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Federal Communications Commission  
Washington, D.C. 20554

CORRECTED

DA 08-2448  
Released: October 31, 2008  
1800E3-JLB

WSMH Licensee LLC  
c/o Clifford M. Harrington, Esq.  
Pillsbury Winthrop Shaw Pittman, LLP  
2300 N Street, N.W.  
Washington, D.C. 20037-1122

Re: MB Docket No. 05-317

Dear Licensee:

By letter dated August 14, 2008, WSMH Licensee LLC ("WSMH"), the permittee of WSMH-DT, Flint, Michigan, requested renewal of its waiver of Section 339(a)(2)(D) of the Communications Act of 1934, as amended, to prohibit satellite subscribers from receiving or conducting a digital signal strength test of WSMH-DT's digital signal.<sup>1</sup> The Commission granted the original digital signal testing waiver based on the fact that WSMH has been unable to construct its authorized DTV facility due to the need for international coordination,<sup>2</sup> and has granted three six-month extensions.<sup>3</sup>

While the previous extension request was pending, the Commission received concurrence from Canada and granted WSMH's application for a digital construction permit on April 18, 2008.<sup>4</sup> In its most recent extension request, WSMH states that it has since filed an application for modification of its construction permit to relocate to a new tower support structure.<sup>5</sup> WSMH asserts that because the modification application requires Canadian concurrence and remains pending, an additional six month waiver is justified. We disagree. WSMH is presently operating a "checklist" digital facility which serves 99% of its analog service population.<sup>6</sup> WSMH also has a construction permit for a maximized post-transition digital facility which has been approved by Canada. We do not believe that WSMH's decision to file an application for modification of its construction permit immediately after grant of its application warrants a further extension of the SHVERA testing waiver. Accordingly, we conclude that WSMH has failed to demonstrate, by clear and convincing evidence, that its station's digital signal coverage is limited due to the unremediable need for international coordination or approvals.

<sup>1</sup> See 47 U.S.C. § 339 (a)(2)(D)(viii), as amended by Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"), 47 U.S.C. § 339.

<sup>2</sup> See *Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004*, 21 FCC Rcd 4812, 4816 (2006)

<sup>3</sup> See *WSMH Licensee LLC c/o Clifford M. Harrington, Esq.*, 23 FCC Rcd 7078 (2008).

<sup>4</sup> File No. BPCDT-19991028ACK.

<sup>5</sup> File No. BMPCDT-20080620AKL. The application seeks to move the digital facility to a new tower currently utilized by both WSMH(TV) and WSMH-DT's "checklist" facility. See Engineering Statement at p.2.

<sup>6</sup> See File No. BDTUCT-20081020AUY.

Accordingly, IT IS ORDERED that the request of WSMH IS DENIED. The first permissible date for digital testing for WSMH-DT IS October 31, 2008.

Sincerely,

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau