

January 11, 2010

Ms. Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: WJMN-TV, Escanaba, MI (Facility Id. No. 9630), Phased Transition STA  
BLDSTA-1204AFG; Construction Permit File No. BMPCDT-20081023AAF

Dear Ms. Dortch:

WFRV and WJMN Television Station, Inc. ("Licensee") is the licensee of WJMN-TV (Facility Id. No. 9630), Escanaba, Michigan. Licensee operates WJMN-TV pursuant to a phased transition special temporary authority ("STA"). Licensee also holds a modified construction permit ("CP") for WJMN-TV approved by the Media Bureau ("Bureau") on July 22, 2009. *See* BMPCDT-20081023AAF. On October 16, 2009, the Bureau extended the STA and CP until February 17, 2010. *See* BELDSTA-20090818ABO. As set forth more fully below, Licensee requires a further extension in order to complete construction after the winter. Consequently, Licensee hereby applies for an extension of the WJMN-TV STA and CP for an additional six months, or until August 17, 2010.

Although the Bureau extended WJMN-TV's CP and STA until February 17, 2010, the current construction deadline terminates in the middle of the Upper Peninsula's severe winter weather. Such conditions, which last month included 50 inches of snow and an average temperature of 16.4 degrees in Marquette, Michigan, clearly preclude the safe construction of WJMN-TV's digital facilities during the winter. Licensee has contacted its digital antenna and transmitter vendors to order the equipment for delivery in the spring. They have informed Licensee that they could complete the manufacture and delivery of WJMN-TV's digital equipment by June 2010, but have expressed concern about committing to do so in light of the current construction deadline. Licensee is prepared to place the orders and pay the required deposits to ensure June delivery, but extension of the CP and STA will be required to permit the completion of construction this summer. Consequently, Licensee respectfully requests that the Bureau extend WJMN-TV's STA and CP for an additional six months.

## **I. Current Status of WJMN-TV Digital Construction**

Licensee's August 18, 2009 application to extend the WJMN-TV CP and STA reviews WJMN-TV's operational history and its efforts to construct the WJMN-TV digital facility. Licensee incorporates that information in this submission. Licensee contacted its digital equipment vendors upon grant of the modified CP in July 2009 and was informed that the equipment for the final construction of the WJMN-TV digital facility could not be delivered until the late fall at the earliest, which would not permit sufficient time to install and test the digital equipment before the onset of the winter season in the Upper Peninsula.

Because Licensee does not have storage facilities at the tower site to hold the digital equipment through the winter weather, it has requested delivery of the equipment in the spring. Licensee's digital equipment vendors, Harris Corp. ("Harris") and Electronics Research Inc. ("ERI"), have stated that they can complete the manufacture and delivery of the digital transmitter and the digital antenna and transmission line by June, provided that Licensee places final equipment orders and pays the required deposits as soon as possible. However, both vendors have expressed concern about committing to do so in light of the current February 17 deadline. Licensee stands ready to place the equipment orders and pay the required deposits in order to ensure delivery of the equipment by June and completion of construction within the requested extension period, or by August 17, 2010, but extension of the CP/STA will be required in order to complete the construction.

## **II. Request to Extend WJMN-TV STA and CP**

In the *Third Report and Order and Order Reconsideration in the DTV Delay Act* proceeding, the FCC stated that it would consider case-by-case extensions of phased transitions. *See In the Matter of Implementation of the DTV Delay Act, Third Report and Order and Order on Reconsideration*, 24 FCC Rcd. 3399 (2009), at ¶¶61, 66 ("*Third Report and Order*"). Extensions beyond February 17, 2010, must be supported by a tolling justification. *Id.* at ¶66. The FCC's rules allow for the tolling of construction deadlines when construction is prevented by the following causes not under the permittee's control: (1) acts of God, defined as natural disasters; (2) pending administrative or judicial review of the grant of a permit, or court proceedings related to a necessary local, state or federal requirement; or (3) international coordination matters. *See* 47 C.F.R. §73.3598(b). However, in the rulemaking proceeding regarding the construction deadline tolling provision, the FCC stated that it would consider requests for waiver of the tolling provisions in other "rare and exceptional circumstances" beyond a permittee's control which prevent the completion of facilities construction. *See In the Matter of 1998 Biennial Regulatory Review-Streamlining of Mass Media Applications, Rules, and Processes; Policies and Rules Regarding Ownership of Mass Media Facilities*, 14 FCC Rcd. 17525 (1999), at ¶42. Licensee respectfully submits that rare

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and exceptional circumstances require an additional extension of time to complete construction of WJMN's digital facility.

