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December 1, 2009

VIA ECFS

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

Re: MB Docket No. 05-317  
WABC-TV, New York, New York, Facility ID No. 1328  
TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST

Dear Ms. Dortch:

American Broadcasting Companies, Inc. (“ABC”), the licensee of WABC-TV, New York, New York, Facility ID No. 174,<sup>1</sup> by its attorneys, hereby requests a further six-month waiver of the July 15, 2007 digital signal testing implementation date (“Testing Deadline”) to prevent satellite subscribers from conducting a digital signal strength test of WABC for purposes of obtaining a distant network signal. The instant extension request 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 actions by the Federal Communications Commission (“FCC”).<sup>2</sup>

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<sup>1</sup> ABC filed a license application for WABC’s post-transition DTV facilities on June 12, 2009. FCC File No. BLCDDT-20090612ADK. This application remains pending.

<sup>2</sup> See, e.g., 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 05-317, DA 07-3201 (rel. Jul. 13, 2007) (“*First Waiver Order*”); Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004, *Order*, MB Docket 05-317, DA 08-111 (rel. Jan. 16, 2008) (“*Second Waiver Order*”); Letter to Tom W. Davidson, Counsel for American Broadcasting Companies, Inc. from Barbara A. Kreisman, Chief, Video Division, Media Bureau, DA 08-1280 (rel. Jun. 6, 2008) (“*Third Waiver Letter*”); Letter to Tom W. Davidson, Counsel for American Broadcasting Companies, Inc. from Barbara A. Kreisman, Chief, Video Division, Media Bureau, DA 08-2565 (rel. Dec. 15, 2008) (“*Fourth Waiver Letter*”); Letter to Tom W. Davidson, Counsel for American Broadcasting Companies, Inc. from Barbara A. Kreisman, Chief, Video Division, Media Bureau, DA 09-1230 (rel. June 2, 2009) (“*Fifth Waiver Letter*”).

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In February 2007, ABC requested that the FCC waive the Testing Deadline as it applies to WABC-DT because WABC's digital signal coverage was limited due to force majeure, namely, the September 11, 2001 terrorist attacks.<sup>3</sup> The FCC's Media Bureau granted ABC's request and extended the digital signal testing implementation date for WABC to January 15, 2008, concluding that the "terrorist attack in 2001 clearly constitutes force majeure and justifies the grant of a six-month digital testing waiver for WABC."<sup>4</sup> The Media Bureau has consistently reiterated this conclusion and granted several further six-month extensions of the Testing Deadline for WABC, the most recent of which expires on December 15, 2009.<sup>5</sup>

Section 339 provides that a station may obtain an extension of 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, including a force majeure event.<sup>6</sup> ABC requests a further six-month waiver of digital signal testing on the basis of force majeure because ABC has not yet been able to construct permanent facilities to replace the WABC facilities that were destroyed in the September 11, 2001 terrorist attacks. Indeed, WABC's signal continues to be hampered by the circumstances surrounding the 9/11 terrorist attacks on the World Trade Center because, to date, no replacement structure suitable for television transmitting has been constructed at that site. Moreover, WABC now is unable to serve many of its former over-the-air analog viewers ("Former Viewers") as a result to the unique signal reception issues faced by WABC's Former Viewers in the aftermath of the DTV transition.

As explained in ABC's *Waiver Request*, WABC built full-power DTV facilities at the World Trade Center and applied for a license to cover these facilities in July 2001. While this license to cover application was pending, the September 11, 2001 terrorist attacks destroyed WABC-DT's facilities. After studying different locations from which it could restore service, ABC applied for and obtained special temporary authorizations for auxiliary DTV facilities at two New York sites—the 4 Times Square Building and the Empire State Building ("ESB"). ABC later constructed auxiliary DTV facilities at both of these sites. ABC also filed an application to license the auxiliary facilities at ESB. ABC operated the pre-transition DTV

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<sup>3</sup> See Letter to Ms. Marlene H. Dortch, Secretary, FCC, from Tom W. Davidson, Esq. re WABC-TV, New York, New York, Facility ID No. 174, MB Docket 05-317, (filed Feb. 15, 2007) ("*Waiver Request*").

