

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
)  
Amendment of Section 73.622(i), ) MB Docket No. 09-230  
Post-Transition Table of DTV Allotments, ) RM-11586  
Television Broadcast Stations. ) DA 09-2605  
(Seaford, Delaware) )  
)  
)

**FILED/ACCEPTED**

**JAN 29 2010**

Federal Communications Commission  
Office of the Secretary

**COMMENTS OF ABC, INC.**

ABC, Inc. ("ABC"), licensee of commercial digital television ("DTV") station WPVI-TV, operating on channel 6 in Philadelphia, Pennsylvania ("WPVI"),<sup>1</sup> by its attorneys, submits these comments ("Comments") in the above-captioned proceeding in which the Federal Communications Commission ("FCC" or "Commission") proposes to allot a new television channel 5 to Seaford, Delaware, pursuant to Section 331(a) of the Communications Act of 1934, as amended ("Channel 5 Proposal").<sup>2</sup> As set forth herein, ABC opposes the Channel 5 Proposal because the allocation will prevent WPVI from restoring service to certain of its former analog viewers who lost coverage in the aftermath of the nationwide transition to all digital television ("DTV"). Furthermore, the allocation of very high frequency ("VHF") spectrum for a new television station could inhibit and even preclude other VHF stations in the Northeast from modifying their facilities (*e.g.* channel changes, power increases, etc.) as necessary to fully restore over-the-air television service to their former analog viewers. Finally, the proposed

<sup>1</sup> ABC filed a license application for WPVI's post-transition DTV facilities on June 12, 2009. FCC File No. BLCDDT-20090612ACL. This application is pending.

<sup>2</sup> Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Seaford, Delaware), MB Docket No. 09-230, RM-11586, DA 09-2605 (rel. Dec. 18, 2009). The validity of the cited legal basis for the FCC's allocation proposal is questionable because it does not appear that it is "technically feasible" within the meaning of Section 331(a) of the Communications Act of 1934, as amended (the "Act") for the FCC to allocate VHF spectrum for a new commercial television station to Seaford, Delaware. 47 U.S.C. § 331(a).

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allocation of channel 5 in Seaford, Delaware likely cannot be implemented in accordance with the FCC's interference protection requirements. For all these reasons and as further demonstrated below, the Channel 5 Proposal is contrary to the public interest, will not further the mandate of Section 307(b) of the Act, and should not be adopted.

## I. BACKGROUND

WPVI has served the Philadelphia, Pennsylvania designated market area ("Philadelphia DMA") on channel 6 for over sixty years, commencing operations in September, 1947. WPVI began operations of a full-power DTV facility on its pre-transition channel 64, in 1998.<sup>3</sup> Because channel 64 is an out-of-core channel, WPVI could not continue to operate on this channel following the DTV transition. Prior to selecting a channel for post-transition DTV operations, and after conducting multiple technical tests that demonstrated that special technical problems did, in fact, exist for post-transition use of low-VHF channels, ABC reluctantly chose channel 6 believing that it was the only viable option from which WPVI could possibly replicate its analog service.<sup>4</sup> Accordingly, WPVI commenced operations of the WPVI CP Facility on June 12, 2009 and filed a license to cover this facility.<sup>5</sup>

Unfortunately, at the time that WPVI initiated post-transition DTV service on channel 6, it became abundantly clear that the authorized power was not sufficient to enable WPVI to serve all of its former analog viewers. Indeed, following its transition to all-digital broadcasts on June

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<sup>3</sup> See FCC File No. BLCDDT-19981112KE.

