

F.C.C. 70-592

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

<p style="text-align: center;">In the Matter of AMENDMENT OF SECTION 1.598 OF THE COM- MISSION'S RULES TO PROVIDE A REVISED PE- RIOD FOR CONSTRUCTION FOR VARIOUS BROAD- CAST STATIONS</p>	}	Docket No. 18763
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REPORT AND ORDER

(Adopted June 3, 1970)

BY THE COMMISSION:

1. The Commission here considers the "Notice of Proposed Rule-making" in this docket, adopted December 3, 1969 (F.C.C. 69-1338). The notice proposed amendment of section 1.598 dealing with time to construct a broadcast facility, and more particularly to enlarge the 8-month period for television to 18 months. The notice also requested to comment whether the construction period for standard and FM broadcast services should also be extended, 14 parties filed comments. Those favoring the proposal are the All-Channel Television Society (ACTS); Association of Maximum Service Telecasters, Inc. (AMST); The National Association of Educational Broadcasters (NAEB); Joseph H. Beirne as a member of the board of directors of the Corporation of Public Broadcasting; McKenna and Wilkinson, a firm of communications attorneys; Duhamel Broadcasting Enterprises, a multiple owner; Fisher's Blend Station, Inc., another multiple owner; Jacksonville Television Co., permittee of WKHM-TV, Jackson, Miss. (channel 18); KMSO-TV, Inc., another multiple owner; Percypeny Radio, licensee of AM station WPRJ, Parsippany-Troy Hills, N.J.; Summit Broadcasting Co., Inc., permittee of WJMR-TV, New Orleans, La. (channel 20); Tele Americas Corp. of Florida, permittee of WTML, Miami, Fla. (channel 39); the Land Mobile Communications Council; and Motorola, Inc. The latter two opposed the change in the rule. In addition, joint reply comments were filed by Boston Heritage Broadcasting, Inc., permittee of channel 68, Boston, Mass.; Indian River Television, Inc., licensee of WTVX, Fort Pierce, Fla. (channel 34); Liberty Television, Inc., licensee of KEZI-TV, Eugene, Oreg. (channel 9); and Minshall Broadcasting Co., permittee of channel 20, Gainesville, Fla.

2. The comments generally favor an extension to 18 months for a television construction permit (CP) as proposed in the notice. Those commenting on behalf of radio broadcast stations feel that a similar extension should be made for the aural services. AMST not only favors the proposed extension of the construction period for television but,

indeed, recommends that the period be 24 months in certain circumstances. As already noted, the Land Mobile Communications Council and Motorola, Inc. opposed the proposed change for television; Motorola expresses the view that the reasons for extension are specious and repetitious: LMCC refers to the perpetual longevity of so-called paper television construction permits, i.e., extensions without sufficient reasons for delay. Motorola goes on to say that the Commission should make plain the intent to compel a permittee to complete construction or enforce early cancellation of the CP. NAEB and Joseph H. Beirne point to the plight of educators depending on funding by donations, gifts, and grants.

3. We became particularly aware of the inadequacy of the present 8-month construction permit period set out in section 1.598 of the rules in the so-called idle UHF proceedings. See *Northeast TV Cablevision Corp., et al.*, 21 F.C.C. 2d 442, 443-4; and *Radio Longview Inc., et al.*, 19 F.C.C. 2d 966, 967-8, which discusses the problem generally. Both decisions state that construction permits for new television stations are granted only to qualified applicants who demonstrate capacity and bona fide intention to construct and render broadcast services in accordance with the Commission's rules, and the Commission in awarding permits relies on the permittee's obligation to proceed with construction and to initiate authorized services promptly and expeditiously. In *Northeast TV*, we also pertinently said (21 F.C.C. 2d at 443-444):

The Commission will grant applications for extensions of time in which to complete construction of facilities only where construction was delayed by unforeseen circumstances beyond the permittees' control or where there are other overriding public interest considerations. A permittee who postpones construction because of economic considerations alone exercises his independent business judgment, and thus his failure to construct is attributable to circumstances within his control.

4. Our authority over construction permits derives from section 319 of the Communications Act of 1934, as amended. Of particular note is paragraph (b) which states:

Such permit for construction shall show specifically the earliest and latest dates between which the actual operation of such station is to begin, and, shall provide that such permit will be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow, unless prevented by causes not under the control of the grantee.

Despite the statutory language as to forfeiture, the Commission must act affirmatively to forfeit a CP. *Mass Communicators, Inc. v. FCC*, 266 F. 2d 681 (C.A.D.C., 1959), certiorari denied, 361 U.S. 828. Moreover, forfeiture is discretionary. *MG-TV Broadcasting Co. v. FCC*, 408 F. 2d 1257 (C.A.D.C., 1968).

5. In sum, we here intend not merely to update section 1.598 of the rules to set forth more realistic periods for construction (18 months in the case of television and 12 months in the case of standard and FM stations) which experience indicates will more than suffice for the usual types of problems, but to make clear that henceforth only the closest adherence to section 319 of the act will be countenanced. We reject certain arguments of those commenting as to the lack of obligation in certain respects. Before a CP is granted, the applicant has to

have reasonable assurance of a transmitter site; if he is purchasing equipment on a deferred plan, he must have negotiated with the manufacturer(s) as to the terms of payment; and he must have ascertained the needs of the community. The policy considerations underlying the permittee's obligation to complete construction in a diligent manner have taken on new meaning in many of the larger and medium markets, where no additional AM, FM, or TV channels are available for assignment. In these circumstances, failure to construct promptly and extension of a CP may be detrimental to the listening public and other prospective applicants. If so, this situation cannot be tolerated, for it is contrary to the public interest, convenience, and necessity.

6. While we do not share the views of LMCC and Motorola, nonetheless, we agree that some sort of control must be provided in order for us to be adequately informed of the progress being made toward completion of construction. Thus, in the case of television permittees, we are providing that a report must be filed during the ninth month after the date of the grant of the construction permit, setting forth the status of construction. If it is felt that the report does not show that a satisfactory degree of progress is being made, we shall so advise the permittee.

7. In amending section 1.598 to provide what are believed to be realistic periods for initial construction, it is felt that the present volume of requests for extension of time to construct will be substantially reduced. Requests may be filed if necessary (using FCC Form 701); but they will be carefully scrutinized and granted only if compelling circumstances are shown indicating that an extension would be in the public interest.

8. In accordance with the foregoing, *It is ordered*, That effective July 13, 1970, section 1.598 of the Commission's rules and regulations *Is amended* to read as set forth in the attached appendix. Authority for the action proposed herein is set out in sections 4(i), 303(r), and 319 of the Communications Act of 1934, as amended.

9. *It is further ordered*, That this proceeding *Is terminated*.

FEDERAL COMMUNICATIONS COMMISSION,  
BEN F. WAPLE, *Secretary*.

#### APPENDIX

Section 1.598 is amended to read as follows:  
"§ 1.598 Period of construction.

"(a) *Television broadcast stations*. Each original construction permit for the construction of a new television broadcast station shall specify a period of 18 months within which construction shall be completed and application for license filed. The permittee shall file a report in the ninth month after the grant of the construction permit setting forth the progress made toward building the station; such progress report shall be signed by the principal(s) of the permittee.

"(b) *Standard or FM broadcast stations*. Each original construction permit for the construction of a new standard or FM broadcast station shall specify a period of 12 months within which construction shall be completed and application for license filed."