The FCC has noted the severity of the Upper Peninsula winter. *See Applications of DuPage County Broadcasting, Inc., Elmhurst, Ill.; Howard L. Enstrom and Stanley G. Enstrom D.B.A. Central DuPage County Broadcasting Co., Wheaton, Ill. For Construction Permit*, 39 F.C.C. 2d 895 (Hearing Examiner Dec. 1971), at ¶11 (winter characterized by snowfall averaging 150-200 inches and extended periods of below zero temperatures). The Upper Peninsula's recent weather conforms to this extreme pattern. National Weather Service data for December 2009 (attached as Exhibit 1) show that Marquette received 50.7 inches of snow and the temperature averaged 16.4 degrees last month. The December snowfall exceeded the normal December snowfall by 12.2 inches and the average temperature was even lower than the normal average of 18 degrees.

Under FCC precedent, unusually severe weather conditions may justify the tolling of construction deadlines. For example, in *CMCG Puerto Rico License LLC*, 21 FCC Rcd. 12900 (Vid. Div. 2006), the Video Division determined that unusually frequent and strong storm systems, although not fitting within the specified FCC tolling criteria, constituted "rare and exceptional circumstances that would warrant waiver of the strict tolling provisions." Similarly, in *Harry C. Martin, Esq.*, 2003 FCC Lexis 2129 (Aud. Div. 2003), the Audio Division determined that the excessive rainstorms reported by the permittee supported waiver of the tolling rules.

Finally, extension of WJMN-TV's STA and CP will eliminate the concerns expressed by Licensee's digital equipment vendors Harris and ERI regarding the February 17, 2010 expiration date and will permit the completion of construction this summer.

Consistent with the *Third Report and Order* requirements, Licensee will: (1) minimize loss of service in this period following the transition deadline; (2) not cause impermissible interference to other stations; and (3) continue to comply with applicable viewer notification requirements.

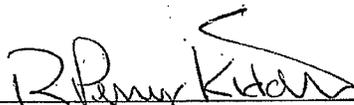
Attached as Exhibit 2 is a certification that neither the Licensee, nor any party to this application, is subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. §862.

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For the reasons set forth above, Licensee respectfully requests that the FCC extend the STA and CP for an additional six months, or until August 17, 2010. Thank you for your consideration of this matter.

Sincerely,



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Mr. R. Perry Kidder  
President & General Manager  
WFRV and WJMN Television Station, Inc.

# **EXHIBIT 1**

**These data are preliminary and have not undergone final quality control by the National Climatic Data Center (NCDC). Therefore, these data are subject to revision. Final and certified climate data can be accessed at the NCDC - <http://www.ncdc.noaa.gov>.**

## Climatological Report (Monthly)

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CXUS53 KMQT 042238  
CLMMQT

CLIMATE REPORT...PRELIMINARY  
NATIONAL WEATHER SERVICE MARQUETTE MI  
540 PM EST MON JAN 4 2010

.....  
...THE MARQUETTE MI CLIMATE SUMMARY FOR THE MONTH OF DECEMBER 2009...

CLIMATE NORMAL PERIOD 1971 TO 2000  
CLIMATE RECORD PERIOD 1961 TO 2010

WEATHER	OBSERVED VALUE	DATE (S)	NORMAL VALUE	DEPART FROM NORMAL	LAST YEAR`S VALUE	DATE (S)
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.....  
TEMPERATURE (F)

