

DOW, LOHNES & ALBERTSON, PLLC
ATTORNEYS AT LAW

SCOTT S. PATRICK
DIRECT DIAL 202-776-2885
spatrick@dowlohn.com

WASHINGTON, D.C.
1200 NEW HAMPSHIRE AVENUE, N.W. • SUITE 800 • WASHINGTON, D.C. 20036-6802
TELEPHONE 202-776-2000 • FACSIMILE 202-776-2222
www.dowlohn.com

ONE RAVINIA DRIVE • SUITE 1600
ATLANTA, GEORGIA 30346-2108
TELEPHONE 770-901-8800
FACSIMILE 770-901-8874

May 17, 2006

VIA ELECTRONIC FILING

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

Re: MB Docket No. 03-15
WLIO-DT (Lima, Ohio)
Facility ID No. 37503
FCC File No. BMPCDT-20060517____
Request for Waiver of July 1, 2006 Replication/Maximization Deadline

Dear Ms. Dortch:

Lima Communications Corporation ("Lima"), permittee of WLIO-DT (Lima, Ohio) (the "Station"), by its attorneys, hereby respectfully requests waiver of the Commission's July 1, 2006 replication/maximization interference protection deadline. Due to circumstances beyond Lima's control, it cannot construct the Station's authorized facilities¹ prior to July 1st. Specifically, because of structure limitations ascertained upon re-evaluation of the existing NTSC tower, Lima will be unable to top mount the Station's DTV antenna as planned and instead must side-mount the antenna as proposed in the above-referenced construction permit application.²

Lima is filing this waiver request in an abundance of caution. Lima specified in its Form 381 Pre-Election Certification that its post-transition operations would be based upon "replication facilities,"³ and, as reflected in the above-referenced construction permit application (copy attached), the proposed DTV service area easily encompasses the NTSC Grade B service

¹ See FCC File No. BMPCDT-20041201BCP.

² In the event the above-referenced construction permit application is not granted in time for Lima to implement such facilities by the July 1st deadline, Lima hereby requests extension of the Station's existing STA (FCC File No. BEDSTA-20051021ABA), which the Commission said it would extend automatically (See DTV Channel Election Issues, *Public Notice*, DA 05-1636 (rel. June 15, 2005) ("*Public Notice*")).

³ See FCC File No. BCERCT-20041104ABJ.

area.⁴ Accordingly, Lima believes the proposed facilities are consistent with its certified “replication facilities.”

The Commission has a freeze on the filing of “expansion” applications,⁵ however, and the Station thus may not increase the proposed power above a certain level so as to contain the proposed service area within that authorized. Accordingly, due to the contour deformities of operating a side-mounted antenna, the proposed service area population is less than that associated with the Station’s existing DTV allotment.⁶ As such, notwithstanding the fact that the Station’s proposed service area population is more than twice that of the NTSC Grade B service area population, if the Commission were to apply the currently allotted DTV parameters as the baseline for “replication,” then the proposed facilities would result in a service area population shortfall, thus necessitating a waiver.

Accordingly, in an abundance of caution, Lima hereby requests waiver of the July 1, 2006 replication/maximization interference protection deadline. Lima submits that this waiver request satisfies the standards set forth in the Commission’s *Public Notice*.⁷ Although the Station is prevented from operating at this time with a top-mounted antenna, it nonetheless still will provide service beyond the NTSC Grade B contour. All persons receiving the Station’s analog signal still would receive the Station’s digital signal. Indeed, the proposed increase in service is substantial, with the Station’s DTV service reaching 910,391 persons compared to the existing NTSC service area population of 426,796.⁸

In its *Second DTV Periodic Review Report and Order*,⁹ the Commission adopted a July 1, 2006 replication/maximization interference protection deadline for all DTV licensees not subject to the July 1, 2005 deadline. The Commission stated that, in cases where a station was unable to meet the applicable deadline due to “circumstances beyond a station’s control,” it would “grant extensions of the applicable replication or maximization interference protection deadline on a six-month basis if good cause is shown.”¹⁰ To receive such a waiver, broadcasters were required

⁴ See Exhibit E-4 of the above-referenced construction permit application.

⁵ See Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes, *Public Notice*, DA 04-2446 (Aug. 3, 2004).

