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VIA ECFS

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

**Re: MB Docket No. 05-317
WABC-TV, New York, New York, Facility ID No. 174
TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST**

Dear Ms. Dortch:

American Broadcasting Companies, Inc. (“ABC”), the licensee of WABC-TV and permittee of WABC-DT, New York, New York, Facility ID No. 174, by its attorneys, hereby requests a six-month waiver (“Testing Waiver”) of the April 30, 2006 digital signal testing April Deadline (“April Deadline”) applicable to certain network stations located in the top 100 television markets to temporarily preclude satellite subscribers from conducting a digital signal strength test of WABC-DT for purposes of obtaining a distant network signal. The Testing Waiver is sought pursuant to Section 339(a)(2)(D) of the Communications Act (“Section 339”), as amended by the Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”), and the November 17, 2005 public notice (“Waiver PN”) released by the Federal Communications Commission (“FCC”).¹ As further set forth herein, grant of a Testing Waiver is consistent with Section 339 because WABC-DT’s digital signal coverage presently is limited due to *force majeure*, *i.e.*, circumstances beyond its control—namely, the 9/11 terrorist attacks that destroyed its facilities at the World Trade Center.

WABC-DT Is Not Subject to the April Deadline. As an initial matter, ABC believes that WABC-DT is not subject to the April Deadline. The April Deadline applies to network stations in the top 100 television markets that received their current digital channel as their post-transition

¹ See 47 U.S.C. § 339(a)(2)(D) as amended by Section 204 of SHVERA; TV Station Requests 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, DA 05-2979, *Public Notice* (rel. Nov. 17, 2005) (“Waiver PN”).

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channel or were found by the FCC to have lost interference protection.² Although WABC-DT tentatively selected its digital channel in the second round of channel elections, to date, WABC-DT has not received a tentative channel designation.³ Moreover, at this time, WABC-DT's request for a waiver of the FCC's July 1, 2005 replication deadline remains pending and WABC-DT has not been found by the FCC to have lost interference protection.⁴ However, it is possible that, prior to the April Deadline, WABC-DT will (1) receive its current digital channel as its tentative post-transition channel and/or (2) lose interference protection if the FCC rejects the WABC-DT replication waiver request. Given these possibilities, in an abundance of caution, WABC-DT is filing the instant request for a Testing Waiver.

WABC-DT's Digital Signal Coverage is Limited Due to Force Majeure. To the extent the FCC determines that WABC-DT is subject to the April Deadline, ABC seeks a Testing Waiver pursuant to Section 339. Section 339 provides that certain network stations may obtain a temporary waiver of satellite subscriber digital signal testing if "the station's digital signal coverage is limited due to the unremediable presence of one or more" statutory criteria, including a force majeure event⁵ ABC requests a Testing Waiver for WABC-DT on the basis of force majeure, namely, the September 11, 2001 terrorist attacks on the World Trade Center.

WABC-DT built full-power DTV facilities at the World Trade Center and applied for a license to cover these facilities in July 2001.⁶ While this license to cover application was pending, the September 11, 2001 terrorist attacks destroyed WABC-DT's facilities. After studying different locations from which it could restore service, ABC applied for and obtained special temporary authorizations ("STAs") for auxiliary DTV facilities at two New York sites—the 4 Times Square Building ("4TS") and the Empire State Building ("ESB").⁷ ABC later

² See 47 U.S.C. § 339(a)(2)(D)(vii).

³ See BFRCCCT-20050815AEJ (filed Aug. 8, 2005). WABC-DT has filed with the FCC an emergency request for waiver of the 0.1 percent interference standard that would permit it to operate digitally on its analog channel post-transition.

⁴ See Letter to Ms. Marlene H. Dortch, Secretary, FCC, from Tom W. Davidson, Esq., MB Docket No. 03-15 (filed July 1, 2005).

⁵ 339(a)(2)(D)(viii)(V)

⁶ See FCC File No. BLCDT-20010710ABU.

⁷ See FCC File No. BEDSTA-20041117AEL (4TS); BEXSTA-20050301AET (ESB). The facilities covered by the STAs are fully subsumed within the predicted 41 dBu contour of the

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constructed auxiliary DTV facilities at both of these sites. ABC also obtained a construction permit for the auxiliary facilities at ESB and recently has filed a license to cover application.⁸ ABC plans to construct more permanent replacement facilities, likely at one of its auxiliary sites or at the World Trade Center site, but cannot build those facilities prior to the April Deadline.⁹ In sum, because WABC-DT's original DTV facilities were destroyed in the September 11, 2001 terrorist attacks, a force majeure event, ABC satisfies the statutory criteria for a Testing Waiver. Accordingly, the FCC should grant WABC-DT a Testing Waiver of the April Deadline.

Conclusion. For all of the reasons set forth herein, ABC respectfully requests that the Commission grant a Testing Waiver for WABC-DT.

Please direct any questions or inquiries regarding this matter to the undersigned.

Respectfully submitted,

/s/

Tom W. Davidson, Esq.

cc: Nazifa Sawez, Esq.

station's initial DTV allotment while providing the required DTV city grade contour over the station's principal community of license.

⁸ See BXPCDT-20040803ACD (granted Apr. 29, 2005); BXLCDT-20051012ACE (filed Oct. 12, 2005)

⁹ While examining all potential permanent solutions, ABC has constructed and operated auxiliary DTV facilities at ESB that serve nearly all of the persons within the station's initial DTV allotment (WABC-DT's current replication percentage is 99.34%.)