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FOUNDED 1866

June 18, 2007

Via Electronic Filing (ECFS)

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
236 Massachusetts Avenue, N.E.  
Suite 110  
Washington, D.C. 20002

Re: Facility ID No. 14050  
WTXX-DT, Waterbury, Connecticut  
Petition for Reconsideration  
MB Docket No. 03-15

Dear Ms. Dortch:

WTXX, Inc. ("WTXX"), licensee of WTXX-TV-DT, NTSC Channel 20, DTV Channel 12, Waterbury, Connecticut, submits this Petition for Reconsideration of the FCC's decision denying WTXX's request for a waiver of the July 1, 2006, interference protection ("use or lose") deadline.<sup>1</sup> As demonstrated more fully below, the Commission should reconsider its decision and grant WTXX's so-called use or lose waiver until 30 days after the effective date of the amendments adopted in the Third DTV Periodic Review proceeding.

A combination of factors warrant this relief. First, WTXX was unable to complete construction of its maximized, top-mount channel 12 DTV facility due to ongoing tower strengthening and improvement work.<sup>2</sup> Second, although unable to build out its

<sup>1</sup> See *DTV Build-Out, Requests for Waiver of July 1, 2005 and July 1, 2006 "Use or Lose" Deadlines*, FCC 07-90, ¶ 122, released May 18, 2007 ("*Build-Out Order*").

<sup>2</sup> See FCC File No. BMDSTA-20060519AAT.

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maximized DTV facility, WTXX did build-out a DTV STA facility lower on the tower that met the applicable use or lose population coverage requirement. These two factors alone warrant reconsideration and a grant of WTXX's use or lose waiver for six months.

Two additional facts warrant extending this use or lose waiver until thirty days after the effective date of any rules adopted in the Third DTV Periodic Review proceeding: (i) WTXX elected to return to its analog channel 20 post-transition and the Commission has proposed to assign channel 20 to WTXX in its post-transition DTV table; and (ii) the Commission has proposed, *inter alia*, to excuse stations that elected to construct post-transition DTV facilities on channels other than their pre-transition DTV channels from any further build-out obligation on their pre-transition channels. Because WTXX was entitled to a grant of its use or lose waiver at the time the order was released, it was also entitled to the same treatment of other, similarly situated stations that also received interference protection waiver until 30 days after the effective date of the rule changes in the Third DTV Periodic Review.

**Background:** WTXX is the CW affiliate in the Hartford-New Haven DMA.<sup>3</sup> WTXX has a maximized construction permit on its pre-transition DTV channel 12 to operate with a non-directional effective radiated power ("ERP") of 1.7 kW and an HAAT of 617 meters. See FCC File No. BMPCDT-20040608ABI. WTXX also has a DTV STA at the same transmitter site to operate with a directional ERP of 19.6 at an HAAT of 196 meters. See FCC

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<sup>3</sup> Under the FCC's so-called use-it-or-lose-it-policies, WTXX was required to build facilities on its DTV channel that served "at least 80 percent of the number of viewers served by the 1997 facility on which the replication coverage was based." See *Second Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd. 18279, 18296 ¶ 41 (2004) ("*Second DTV Periodic R&O*").

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File No. BMDSTA-20060519AAT. A map depicting the coverage provided by WTXX's DTV construction permit and its DTV STA has been filed with this Petition.

WTXX's initial request for a waiver of the interference protection deadline exclusively relied on the fact that it had built-out a DTV facility pursuant to an STA that provided service to the requisite number of people during the transition and thus satisfied the underlying public policy goal behind imposing a use or lose requirement in the first place. Although it was required to file a waiver request because the service was being provided pursuant to an STA rather than a DTV construction permit or licensed facility, WTXX argued that it was entitled to a waiver under the applicable good cause standard because WTXX's modified STA facility provided service to the required number of people under the use or lose rules.<sup>4</sup> Unfortunately, the Commission effectively ignored this argument, finding that the excess interference that WTXX's STA facilities would cause if they were converted to a construction permit warranted a denial of the waiver.<sup>5</sup>

**Argument:** Although it maintains that it was entitled to an interference protection deadline waiver at least with respect to the protection of its maximized service area post-transition because it satisfied the public policy objectives underlying the use it or lose it deadline by actually providing DTV service, WTXX also acknowledges that it placed too much

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<sup>4</sup> 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, released June 11, 2006. The waiver explained that differences in the FCC's processing rules for minor changes to DTV construction permits or licenses compared with and DTV STA requests prevented it from amending its DTV construction permit to specify the parameters in its modified DTV STA.

