



Wiley Rein & Fielding LLP

1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

Virginia Office
7925 JONES BRANCH DRIVE
SUITE 6200
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wrf.com

March 24, 2006

John M. Burgett
202.719.4239
jburgett@wrf.com

**FILED ELECTRONICALLY
(VIA ECFS)**

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: MB Docket No. 05-317
KENS-DT, San Antonio, Texas (Facility ID No. 26304)
Response to Opposition of EchoStar Satellite, L.L.C.
TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST

Dear Ms. Dortch:

KENS-TV, Inc., the licensee of KENS-TV and permittee of KENS-DT, San Antonio, Texas ("KENS-DT"), by its attorneys, hereby submits this reply ("Reply") to the opposition ("Opposition") of EchoStar Satellite, L.L.C. ("EchoStar") to KENS-TV, Inc.'s request for a six-month waiver ("Testing Waiver") of the April 30, 2006 digital signal testing implementation date ("Implementation Deadline"). This Reply is filed timely pursuant to the FCC's Public Notice released March 17, 2006.¹

The Opposition asserts that KENS-TV, Inc. has not provided any evidence that its inability to obtain international coordination for its pending DTV minor modification application is or has been unremediable.² As explained herein, the Media Bureau ("Bureau") should reject EchoStar's position because KENS-TV, Inc. has adequately demonstrated that grant of a Testing Waiver is consistent with Section 339(a)(2)(D) of the Communications Act ("Section 339").³

Section 339 provides that network stations subject to the Implementation Deadline may obtain a temporary waiver of satellite subscriber digital signal testing if "the

¹ See Public Notice, *Extension of Time to File Responses to Opposition to TV Station Requests for Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004*, DA 06-579 (rel. Mar. 17, 2006).

² See Opposition at 15.

³ See 47 U.S.C. § 339(a)(2)(D), as amended by Section 204 of the Satellite Home Viewer Extension and Reauthorization Act of 2004.

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station's digital signal coverage is limited due to the unremediable presence of one or more" statutory criteria, including "the need for international coordination or approvals."⁴ KENS-TV, Inc. explained in its request for a Testing Waiver that KENS-DT is not yet able to commence full-power DTV operations because it is awaiting Commission action on a pending FCC Form 301 application that requires international approval from the Mexican government.⁵ As set forth in KENS-TV, Inc.'s request for a Testing Waiver, the application was filed June 27, 2005 to modify KENS-DT's original DTV construction permit to conform it to the station's "as built" facilities. Until Mexican approval is obtained, KENS-DT is constrained from operating at full power. It is clear, therefore, that KENS-TV, Inc. satisfies the statutory criteria for a waiver of the Implementation Date because KENS-DT's digital signal coverage currently is limited due to "the need for international coordination or approvals."

Although EchoStar recognizes that the "unavoidable administrative delay caused by the need to obtain Mexican government approval would be a legitimate ground for waiver," the Opposition asserts that KENS-TV, Inc. is somehow responsible for the unresolved need for international coordination because KENS-DT did not file its minor modification application until June 27, 2005.⁶ This assertion simply carries no weight. There is no requirement under Section 339 of the Communications Act or the FCC's rules requiring television licensees to file applications to modify their digital coverage areas within any specific timeframe. Moreover, contrary to the Opposition's suggestion that the pace of international coordination is somehow determined by how actively a licensee pursues a pending application, it is well established that licensees have little or no opportunity to become involved in the international approval process, which is administered by the Commission and the appropriate international regulatory authority, *e.g.*, Mexico's Secretariat of Communications and Transportation. Indeed, the most that a licensee can do is simply correspond with the FCC staff to determine the status of a pending application that is subject to an international coordination request. Although KENS-TV, Inc. has communicated with the FCC staff numerous times (and will continue to do so) in an effort to expedite the processing of its Form 301

⁴ *Id.*

⁵ *See* Letter to Marlene H. Dortch, Secretary, FCC, from John M. Burgett, Esq., MB Docket No. 05-317 (filed Nov. 29, 2005).

⁶ *See* Opposition at 15.

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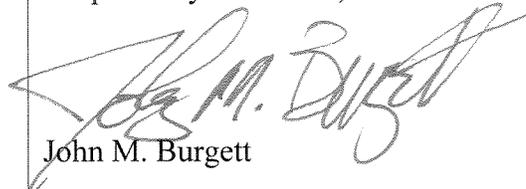
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application, KENS-TV, Inc.'s actions likely have no bearing on the pace of the international coordination process.

In sum, KENS-DT's digital signal coverage is currently limited due to the unremediable need for Mexico to provide international approval for the station's pending modification application. As set forth in KENS-TV, Inc.'s request for a Testing Waiver, the facilities specified in the application are already constructed, but KENS-DT needs a grant of the application before it can turn up the power on its installed transmitter. As soon as Mexican approval is obtained, and the Commission grants the application, KENS-TV, Inc. is prepared to immediately turn up the power and file an application for a license. Accordingly, for the reasons set forth herein, KENS-TV, Inc. respectfully requests that the Bureau deny the Opposition and grant a Testing Waiver for KENS-DT.

This request is being filed electronically using the Commission's Electronic Comment Filing System. Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John M. Burgett", is written over a horizontal line. The signature is stylized and cursive.

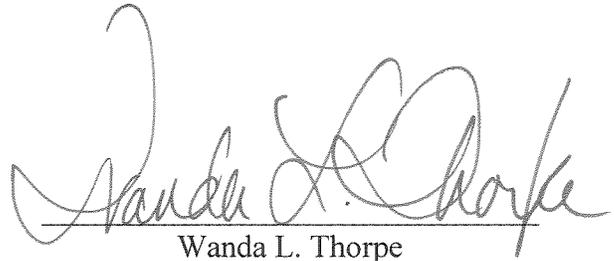
John M. Burgett

CERTIFICATE OF SERVICE

I, Wanda L. Thorpe, hereby certify that on March 24, 2006, I caused a copy of the foregoing Response to Opposition of EchoStar Satellite, L.L.C. to be mailed via first-class postage prepaid mail to the following:

Nazifa Sawez
Federal Communications Commission
445 12th Street, S.W., Room 2-A726
Washington, DC 20445
Via E-mail: Nazifa.Sawez@fcc.gov

David K. Moskowitz
Executive Vice President and General
Counsel
EchoStar Satellite, L.L.C.
9601 South Meridian Boulevard
Englewood, CO 80112



Wanda L. Thorpe