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August 5, 2011

VIA HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals II
445 – 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

FILED/ACCEPTED

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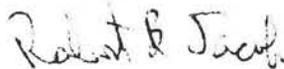
Federal Communications Commission
Office of the Secretary

In re: Petition for Reconsideration and/or Clarification of Second Report and Order (Amendment of Parts 73 and 74 of the FCC Rules for Digital Low-Power Television, etc, Docket No. 03-185)

Dear Ms. Dortch

On behalf of Cohn and Marks LLP's clients holding construction permits for new digital low-power television facilities, there are herewith transmitted an original and nine copies of a "Petition for Reconsideration and/or Clarification" of the above-referenced Second Report and Order, released July 15, 2011.

Yours very truly



Robert B. Robert

RBJ:btc

Enclosures

cc: Mr. Hossein Hashemzadeh
The Commissioners

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construction permit pursuant to Section 74.788 (c) of the rules. Second Report and Order at fn. 37.¹

The Second Report and Order specifically identifies the rationale (the factors) for the automatic extension of construction permits held by existing analog LPTV stations as follows:

- (a) “We agree that it would be preferable for these stations not to have to make the significant investment required for conversion to digital facilities, when such facilities may have to be substantially modified due to channel displacement or taken off the air altogether in connection with the implementation of a spectrum repacking scheme” (Id. at Para. 8);
- (b) “A deadline four years in the future will give these low power television stations time to determine the best location. . . prepare and file an application, obtain a grant of their construction permit, order equipment. . . and carry out other necessary steps toward the transition” (Id. at Para. 9);
- (c) “. . . we seek to bring the benefits of digital broadcast technology to low power television viewers. . . . Adopting a transition date of September 1, 2015 will allow low power television stations to have better understanding of the overall spectrum landscape when determining their final transition plan. . . .” (Id. at Para. 10);
- (d) “. . . we conclude that setting the low power transition date to occur in the middle of the summer will maximize available construction time and minimize weather-related disruptions for low power television stations. . . . A September 1, 2015 transition date will ensure that all low power stations have ample time to complete their facilities prior to the deadline” (Id. Para 11);
- (e) “We conclude that fairness dictates that stations with outstanding digital construction permits set to expire in the coming months or years be given until September 1, 2015 to complete their digital facilities. . . we do not believe that stations should be forced to transition before they are truly prepared to do so simply because their digital construction permits are set to expire. Stations with outstanding construction permits obtained them without knowing the

¹ The rules as amended in the Second Report and Order are not challenged by the instant Petition. The Petition is limited to the Commission’s mandate to exclude construction permits for new, digital-only facilities – as is set forth in footnote 37 of the Second Report and Order.

final timetable for the completion of the digital transition. With a hard deadline now set, those stations should not be penalized. . . rather they should be permitted to revise their digital construction schedule to meet their own financial and market demands” (Id. Para. 14).

All of the above factors which justify an automatic extension to September 1, 2015 for construction permits held by existing analog LPTV licensees are equally applicable to construction permits held by permittees who are not licensees of existing analog LPTV stations.

Underlying the factors identified as justification for the automatic extension to September 1, 2015 is the Commission’s recognition that licensees should not have to make the significant investment for a facility which subsequently may require substantial modification or worse, the possibility that there may be no spectrum available for continued LPTV operation. At paragraph 8, the Commission stated,

“We agree that it would be preferable for these stations not to have to make the significant investment required for conversion to digital facilities, when such facilities may have to be substantially modified due to channel displacement or taken off the air altogether in connection with the implementation of a spectrum repacking scheme.”

Pragmatically, the rationale/factors set forth as justification for automatic licensee extension to September 1, 2015 are equally applicable to permittee “new” facilities,

1. The permittee will be required to make the same “significant investment” as the licensee;
2. The financial risk for licensee “conversion” and for permittee “construction” is identical. There is no substantive difference between “conversion” and “construction”;

3. Both licensees and permittees obtained construction permits “. . .without knowing the final timetable for the completion. . ..”;
4. The benefits arising from “a deadline four years in the future” accorded to licensees would be equally beneficial to permittees;
5. “Fairness” accorded to licensees based on “. . .we do not believe that stations should be forced to transition. . . simply because their construction permits are set to expire” is equally applicable to permittees and should be accorded to permittees.

The Commission distinction between digital construction permits held by licensees of analog LPTVs and digital construction permits held by permittees of new LPTV facilities is not supported by the Second Report and Order and, indeed, is wholly irrational. Repacking will be equally destructive to both permittee groups.

The absence of a definitive spectrum impact study and a repacking plan for digital television stations creates great uncertainty for ALL digital LPTV permittees. More significant, the absence is not the fault of the “new” permittees and, therefore, “new” permittees “should not be penalized”. The Commission concluded,

“. . . we do not believe that stations should be forced to transition before they are truly prepared to do so simply because their digital construction permits are set to expire” (Id. at Para. 14).

The same logic applies to permittee construction permits.

Petitioner submits that “fairness dictates” all digital LPTV construction permits should be automatically extended through September 1, 2015, and not just those digital flash-cut or digital companion channel permits of existing analog LPTV licensees.

CLARIFICATION

The matter of obtaining an extension of time pursuant to Section 74.788(c) of the FCC Rules is subject to the “unforeseeable or beyond the licensee’s control where the licensee has taken all reasonable steps to resolve the problem expeditiously” standard. The factual circumstances underlying the need for Clarification include unresolved congressional consideration of spectrum auctions and Commission studies pertaining to repacking – factors unforeseeable and beyond the permittee’s control. The unresolved factual situation (repacking) common to all outstanding LPTV digital permittees requires that either all outstanding LPTV digital construction permits be extended through September 1, 2015 or provision of assurance to permittees of new digital-only LPTV facilities that the filing of an extension application based solely on the delay of the repacking finalization will suffice to satisfy the unforeseeable/beyond control standard.

Respectfully submitted



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