

AKIN GUMP  
STRAUSS HAUER & FELD LLP

Attorneys at Law

TOM W. DAVIDSON  
202.887.4011/fax: 202.887.7719  
tdavidson@akingump.com

February 15, 2007

VIA ECFS

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

Re: MB Docket No. 05-317  
KGO-TV, San Francisco, California, Facility ID No. 34470  
TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST

Dear Ms. Dortch:

KGO Television, Inc. (“KGO, Inc.”), the licensee of KGO-TV and KGO-DT, San Francisco, California, Facility ID No. 34470, by its attorneys, hereby requests a six-month waiver (“Testing Waiver”) of the July 15, 2007 digital signal testing implementation date (“July Deadline”) to temporarily preclude satellite subscribers from conducting a digital signal strength test of KGO-DT for purposes of obtaining a distant network signal. The Testing Waiver is sought pursuant to Section 339(a)(2)(D) of the Communications Act (“Section 339”), as amended by the Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”), and the relevant releases of the Federal Communications Commission (“Commission”).<sup>1</sup> KGO-DT’s digital signal coverage area presently is limited due to the necessity of using a side mounted antenna below its top-mounted analog antenna, and its plans to use its current analog antenna as its digital antenna post-transition. For these and other reasons set forth herein, KGO, Inc. submits that grant of a Testing Waiver is consistent with Section 339 and is in the public interest.

---

<sup>1</sup> See 47 U.S.C. § 339(a)(2)(D), as amended by Section 204 of SHVERA; Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004, *Order*, MB Docket No. 05-317, DA 06-801 (rel. May 1, 2006) (“*Waiver Order*”); TV Station Requests for Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004 to be Filed by November 30, 2005 or February 15, 2007, DA 05-2979, *Public Notice* (rel. Nov. 17, 2005) (“*Waiver PN*”).

February 15, 2007  
Page 2 of 3

Section 339 provides that a station may obtain a temporary waiver of satellite subscriber digital signal testing if “the station’s digital signal coverage is limited due to the unremediable presence of one or more” statutory criteria.<sup>2</sup> One criterion is whether “the station experiences a substantial decrease in its digital signal coverage area due to the necessity of using a side-mounted antenna.”<sup>3</sup> KGO-DT presently is unable to serve 26.0% of the area predicted to be served by KGO-DT’s initial DTV allotment, and 29.6% of the area within its NTSC Grade B contour, because of the current side-mounted position of its antenna.<sup>4</sup> The top tower mast position on the KGO, Inc. tower is occupied by the KGO-TV antenna. As a result, KGO, Inc. had to side-mount KGO-DT’s antenna on the tower’s lower and wider base. The large size of the tower at this level causes signal blockage and reduces the number of viewers that KGO-DT can reach.<sup>5</sup> KGO, Inc. cannot remedy this signal blockage by moving its antenna because, as indicated above, the higher position is occupied by the NTSC antenna.<sup>6</sup> KGO, Inc. also cannot remedy this problem now because it will use its current NTSC antenna as its DTV antenna post-transition. Specifically, because KGO, Inc. will use its current NTSC channel as its post-transition DTV channel, it will use the current KGO-TV antenna as its antenna for KGO-DT. However, KGO-DT must wait until KGO-TV ceases operation before it can assume use of the KGO-TV antenna. In sum, KGO-DT’s signal coverage temporarily is “limited” due to its need to use a side-mounted antenna and its plans to use its NTSC antenna for its post-transition operations, and KGO, Inc. requests a Testing Waiver on this basis.<sup>7</sup>

---

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

<sup>3</sup> 47 U.S.C. § 339(a)(2)(D)(viii)(V).

<sup>4</sup> See Engineering Statement, at Exhibit 2.

<sup>5</sup> The tower does not similarly impede the signal of KGO-TV because the KGO-TV antenna is attached to a narrower and higher portion of the tower, above the KGO-DT side-mounted antenna.

<sup>6</sup> KGO, Inc. also examined possible ways to increase KGO-DT’s coverage, aside from a switch of antenna positions; however, these studies found no viable solution.

<sup>7</sup> KGO, Inc. believes that it need only show that its coverage is “limited,” as set forth in Section 339(a)(2)(D)(viii). However, in its *Waiver Order*, the Commission stated that it expected a showing consistent with Section 339(a)(2)(D)(viii), which states that a station experiences “a substantial decrease” in its coverage area. KGO, Inc. believes that this Commission interpretation may place too much emphasis on the “substantial decrease” phrase without affording adequate weight to the preceding phrase, which requires only that the signal coverage be “limited.” To the extent that the Commission applies its *Waiver Order* interpretation of “substantial decrease” to the instant request, KGO, Inc. submits that an area difference of 26.0% or 29.6% is a “substantial decrease.”

February 15, 2007  
Page 3 of 3

Grant of a Testing Waiver also is in the public interest because it will have only a short-term, temporary effect on satellite subscribers within KGO-TV's coverage area. KGO-DT will be able to reach these subscribers at the end of the analog transition through the eventual use of the current KGO-TV antenna and channel. The antenna will remain top-mounted on the tower, and thus will not face the problems currently affecting the side-mounted KGO-DT antenna. From this position, the KGO-TV antenna has proven quite capable of serving the station's analog viewers and will continue to capably serve these viewers as the antenna for KGO-DT. Thus, satellite subscribers will be able to receive KGO-DT at the end of the digital transition. Because satellite subscribers soon will receive KGO-DT, the Commission should delay testing that potentially could permit subscribers to receive distant digital signals indefinitely, well-beyond the short-term period during which they could not receive KGO-DT over-the-air.<sup>8</sup>

For all of the reasons set forth herein, KGO, Inc. respectfully requests that the Commission grant a Testing Waiver for KGO-DT.

Please direct any questions or inquiries regarding this matter to the undersigned.

Respectfully submitted,

/s/

Tom W. Davidson, Esq.

Attachment (Engineering Statement)

---

<sup>8</sup> At a minimum, the Commission should clarify that the term of any permissible distant signal delivery is limited so that satellite subscribers no longer may receive distant network signals after they are capable of receiving local digital signals over-the-air.