<sup>5</sup> See *DTV Build-Order* ¶ 122.

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emphasis on that argument. WTXX submits it was/is entitled to a waiver on an entirely separate grounds – namely that it was unable to construct its maximized, pre-transition DTV facilities due to circumstances beyond its control.

Specifically, WTXX could not have built-out its DTV construction permit facility until April 2007 because of extensive strengthening and construction work required on its authorized transmission tower, which is approximately 1250 feet tall. This tower work required substantial strengthening, the removal of the top two portions of the tower and the installation of a candelabra to accommodate the television operations of WTIC-TV, WTIC-DT, WEDH, WEDH-DT and WTXX-DT. Tower strengthening work started over two years ago and the actual tower construction in the Fall of 2006. This work was only recently completed. Until that time, WTXX could not have built out its maximized DTV facility.

Although WTXX was unable to build-out its top-mounted DTV construction permit, it was able to build an STA facility further down the tower. As noted above, this STA facility provided coverage to the requisite number of people under the FCC's so-called use or lose requirements. The combination of the construction delay by the tower work and WTXX's construction of a STA facility warrants the reconsideration of the Commission's earlier decision and a grant of the WTXX use or lose waiver for 6 months.

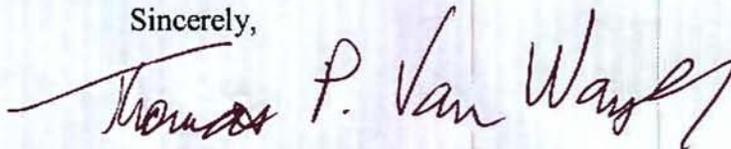
Finally, as confirmed in the *Seventh Further Notice of Proposed Rulemaking*, WTXX is one of those stations that elected to construct a post-transition DTV facility on a channel other than its pre-transition channel. As a result, it too is entitled to additional relief that

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the FCC awarded to similarly situated stations that will be potentially affected by the FCC's decisions in the Third DTV Periodic Report. For this reason, WTXX submits that the FCC should extend the grant of WTXX's use or lose waiver until 30 days after the effective date of any rules adopted in the Third DTV Periodic Report.

Please direct any questions regarding this request to the undersigned.

