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In re: Capstar TX Limited Partnership
WKOX(AM), Framingham, MA
Facility ID No. 20441
File No. BMJP-200010112AAQ

Champion Broadcasting Systems, Inc
WUNR(AM), Brookline, MA
Facility ID No. 10118
File No. BP-20020215ABN

WRCA License, LLC
WRCA(AM), Waltham, MA
Facility ID No. 60695
File No. BMP-20020926ACN

Dear Counsel:

This letter concerns recent filings by Capstar TX Limited Partnership (“Capstar”), Champion Broadcasting System, Inc. (“Champion”), and WRCA License, LLC (“WRCA”) concerning the expiration dates of the above-referenced broadcast construction permits. For the reasons discussed below, we determine that litigation-based tolling treatment has ended but that the stations should receive additional construction time by waiver.

WKOX(AM), WUNR(AM) and WRCA(AM) are separately owned, licensed, and operating stations with authority to relocate to a single shared location in Newton, Massachusetts.¹ The local

¹ Champion has operated WUNR(AM) at the site since 1987. Champion, WRCA, and Capstar plan to tear down the existing towers and to replace them elsewhere on the site with five new towers from which they would triplex.

government denied the parties' zoning application based on environmental concerns and the parties initiated a court appeal. We granted tolling treatment during the litigation pursuant to Section 73.3598(b)(ii) of the Commission's Rules.² On January 20, 2006, the parties notified the Commission that the litigation ended on December 20, 2005, pursuant to a settlement agreement approved by the court.³ Accordingly, we have updated the broadcast database to provide each station with the remainder of its three-year construction period. The revised expiration dates of the WKOX(AM), WUNR(AM), and WRCA(AM) permits are April 26, 2007, October 14, 2006, and November 27, 2006, respectively.

The parties' January 20, 2006, submissions also notified the Commission that the local government had placed numerous conditions on construction as part of the settlement and that the parties were requesting additional construction time based on some of those conditions. On March 24, 2006, the parties provided supplemental information. The parties demonstrate that their authority to use the site is subject to state and local restrictions designed to protect the blue-spotted salamander and its habitat. The presence of the salamanders was apparently unknown to the parties at the time they received their FCC construction permits in 2002. Now, as a result of that discovery, local authorities prohibit construction at the site during the adult salamander migration/breeding period (February 15 –May 15), and limit the activities that may be performed during the juvenile salamander dispersal period (July 1 to September 30).⁴ The permissibility of construction during the remaining months depends on such factors as ground water levels and the use of low impact equipment or manual labor in environmentally sensitive areas.⁵ The parties argue that their compliance with these environmental conditions will make it impossible to complete construction by their respective permit expiration dates. They submit a proposed construction schedule estimating completion of the project between September 2007 and December 2007, depending upon whether actual conditions at the site trigger a particular environmental requirement. Accordingly, the parties seek a waiver of the three-year broadcast construction rule.⁶

The Commission has recognized that waiver of the three-year construction rule is appropriate when rare and exceptional circumstances beyond a permittee's control prevent construction.⁷ The present circumstances meet that standard. The parties have constructed, operated, and served the public for many years with these three stations. Their permits to improve these facilities have, however, become subject to environmental conditions imposed by the local government and approved by a court to settle protracted litigation. It is clear that these conditions impose extremely restrictive construction requirements on each of these licensees. In contrast to routine local zoning restrictions, the conditions at issue in the present case effectively require construction activity to cease for substantial periods each year. The parties' proposed construction schedule appears designed to make all progress possible within the permittees' control, consistent with these exceptional restrictions. For example, during the salamander migration and

² 47 C.F.R. § 73.3598(b)(ii) (tolling based on litigation "relating to any necessary local, state, or federal requirement for construction or operation of the station, including any zoning or environmental requirement"). See Letter to Nia Y. McDonald, Esq., Re: WKOX(AM) (MB Apr. 5, 2005); Letter to Robert B. Jacobi, Esq., Re: WUNR(AM) (Apr. 5, 2005); Letter to Dennis P. Corbett, Esq. Re: WRCA(AM) (MB Jan. 1, 2005).

³ See 47 C.F.R. § 73.3598(d).

⁴ See City of Newton Conservation Commission, Order of Conditions Pursuant to the Wetlands Protection Act and the Newton Floodplain/Watershed Protection Ordinance, Condition 45 at 4-F (Apr. 17, 2003) (incorporated into November 21, 2005 Order of the City of Newton Board of Alderman and submitted as Joint Waiver Request, Attachment 2).

⁵ *Id.* at Condition 50, 4-H.

⁶ See 47 C.F.R. § 73.3598(a).

⁷ See *Streamlining of Mass Media Applications, Rules, and Processes*, 14 FCC Rcd. 17525, 17537 (1999).

breeding period of February 15 through May 15, 2006, the parties state that they are prohibited from working outside but have obtained the local government's permission to work inside the site's existing transmitter building to upgrade it from a one-station to a three-station operation.

Accordingly, we grant an initial six-month waiver of Section 73.3598(a) to each of the parties based on their representations that they will adhere to the construction schedule submitted on March 23, 2006, local conditions permitting. The parties shall file written requests to continue the waiver, as needed, at six month intervals. Each request must include a short report which either (1) certifies that it has made all expected progress pursuant to the March 23, 2006, construction schedule or (2) details the progress made, explaining why expected progress was not possible, and describing actions taken or that it plans to take in response to any adverse development.

Sincerely,

Peter H. Doyle
Chief, Audio Division
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