

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
)
Waiver of Digital Testing Pursuant) MB Docket No. 05-317
To the Satellite Home Viewer)
Extension and Reauthorization Act)
Of 2004)
)
)
)

To: The Commission

REPLY COMMENTS OF INDEPENDENCE TELEVISION COMPANY

Independence Television Company (“Independence”), licensee of WDRB(TV), Louisville, Kentucky, by its attorneys, hereby replies to the Opposition of EchoStar Satellite L.L.C.¹ (“EchoStar”) in the above-captioned proceeding. On November 30, 2005, Independence submitted its request pursuant to the Commission’s Public Notice dated November 17, 2005,² for a waiver under Section 339(a)(2)(D)(viii) of the Communications Act of 1934, as amended.³ In its waiver request Independence demonstrated that WDRB-DT is entitled to a waiver because the station experiences “a substantial decrease in its digital signal coverage area due to necessity of using a side-mounted antenna.”⁴

¹ See Opposition of EchoStar Satellite L.L.C. filed in MB Docket No. 05-317 (Dec. 30, 2005) (“EchoStar Opposition”).

² 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 17, 2007, *Public Notice*, DA 05-2979 (rel. Nov. 17, 2005).

³ See 47 U.S.C. § 339(a)(2)(D)(viii).

⁴ Letter from Scott S. Patrick, Counsel to Independence Television Company, to Marlene H. Dortch, Secretary, FCC, filed in MB Docket No. 05-317 (filed Nov. 30, 2005).

EchoStar filed an opposition to Independence's request for waiver of digital signal testing procedures because, *inter alia*, EchoStar does not know whether Independence has constructed a side-mounted antenna⁵ or if a service loss of over 120,000 people is "substantial."⁶ Such grounds for opposition strike Independence as desperate at best and disingenuous at worst. Had EchoStar felt compelled to educate itself on the rudimentary aspects of broadcast regulation, for which it so often has filed extensively detailed comments, or to conduct a simple review of the Commission's CDBS database, it would have seen that Independence did construct a side-mounted DTV antenna.⁷ Indeed, had EchoStar reviewed Independence's publicly available filings on this matter, it would have learned that Independence was forced to install a side-mounted DTV antenna because it otherwise could not maintain the structural integrity of its tower.⁸ As such, Independence is at a loss to understand how EchoStar sincerely could declare that "there is no such [WDRB-DT side-mounted] antenna."⁹

Perhaps betraying its posture as a nationwide satellite service provider, EchoStar goes on to question whether Independence's service loss of over 120,000 people is "substantial."¹⁰ Perhaps 120,000 people does not represent a "substantial" amount to a service provider capable

⁵ See EchoStar Opposition at 55.

⁶ See EchoStar Opposition at 56.

⁷ See FCC File No. BLCDT-20051128AHQ.

⁸ The full details of the need for the side-mounted antenna are described in FCC File No. BSTA-20050531BYR.

⁹ See EchoStar Opposition at 56.

¹⁰ See Letter from Scott S. Patrick, Counsel to Independence Television Company, to Marlene H. Dortch, Secretary, FCC, *filed in* MB Docket No. 05-317 (filed Nov. 30, 2005). Although Independence believes its engineering study is accurate, even EchoStar's study shows a service loss of over 100,000 people. See EchoStar Opposition at 56. While Independence stands by its study, using either the service loss from the side-mounted antenna qualifies as "substantial."

of reaching hundreds of millions of people, but it certainly does to a provider of local programming such as Independence – and undoubtedly as well does to the Commission, who regularly refuses to countenance losses of dramatically smaller proportions.¹¹

Independence's waiver request falls squarely within the exemption set forth in Section 339(a)(2)(D)(viii)(IV). To maintain the structural integrity of its tower, Independence was forced to side mount its antenna, resulting in a substantial reduction to its digital service area population. When seen in light of these facts, EchoStar's Opposition and its misstatements therein cannot be supported.

For these reasons, Independence urges the Commission to grant it a waiver from the digital testing rules.

Respectfully submitted,

INDEPENDENCE TELEVISION COMPANY

By: /s/ Scott S. Patrick

Its Attorney

DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, NW, Suite 800
Washington, D.C. 20036
(202) 776-2000

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¹¹ See, e.g., Letter from W. Kenneth Ferree, Media Bureau Chief, *Federal Communications Commission*, to Barry A. Friedman, Counsel, *KJLA, LLC*, DA 05-343 (Feb. 9, 2005) (refusal to approve the loss of 0.25% of a station's measured over-the-air service population).