⁶ The Station obtained a channel change pursuant to rulemaking, and the Commission accordingly modified the DTV allotment’s associated parameters (which are reflected in the current construction permit). See *Lima, Ohio*, MM Docket 01-51, *Report and Order*, 16 FCC Rcd 10935 (2001).

⁷ *Public Notice* at 3. The *Public Notice* applied to requests for waiver of the July 1, 2005 replication/maximization deadline applicable to stations in the top 100 markets affiliated with the top 4 networks. Lima understands, however, that similar standards will apply to requests for waiver of the July 1, 2006 replication/maximization deadline.

⁸ See Exhibit E-4 of the above-referenced construction permit application.

⁹ Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, *Report and Order*, 19 FCC Rcd 18279 (rel. Sept. 7, 2004) (“*Report and Order*”).

¹⁰ *Id.*, ¶ 87. See also *Public Notice*.

to make a showing “similar to that required to obtain a waiver of the DTV construction deadlines.”¹¹

In its June 14, 2005 *Public Notice*, the Commission recognized that certain stations, although unable to reach 100% maximization or replication, nevertheless would be able to come close to meeting the applicable coverage requirements – and the Commission specifically cited the example of coverage shortfalls due to the use of side-mounted DTV antennas.¹² The Commission requested that stations submit the following information in conjunction with any request for waiver: “(1) how close to full replication/maximization the station will be as of the deadline; (2) the reason the station is unable to fully comply; (3) the cost to the station and the impact on viewers if the station were required to fully comply; (4) whether the station will be able to modify its operation to fully comply after analog operation terminates (*e.g.*, relocate their DTV antenna to the top of the tower); and (5) any other relevant factors.”¹³

Lima responds to these specific inquiries as follows: (1) the proposed operations will reach 213% of the Grade B service area population and 91.1% of the construction permit service area population;¹⁴ (2) the Station is prevented from operating as authorized in its current construction permit because it cannot top mount its DTV antenna during the transition as anticipated; (3) N/A; and (4) it is unknown at this time whether circumstances will permit the Station to top-mount the DTV antenna post-transition; and (5) the Station serves one of the smallest markets in the country (DMA #194), the market area is entirely encompassed by the proposed service area, and all those capable of receiving the Station’s NTSC signal will receive the DTV signal.

¹¹ *Report and Order*, ¶ 87.

¹² *Public Notice* at 3. The *Public Notice* applied to requests for waiver of the July 1, 2005 replication/maximization deadline applicable to stations in the top 100 markets affiliated with the top 4 networks. Paxson understands, however, that similar standards will apply to requests for waiver of the July 1, 2006 replication/maximization deadline.

¹³ *Id.*

¹⁴ Specifically, the predicted service area population resulting from the facilities authorized in FCC File No. BMPCDT-20041201BCP is 998,812.

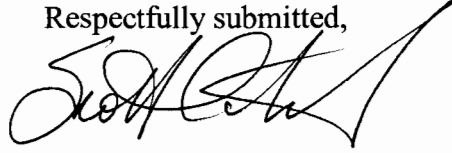
Federal Communications Commission

May 17, 2006

Page 4

Based upon the foregoing, Lima believes that it has shown good cause for the Commission to grant waiver of the July 1, 2006 deadline for the Station. Should any questions arise, please contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Scott S. Patrick', written in a cursive style.

Scott S. Patrick

cc: Shaun Maher (FCC)



The FCC Acknowledges Receipt of Comments From ...

Lima Communications Corporation

...and Thank You for Your Comments

Your Confirmation Number is: **'2006517795239 '**

Date Received: **May 17 2006**

Docket: **03-15**

Number of Files Transmitted: **1**

DISCLOSURE

This confirmation verifies that ECFS has received and accepted your filing. However, your filing will be rejected by ECFS if it contains macros, passwords, redlining, read-only formatting, a virus or automated links to source documents that is not included with your filing. Filers are encouraged to retrieve and view their filing within 24 hours of receipt of this confirmation. For any problems contact the Help Desk at 202-418-0193.

[Initiate a Submission](#) | [Search ECFS](#) | [Return to ECFS Home Page](#)

FCC Home Page | **Search** | **Commissioners** | **Bureaus/Offices** | **Finding Info**

updated 12/11/03