

August 31, 2006

VIA ECFS

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

Re: KVOA-DT, Tucson, Arizona (Fac. Id. No. 25735)  
MB Docket No. 05-317  
TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST

Dear Ms. Dortch:

On behalf of KVOA Communications, Inc. (“KVOA”), permittee of KVOA-DT, Tucson, Arizona, and pursuant to the *Order in Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension And Reauthorization Act of 2004*,<sup>1</sup> we hereby request a six-month extension of the waiver of Section 339(a)(2)(D)(vii) of the Communications Act of 1934, as amended,<sup>2</sup> which the Media Bureau granted for KVOA-DT on May 1, 2006.<sup>3</sup> The circumstances that existed four months ago, when the Media Bureau granted the waiver, still exist and justify an extension of the waiver.<sup>4</sup> Specifically, as the Commission’s staff has confirmed, Mexico has not yet completed its review and issued its concurrence so that the Commission can process the KVOA-DT construction permit application.

The Satellite Home Viewer Extension and Reauthorization Act of 2004<sup>5</sup> (“SHERVA”) permits certain satellite subscribers to qualify for satellite retransmission of distant digital network signals unless the Commission grants the local network station a waiver.<sup>6</sup> To qualify for

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<sup>1</sup> See Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension And Reauthorization Act of 2004, *Order*, 21 FCC Rcd 4813, ¶ 46 (2006) (“*Waiver Order*”).

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

<sup>3</sup> See *Waiver Order*, ¶ 12.

<sup>4</sup> See *Waiver Order*, ¶ 12. See also 47 U.S.C. § 339(a)(2)(D)(viii), providing that “a waiver may be renewed upon a proper showing.”

<sup>5</sup> Satellite Home Viewer Extension and Reauthorization Act of 2004, Pub. L. No. 108-447, 118 Stat. 3393.

<sup>6</sup> See 47 U.S.C. § 339(a)(2)(D)(viii).

a waiver, the local network station must demonstrate that its digital signal coverage is limited due to the unremediable presence of one or more of the following factors:

- (I) the need for international coordination or approvals;
- (II) clear zoning or environmental legal impediments;
- (III) force majeure;
- (IV) the station experiences a substantial decrease in its digital signal coverage area due to necessity of using side-mounted antenna; or
- (V) no satellite carrier is providing the retransmission of the analog signals of local stations under section 338 in the local market.<sup>7</sup>

KVOA-DT qualifies for an extension of its waiver because the need for international coordination continues to prevent the Commission from processing the station's application to maximize its digital facilities.<sup>8</sup> Under operative bilateral agreements between the United States and Mexico, the Commission must obtain concurrence from the Mexican *Secretaria de Comunicaciones y Transportes* ("SCT") before it can grant a DTV construction permit application for any facility within 275 kilometers of the Mexican border.<sup>9</sup> KVOA proposes to maximize its DTV facilities at a site which is 120 kilometers from the Mexican Border.<sup>10</sup> Consequently, the Commission must receive concurrence from the SCT before it can grant this application, and KVOA has learned from the Commission's staff that its application continues to await Mexican concurrence. Under international coordination procedures KVOA cannot speed this approval process.<sup>11</sup>

Based on the foregoing and pursuant to Section 339(a)(2)(D)(viii), we respectfully submit that KVOA-DT qualifies for a waiver under the Act.

Please contact me if you have any questions about this waiver request.

Respectfully submitted,



Scott S. Patrick

cc: Nazifa Sawez (FCC) (via email)

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<sup>7</sup> *Id.*

<sup>8</sup> *See* FCC File No. BMPCDT-20031010ADG.

<sup>9</sup> *See* Memorandum of Understanding Between the Federal Communications Commission of the United States of America and the Secretaria De Comunicaciones y Transportes of the United Mexican States Related to the Use of the 54-72 MHz, 174-216 Mhz, and 470-806 MHz Bands for the Digital Television Broadcasting Service Along the Common Border, U.S.-Mex. (Jul. 22, 1998).

<sup>10</sup> *See* FCC File No. BMPCDT-20031010ADG.

<sup>11</sup> *See Waiver Order*, ¶ 11.