to resolve these issues. In granting that application in March 2005, the Commission recognized that the circumstances met the requirements of Section 73.624(d)(3) of the Commission's rules.⁴ The Commission stated that "[c]onstruction and tower siting delays of the type outlined above qualify as uncontrollable and unforeseeable delays that warrant extension of these stations' DTV construction deadlines."⁵

WPTZ(TV) has previously filed a request to waive the Commission's replication and maximization deadline in conjunction with its April 7, 2005 construction permit extension request (File No. BEPCDT-20050406AAB). The Commission granted WPTZ(TV)'s construction permit extension and maximization request on May 20, 2005, for a term expiring on November 20, 2005. Nonetheless, as a member of the group of stations proposing co-location of their DTV facilities on Mt. Mansfield, WPTZ(TV) supports the instant waiver request and respectfully requests that any maximization deadline extension resulting from the instant request also apply to WPTZ(TV) to the extent that such extended deadline is after November 20, 2005. We also note that the maximization deadline for which WVNY-DT seeks a waiver is August 9, 2005, which is the date on which its construction permit (BPCDT-19991027ACA) expires.

² Letter from William R. Richardson, Jr., to Rick Chessen, February 24, 2005; Letter to Roy J. Stewart, October 2, 2001. *See also* File BEPCDT-20020227ADT, granted March 28, 2002; File No. BEPCDT-20020910ABE, granted February 5, 2003; File No. BEPCDT-20030527ABQ, granted October 24, 2003; BEPCDT-20050406AAB, granted May 20, 2005.

³ *See* File No. BEPCDT-20040218ALN (February 19, 2004).

⁴ 47 C.F.R. § 73.624(d)(3) (2005) (Extensions of time to complete construction of DTV facilities may be granted "upon demonstration by the DTV licensee or permittee that failure to meet that construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee had taken all reasonable steps to resolve the problem expeditiously").

⁵ *See Order, DTV Buildout, Requests for Extension of the Digital Television Construction Deadline, Commercial Televisions with May 1, 2002 Deadline*, 2005 WL 597587, FCC 05-67, at ¶ 9, 16 (rel. March 15, 2005).

The problems faced by these stations in meeting the replication/maximization deadline are identical to those faced in meeting the construction deadline; upon construction of the joint facility, all stations will commence DTV operation at their fully authorized parameters. The stations have continued to work diligently to resolve the outstanding issues. The process of preparing and gaining approval of the joint proposal discussed above, which began in March 1997, concluded in late April 2005 with issuance by the Vermont District Five Environmental Commission of a so-called "Act 250 Permit." The appeal period for the permit has now passed and the permit is final. The project also has now received zoning and planning approval from the Town of Stowe.

Further, a prerequisite to the project's moving forward was completion of lease negotiations between WCAX and the University of Vermont, which owns the land on which the new DTV facilities will be located. Those negotiations, which commenced in December 2002, were protracted and difficult, but were concluded on May 5, 2005 with signing of the lease. WCAX is in the final stages of completing subleases with its television and radio subtenants.

Finally, the technical facilities for certain of the stations' DTV operations are contingent upon satisfactory resolution of Canadian coordination requirements. These stations have been diligently working with the Commission in seeking to obtain such coordination, while ensuring that the technical facilities continue to provide adequate service to Vermont viewers. We believe that this process is now complete or virtually complete.

As a result, the stations are now at the end of the pre-construction process. Tree clearing at the project site on Mt. Mansfield began the second week of May. Excavation for building and standby power fuel facility foundations has now begun. Material for the two tower foundations has been ordered, and the foundation work is scheduled to begin the second week of July. Because of the very short construction season on Mt. Mansfield (June 1 – October 15), the remote location of the site, and environmental permit constraints, the most that can be done this year is to complete the building and tower foundations, as well as construct the transmission line support structures. Construction of the building is scheduled to commence on June 1, 2006 and the towers are anticipated to be set in mid-July, to be followed by installation of the antennas and transmission lines. The building is scheduled for occupancy in early September, and installation and testing of transmitter equipment is scheduled to begin September 10, 2006. On-air testing is slated to begin November 21, 2006.

Based on the foregoing, the above-referenced Burlington-Plattsburgh market stations request a waiver of the July 1 replication and maximization deadline.

Respectfully submitted,



William R. Richardson, Jr.

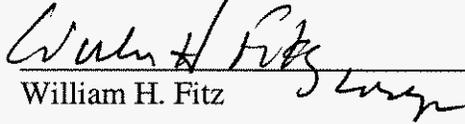
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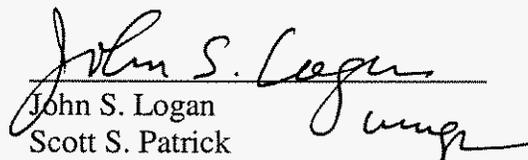
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