

July 7, 2006

**VIA ELECTRONIC FILING**

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

Re: MB Docket No. 03-15  
KEYT-DT (Santa Barbara, California)  
Facility ID No. 60637  
Request for Waiver of July 1, 2006 Replication/Maximization Deadline

Dear Ms. Dortch:

Smith Media License Holdings, LLC (“Smith”), permittee of KEYT-DT, Santa Barbara, California (the “Station”), by its attorneys and pursuant to the Commission’s *Public Notice*,<sup>1</sup> hereby respectfully requests waiver of the Commission’s July 1, 2006 replication/maximization interference protection deadline. Due to circumstances beyond Smith’s control, the Station cannot further increase power prior to July 1, 2006 and thereby allow replicated coverage of the Grade B contour. As described herein, Smith believes the Station’s current operations at the maximum power practically allowed will “come close to meeting the applicable . . . requirements”<sup>2</sup> by serving more than 84.3% of the population within the replication service area. Because this service area falls short of that certified, however, Smith respectfully requests waiver to extend the deadline.

**Construction of Certified Facilities Prevented**

The Station prior to the deadline cannot further increase power and thereby replicate coverage because of utility company limitations at the Station’s antenna site. Currently, Smith operates the Station pursuant to STA with an ERP of 250 kW from a site atop Broadcast Peak

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<sup>1</sup> See *DTV Channel Election Issues—Compliance with the July 1, 2006 Replication/Maximization Interference Protection Deadline; Stations Seeking Extension of the Deadline*, Public Notice, DA 06-1255 at 5 (rel. June 14, 2006) (“*Public Notice*”).

<sup>2</sup> *Public Notice* at 5.

near Santa Barbara, California.<sup>3</sup> For Smith to operate with its allotted replication facilities, as the prior owner certified,<sup>4</sup> Smith would have to increase ERP to approximately 698 kW. However, according to officials at Pacific Gas & Electric, the utility company which supplies electricity to Broadcast Peak, the transformer serving the site already is at capacity. The utility company cannot supply the increased voltage necessary for the Station to increase power.

Because Smith became the Station's new licensee only relatively recently,<sup>5</sup> it obviously could not uncover this problem until after the prior licensee had certified to the higher power. Once Smith became the new licensee, it examined the DTV construction plans of all its new stations, including KEYT-TV. Smith discovered during this review that the previous licensee had not made a routine determination as to whether the existing electrical system in fact could provide the necessary ERP to replicate service. Once Smith completed this analysis, it was plain that prior to the deadline it could not implement the facilities to which the prior licensee had certified.

Smith and the electric utility company have held discussions about whether the Station could increase power in February 2009 when analog television service ends, but presently the extent to which the Station could do so and whether the electric utility company would have to upgrade its facilities is not known. Smith anticipates that, when the television broadcasters on Broadcast Peak discontinue analog service, the reduction in overall power demand will allow the Station to increase power. Smith expects to continue discussions with the electric utility company and intends to determine its permissible post-transition ERP as soon as possible.

### **Satisfaction of Waiver Standard**

Smith submits that this waiver request satisfies the standards set forth in the *Public Notice*. For reasons beyond its control, the Station cannot increase power to replicate service. In its *Second DTV Periodic Review Report and Order*,<sup>6</sup> the Commission adopted a July 1, 2006 replication/maximization interference protection deadline for all DTV licensees not subject to the July 1, 2005 deadline. The Commission stated that, in cases where a station was unable to meet the applicable deadline due to "circumstances beyond a station's control," it would "grant extensions of the applicable replication or maximization interference protection deadline on a

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<sup>3</sup> See FCC File No. BEDSTA-20060301ABI (granted Mar. 6, 2006).

<sup>4</sup> See FCC File No. BCERCT-20041103AJF.

<sup>5</sup> Smith became the new licensee on November 16, 2004. See FCC File No. BALCT-20040826ADG.

<sup>6</sup> Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, *Report and Order*, 19 FCC Rcd 18279 (rel. Sept. 7, 2004) ("*Report and Order*").

six-month basis if good cause is shown.”<sup>7</sup> To receive such a waiver, broadcasters were required to make a showing “similar to that required to obtain a waiver of the DTV construction deadlines.”<sup>8</sup> Smith believes this instant waiver request satisfies these requirements.

The Station’s current operations at 250 kW nonetheless reach a substantial percentage of the NTSC Grade B service area population. The *Public Notice* recognized that certain stations, although unable to reach 100% maximization or replication, could “come close” to meeting the applicable coverage requirements.<sup>9</sup> The Commission requested that licensees of such stations submit the following information in conjunction with their waiver request: “(1) how close to full replication/maximization the station will be as of the deadline; (2) the reason the station is unable to comply fully; (3) the cost to the licensee and the impact on viewers if the licensee were required to comply fully; (4) whether the licensee will be able to modify its operation to comply fully after analog operation terminates (*e.g.*, relocate its DTV antenna to the top of the tower); and (5) any other relevant factors.”<sup>10</sup>

Smith responds to these specific inquiries as follows:

(1) the proposed operations will reach 84.3% of the certified replication service area population;<sup>11</sup>

(2) the Station is prevented from increasing power to the certified ERP because the transformer serving the broadcast site is at capacity;

(3) N/A;

(4) Smith believes that at the end of the DTV transition it may be able to increase ERP, but the extent to which the Station could do so presently is not known;

(5) more than ninety-one percent the percentage of television households in the Santa Barbara-Santa Maria-San Luis Obispo DMA that subscribe to an MVPD is well above the

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<sup>7</sup> *Id.*, ¶ 87. See also *Public Notice*.

<sup>8</sup> *Report and Order*, ¶ 87.

<sup>9</sup> *Public Notice* at 5.

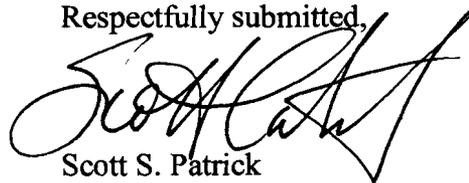
<sup>10</sup> *Id.*

<sup>11</sup> Specifically, the proposed service area population is 1,118,660 persons. The certified replication service area population is 1,326,950 persons.

national average at 91%,<sup>12</sup> suggesting that reliance on over-the-air service in this market is limited.

Based upon the foregoing, Smith believes that it has shown good cause for the Commission to grant waiver of the July 1, 2006 deadline for the Station.<sup>13</sup> Should any questions arise, please contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott S. Patrick", written in a cursive style.

Scott S. Patrick

cc: Shaun Maher (FCC)

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<sup>12</sup> See Cable and ADS Penetration by DMA at <http://www.tvb.org/rcentral/markettrack/archivebymarket.asp?marketid=170>.

<sup>13</sup> Smith is separately requesting an extension of its STA to permit it to continue operating the Station with its existing DTV facilities. See FCC File No. BEDSTA-20060301ABI.