

November 16, 2007

VIA ELECTRONIC FILING

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: MB Docket No. 03-15
KMGH-DT (Denver, Colorado)
Facility ID No. 40875
Request for Clarification or In the Alternative Waiver of DTV
Replication/Maximization Deadline

Dear Ms. Dortch:

McGraw-Hill Broadcasting Company, Inc. (“McGraw-Hill”), permittee of KMGH-DT, Denver, Colorado (the “Station”), by its attorneys, hereby respectfully requests clarification or, in the alternative, waiver of the Station’s replication/maximization interference protection deadline.¹ On May 18, 2007, the Commission granted McGraw-Hill a six month extension of the Station’s DTV construction permit.² In granting that extension, however, the Commission did not recognize that KMGH-DT was switching to a new post-transition channel and accordingly should have granted the Station an extension until thirty days after the effective date of the Report and Order following the *Third Periodic Review NPRM*.³

Background

As the Commission is aware, McGraw-Hill and several other Denver area broadcasters have been unable to complete construction of their DTV facilities because of litigation relating to

¹ See FCC File No. BEPCDT-20040224ABT (expiring November 18, 2007). McGraw-Hill is requesting a waiver of the Commission’s build-out deadline because the Commission’s staff informally has advised that it is unnecessary to submit both a waiver request and an application on FCC Form 337 for an extension of a DTV construction permit.

² See DTV Build-Out; Applications Requesting Extension of the Digital Television Construction Deadline, *Order*, 22 FCC Rcd 9789, ¶ 18 (2007). (“*DTV Extension Order*”).

³ See Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, *Notice of Proposed Rulemaking*, 22 FCC Rcd 9478 (2007) (“*Third Periodic Review*”).

zoning approval of a new broadcast tower on Lookout Mountain.⁴ On September 17, 2003, the City of Golden, Canyon Area Residents for the Environment, and other parties (collectively the “Plaintiffs”) filed a Complaint with the District Court, County of Jefferson, Colorado seeking to prevent construction of the tower on Lookout Mountain on which McGraw-Hill proposes to locate the Station (Case No. 03 CV 3045). On March 26, 2004, District Judge R. Brooke Jackson entered a preliminary stay order enjoining Jefferson County from allowing construction of the new tower on Lookout Mountain. The court then remanded the zoning dispute to the Jefferson County Board of Commissioners. Over the next two and a half years, this litigation resulted in a series of court ordered remands to the Board of Commissioners to make additional findings concerning issues raised by the Plaintiffs. On December 22, 2006, however, President Bush signed into law PL 109-466 (the “Preempting Legislation”), which provided that

Notwithstanding an applicable State or local land use or condemnation laws or regulations, and subject to all applicable Federal laws and regulations, any person that holds an approved Federal Communications Commission permit to construct or install [a television broadcast station tower] located on Lookout Mountain in Jefferson County in the State of Colorado, may, at such location, construct [such tower].

The enactment of the Preempting Legislation did not immediately remove all legal obstacles. The Jefferson County District Court’s judicial stay remained in effect until April 16, 2007, when it dismissed the pending lawsuits. Three weeks later, on May 8, 2007, Jefferson County issued a building permit, finally clearing the way for construction of the Station.

On May 18, 2007, the Commission agreed that this litigation met the standards for a waiver of the deadline and granted a six-month extension to construct the Station.⁵ The Commission also granted extensions to the other Denver area broadcasters affected by the litigation, including KUSA-TV which received an extension until thirty days after the effective date of the Report and Order following the *Third Periodic Review NPRM*.⁶

Request for Clarification or Extension

In the *DTV Extension Order*, for stations that elected to construct their DTV facility on a channel that is different from their transitional DTV channel, the Commission granted extensions until thirty days after the effective date of the Report and Order following the *Third Periodic Review NPRM*.⁷ The Commission took this action because in the *Third Periodic Review NPRM*

⁴ See, e.g., McGraw-Hill Broadcasting Company, Inc., *Request for Waiver of July 1, 2005 Replication/Maximization Deadline*, MB Docket No. 03-15 (filed June 30, 2005) (providing the Commission with a history of the zoning litigation) (“*Waiver Request*”).

⁵ See *DTV Extension Order*, ¶ 18.

⁶ *Id.*, ¶¶ 18 and 68.

⁷ *Id.*, ¶ 1.

it tentatively concluded that these so-called “Category Two” DTV stations may discontinue construction and carry over interference protection to their new channel.⁸

KMGH-DT is a “Category Two” station, and the Commission should treat it as other stations in this category.⁹ After the transition, the Station will operate on a DTV channel different from that currently allotted, so the Station accordingly should have received an extension until thirty days after the effective date of the Report and Order following the *Third Periodic Review NPRM*. Indeed, KUSA-TV, Denver, Colorado – which, like the Station, will operate on a different DTV channel from Lookout Mountain – was among the stations that received such an extension.¹⁰

Based upon the foregoing, McGraw-Hill believes that the Commission should clarify that DTV construction deadline for KMGH-DT is not until thirty days after the effective date of the Report and Order following the *Third Periodic Review NPRM*. In any event, however, McGraw-Hill believes that the Station meets the Commission’s articulated standards for extension. Accordingly, in the alternative, McGraw-Hill requests that the Commission grant the Station a six-month extension.

Should any questions arise, please contact the undersigned.

Respectfully submitted,

/s/

Scott S. Patrick

cc: Shaun Maher (FCC)

⁸ See *Third Periodic Review NPRM*, ¶ 66.

⁹ *Id.*.

¹⁰ See *DTV Extension Order*, App. B.