<sup>4</sup> See, e.g., Comments of ABC, Inc., MB Docket 07-294, *et al.*, 2-4 (filed Jul. 30, 2008) (describing WPVI's channel election plight); ABC, Inc., Opposition to Petitions for Reconsideration of National Public Radio, Inc. and Hammett & Edison, Inc., MB Docket 87-268 (filed May 20, 2008) (same); *Ex Parte* Letter to Ms. Marlene H. Dortch, FCC, from Susan L. Fox, The Walt Disney Company, and Tom W. Davidson, Counsel to ABC, Inc., MB Docket No. 99-25 (filed Jul. 9, 2008) (same). After ABC selected channel 6, the FCC allotted WPVI a DTV facility on channel 6 with 6.22 kW ERP at 332 m HAAT and a directional antenna. WPVI could not, however, construct facilities with the theoretical and unachievable antenna pattern specified in Appendix B. Accordingly, on March 6, 2008, WPVI obtained a construction permit for a DTV facility with 7.56 kW ERP at 332 m and a non-directional antenna ("WPVI CP Facility"). See FCC File No. BPCDDT-20080208ADW.

<sup>5</sup> See FCC File No. BLCDDT-200906012ACL.

12, 2009, WPVI received thousands of telephone calls from former over-the-air viewers complaining that at the time of the DTV transition, they could not receive WPVI's DTV signal on channel 6 and no longer had access to ABC network or locally-produced programming (including news, emergency information, and other public affairs programming) received prior to the DTV transition.<sup>6</sup> Promptly after the DTV transition, WPVI worked with neighboring stations to implement a mutual power increase to enable WPVI to help restore service to certain of its former analog viewers on VHF channel 6, its post-transition channel ("Current WPVI Facility").<sup>7</sup>

## **II. THE FCC SHOULD REJECT THE CHANNEL 5 PROPOSAL BECAUSE IT WILL PREVENT WPVI FROM RESTORING OVER-THE-AIR SERVICE TO WPVI'S FORMER ANALOG VIEWERS WHO LOST OFF-AIR SERVICE AFTER THE DTV TRANSITION**

The Channel 5 Proposal will prevent WPVI from restoring service to the vast majority of its former analog viewers. As discussed above, in an effort to mitigate the service losses experienced by WPVI following the DTV transition, the FCC authorized operation of the Current WPVI Facility. While ABC has been able to restore over-the-air DTV service to most of WPVI's former analog viewers with the Current WPVI Facility, the current increase in WPVI's power to 30.2 kW has not solved all of WPVI's viewers' reception problems. Specifically, WPVI still receives complaints on a regular basis from many of its former analog over-the air viewers, many of whom live less than ten miles from the WPVI transmitter and still are not receiving WPVI's over-the-air digital signal, even with the increased ERP. In order to fully

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<sup>6</sup> WPVI currently broadcasts nearly 35 hours of original local news and public affairs programming per week. WPVI consistently achieves the highest audience ratings in the Philadelphia DMA for its weekday 5 a.m. to 7 a.m. and 5 p.m. to 6 p.m. local newscasts. In addition, WPVI historically has aired Pennsylvania, New Jersey, and Delaware gubernatorial debates, as well as senatorial and congressional debates. Comments of The Walt Disney Company, MB Docket 04-233 (filed Apr. 28, 2008) ("TWDC Localism Comments") (detailing WPVI's extensive efforts to serve its local community). For example, on May 30, 2008, WPVI co-sponsored (and aired on June 1, 2008) the Democratic and Republican New Jersey Senatorial debates with the League of Women Voters of New Jersey. WPVI also broadcasts between 300 to 400 public service announcements per month and, since 1970, WPVI has aired the longest-running Hispanic public affairs show in the nation. *See* TWDC Localism Comments.

<sup>7</sup> *See* FCC File No. BLSTA-20090619ABQ. WPVI applied for a construction permit to cover the same operating parameters as the Current WPVI Facility. *See* FCC File No. BPCDT-20090617ADQ (pending).

replicate its over-the-air analog coverage and restore service to all of its former analog viewers, WPVI believes and estimates that it will need to increase its signal strength by approximately 2 decibels (“dBs”), which requires 47.86 kW effective radiated power (“ERP”).<sup>8</sup> Unfortunately, it appears that WPVI’s ability to increase its power to the level believed to be sufficient to restore service to its former analog viewers is preempted by the Channel 5 Proposal. By WPVI’s calculation, such a power increase would cause additional new interference of more than 1.0% to the Channel 5 Proposal and thus would violate Section 73.616 of the FCC’s rules.<sup>9</sup> Such a result is clearly contrary to the Commission’s long standing objective of ensuring that all Americans would have access to television service both before and after June 12, 2009.<sup>10</sup> Accordingly, the Channel 5 Proposal is against the public interest and must be denied.

