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November 30, 2005

VIA ECFS

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

Re: WFFF-DT, Burlington, Vermont  
Facility Id. No. 10132  
MB Docket No. 05-317  
TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST

Dear Ms. Dortch:

On behalf of Smith Media License Holdings, LLC (“Smith”) licensee of WFFF-DT, Burlington, Vermont, and pursuant to the Commission’s Public Notice dated November 17, 2005,<sup>1</sup> we hereby request a waiver of Section 339(a)(2)(D)(vii) of the Communications Act of 1934, as amended.<sup>2</sup>

The Satellite Home Viewer Extension and Reauthorization Act of 2004<sup>3</sup> (“SHERVA”) permits certain satellite subscribers to qualify for satellite retransmission of distant digital network signals unless the Commission grants the local network station a waiver.<sup>4</sup> To qualify for a waiver, the local network station must demonstrate that its digital signal coverage is limited due to the unremediable presence of one or more of the following factors:

- (I) the need for international coordination or approvals;
- (II) clear zoning or environmental legal impediments;
- (III) force majeure;

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<sup>1</sup> See TV Stations Request for Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004 to be Filed by November 30, 2005, or February 15, 2007, *Public Notice*, DA 05-2979 (rel. Nov. 17, 2005).

<sup>2</sup> See 47 U.S.C. § 339(a)(2)(D)

<sup>3</sup> Satellite Home Viewer Extension and Reauthorization Act of 2004, Pub. L. No. 108-447, 118 Stat. 3393.

<sup>4</sup> See 47 U.S.C. § 339(a)(2)(D)(viii).

- (IV) the station experiences a substantial decrease in its digital signal coverage area due to necessity of using side-mounted antenna; or
- (V) no satellite carrier is providing the retransmission of the analog signals of local stations under section 338 in the local market.<sup>5</sup>

WFFF-DT qualifies for a waiver because circumstances beyond Smith's control, including the need for international coordination and zoning impediments, have prevented the construction of WFFF-DT's digital facilities. All television construction permit applications specifying transmitter coordinates within 400 kilometers of the Canadian border are subject to the terms of a treaty between the United States and Canada.<sup>6</sup> The proposed WFFF-DT digital transmitter site is located within 54.9 kilometers of the Canadian border.<sup>7</sup> In fact, the entire Burlington-Plattsburgh designated market area is located within the 400 kilometer Canadian border zone. Consequently, any transmitter site that Smith would have selected for the WFFF-DT digital facilities would have required concurrence from the Canadian Department of Communications ("CDC"). Smith believes that the WFFF-DT construction permit remains pending because of, *inter alia*, CDC review.

WFFF-DT primarily qualifies for a waiver because clear zoning and environmental legal impediments have prevented the construction of a tower where Smith proposes to locate its DTV facilities. Smith and four other FCC licensees have proposed to construct DTV facilities on a tower atop Mt. Mansfield, the highest peak in Vermont and an environmentally sensitive location. The State of Vermont's restrictive environmental regulations required all television broadcasters in the state to present a joint tower proposal. In January 2003, the broadcasters reached a settlement agreement with the state and submitted an application for zoning approval. Finally, in April 2005 (after a delay of more than eight years) the Vermont District Five Environmental Commission issued a permit approving the construction of the proposed tower.

As previously disclosed to the Commission, environmental and zoning opposition caused this eight-year delay. On June 23, 2005, Smith and the three other commercial television licensees submitted the attached request for a waiver of the July 1, 2005 replication and maximization deadline.<sup>8</sup> In this waiver request, Smith fully discussed the zoning and environmental approval process for the tower on Mt. Mansfield. Furthermore, the FCC licensees for WPTZ(TV) and WCAX-TV, which also propose to construct DTV facilities at the Mt. Mansfield site, have submitted five separate requests for extensions of time to construct their DTV facilities because of these zoning and environmental delays. The Commission has granted

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<sup>5</sup> *Id.*

<sup>6</sup> See Working Arrangement for Allotment and Assignment of UHF and VHF Television Broadcasting Channels Under the Agreement between the Government of the United States of America and the Government of Canada Relating to the TV Broadcasting Service, U.S.-Can., Mar. 1, 1989.

<sup>7</sup> See FCC File No. BPCDT-19991029ABX.

<sup>8</sup> See Letter from William R. Richardson, Jr., et al. to Marlene H. Dortch, June 23, 2005;

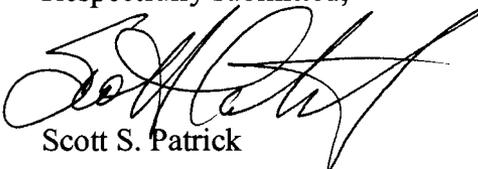
all five of these requests.<sup>9</sup> In fact, the Commission declared that the tower siting delays experienced in Vermont “qualify as uncontrollable and unforeseeable delays that warrant extension of [the] DTV construction deadline[.]”<sup>10</sup>

Since receiving zoning approval, Smith and the other FCC licensees proposing to construct at this site have proceeded expeditiously to complete construction of the DTV tower. The construction crews have poured the foundations for the tower and completed construction of the building at the site. Nevertheless, the extreme weather conditions on Mt. Mansfield render construction virtually impossible between October 15 and June 1. Consequently, Smith does not anticipate completing construction until the fall of 2006.

Based on the foregoing and pursuant to Section 339(a)(2)(D)(viii), we respectfully submit that WFFF-DT qualifies for a waiver under the Act. Accordingly, we request that the Commission grant a waiver for WFFF-DT.

Please contact me if you have any questions about this waiver request.

Respectfully submitted,



Scott S. Patrick

Enclosures

cc(w/): Ms. Nazifa Sawez (FCC)

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<sup>9</sup> See *WPTZ-DT Application for Extension of Time to Construct a Digital Television Station*, BEPCDT-20050406AAB (granted May 20, 2005); *WCAX-DT Application for Extension of Time to Construct a Digital Television Station*, BEPCDT-20040218ALN (granted Mar. 15, 2005); *WCAX-DT Application for Extension of Time to Construct a Digital Television Station*, BEPCDT-20030527ABQ (granted Oct. 24, 2003); *WCAX-DT Application for Extension of Time to Construct a Digital Television Station*, BEPCDT-20020910ABE (granted Feb. 5, 2003); *WCAX-DT Application for Extension of Time to Construct a Digital Television Station*, BEPCDT-20020227ADT (granted Mar. 28 2002).

<sup>10</sup> *DTV Build-out, Requests for Extension of the Digital Television Construction Deadline, 40 Commercial Television Stations with May 1, 2002 Deadline*, 20 FCC Rcd. 5773, ¶¶ 9, 16 (2005).