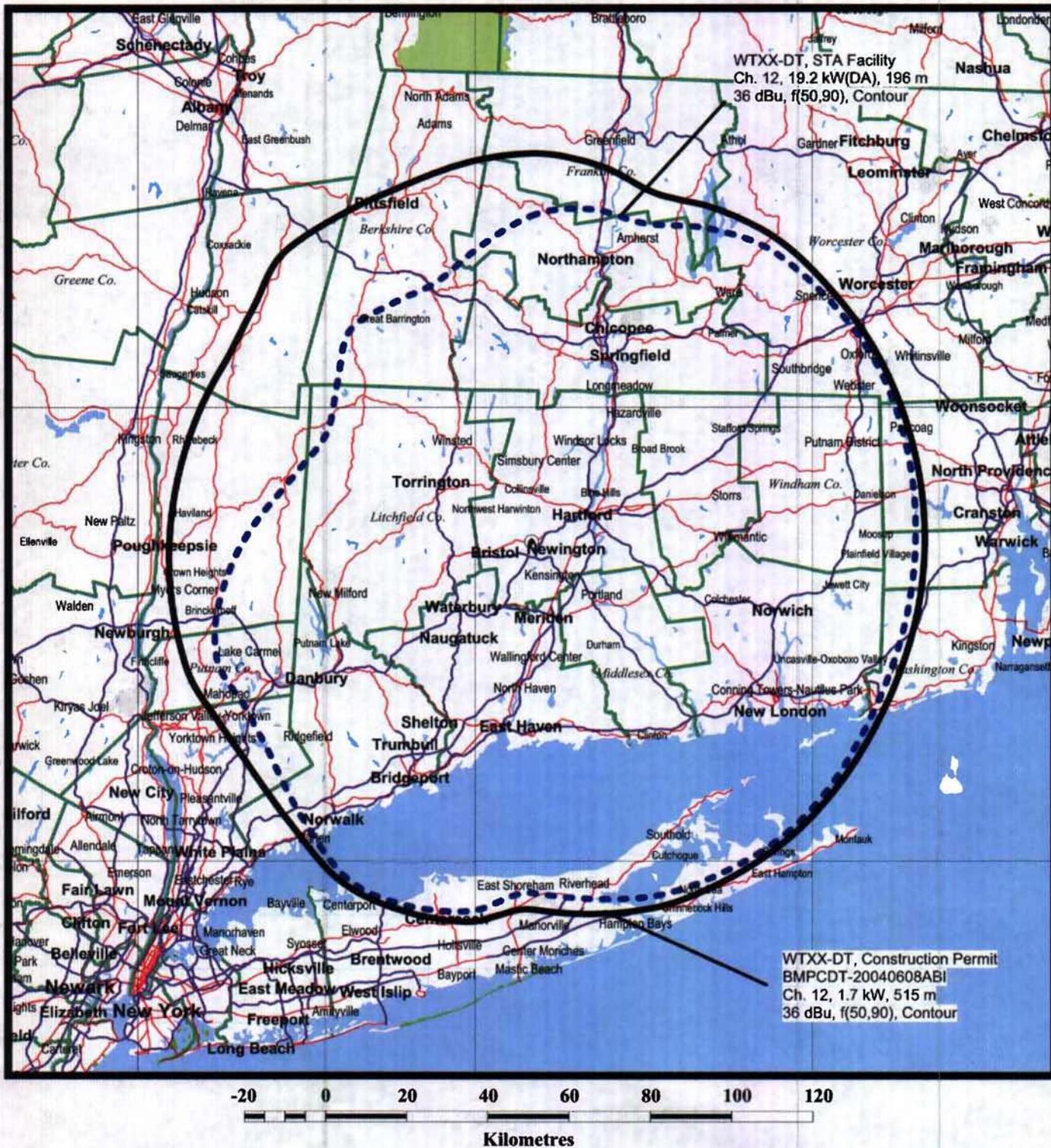
Sincerely,

A handwritten signature in black ink that reads "Thomas P. Van Wazer". The signature is written in a cursive style with a long horizontal stroke at the beginning.

Thomas P. Van Wazer

Attachments

Figure 1



## PREDICTED COVERAGE CONTOURS

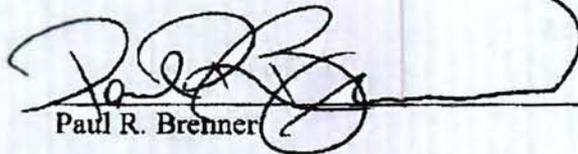
duTreil, Lundin & Rackley, Inc. Sarasota, Florida

**Declaration**

I, Paul R. Brenner, hereby declare under penalty of perjury the following:

1. I am the Director of Engineering at WTIC-TV, Hartford, Connecticut and WTXX-TV, Waterbury, Connecticut. In that capacity, I am responsible for overseeing the digital build-out of both stations. Both stations have digital construction permits to operate from WTIC's analog broadcast site in Hartford.

2. I have reviewed factual statements contained in the Petition for Reconsideration ("Petition") to be filed by WTXX Inc. requesting that the FCC reconsider and reverse its decision denying WTXX's so-called use or lose waiver. I certify that the factual statements in the Petition are true and correct to the best of my knowledge, information and belief.

  
Paul R. Brenner

Date: