



PUBLIC NOTICE

Federal Communications Commission
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DA 05-2979

November 17, 2005

**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**

The Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”) amended Section 339 of the Communications Act to provide for stations to request a waiver that would prohibit satellite subscribers from receiving or conducting a digital signal strength test.¹ This Public Notice sets forth the procedures for stations to request such a waiver.

The SHVERA amended Section 339(a)(2)(D) of the Act to permit satellite subscribers to qualify for satellite retransmission of distant digital network signals under circumstances specified in the Act.² Of relevance here, a satellite subscriber whose household is predicted to be served³ by the analog signal of a local network station and who is seeking a distant digital signal of a station affiliated with the same network as that local network station may attempt to demonstrate eligibility for the distant digital signal based on a signal test to determine if the over-the-air digital signal of a local network station exceeds the digital signal intensity standard in Section 73.683(a) of our rules.⁴ A subscriber may request such a test beginning April 30, 2006, if such local network station is within the top 100 television markets and has received a tentative channel designation on its allotted digital channel or has lost interference protection; or, beginning July 15, 2007 for any other full power local network station.⁵

Local network stations may request that the Commission grant a waiver to prohibit such testing if they meet the criteria set forth in Section 339(a)(2)(D)(viii) of the Act. The statute provides that such waiver requests must be filed no later than November 30, 2005, for local network stations subject to the April 30, 2006 testing implementation date, or no later than February 15, 2007 for all other local network stations.⁶

¹ See 47 U.S.C. § 339(a)(2)(D)(viii) *as amended by* Section 204 of the SHVERA.

² See 47 U.S.C. § 339(a)(2)(D)(i)(III) *as amended by* Section 204 of the SHVERA.

³ See 47 U.S.C. § 339(c)(3) (mandating the Individual Location Longley-Rice (ILLR) model to predict the ability of individual locations to receive analog signals of Grade B intensity).

⁴ See 47 U.S.C. § 339(a)(2)(D)(i)(I) *as amended by* Section 204 of the SHVERA.

⁵ See 47 U.S.C. § 339(a)(2)(D)(vii) *as amended by* Section 204 of the SHVERA.

⁶ See 47 U.S.C. § 339(a)(2)(D)(viii), *as amended by* Section 204 of the SHVERA (providing that waiver requests must be filed “not less than 5 months prior to the implementation deadline.”).

Section 339(a)(2)(D)(viii) of the Act sets forth the criteria and the standard for the Commission's review of station requests for waiver. To be grantable, waiver requests must provide clear and convincing evidence that the station's digital signal coverage is limited due to the unremediable presence of one or more of the following:

- (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 the necessity of using a side-mounted antenna;
- (V) substantial technical problems that result in a station experiencing a substantial decrease in its coverage area solely due to actions to avoid interference with emergency response providers; or
- (VI) no satellite carrier is providing the retransmission of the analog signals of local network stations under section 338 in the local market.

The Act further provides that under no circumstances may such a waiver be based upon financial exigency.

Station licensees and permittees that want to request a waiver of satellite subscriber digital signal testing governed by the implementation date of April 30, 2006 must file such requests with the Commission no later than November 30, 2005.⁷ Requests should be made in letter format and clearly labeled "TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST." Requests must specify which of the statutory criteria apply to the station and include supporting evidence. Requests should reference MB Docket No. 05-317, and be filed electronically using the Commission's Electronic Comment Filing System ("ECFS"): <http://www.fcc.gov/cgb/ecfs/>. A copy of each waiver request must also be delivered to Nazifa Sawez, Federal Communications Commission, Room 2-A726, 445 12th Street, S.W., Washington, D.C. 20554.

Waiver requests will be available for public review on the ECFS. A party affected by a waiver request may file an Opposition by December 30, 2005. Stations requesting a waiver may file a Response to an Opposition no later than January 16, 2006. Such Oppositions and Responses should be filed electronically using the ECFS and reference MB Docket No. 05-317 and the call sign of the station requesting the waiver.

Waiver requests will be acted upon prior to April 30, 2006. Waivers will have an initial term of six months and may be extended upon a proper showing.

For additional information, contact Nazifa Sawez or Joyce Bernstein of the Video Division, Media Bureau, at (202) 418-1600 or nazifa.sawez@fcc.gov or joyce.bernstein@fcc.gov, or Eloise Gore of the Policy Division, Media Bureau, at 202-418-7200 or eloise.gore@fcc.gov. TTY: (202) 418-7172.

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⁷ Station licensees and permittees that want to request such waiver in connection with the implementation date of July 15, 2007, must file waivers requests no later than February 15, 2007.