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November 30, 2005

VIA ECFS

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

Re: MB Docket No. 05-317  
WJRT-TV, Flint, Michigan, Facility ID No. 21735  
TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST

Dear Ms. Dortch:

Flint License Subsidiary Corp. (“Flint License”), licensee of WJRT-TV and WJRT-DT, Flint, Michigan, Facility ID No. 21735, by its attorneys, hereby requests a six-month waiver (“Testing Waiver”) of the April 30, 2006 digital signal testing implementation date (“April Deadline”) to temporarily preclude satellite subscribers from conducting a digital signal strength test of WJRT-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 (“Commission”).<sup>1</sup> As further set forth herein, WJRT’s digital signal coverage presently is limited due to the necessity of using a side mounted antenna below its top-mounted analog antenna, and its plans to use its current analog antenna as its digital antenna post-transition. For these and other reasons set forth herein, Flint License submits that grant of a Testing Waiver is consistent with Section 339 and is in the public interest.

WJRT-DT Is Not Subject to the April Deadline. As an initial matter, Flint License believes that WJRT-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

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<sup>1</sup> 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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their post-transition channel or were found by the FCC to have lost interference protection.<sup>2</sup> WJRT-DT was awarded a tentative channel designation on its present analog channel and has not lost interference protection at this time. However, WJRT-DT has requested a waiver of the Commission's replication deadline of July 1, 2005, and this request ("Replication Waiver Request") remains pending.<sup>3</sup> If the Commission rejects the WJRT-DT Replication Waiver Request, WJRT-DT may lose interference protection. Given this possibility, WJRT-DT is filing the instant Testing Waiver out of an abundance of caution.

WJRT-DT Uses a Side-Mounted Antenna. To the extent that the Commission determines that WJRT-DT is subject to the April Deadline, Flint License requests a Testing Waiver pursuant to Section 339. Section 339 provides that subject 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. One criterion considered is whether "the station experiences a substantial decrease in its digital signal coverage area due to the necessity of using a side-mounted antenna."<sup>4</sup> Flint License requests a Testing Waiver for WJRT-DT on the basis of this criterion.

WJRT-DT currently is unable to serve 64,381 people predicted to be served by WJRT-DT's initial DTV allotment because of the current side-mounted position of its antenna.<sup>5</sup> The top position on the Flint License tower is occupied by the WJRT-TV antenna. As a result, Flint License had to side-mount WJRT-DT's antenna on the tower's lower and wider base. The large size of the tower at this level causes signal blockage and reduces the number of viewers that WJRT-DT can reach.<sup>6</sup> Flint License cannot remedy this signal blockage by moving its antenna because, as indicated above, the higher position is occupied by the NTSC antenna.<sup>7</sup> Flint License also cannot remedy this problem now because it will use its current NTSC antenna as its DTV antenna post-transition. Specifically, because Flint License will use its current NTSC

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

<sup>3</sup> See Letter to Ms. Marlene H. Dortch, Secretary, FCC, from Tom W. Davidson, Esq., MB Docket No. 03-15 (filed July 1, 2005) ("Replication Waiver Request").

<sup>4</sup> 339(a)(2)(D)(viii)(V)

<sup>5</sup> WJRT's current replication percentage is 96.9%. See Replication Waiver Request, at 2.

<sup>6</sup> The tower does not similarly impede the signal of WJRT-TV because the WJRT-TV antenna is attached to a narrower and higher portion of the tower, above the WJRT-DT side-mounted antenna.

<sup>7</sup> Flint License also examined possible ways to increase WJRT-DT's coverage, aside from a switch of antenna positions; however, these studies found no viable solution.

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channel as its post-transition DTV channel, it will use the current WJRT-TV antenna as its antenna for WJRT-DT. However, WJRT-DT must wait until WJRT-TV ceases operation before it can assume use of the WJRT-TV antenna. In sum, WJRT-DT's signal coverage is temporarily limited due to its side-mounted antenna and its plans to use its NTSC antenna for its post-transition operations, and Flint License requests a Testing Waiver on this basis.

Grant of a Testing Waiver Also is in the Public Interest. Grant of a Testing Waiver also is in the public interest because it will have only a short-term, temporary effect on satellite subscribers within WJRT-DT's non-replicated area. Specifically, WJRT-DT will be able to reach these subscribers at the end of the analog transition through the eventual use of the current WJRT-TV antenna. The antenna will remain top-mounted on the tower, and thus will not face the problems currently affecting the side-mounted WJRT-DT antenna. From this position, the WJRT-TV antenna has proven quite capable of serving the station's analog viewers and will continue to capably serve these viewers as the antenna for WJRT-DT. Thus, satellite subscribers will be able to receive WJRT-DT at the end of the digital transition. Because satellite subscribers soon will receive WJRT-DT, the Commission should delay testing that could permit subscribers to receive distant digital signals indefinitely, well-beyond the short-term period during which they could not receive WJRT-DT over-the-air.<sup>8</sup>

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

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

Respectfully submitted,

/s/

Tom W. Davidson, Esq.

cc: Nazifa Sawez, Esq.

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<sup>8</sup> At a minimum, the Commission should ensure that the term of any permissible distant signal delivery is limited so that satellite subscribers no longer may receive distant network signals once they are capable of receiving local digital signals over-the-air.