RECORD

HIGH	59	12/03/1998				
		12/03/1982				
LOW	-28	12/20/1983				
HIGHEST	38	12/01	24	14	42	12/27
LOWEST	-13	12/17	10	-23	-14	12/16
		12/16				
AVG. MAXIMUM	23.5		25.2	-1.7	20.8	
AVG. MINIMUM	9.3		10.7	-1.4	5.9	
MEAN	16.4		18.0	-1.6	13.3	
DAYS MAX >= 90	0		0.0	0.0	0	
DAYS MAX <= 32	28		23.9	4.1	27	
DAYS MIN <= 32	31		30.5	0.5	31	
DAYS MIN <= 0	8		7.1	0.9	10	

PRECIPITATION (INCHES)

RECORD

MAXIMUM	6.91	1968				
MINIMUM	0.37	1994				
TOTALS	3.48		2.43	1.05	3.46	
DAILY AVG.	0.11		0.08	0.03	0.11	

DAYS >= .01	15	17.2	-2.2	23
DAYS >= .10	6	6.7	-0.7	12
DAYS >= .50	1	1.1	-0.1	1
DAYS >= 1.00	1	0.2	0.8	0

## GREATEST

24 HR. TOTAL	1.83	12/09 TO 12/09
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## SNOWFALL (INCHES)

## RECORDS

TOTAL	89.5	2000		
TOTALS	50.7		38.5	12.2
SINCE 7/1	57.3		67.1	-9.8
SNOWDEPTH AVG.	11		12	-1
DAYS >= 1.0	11		9.1	1.9
GREATEST				
SNOW DEPTH	19	12/28		23
24 HR TOTAL	21.6	12/09 TO 12/09		12/20

## DEGREE\_DAYS

HEATING TOTAL	1501	1450	51	1594
SINCE 7/1	3616	3708	-92	3633
COOLING TOTAL	0	0	0	0
SINCE 1/1	124	229	-105	152

## WIND (MPH)

AVERAGE WIND SPEED	MM		
HIGHEST WIND SPEED/DIRECTION	MM	DATE	MM
HIGHEST GUST SPEED/DIRECTION	34/315	DATE	12/28

## SKY COVER

POSSIBLE SUNSHINE (PERCENT)	MM
AVERAGE SKY COVER	MM
NUMBER OF DAYS FAIR	MM
NUMBER OF DAYS PC	MM
NUMBER OF DAYS CLOUDY	MM

AVERAGE RH (PERCENT)	MM
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## WEATHER CONDITIONS. NUMBER OF DAYS WITH

THUNDERSTORM	0	MIXED PRECIP	0
HEAVY RAIN	0	RAIN	0
LIGHT RAIN	1	FREEZING RAIN	0
LT FREEZING RAIN	2	HAIL	0
HEAVY SNOW	2	SNOW	4
LIGHT SNOW	29	SLEET	0
FOG	3	FOG W/VIS <= 1/4 MILE	0
HAZE	0		

- INDICATES NEGATIVE NUMBERS.

R INDICATES RECORD WAS SET OR TIED.

MM INDICATES DATA IS MISSING.

T INDICATES TRACE AMOUNT.

&&

...DECEMBER 2009 MONTHLY CLIMATE SUMMARY FOR UPPER MICHIGAN...  
(THIS DISCUSSION DOES NOT INCLUDE CHIPPEWA AND MACKINAC COUNTIES)

...MONTHLY AVERAGE TEMPERATURE BELOW NORMAL...

...ABOVE NORMAL SNOWFALL...

...ABOVE NORMAL PRECIPITATION...

...TENTH WETTEST DECEMBER AT THE MARQUETTE NWS...

DECEMBER CLIMATE STATISTICS FOR THE MARQUETTE NWS IN NEGAUNEE TOWNSHIP

	NORMAL		DEPARTURE	
AVERAGE TEMPERATURE	16.4	18.0	MINUS	1.6
AVERAGE HIGH TEMPERATURE	23.5	25.2	MINUS	1.7
AVERAGE LOW TEMPERATURE	9.3	10.7	MINUS	1.4
HEATING DEGREE DAYS	1501	1450	PLUS	51
COOLING DEGREE DAYS	0	0		0
TOTAL PRECIPITATION	3.48	2.43	PLUS	1.05
TOTAL SNOWFALL	50.7	38.5	PLUS	12.2