**III. THE CHANNEL 5 PROPOSAL SHOULD BE DENIED BECAUSE IT COULD INHIBIT AND EVEN PRECLUDE OTHER VHF STATIONS IN THE ALREADY OVERCROWDED NORTHEAST CORRIDOR FROM RESTORING SERVICE TO THEIR FORMER ANALOG VIEWERS**

The Northeast corridor consists of densely populated geographic areas in multiple adjacent television markets. As a result, when selecting their DTV channel designation, many broadcasters in this region, like ABC, were required to accept higher levels of interference than otherwise would be permitted under the FCC rules.<sup>11</sup> Additionally, many Northeast stations were effectively relegated to a VHF channel election despite their concerns that operations on VHF digital channels would be technically disadvantaged. It is well-established that the

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<sup>8</sup>If the Seaford Station (as hereinafter defined) operated with 10 kW of ERP (which is the maximum power level authorized by the FCC’s rules in Zone I), WPVI would be limited to only a 0.787 dB improvement beyond the Current WPVI Facility. See attached Engineering Statement.

<sup>9</sup> See attached Engineering Statement.

<sup>10</sup> See, e.g., Third Period Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, Report and Order, MB Docket No. 07-91, para. 2 (rel. Dec. 31, 2007) (“We want to ensure that no consumers are left behind in the DTV transition.”).

<sup>11</sup> See Requests For Further Extension of the November 1, 2000, Digital Television Construction Deadline, Order, FCC 01-111 (rel. Apr. 5, 2001) (recognizing that “the Northeast Corridor is particularly congested and a number of DTV allotments are not ideal”).

maximum ERP levels allotted by the FCC to television stations operating on VHF channels are insufficient to reach certain analog viewers who rely on indoor antennas for reception of digital television service.<sup>12</sup> This digital off-air television reception challenge is exacerbated in urban areas because of the urban canyon effect whereby tall buildings limit coverage. Moreover, urban over-the-air viewers often reside in high-rise buildings where indoor reception is severely impaired due to wall attenuation. As a result, despite the Commission's best efforts and the dedication of significant resources, many "Big Four" network television stations with post-transition VHF channels, including WPVI, promptly learned that their post-transition DTV facilities did not enable many former over-the-air analog viewers to receive a DTV signal.<sup>13</sup>

Most of the technical solutions being considered by VHF stations in the Northeast corridor involve power increases that are predicted to result in impermissible interference to stations in adjacent television markets.<sup>14</sup> Allocating an additional low VHF channel to the already congested VHF spectrum in the Northeast corridor now would make it even more

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<sup>12</sup> See, e.g., Doug Lung, "Solving VHF DTV Reception Problems," TV TECHNOLOGY, April 23, 2009, available at <http://www.tvtechnology.com/article/79862>.

<sup>13</sup> For example, the following stations in the Northeast corridor reported reception issues following June 12: (i) WABC-TV, an ABC affiliate operating on digital channel 7 in New York, New York; (ii) WBAL-TV, a NBC affiliate operating on digital channel 11 in Baltimore, Maryland; (iii) WHDH-TV, a NBC affiliate in Boston, Massachusetts (operating on digital channel 7 at the time of the DTV transition, but subsequently substituting its pre-transition channel 42 for its post-transition DTV channel 7 due to viewer complaints); (iv) WUSA(DT), a CBS affiliate operating on digital channel 6 in Washington, D.C.; (v) WJLA-TV, an ABC affiliate operating on digital channel 9 in Washington, D.C.; and finally, (vi) WGAL(DT), a NBC affiliate operating on digital channel 8 in Lancaster, Pennsylvania.

