

August 31, 2006

VIA ECFS

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

TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST

Re: WFFF-DT, Burlington, Vermont
Facility Id. No. 10132
MB Docket No. 05-317
Request for Six-Month Extension of DBS Testing Waiver

Dear Ms. Dortch:

On behalf of Smith Media License Holdings, LLC (“Smith”) permittee of WFFF-DT, Burlington, Vermont, and pursuant to the *Order in Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension And Reauthorization Act of 2004*,¹ 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,² which the Commission granted for WFFF-DT on May 1, 2006.³ Smith remains on schedule to complete construction and commence digital operations of WFFF-DT by November 2006, as Smith has stated to the Commission on several occasions.⁴ Nevertheless, because Smith

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

² See 47 U.S.C. § 339(a)(2)(D)

³ See *DBS Testing Waiver Order* at ¶ 20.

⁴ See, e.g., Smith Media License Holdings, LLC, *Television Station Section 339(a)(2)(D)(vii) Waiver Request*, MB Docket No. 05-317 (filed Nov. 30, 2005); William R. Richardson, Jr., et al., *Waiver of July 1, 2005 Maximization/Replication Deadline*, MB Docket No. 03-15 (filed June 23, 2005).

estimates that it may not complete construction until after its waiver expires, Smith respectfully requests a six-month extension.

The Satellite Home Viewer Extension and Reauthorization Act of 2004⁵ (“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.⁶ To qualify for a waiver, or an extension thereof, 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.⁷

In the *DBS Testing Waiver Order*, the Commission agreed that WFFF-DT qualified for a waiver because zoning and environmental legal impediments had prevented Smith from completing construction of its DTV facilities on Mt. Mansfield.⁸ In particular, environmental and zoning opposition caused an eight-year delay before the Vermont District Five Environmental Commission approved construction of the proposed DTV tower. During this eight-year period, Smith did not have other options because the State of Vermont’s restrictive environmental regulations required all television broadcasters in the state to present a joint tower proposal. In January 2003, the broadcasters reached a settlement agreement with the state and submitted an application for zoning approval. Finally, in April 2005 the state issued a permit approving the construction of the proposed tower.

Upon receiving zoning approval, construction crews immediately began constructing a new DTV tower, but extreme weather conditions on Mt. Mansfield, the highest point in Vermont, render heavy construction virtually impossible between October 15 and June 1.⁹ During the 2005 building season, construction crews were able pour the foundation for the tower and complete construction of the transmitter building. To date in 2006, construction crews have completed construction of the tower, and antenna installation is expected soon. Within thirty days, Smith anticipates that it will install the transmitter and begin testing its new digital facility.

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

⁶ See 47 U.S.C. § 339(a)(2)(D)(viii).

⁷ *Id.*

⁸ See *DBS Testing Waiver Order*, ¶ 20.

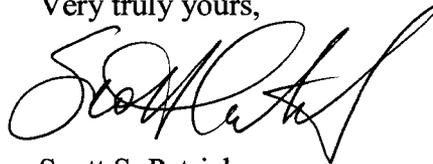
⁹ If heavy construction is complete, some testing can be done after October 15.

Smith continues to believe that it remains on course to commence WFFF-DT operations in November 2006 – after, however, the expiration of the testing waiver.¹⁰ Consequently, Smith seeks a six-month waiver extension.

In the *DBS Order*, the Commission acknowledged that even after impediments from international coordination or zoning requirements are removed, it may take at least a year before a licensee can complete construction of its DTV facilities, and during that construction period continued waiver is justified.¹¹ On November 1, 2006, Smith will have had a total nine months of favorable weather conditions since obtaining zoning approval to complete construction of its DTV facilities. Accordingly, pursuant to Section 339(a)(2)(D)(viii), we respectfully submit that WFFF-DT qualifies for a six-month extension of its waiver under the Act, and we request that the Commission grant such an extension for WFFF-DT.

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

Very truly yours,



Scott S. Patrick

cc: Ms. Nazifa Sawez (FCC) (via e-mail)

¹⁰ In its *Consolidated Opposition* filed in response to the October 31, 2005 waiver requests, EchoStar Satellite, L.L.C. stated that it would not object to a waiver for WFFF-DT if Smith completes construction by the Fall 2006. See *DBS Testing Waiver Order*, ¶ 20 n.34.

¹¹ See *DBS Testing Waiver Order*, ¶ 9 n.16 (granting waiver requests for two stations even though the Canadian government granted its concurrence almost a year earlier).