HIGHEST TEMPERATURE: 38 ON 12/1  
 LOWEST TEMPERATURE: -13 ON 12/16 AND 12/17  
 GREATEST CALENDAR DAY PRECIPITATION: 1.83 ON 12/9  
 GREATEST 24 HOUR PRECIPITATION: 1.83 ON 12/9  
 GREATEST CALENDAR DAY SNOWFALL: 21.6 ON 12/9  
 GREATEST 24 HOUR SNOWFALL: 21.6 ON 12/9  
 PEAK WIND SPEED: 36 MPH FROM THE NORTHEAST ON 12/9  
 34 MPH FROM THE NORTHWEST ON 12/28

DAILY RECORD PRECIPITATION ON 12/9...1.83 (OLD RECORD 1.18...1977)

DAILY RECORD LOW MAXIMUM TEMPERATURE TIED ON 12/15...12

(12...1985/91)

DAILY RECORD HIGH MINIMUM TEMPERATURE ON 12/25...28 (25...1973/2005)

TENTH HIGHEST DECEMBER PRECIPITATION...3.48 (RECORD 6.91...1968)

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 GREAT LAKES WATER LEVELS (FEET/METERS ABOVE MEAN SEA LEVEL)

	LAKE SUPERIOR	LAKE MICHIGAN-HURON
12/01/09 DAILY MEAN	601.5/183.34	578.3/176.27
12/31/09 DAILY MEAN	601.3/183.26	578.1/176.20
AVG NOV 2009 DAILY MEAN	601.6/183.35	578.3/176.28
AVG DEC 2008 DAILY MEAN	601.0/183.19	577.3/175.97
LONG TERM DEC DAILY MEAN	601.7/183.41	578.5/176.34



RECORDS GO BACK TO THE EARLY 1900S...SAW THEIR COLDEST JANUARY IN 1912...WHEN AVERAGE TEMPERATURES WERE A FRIGID -5.3 AND 2.7 RESPECTIVELY. MORE RECENTLY...JANUARY 2009 WAS A TOP TEN COLDEST FIRST MONTH AT MANY LOCATIONS WITH A PERSISTENT UPPER TROUGH LOCKED OVER THE GREAT LAKES THROUGH THE MONTH. THE MEAN MONTHLY TEMPERATURE IN JANUARY 2009 WAS 3 TO 7 DEGREES BELOW NORMAL.

ON THE OTHER SIDE OF THE COIN...JANUARY 2006 IS THE WARMEST FIRST MONTH ON RECORD AT MOST PLACES ACROSS UPPER MICHIGAN. MONTHLY MEAN TEMPERATURES AVERAGED AN INCREDIBLE 10 TO 15 DEGREES ABOVE THE LONG-TERM NORMAL. A STRONG WEST-TO-EAST FLOW ALOFT KEPT ARCTIC AIR BOTTLED UP WELL NORTH IN CANADA...AND THE DAILY TEMPERATURE ENDED UP ABOVE THE MEAN ALL 31 DAYS OF THE MONTH AT MOST SITES. THERE WAS ALMOST A COMPLETE ABSENCE OF SUB-ZERO TEMPERATURES IN JANUARY 2006. FOR THE FIRST TIME SINCE RECORDS BEGAN IN 1901...THE MERCURY DID NOT FALL BELOW ZERO IN JANUARY AT IRONWOOD IN 2006. AT IRON MOUNTAIN AND THE MARQUETTE NWS...2006 JOINS 2002 AS THE ONLY YEAR WHEN THE THERMOMETER NEVER DIPPED BELOW ZERO IN JANUARY. AT MANY PLACES WEST OF MUNISING AND ESCANABA...1/27/2006 WAS THE WARMEST OR ONE OF THE TOP FIVE WARMEST JANUARY DAYS ON RECORD. MAXIMUM TEMPERATURES PEAKED AT OR ABOVE 50 AT MANY LOCATIONS...INCLUDING THE HOUGHTON COUNTY AIRPORT. THE PREVIOUS HIGHEST JANUARY TEMPERATURE ON RECORD THERE HAD BEEN 43. AVERAGE JANUARY TEMPERATURES IN 2002...2001...AND 1990 WERE AMONG THE TOP FIVE HIGHEST ON RECORD AT MANY LOCATIONS. READINGS DURING THOSE MONTHS AVERAGED 5 TO 10 DEGREES OR MORE ABOVE NORMAL.