<sup>14</sup> For example, ABC's station in New York, WABC, recently negotiated an interference acceptance agreement to secure special temporary authority for a power increase. Without such an agreement, the power increase to restore service to many of WABC's former analog viewers would not have been possible because the power increase is predicted to cause impermissible interference to WNJB, located in an adjacent market. Additionally, the following list represents some of the stations in the Northeast corridor that have requested authority to operate at power levels higher than their post-transition DTV authorization: (i) WGAL(DT) (applied for a power increase of 32.2 kW after commencing its post-transition digital operation with 7.5kW ERP, subsequently increasing to 8.1 kW ERP and currently operating under program test authority with 14.1 kW ERP) See FCC File No. BPCT-20100111AER; (ii) WUSA(DT) (operating pursuant to experimental authorization at an ERP of 52 kW compared to the 12.6 kW authorized pursuant to its post-transition DTV construction permit) See FCC File No. BDSTA-20091218ACS (granted 12/18/2009); and (iii) WJLA-TV (operating at 52 kW ERP pursuant to experimental authority, compared to its maximized post-transition DTV licensed facility ERP of 32.2 kW) See FCC File No. BEDSTA - 20091117AAG.

difficult for these stations to solve their current coverage deficiencies. Accordingly, until the Commission resolves these very real coverage issues for low VHF channel stations in the Northeast corridor, the FCC should not allocate additional VHF channels to Seaford, Delaware or any other community in this already overcrowded region.

**IV. THE CHANNEL 5 PROPOSAL SHOULD BE DENIED BECAUSE IT CANNOT BE IMPLEMENTED IN ACCORDANCE WITH THE FCC’S INTERFERENCE REQUIREMENTS**

The post-DTV transition experiences of television broadcasters in the Northeast corridor operating on low-VHF channels demonstrate that a new station on channel 5 in Seaford (“Seaford Station”) will need more than the maximum 10 kW ERP specified in the FCC’s rules for Zone 1 stations in order to adequately cover its intended service area. Unfortunately, even a relatively small power increase by any Seaford Station will cause prohibitive interference in violation of Section 73.616 of the FCC’s rules.<sup>15</sup> Operation of the Seaford Station at any power level greater than 12.5 kW ERP will result in additional new interference greater than 0.5% in violation of Section 73.616.<sup>16</sup> Consequently, the Seaford Station would be limited in its ability to increase its power beyond 10 kW ERP without causing impermissible interference and thus likely could not provide adequate service. Accordingly, the Channel 5 Proposal should be denied because it is not likely to be able to be implemented without violating the FCC’s interference requirements.

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Given the constraints described above that will be placed on WPVI, other VHF Stations in the Northeast corridor, and on the Seaford Station itself, adoption of the Channel 5 proposal is

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<sup>15</sup> See 47 C.F.R. § 73.616.

<sup>16</sup> See attached Engineering Statement.

not the most “fair, efficient and equitable” distribution of radio spectrum.<sup>17</sup> For the reasons set forth herein, the FCC should not adopt the Channel 5 Proposal.

Respectfully submitted,

**ABC, Inc.**

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January 29, 2010

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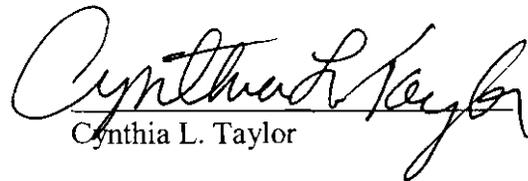
<sup>17</sup> See 47 U.S.C. § 307(b). The Channel 5 Proposal does not serve the objectives of Section 307(b) of the Communications Act because it could inhibit and, even preclude, existing VHF stations from modifying their facilities to restore service to former over-the-air viewers, thereby maximizing efficient use of their current spectrum allocations. Under these circumstances, given the potential interference issues described above and the resulting inefficient use of the channel 5 spectrum in Seaford, the Channel 5 Proposal directly contravenes the mandate of Section 307(b).

