

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

In the Matter of)
)
DTV Build-out)
)
Requests For Extension of the)
Digital Television Construction Deadline)
)
Network-Affiliated Television Stations)
Located In the Top Thirty Television Markets)

ORDER

Adopted: May 20, 2004

Released: May 26, 2004

By the Commission:

1. The Commission has before it five requests submitted by “network-affiliated” television stations located in the top thirty television markets seeking extensions of their deadline for construction of their digital television (DTV) facilities pursuant to Section 73.624(d)(3)(iii) of the Commission’s Rules.¹ The requests are unopposed. For the reasons set forth below, we grant the requests and we extend the DTV construction deadline to six months from the release date of this order.

I. Background

2. To further the rapid implementation of a nationwide system of DTV, we adopted in 1997 an aggressive DTV construction schedule.² We determined that television stations affiliated with the ABC, CBS, Fox and NBC television networks would be required to build DTV facilities in the ten largest television markets by May 1, 1999. Stations affiliated with these networks in television markets eleven through thirty were required to construct their DTV facilities by November 1, 1999. All other commercial stations were required to construct their DTV facilities by May 1, 2002, and all noncommercial stations by May 1, 2003.

3. The stations in this proceeding are one of a small number of remaining network-affiliated stations located in the top thirty television markets that have been unable to complete construction of their DTV facilities. Because they have already been granted at least two extensions, their current extension request must be considered by the Commission.

¹ 47 C.F.R. § 73.624(d)(iii). A complete list of all stations seeking extensions is included in Appendix A to this Order.

² See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, 12 FCC Rcd 12809 (1997) (*Fifth Report and Order*).

II. Discussion

4. *New York Stations.* A number of television stations were directly or indirectly affected by the September 11, 2001, terrorist attack in New York City. WABC-DT, New York, New York, and WNBC-DT, New York, New York, had previously completed and began operating their DTV facilities on the World Trade Center before those facilities were destroyed. WABC-DT has obtained space on the Empire State Building and is continuing to work to construct its DTV facilities at that location. In the interim, both WABC-DT and WNBC-DT are operating temporary facilities pursuant to Special Temporary Authority (STA).

5. In addition, WABC-DT and WNBC-DT have joined the Metropolitan Television Alliance, a group seeking to construct a new multi-user tower. That proposal has met with a number of obstacles such as local zoning, environmental and air hazard concerns. The group continues to pursue suitable locations.

6. The September 11th terrorist attack clearly qualifies as an uncontrollable and unforeseeable event warranting extension of DTV construction deadlines of WABC-DT and WNBC-DT. We find that these stations have taken steps to recover from that disaster and to complete construction of their DTV facilities.

7. *Hartford Area Stations.* WTIC-DT's DTV allotment (Channel 5) was the subject of a rulemaking wherein WNYW(TV), New York, New York, sought to substitute Channel 31 for DTV Channel 5 for WTIC-DT. The *Report and Order* in that proceeding was released on January 8, 2003, during the pendency of WTIC-DT's current extension request. Following the release of the *Report and Order*, WTIC-DT submitted a minor change application specifying DTV Channel 31. That application remains pending. Until the application is granted, WTIC-DT is unable to complete construction of its DTV facilities. In the interim, WTIC-DT has been operating a temporary Channel 31 DTV facility under an STA.

8. WFSB-DT, Hartford, Connecticut, was a party to the above-referenced rulemaking proceeding. It maintained that the channel change for WTIC-DT would effect its DTV operation and that it could not construct its facilities until the rulemaking was completed. While it was awaiting the outcome of the rulemaking proceeding, WFSB-DT decided to pursue an alternate course and, in October 2002, it filed an application to modify its DTV construction permit to resolve at least part of the issues affecting its DTV operation. That application was granted in June 2003. Following the grant of its modification application, the station began construction but received local objections. The station subsequently resolved those objections and entered into a contract with a tower construction company. The station has completed site engineering and is currently working on the tower foundation. The station expects to complete construction soon, weather permitting.

9. WVIT-DT, New Britain, Connecticut, states that its original application for zoning variance for modifications to its existing tower was also denied and it appealed that decision to the Connecticut Superior Court. Subsequently, WVIT-DT engaged a consulting engineer and revised its proposed DTV facilities in order to obtain the necessary local zoning approval. That approval was obtained in March 2002, but a neighboring land owner challenged the local zoning approval, further delaying WVIT-DT's construction. WVIT-DT then entered into negotiations with the land owner and reached an agreement in February 2003 that resulted in a withdrawal of the appeal. Meanwhile, WVIT-DT obtained the necessary equipment for its DTV facilities and began to construct its facilities. The station subsequently discovered that it would have to make changes to its proposed facilities as a result of the agreement it had made with the land owner. It filed an application for modification to its DTV

construction permit that is currently pending. In the interim, the station completed construction and obtained an STA to operate its modified facilities on a temporary basis pending the grant of its construction permit.

10. We find that, in each of these cases, the television licensee made reasonable and diligent efforts to construct their authorized facilities, but that each encountered delays that were unforeseeable or beyond their control and that these delays prevented timely construction of their DTV facilities. Therefore, we grant these stations an extension to six months from the release date of this order in order to complete their DTV facilities.

11. Although we grant these extension requests, we take this opportunity to remind television stations that timely implementation of DTV is the key to the success of a nationwide DTV system. We have found that expedited construction promotes DTV's competitive strength internationally, as well as domestically. We have also determined that rapid build-out ensures that the recovery of broadcast spectrum for future uses occurs as quickly as possible. We continue to expect stations seeking extensions to submit detailed justifications as to why they have been unable to complete construction of their facilities. As before, each station will be required to demonstrate that its failure to construct has been due to circumstances that were either unforeseeable or beyond its control and that the station has taken all reasonable steps to resolve the problem expeditiously. We continue to expect such requests to be supported by documentation, and for stations to be able to demonstrate each step that was taken to complete construction or to outline each unforeseeable or uncontrollable delay or event. Only when we receive a fully supported request, will we allow an additional extension of the construction period.

12. ACCORDINGLY, IT IS ORDERED That, pursuant to Section 73.624(d)(3)(iii) of the Commission's rules, 47 C.F.R. § 73.624(d)(3)(iii), the requests of the television stations set forth in Appendix A of this Order for extension of the digital television construction deadline ARE GRANTED and the digital television construction deadline IS EXTENDED to six months from the release date of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A – Stations Seeking an Extension of their DTV Construction Deadline

CALL	City	ST
WABC-DT	New York	NY
WNBC-DT	New York	NY
WFSB-DT	Hartford	CT
WTIC-DT	Hartford	CT
WVIT-DT	New Britain	CT