

**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 KVOA COMMUNICATIONS, INC.**

KVOA Communications, Inc. (“KVOA”), licensee of KVOA-TV, Tucson, Arizona, by its attorneys, hereby replies to the Opposition of EchoStar Satellite L.L.C.<sup>1</sup> (“EchoStar”) in the above-captioned proceeding. On November 30, 2005, KVOA submitted its request pursuant to the Commission’s Public Notice dated November 17, 2005,<sup>2</sup> for a waiver under Section 339(a)(2)(D)(viii) of the Communications Act of 1934, as amended.<sup>3</sup> In its waiver request, KVOA demonstrated that it is entitled to a waiver because of the “unremediable presence of . . . the need for international coordination or approvals.”<sup>4</sup>

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

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

<sup>3</sup> See 47 U.S.C. § 339(a)(2)(D)(viii).

<sup>4</sup> *Id.*

On December 30, 2005, EchoStar filed an Opposition to thirty-six of the requests for waiver of digital signal testing procedures, including KVOA-TV's waiver request. In its Opposition EchoStar first recognizes, as it must, "that *unavoidable* administrative delay caused by the need to obtain Mexican government approval would be a legitimate ground for a waiver," yet in the very same sentence EchoStar claims KVOA has not demonstrated that this "unavoidable administrative delay" is sufficient grounds for a waiver.<sup>5</sup>

EchoStar does not challenge that the KVOA-DT transmitter is located within 275 kilometers of the Mexican border, and EchoStar agrees that Commission must obtain concurrence from the Mexican government before it can grant KVOA's DTV application. Thus, as EchoStar must admit, KVOA's waiver request falls squarely within the international coordination exemption that Congress set forth in § 339(a)(2)(D)(II). Yet, EchoStar still opposes KVOA's waiver request by unreasonably claiming that KVOA is at fault for the lack of Mexican concurrence.

EchoStar's argument is without merit. When Congress set forth the international coordination exemption in § 339(a)(2)(D)(II), it intended to protect applicants such as KVOA who through no fault of their own have been unable to construct DTV facilities due to "unavoidable administrative delay." Congress did not set forth additional requirements, as EchoStar would have it, that to obtain a waiver the applicant must also "facilitate coordination" between the Commission and the Mexican *Secretaria de Comunicaciones y Transportes*.<sup>6</sup>

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<sup>5</sup> See EchoStar Opposition at 5-6 (emphasis added).

<sup>6</sup> EchoStar Opposition at 6.

Perhaps EchoStar's posture reflects its position as a nationwide satellite service provider, but KVOA cannot imagine what EchoStar might reasonably suggest an individual broadcaster can do that the Commission cannot in facilitating international approval. KVOA very much wishes to construct full power digital facilities and looks forward to the grant of its pending construction permit application. Once KVOA receives such authorization, it intends to construct such facilities promptly, thus removing the necessity of a digital testing waiver. To the extent possible, KVOA respectfully urges the Commission to use its good offices to facilitate Mexican approval of the KVOA-DT construction permit application, which, to the best of its knowledge, is not predicted to cause impermissible interference to any authorized Mexican television station. Until grant of this application occurs and construction is completed, KVOA submits that a waiver of the digital testing rules is warranted.

Respectfully submitted,

**KVOA COMMUNICATIONS, INC.**

By: /s/ Scott S. Patrick  
Scott S. Patrick

Its Attorney

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

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