**CERTIFICATE OF SERVICE**

I, Cynthia L. Taylor, a secretary in the law firm of AKIN GUMP STRAUSS HAUER & FELD LLP, hereby certify that on this 29th day of January, 2010, I caused copies of the foregoing ABC Comments to be mailed via first-class postage prepaid mail to the following:

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**ENGINEERING EXHIBIT  
IN SUPPORT OF  
COMMENTS OF ABC INC. IN RM-11586  
MB Docket 09-230**

**ABC, INC.,  
TELEVISION STATION WPVI  
PHILADELPHIA, PENNSYLVANIA  
CHANNEL 6 – 332 METERS HAAT - FACILITY ID 8616**

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## **ENGINEERING EXHIBIT**

**ABC, INC.,  
TELEVISION STATION WPVI  
PHILADELPHIA, PENNSYLVANIA  
CHANNEL 6 – 332 METERS HAAT - FACILITY ID 8616**

### **ENGINEERING STATEMENT**

#### **Introduction**

ABC Inc. is the licensee of WPVI (TV), Philadelphia, Pennsylvania. WPVI was licensed to operate NTSC analog facilities on channel 6 with an effective radiated power of 74.1 KW at a height above average terrain of 332 meters as described in its license which bears FCC File Number BLCT-2282. This license describes the facilities that were used as the basis for DTV replication facilities and was a full NTSC facility in Television Zone I.

WPVI began broadcasting in September of 1947 and has been serving Philadelphia and nearby communities on channel 6 continuously since that time.

WPVI was one of several stations that committed to initiating DTV operation in November of 1998. WPVI was able to meet that commitment, and began broadcasting Digital Television on its initial allotment, channel 64, on November 1, 1998. The facilities used for this initial DTV broadcasting are described in FCC File Number BMPCDT-19980826KG. The application for license to cover the out of core facilities that are no longer operating bears FCC File Number BLCDT-19981112KE.

WPVI was granted a construction permit for post-transition operation on channel 6, its former NTSC channel, which bears BPCDT-20080208ADW. On June 12, 2009, at approximately 12:30 PM EDT, WPVI began operating with Digital Television facilities which are authorized in BPCDT-20080208ADW, and filed an application for license to cover, BLCDT-20090612ACL. This application was accepted for filing on June 15, 2009.

Shortly after commencement of DTV operation on channel 6, many channel 6 viewers found they could no longer receive WPVI. The Commission's call center and the WPVI local call center received thousands of calls in the first hours after WPVI and other full service stations in the Philadelphia market transitioned to DTV only signals.

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The former WPVI NTSC off-the-air viewers that suffered loss of reception of WPVI on channel 6 were located primarily in the immediate Philadelphia metropolitan area. Although many of these viewers did not receive a perfect NTSC picture, once WPVI transitioned to DTV transmission with a lower ERP than was licensed for NTSC transmission, they could not receive any picture from WPVI at the lower ERP authorized for DTV transmission.

WPVI conducted field tests of DTV transmission on channel 6 under STA in the months and weeks before the transition to DTV. As a result of those tests, the post-transition reception difficulties were correctly attributed to weak signals, particularly where indoor antennas were used.

WPVI obtained Special Temporary Authority to operate with a 6 dB increase on June 19, 2009. This increase in ERP has solved many, possibly a majority of the outstanding over-the-air reception problems the former NTSC viewers were experiencing.

Shortly after the DTV transition, WPVI conducted field measurements and also visited many viewers to determine what improvements in ease of reception had been realized and if any improvement could be realized by changing receiving antenna models. FCC personnel accompanied WPVI engineers to several locations where viewers had indicated they would accept the assistance that visiting engineers could provide. The FCC field office personnel and WPVI engineers observed channel 6 DTV signals with consumer grade receiving equipment as well as professional measurement equipment in an attempt to quantify what amount of increase was useful to improve reception of DTV signals.

WPVI is continuing to study VHF over-the-air reception in an attempt to solve the remaining channel 6 reception problems. Both WPVI and the Commission have observed that the transition to DTV transmission on VHF channels has caused difficulties to former VHF NTSC viewers. Many of these difficulties are attributable weak signals from the lower DTV ERP when compared with the ERP levels that were formerly authorized for NTSC transmission.

