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March 31, 2016

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
9300 East Hampton Drive  
Capitol Heights, MD 20743

*Via Overnight Delivery*

Attn: Audio Division, Media Bureau – Vicky McCauley

Re: Waiver of FM Translator Construction Permit Deadline  
250-Mile Window (Second Window)  
K273CG (File No. BMPFT-20160121AGG)

Dear Ms. Dortch:

This letter is being filed pursuant to footnote 36 of the AM Revitalization Order, FCC 15-142.<sup>1</sup> By this letter, WGEM License, LLC (“WGEM”), the proposed assignee in File No. BAPFT-20160303AAR (the “Pending Assignment Application”), of the construction permit of FM Translator Station K273CG (File Nos. BMPFT-20160121AGG, BNPFT-20030317IYW, and BNPFT-20130326BCT, collectively referred to herein as the “Construction Permit”) requests, through undersigned counsel, a waiver<sup>2</sup> of the construction deadline set forth in the Construction Permit.

Footnote 36 of the AM Revitalization Order states:

A substantial majority of the approximately 1300 outstanding Auction 83 construction permits are scheduled to expire in 2016. Modification

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<sup>1</sup> *Revitalization of the AM Service*, First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, 30 FCC Rcd 12145 (2015) (“AM Revitalization Order”); *see also Media Bureau Initiates AM Revitalization Outreach Efforts; Modification Window Procedures and Requirements Announced*, Public Notice, 30 FCC Rcd 11601 (2015); *Media Bureau Announces Filing Dates and Procedures for AM Station Filing Window for FM Translator Modifications and Availability of FM Translator Technical Tools*, Public Notice, 30 FCC Rcd 14690 (2015).

<sup>2</sup> In the alternative, WGEM License, LLC, requests a tolling or extension of the Construction Permit deadline, pursuant to 47 C.F.R. § 73.3598.

applicants in one of these two modification windows may seek waivers of these construction deadlines. *See* 47 C.F.R. §1.3. Waivers can expand cross-service broadcasting opportunities for AM stations, will allow AM licensees to realize service improvements quickly, will incentivize FM translator permittee participation in the modification window process, and will provide a means to avoid the delays and administrative burdens of re-auctioning this spectrum. Accordingly, we find that a waiver of an Auction 83 FM translator construction deadline is presumptively in the public interest for applicants participating in one of the modification windows, provided that the AM station licensee proposing to use the FM translator for rebroadcasting its AM station commits to prompt FM translator station construction and initiation of broadcast operations.<sup>3</sup>

Section 1.3 of the Commission's Rules governs the instant waiver request.<sup>4</sup> Section 1.3 states that waiver of a rule is possible "for good cause shown." 47 C.F.R. § 1.3. In addition, in accordance with Section 1.3 of the Commission's Rules, "[a] waiver is appropriate when special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Northwest Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). WGEM submits that the policy espoused by the full Commission in footnote 36 demonstrates that such special circumstances are present here. In support of its waiver request, WGEM shows as follows:

**The Construction Permit Was Obtained in Auction 83, and the Construction Deadline Is Rapidly Approaching.** As demonstrated in the screen shot below from CDBS, K273CG is an FM Translator that was applied for during the 2003 Auction 83 window and was granted May 7, 2013. *See* File Nos. BNPFT-20030317IYW and BNPFT-20130326BCT. The Construction Permit was subsequently modified by its current permittee in File No. BMPFT-20160121AGG, which did not change the construction deadline. Thus, the Construction Permit is scheduled to expire on May 7, 2016, which is prior to the opening of the Second 250-Mile Window.

Application Search Results								
File Number	Form	Paper/ Elect	Call Sign	Facility Id	Service	Status	Status Date	Details
BAPFT 20160303AAR	345	E	K273CG	156892	FX	ACCEPTED FOR FILING	03/04/2016	<a href="#">Info</a>   <a href="#">Application</a>
BMPFT 20160121AGG	349	E	K273CG	156892	FX	GRANTED	02/02/2016	<a href="#">Info</a>   <a href="#">Application</a>
BNPFT 20130326BCT	349	E	K273CG	156892	FX	GRANTED	05/07/2013	<a href="#">Info</a>   <a href="#">Application</a>
BNPFT 20030317IYW	349	E	K273CG	156892	FX	GRANTED	05/07/2013	<a href="#">Info</a>   <a href="#">Application</a>

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<sup>3</sup> AM Revitalization Order, ¶ 15 n.36.

<sup>4</sup> *See id.* (citing Section 1.3).

