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VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-B204
Washington, DC 20554

Re: **WNET-DT, Newark, New Jersey**
Facility ID No. 18795
Request for Waiver of Use-or-Lose Deadline
MB Docket No. 03-15

Dear Ms. Dortch:

On behalf of Educational Broadcasting Corporation (“EBC”), permittee of noncommercial educational digital television station WNET-DT (“WNET”), Channel 61, Newark, New Jersey, we are requesting a waiver of today’s use-or-lose interference protection deadline and a grant of EBC’s pending request to extend its current DTV STA operation at the Empire State Building (“ESB”). See FCC File No. BMDSTA-20050609ACN, as extended. Although WNET’s modified DTV STA facility at the ESB more than satisfies the applicable use-it-or-lose-it requirement, EBC is compelled to file this request for a waiver of the interference protection deadline because it does not have a DTV construction permit for the ESB site.¹

Rather, EBC holds a DTV construction permit for facilities at the former World Trade Center (“WTC”). See FCC File No. BPEDT-20000425AAF. EBC has been unable to rebuild the DTV facilities authorized in that permit following the September 11, 2001 attacks that

¹ See Public Notice, *DTV Channel Election Issues – Compliance with the July 1, 2006 Replication/Maximization Interference Protection Deadline; Stations Seeking Extension of the Deadline*, DA 06-1255 at 3 (June 14, 2006). See also Public Notice, *DTV Channel Election Issues – Media Bureau Extends Filing Deadline for Compliance with the July 1, 2006 Replication/Maximization Interference Protection Deadline to July 7, 2006*, DA 06-1372 (June 29, 2006).



Ms. Marlene H. Dortch
July 7, 2006
Page -2-

destroyed them (along with EBC's analog WTC facilities). EBC does not wish to amend its WTC DTV construction permit down to its ESB DTV STA parameters because it currently expects to replicate the WTC DTV service area from the Freedom Tower that will be constructed at the former WTC site, and does not wish to lose interference protection for that service area in the interim.

The FCC has tentatively designated WNET's current analog channel, Channel 13, for post-transition DTV operations.² Under that circumstance, WNET as a noncommercial station was required to build facilities by July 2006 on its current DTV channel, Channel 61, that "serve at least 80 percent of the number of viewers served by the 1997 facility on which [its] replication coverage was based."³

Before the events of September 11th, 2001, EBC had already completed construction of its authorized Channel 61 DTV facilities at the WTC, and had filed a license to cover. *See* FCC File No. BLEDT-20010723ABS. EBC has worked diligently since then to restore DTV service to New York City. Subsequent to the destruction of its operational checklist DTV facilities at the WTC, EBC initially constructed a low-power DTV replacement STA facility above its West 33rd Street studios and offices. Last year, EBC converted that facility to an auxiliary STA operation and constructed its current main STA facility at the ESB, initiating higher-powered DTV operations from that location in mid-2005.

As demonstrated in the Engineering Statement accompanying its June 9, 2005 letter request seeking authority to construct those higher-power facilities at the ESB (FCC File No. BMDSTA-20050609ACN), WNET's DTV STA operation from that site more than satisfies the use-it-or-lose-it build-out requirement applicable to WNET. The facility achieves a 90.07 percent population match with the Channel 61 replication facility.

Having already constructed three separate interim DTV facilities on Channel 61, EBC is also working on a long-term solution for its DTV service. Because EBC currently expects to replicate WNET's authorized WTC DTV service from the future Freedom Tower, it does not plan to modify its WTC DTV construction permit down to its DTV STA facilities at the ESB, because doing so will cause the loss of interference protection for the slightly different WTC service area. It is conceivable that the construction of the Freedom Tower could be completed prior to the end of the DTV transition, in which case WNET would expect to operate on Channel 61 with its full authorized WTC parameters from that location. Thus, WNET's WTC DTV authorization should remain intact.

² *See* Public Notice, *Tentative Digital Channel Designations for Stations Participating in the First and Second Rounds of the DTV Channel Election Process*, DA 06-1082 at 20 (May 23, 2006).

³ *See* *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, FCC 04-192 at 36 para. 78 (Sept. 7, 2004).



Ms. Marlene H. Dortch
July 7, 2006
Page -3-

Based on the foregoing, good cause has been shown for grant of the instant request for a waiver of the interference protection deadline and for further extension of WNET's modified DTV STA. With its 90 percent replication facility at the ESB, WNET has more than satisfied the FCC's use-it-or-lose-it requirements and is providing the required level of service during the DTV transition.

In addition, WNET has clearly been unable to resume DTV operations from the WTC due to circumstances beyond its control. The FCC has repeatedly recognized that "[t]he September 11th terrorist attack constitutes an uncontrollable and unforeseeable event warranting extension of DTV construction deadlines for the affected stations."⁴ Moreover, EBC has diligently worked to restore and improve its DTV service while it pursues a long-term solution at the Freedom Tower. Accordingly, EBC's instant request for a waiver of the interference protection deadline should be granted.

Please contact me if there are any questions.

Respectfully submitted,

John W. Bagwell, Esq.

Counsel for Educational Broadcasting Corporation

cc: Shaun Maher (via email to shaun.maher@fcc.gov)
Josh Nathan, Esq. (Public Inspection File) (via email)
Frank Graybill (via email)

⁴ See *DTV Build-out, Requests for Extension of the Digital Television Construction Deadline, Commercial Stations With May 1, 2002 Deadline*, FCC 03-250 at 3 para. 10 (Oct. 23, 2003); see also *DTV Build-out, Requests for Extension of the Digital Television Construction Deadline, Network-Affiliated Television Stations Located In the Top Thirty Television Markets*, FCC 04-117 at 2 para. 6 (May 26, 2004).