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Via Electronic Filing

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Room TW-A325  
Washington, DC 20554

**Re: Request for Extension of Waiver of the "Use or Lose" Deadline  
MB Docket No. 03-15  
WMYA-DT, Anderson, South Carolina (FIN #56548)**

Dear Ms. Dortch:

On behalf of Anderson (WFBC-TV) Licensee, Inc. ("Anderson Licensee"), licensee of television broadcast station WMYA-TV, Channel 40 and permittee of digital television station WMYA-DT, Channel 14, Anderson, South Carolina, this letter is to request an extension of the six-month waiver of the July 1, 2006 replication/maximization interference protection deadline (the "use or lose" deadline) granted to the licensee in the Commission's *Use or Lose Order*.<sup>1/</sup>

Anderson Licensee filed a request for waiver of the "use or lose" deadline on June 29, 2006. In its waiver request, the licensee explained that its outstanding digital construction permit (FCC File No. BPCDT-19991109ACE) authorizes operation at 310 kilowatts effective radiated power ("ERP") from the top-mounted tower position.<sup>2/</sup> However, because the authorized tower also holds the antenna for the analog station in the top-mounted position, Anderson Licensee was forced to side mount the digital

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<sup>1/</sup> *DTV Build-Out; Requests for Waiver of July 1, 2005 and July 1, 2006 "Use or Lose" Deadlines; Requests for Waiver of the August 4, 2005 "Checklist" Deadline*, Order, 41 CR 590 (2007) ("Use or Lose Order").

<sup>2/</sup> This top-mounted position is at a height above average terrain ("HAAT") of 311.0 meters.

antenna at a lower HAAT. Even so, the WMYA-DT side-mounted facility is currently providing coverage to approximately 98% of the maximized service area.

Nevertheless, in an effort to fully comply with the "use or lose" deadline, Anderson Licensee filed, concurrently with its waiver request, an application for minor modification of the WMYA-DT construction permit in which it sought to increase the station's ERP to 430 kilowatts at the current side-mounted location in order to compensate for the unavoidable reduction in HAAT. See FCC File No. BMPCDT-20060629ACU. As the licensee explained in its waiver request, upon grant of this application, it could immediately construct full authorized facilities, and no further waiver would be necessary.

With respect to DTV permittees, such as Anderson Licensee, who had pending modification applications, the Commission stated in the *Use or Lose Order*:

At the time that they filed their waiver requests, certain stations were unable to complete construction of their DTV facilities because they were awaiting action on pending modification applications. A few of these modification applications remain pending but most have been granted. In all cases, the stations could not complete construction of their DTV facilities until their modified DTV construction permit was issued. In each of these cases, we find that the station took the necessary steps to complete the processing of its proposal, but that because of a pending Commission matter, the station was unable to timely complete construction.

*Use or Lose Order* at ¶ 41. Thus, the Commission's grant of a short, six-month extension was based on the assumption that all such pending applications had either been granted or would soon be granted, thereby giving the licensees ample time to complete construction of their digital facilities prior to the expiration of the waiver.

In Anderson Licensee's case, however, the modification application has not been granted. In fact, the Commission's staff has raised concerns about interference to another station, and an informal objection has been filed against the application. While Anderson Licensee believes that it has adequately responded to the staff's concerns and that it has demonstrated that the informal objection lacks merit, it is unclear when these issues will be resolved or whether they will be resolved in Anderson Licensee's favor. Thus, Anderson Licensee, through no fault of its own, has been unable to construct full authorized digital facilities prior to expiration of the six-month waiver deadline.

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More importantly, however, the failure to grant Anderson Licensee until the end of the digital transition to complete its final, post-transition facilities, as the Commission did for other similarly-situated television licensees, is patently unfair. Other licensees who were forced to side mount their digital antenna because their analog antenna or some other station's antenna was occupying the top-mount position were granted "use or lose" waivers until February 17, 2009.<sup>3/</sup> Anderson Licensee should not be penalized because it took the extra step of attempting to remedy the problem by filing a modification application rather than merely requesting a waiver.<sup>4/</sup>

For the foregoing reasons, Anderson Licensee respectfully requests that the Commission grant it a waiver of the "use or lose" deadline until six months after the Commission grants its pending minor modification application or until February 17, 2009, whichever is sooner.

Should there be any questions regarding this matter, please contact the undersigned.

Respectfully submitted,



Veronica D. McLaughlin Tippet

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<sup>3/</sup> See *Use or Lose Order* at ¶¶ 79-104.

<sup>4/</sup> Anderson Licensee has filed both a Petition for Reconsideration of the *Use or Lose Order* and Comments in response to the Notice of Proposed Rule Making in the *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, FCC 07-70, MB Docket No. 07-91, seeking redress of this inequitable treatment.