JANUARY IS THE SNOWIEST MONTH OF THE YEAR AT MOST LOCATIONS. THE PASSAGE OF ARCTIC AIR OVER THE TYPICALLY UNFROZEN LAKE SUPERIOR RESULTS IN CONSIDERABLE LAKE EFFECT SNOW. AS THE COLD AIR PASSES OVER THE RELATIVELY WARM WATERS OF THE LAKE...THE AIRMASS BECOMES INCREASINGLY UNSTABLE. THE RESULT IS A GREATER FREQUENCY OF LOW CLOUD AND SNOW SHOWERS...WHICH ARE TYPICALLY HEAVIER AND MORE WIDESPREAD OVER HIGHER TERRAIN JUST DOWNWIND OF LAKE SUPERIOR. THE LOCATION OF MAXIMUM SNOWFALL IS VERY DEPENDENT ON THE LOW LEVEL WIND DIRECTION BECAUSE THE LONGEST WIND FETCH ACROSS THE WATER RESULTS IN GREATEST DESTABILIZATION. A WEST WIND FAVORS THE KEWEENAW PENINSULA; A NORTHWEST WIND USUALLY RESULTS IN HEAVIER SNOW AROUND ONTONAGON AND IN ALGER AND LUCE COUNTIES; AND A NORTH TO NORTHEAST WIND CAUSES THE HEAVIEST SNOW AROUND IRONWOOD AND IN THE NORTH CENTRAL HIGHLANDS OF BARAGA AND MARQUETTE COUNTIES. ALTHOUGH LARGE SCALE STORM SYSTEMS THAT TYPICALLY MOVE NORTHEAST FROM THE PLAINS STATES INTO THE GREAT LAKES CAN ALSO BRING HEAVY SNOW TO INLAND LOCATIONS...AVERAGE JANUARY PRECIPITATION IS QUITE A BIT LESS AWAY FROM LAKE SUPERIOR. FOR INSTANCE...THE HOUGHTON COUNTY AIRPORT PICKS UP 62.8 INCHES OF SNOW AND 3.71 INCHES OF LIQUID EQUIVALENT PRECIPITATION DURING A TYPICAL JANUARY. IRON MOUNTAIN RECEIVES ONLY 15.0 INCHES OF SNOW AND 1.25 INCHES OF LIQUID EQUIVALENT PRECIPITATION ON AVERAGE. WHILE RECORD SNOWS AT INLAND LOCATIONS ARE TYPICALLY AROUND 50 INCHES... LOCATIONS THAT RECEIVE BOTH LAKE EFFECT AND SYNOPTIC SNOW CAN PICK

UP 100 INCHES OF THE WHITE STUFF. DURING THE COLD JANUARY OF 2004... A LOCATION JUST SOUTHWEST OF ONTONAGON WAS BURIED UNDER 121 INCHES OF THE WHITE STUFF. TWO HEART IN LUCE COUNTY LOGGED 115 INCHES...AND BOTH PAINESDALE IN HOUGHTON COUNTY AND PHOENIX IN KEWEENAW COUNTY REPORTED 112 INCHES. SNOWFALL IN JANUARY 1997 WAS ALSO HEAVY...106.3 INCHES FELL AT THE HOUGHTON COUNTY AIRPORT...100.7 INCHES AT IRONWOOD...91.7 INCHES AT THE MARQUETTE NWS...AND 88.7 INCHES AT MUNISING.

DURING DRY AND/OR WARM YEARS...MONTHLY SNOWFALL MAY NOT EXCEED 12 INCHES AT MANY LOCATIONS. IRON MOUNTAIN PICKED UP ONLY 2.3 INCHES OF SNOW IN JANUARY 1961...EVEN THOUGH THE MONTHLY TEMPERATURE WAS NEAR NORMAL. AN ACTIVE STORM TRACK THAT YEAR TOO FAR TO THE SOUTH LEFT MUCH OF UPPER MICHIGAN AWAY FROM LAKE SUPERIOR HIGH AND DRY (TOTAL LIQUID EQUIVALENT PRECIPITATION AT IRON MOUNTAIN WAS ONLY 0.12 INCHES). DURING A RELATIVELY DRY AND MILD JANUARY 1973 WHEN THERE WERE FEW ARCTIC INVASIONS...THE MARQUETTE NWS RECORDED ONLY 12.0 INCHES OF SNOW. THE RECORD LOW JANUARY SNOWFALL AT THE HOUGHTON COUNTY AIRPORT IS 27.7 INCHES (1968).

