

**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)

**OHIO/OKLAHOMA HEARST-ARGYLE TELEVISION, INC.'S
RESPONSE TO THE FEBRUARY 17 LETTER OF ECHOSTAR SATELLITE
L.L.C.**

Ohio/Oklahoma Hearst-Argyle Television, Inc., permittee of KOCO-DT, Oklahoma City, Oklahoma, (“Hearst”) hereby responds to EchoStar Satellite L.L.C.’s (“EchoStar”) letter regarding Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004—MB Docket No. 05-317 WNBC-DT, WJAR-DT, KTRK-DT, KOCO-DT, dated February 17, 2006 (the “February 17 Letter”), which constitutes an unauthorized sur-reply with respect to Hearst, in the above-referenced proceeding.¹

Regardless of EchoStar’s repeated assertions that Hearst’s waiver request for KOCO-DT presents nothing more than a case of “financial exigency,” the facts of this case and the language of SHVERA give lie to the claim. SHVERA sets forth six specific

¹ Because the Commission’s rules do not contemplate that EchoStar is entitled to any further pleading with respect to KOCO-DT (and EchoStar did not seek leave to file an additional pleading), the portion of its February 17 Letter relating to KOCO-DT should be stricken. Moreover, because EchoStar’s February 17 Letter raises a new argument not set forth in its Opposition (i.e., that Hearst is required to *over*-build its digital facility in order to overcome EchoStar’s position that KOCO-DT’s waiver presents only a case of financial exigency), Hearst is entitled to this response. Should the Commission deem it necessary for Hearst to request leave to submit this response, then Hearst hereby respectfully makes such a request and moves that this response be accepted.

statutory bases on which waiver requests may be granted, including where “the station experiences a substantial decrease in its digital signal coverage area due to the necessity of using a side-mounted antenna.” 47 U.S.C. § 339(a)(2)(D)(viii)(IV). As described in Hearst’s waiver request, KOCO-DT presents precisely such a case.

In its unauthorized sur-reply, EchoStar mischaracterizes Hearst as a DTV transition laggard, which is plainly untrue:

Hearst essentially admits that the “substantial decrease” in coverage area resulting from its use of side-mounted antennas [sic] was not “unremediable,” as required by SHVERA. It could have been remedied with the use of a more powerful transmitter, if only Hearst were willing to spend the money to do so.²

To the contrary, KOCO-DT installed its full-power digital transmitter in October 2002, and, other than the final top-mounted antenna, the facility is fully built out. Under these circumstances, it is absurd for EchoStar to characterize the KOCO-DT waiver request as a “financial exigency” case or to suggest that Hearst should have to purchase and install a transmitter whose power would exceed that required for operation of KOCO-DT’s maximized facility as set forth in FCC File No. BCERCT-20041105ABA. There is no such requirement in the law, and any policy approach that would contemplate such a requirement would be folly indeed—the policy objective at every stage of the DTV transition has been to maximize service to the public, not to maximize expenditures that create

stranded investment.

As set forth in Hearst's waiver request filed with respect to KOCO-DT, it is physically impossible for the supporting tower to support KOCO-DT's antenna at its maximized HAAT until the KOCO-TV antenna is removed from the top of the tower at the end of the digital transition. The unavailability of the tower top is not a "financial exigency," as EchoStar yet again disingenuously characterizes it, but it is an unremediable circumstance—absent a substantial loss of service to existing NTSC viewers—necessitating Hearst's use of a side-mounted antenna for KOCO-DT. This circumstance precisely meets SHVERA's requirement for a digital testing waiver.

Conclusion

For the reasons set forth above and in Hearst's respective waiver request, the digital testing waiver for KOCO-DT should be granted. EchoStar's Opposition to the waiver request should be denied.

Respectfully submitted,

**OHIO/OKLAHOMA HEARST-ARGYLE
TELEVISION, INC.**

_____/s/

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² EchoStar February 17 Letter, at 2.

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February 27, 2006

Certificate of Service

The undersigned, of the law firm of Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., hereby certifies that s/he has caused a copy of the foregoing **Response of Ohio/Oklahoma Hearst-Argyle Television, Inc. to the February 17 Letter of EchoStar Satellite L.L.C.** to be placed in the U.S. Mail, first-class postage prepaid, addressed as follows:

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This the 27th day of February, 2006.

____/s/

Sandra S. Kreps