**The Pending Assignment Application Contemplates the Filing of the Instant Request.** In the Asset Purchase Agreement included as Attachment 4 to the Pending Assignment Application, the assignor and WGEM agreed that a request to extend the expiration date of the Construction Permit would be filed. See File No. BAPFT-20160303AAR, Exh. 4, Attachment 4, FM Translator Asset Purchase Agreement, Section 2. Media Bureau Staff has informally advised that the Pending Assignment Application will not be granted until after a 250-Mile Application has been filed in the Second Window. See Email Correspondence Dated March 3, 2016, from Parul Desai to Stephen Hartzell (stating “the assignment application will not be granted until you file the mod app in the second window”). The current permittee of the Construction Permit (i.e., the assignor) has reviewed the instant request and consented to its filing.

**Waiver of the Construction Deadline Is Necessary for WGEM to File in the Second 250-Mile Window.** WGEM’s AM station, WGEM(AM), Quincy, Illinois, is a Class B facility, which means it is eligible to file a 250-Mile Application only during the Second Window, which is scheduled to open on July 29, 2016. Because the Construction Permit is scheduled to expire May 7, 2016, K273CG would not be an eligible facility for a 250-Mile Application during the Second Window unless its expiration date were to be waived and extended. Thus, the waiver requested by this letter is the *sine qua non* of WGEM’s ability to file a minor modification application during the Second 250-Mile Window for the benefit of WGEM(AM).

**WGEM Is Fully Committed to Promptly Constructing the FM Translator for Use with WGEM(AM) Following Grant of the Applications.** Following grant of the 250-Mile Application that will be filed during the Second Window and grant of the Pending Assignment Application (and prompt closing of the proposed transaction), WGEM is committed to promptly constructing the facility. Depending on the frequency specified in the 250-Mile Application and in the final permit granted in the Second Window, WGEM may be in a position to construct the facility using readily available equipment. Alternatively, depending on the frequencies still available for use with WGEM(AM) during the Second Window, WGEM may be required to price, order, and take delivery of new equipment to construct the facility. In the latter case, WGEM remains fully committed to prompt construction of the facility, but the timing of such construction is subject to the procurement process, including fabrication and delivery schedules. Moreover, depending on how quickly the applications are granted and equipment delivered (and the availability of a qualified tower crew), winter weather may affect the timing of construction because this facility will ultimately be located in the area of Quincy, Illinois, in the Midwestern United States, an area which is subject to severe winter weather beginning in the autumn months. Notwithstanding such factors—which are beyond the control of WGEM—WGEM is unequivocally committed to prompt construction of the facility. At this juncture, however, it is unclear whether a single, six-month extension of time beyond the May 7, 2016, expiration date of the Construction Permit will be sufficient or whether a longer period of time will be necessary in order for WGEM to construct the facility as promptly as the factors beyond its control will allow.



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For the reasons stated above, and consistent with the policy adopted by the full Commission in the AM Revitalization Order, a waiver of the May 7, 2016, construction deadline for the Construction Permit is respectfully requested. Out of an abundance of caution, a Certification executed by an officer of WGEM is enclosed in support of this request.

If any questions should arise during the course of your consideration of this matter, it is respectfully requested that you communicate with this office.

Sincerely,

BROOKS, PIERCE, McLENDON,  
HUMPHREY & LEONARD, L.L.P.



Stephen Hartzell  
*Counsel to WGEM License, LLC*

Enclosure

cc: Vicky.McCauley@fcc.gov  
Dennis Kelly, Counsel to Construction Permit Assignor (via email)

**CERTIFICATION OF WGEM LICENSE, LLC**

I, Ralph Oakley, hereby certify as follows:

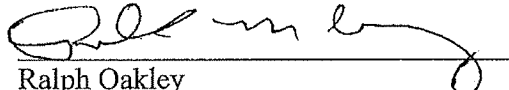
1. I am greater than eighteen years of age and am competent to make this Certification. I am President of WGEM License, LLC, licensee of WGEM(AM), Quincy, Illinois, and proposed assignee of FM Translator K273CG (the "FM Translator").

2. My signature below indicates that: I have reviewed the foregoing letter requesting a waiver of the construction deadline for the FM Translator, I am familiar with its contents, and WGEM License, LLC is fully committed to prompt construction of the FM Translator following grant of a 250-Mile Application during the Second Window and grant of the Pending Assignment Application. I have reviewed the foregoing letter, and, to the best of my knowledge, information, and belief, I hereby verify the truth and accuracy of the facts contained therein.

The undersigned certifies the foregoing to be true, complete, and correct to the best of his personal knowledge.

This, the 31st day of March, 2016.

By:

  
Ralph Oakley  
President, WGEM License, LLC