<sup>4</sup> *Waiver Order*, at ¶ 12.

<sup>5</sup> See *Second Waiver Order*, at ¶ 8 (extending the Testing Deadline until June 15, 2008); *Third Waiver Letter* (extending the Testing Deadline until December 15, 2008); *Fourth Waiver Letter* (extending the Testing Deadline until June 15, 2009); *Fifth Waiver Letter* (extending the Testing Deadline until December 15, 2009).

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

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facilities described in this paragraph on channel 45. However, ABC elected to operate its post-transition DTV facilities on channel 7, its analog channel, rather than its pre-transition channel, channel 45. The FCC allotted to WABC a DTV facility on channel 7 which was based on the coverage of its analog facilities at World Trade Center. However, to date, no replacement structure suitable for television transmitting has been constructed at that site. Thus, the exact DTV facility allotted by the FCC for WABC cannot be constructed at this time. Accordingly, on June 18, 2008, ABC obtained a construction permit for a post-transition DTV facility for WABC at the Empire State Building, the location from which it operated post-9/11 DTV facility on pre-transition channel 45 (“WABC CP Facility”).<sup>7</sup> WABC commenced operations of the WABC CP Facility on June 12, 2009 and has filed a license application to cover this facility (“WABC DTV Facility”).<sup>8</sup>

Following its transition to all-digital broadcasts on June 12, 2009, ABC promptly learned that the WABC DTV Facility does not enable WABC to serve many of its Former Viewers. However, absent interference agreements with a neighboring television station or a waiver of the FCC’s rules, WABC is precluded by the FCC’s interference rules from increasing the power of the WABC DTV Facility to restore over-the-air television service to many of its Former Viewers. Since the DTV transition, ABC has been working with the Commission and neighboring television stations to find a solution to the unique signal reception issues faced by many of WABC’s Former Viewers. To this end, ABC is pursuing a good faith mutually acceptable technical resolution that would enable WABC and other affected television stations to implement a mutual power increase, which ABC believes is likely to restore service to many of WABC’s Former Viewers.

In short, a further six-month waiver of satellite subscriber digital signal testing is warranted because (1) to date, there is no replacement structure suitable for television transmitting has been constructed at the site of the World Trade Center and (2) ABC has not yet been able to restore service to its Former Viewers due to the unique signal reception issues faced

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<sup>7</sup> On June 20, 2008, ABC also filed an application for a construction permit for post-transition DTV facilities at Freedom Tower (“Freedom Tower CP Application”). *See* FCC File No. BMPCDT-20080620AMV. ABC requested acceptance and delayed processing of the Freedom Tower CP Application and understands that acceptance of the Freedom Tower Application without further processing effectively will provide interference protection for the Lower Manhattan facilities without restricting WABC’s ability to operate under, and ultimately license, its post-transition DTV facilities at the Empire State Building.

<sup>8</sup> *See* FCC File No. BLCDDT-200906012ACL.

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by these viewers and ABC's inability to implement an increase of power under existing FCC rules.<sup>9</sup>

Please do not hesitate to contact the undersigned with any questions regarding this matter.

Sincerely,

/s/ Tom W. Davidson  
Tom W. Davidson, Esq.

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<sup>9</sup> ABC has been working diligently on an interference agreement with the affected television stations and had anticipated that a waiver of satellite subscriber digital signal testing may not have been required depending upon the actual coverage provided by WABC's modified facilities. However, because the interference agreement has not yet been finalized and many of WABC's Former Viewers continue to be without over-the-air service from WABC, ABC is requesting the instant waiver. To the extent necessary, ABC respectfully requests a waiver of the requirement that the instant request for a further six-month waiver of satellite subscriber digital signal testing be filed by October 15, 2009. *See Fifth Waiver Letter.*