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### **Petition for Rulemaking RM-11586**

On December 18, 2009, the Commission released a Notice of Proposed Rulemaking in MB Docket 09-230 (the Petition), in which the petitioner proposes to amend the Table of Allotments to include channel 5 in Seaford, Delaware.

The Petition specifies a location of an existing tower in Delaware which is presently used by an educational television station and educational FM radio station. The proposed channel 5 facilities that were studied on behalf of WPVI were assumed to be located on this structure.

The proposed channel 5, Seaford, Delaware allotment was studied for impact to WPVI, adjacent channel 6. The proposed Seaford allotment is located in Television Zone I.

### **Preclusion of Improvement by WPVI**

Results of field studies indicate that an additional improvement in transmitted signal strength of 2 dB may solve many of the remaining DTV reception problems for WPVI's former NTSC viewers.

The effect of the proposed channel 5 allotment in Seaford, Delaware was studied, and based on the coordinates found in the Notice of Proposed Rulemaking, and the antenna structure registration information for the existing tower on the proposed site, the limit imposed by the proposed channel 5 in Seaford is less than the 2 dB of increase that present studies indicate would be helpful to restore reception of the WPVI DTV signal to those former NTSC viewers who are continuing to experience reception difficulties.

If channel 5 in Seaford were to operate with its proposed 10 kW ERP and a non-directional antenna, it would limit WPVI to only a 0.787 dB improvement beyond the presently authorized STA ERP before impermissible interference (as presently defined for low-VHF DTV stations) occurs.

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Moreover, if WPVI continued to operate with its present ERP, and the Seaford facility realized that it, too, needs additional signal strength in order to serve potential viewers in an urbanized environment, it would preclude WPVI from any increase once the channel 5 ERP reached approximately 12.5 kW. The increase to 12.5 kW represents only a 0.97 dB increase above the 10 kW ERP the petitioner seeks to obtain.

If the proposed channel 5 facility operates at its stated 10 kW ERP, and WPVI increases by 2.0 dB, the interference caused by WPVI to Seaford would be greater than 1.0%.

If the proposed channel 5 facility were required to operate with 30 kW and WPVI were to increase by 2.0 dB, the interference caused by WPVI to Seaford proposal would be approximately 1.7%.

The field experience and measurement programs of many DTV stations operating on VHF channels indicates that increases above ERP levels originally expected to produce coverage are in the order of 8.0 dB.

### **Calculation Methodology**

The results of interference calculations that are contained in this engineering statement were obtained by Longley-Rice methods that are described in OET Bulletin 69, July 1997, as implemented in the Commission's TV Process software with 2 KM cell size. The post-transition data that were used for these calculations were obtained from the CDBS post-transition database.

The population census data were obtained from the Year 2000 Census. This methodology and the associated Longley-Rice parameters and cell size are described in the Report and Order in the Third Periodic Review in Paragraph 155, and are the normal, default, TV Process values.

The facilities proposed for channel 5 Seaford, DE, station were 10 kW ERP with a non-directional antenna located at 186.0 meters radiation center above mean sea level. The height of the registered structure (ASRN 1032913) which is located at the coordinates found in the Notice of Proposed Rulemaking was used as a guide.

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Interference calculations in TV Process output format are available upon request.

**Conclusion**

Although the proposed channel 5 Seaford facility and WPVI can continue to operate as presently described, the experience of those VHF stations, and particularly low band VHF stations, indicates that the 10 kW ERP proposed by the petitioner will likely prove to be insufficient to develop the required signal strength needed to serve its immediate metropolitan area. WPVI has not finished its studies to determine what increase beyond its presently authorized ERP will be optimum to improve the reception of DTV signals to former NTSC viewers. Restoration of service to existing viewers is a responsibility that WPVI needs and desires to fulfill.

**Certification**

I certify that, on behalf of the ABC, Inc., permittee of WPVI-DT, I have prepared the information contained in this Engineering Statement with the assistance of Zar B. Aung, EIT, and that after such preparation, I have examined it and found it to be accurate and true to the best of my knowledge and belief.



Signed: \_\_\_\_\_  
Alfred E. Resnick, P. E.

Dated: January 29, 2010