#### JANUARY FORECAST

THE CLIMATE PREDICTION CENTER (CPC) IS FORECASTING EQUAL CHANCES OF ABOVE AND BELOW NORMAL PRECIPITATION AS WELL AS AN ABOVE AND BELOW NORMAL MONTHLY AVERAGE TEMPERATURE OVER ALL OF UPPER MICHIGAN IN JANUARY 2010.

#### OUTLOOK FOR LATE WINTER INTO SPRING

THE CLIMATE PREDICTION CENTER (CPC) IS FORECASTING A BETTER THAN CLIMATOLOGICAL CHANCE OF AN ABOVE NORMAL 3-MONTH AVERAGE TEMPERATURE OVER ALL OF UPPER MICHIGAN IN FEBRUARY THROUGH APRIL 2010. WATER TEMPERATURES IN THE TROPICAL EASTERN PACIFIC OCEAN ARE FORECAST TO REMAIN ABOVE NORMAL THROUGH THIS WINTER. THIS SO CALLED EL NINO PHENOMENON OFTEN CAUSES TEMPERATURES ACROSS THE NORTH CENTRAL UNITED STATES TO AVERAGE ABOVE NORMAL...ESPECIALLY DURING THE COLD SEASON. CPC INDICATES THERE IS AN EQUAL CHANCE OF ABOVE AND BELOW NORMAL 3-MONTH PRECIPITATION OVER ALL OF UPPER MICHIGAN IN FEBRUARY THROUGH APRIL.

GO TO [HTTP://WWW.WEATHER.GOV/CLIMATE/L3MTO.PHP](http://www.weather.gov/climate/l3mto.php) TO ACCESS DETAILED LOCAL THREE-MONTH AVERAGE TEMPERATURE OUTLOOKS FOR A NUMBER OF SITES IN UPPER MICHIGAN.

CHECK OUT [HTTP://WWW.CPC.NCEP.NOAA.GOV](http://www.cpc.ncep.noaa.gov) FOR MORE INFORMATION ABOUT THE CLIMATE PREDICTION CENTER AND MORE LONG RANGE PREDICTIONS.

NOTE THAT STATISTICS FOR THE NATIONAL WEATHER SERVICE OFFICE IN NEGAUNEE TOWNSHIP ARE BASED ON RECORDS WHICH BEGAN IN OCTOBER 1961. THIRTY YEAR NORMALS USED ARE FOR THE PERIOD OF 1971 THROUGH 2000.

NOTE ALL TEMPERATURES ARE IN FAHRENHEIT AND PRECIPITATION IS IN INCHES. ALL CLIMATE DATA LISTED IN THIS PRODUCT ARE UNOFFICIAL. FOR OFFICIAL DATA...PLEASE REFER TO THE NATIONAL CLIMATIC DATA CENTER. ALSO NOTE THIS DISCUSSION DOES NOT INCLUDE DATA FROM CHIPPEWA AND MACKINAC COUNTIES.

NWS MARQUETTE WEB PAGE IS AT [HTTP://WWW.WEATHER.GOV/MQT](http://www.weather.gov/mqt) (ALL LOWER CASE). CONTACT THE NATIONAL CLIMATIC DATA CENTER AT (828) 271-4800 OR [WWW.NCDC.NOAA.GOV](http://www.ncdc.noaa.gov).

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# **EXHIBIT 2**

Exhibit 2

On behalf of WFRV and WJMN Television Station, Inc., the applicant for an extension of: (1) WJMN-TV's phased transition special temporary authority and; (2) modified digital construction permit, I hereby certify that neither the Applicant nor any party to this application is subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

WFRV and WJMN Television Station, Inc.

By: R. Perry Kidder

Name: R. Perry Kidder

Title: President

Date: Jan 11, 2010