



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

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**Procedures for Filing Oppositions and Responses Regarding Requests for Digital Testing Waivers Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004
MB Docket No. 05-317**

The Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) created an opportunity for subscribers to qualify, via signal strength tests, to receive distant digital television broadcast signals from satellite carriers. SHVERA also provided television stations with the ability to request a waiver that would prohibit satellite subscribers from receiving or conducting a digital signal strength test under certain circumstances. This Public Notice establishes procedures for filing oppositions and responses regarding requests for digital testing waivers filed by broadcast television stations pursuant to the SHVERA.

Specifically, as amended by the SHVERA in 2004, Section 339(a)(2)(D) of the Act permits satellite subscribers to qualify for satellite retransmission of distant digital network signals under circumstances specified in the Act.¹ Of relevance here, a satellite subscriber whose household is predicted to be served² 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 conducted at the household. If the test shows that the subscriber is unable to receive an over-the-air digital signal of a local network station that exceeds the digital signal intensity standard in Section 73.622(e)(1) of the Commission's rules, the subscriber is eligible for the digital signal of a distant network station affiliated with the same network.³ A subscriber may request such a test beginning July 15, 2007 for any full power local network station not subject to the April 30, 2006 commencement of digital testing.⁴

Local network stations were permitted to request that the Commission grant a waiver for up to six months to prohibit such testing if they meet the criteria set forth in Section 339(a)(2)(D)(viii) of the Act. Waivers may be

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

² 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).

³ 47 U.S.C. § 339(a)(2)(D)(i)(III); *see also* 47 U.S.C. § 339(a)(2)(D)(vi)(I).

⁴ See 47 U.S.C. § 339(a)(2)(D)(vii) *as amended by* Section 204 of the SHVERA. Subscribers could request a signal test beginning April 30, 2006 for local network stations within the top 100 television markets that had received a tentative channel designation on its allotted digital channel or had lost interference protection. *See In the Matter of Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004*, 21 FCC Rcd 4813 (2006) (“*Digital Testing Waiver Order*”).

renewed upon a proper showing.⁵ 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.

The statute provides that such waiver requests must be filed no later than February 15, 2007 and the Commission must act on them by July 15, 2007.⁶ The twenty-nine network stations listed on the Attachment to this Public Notice filed waiver requests by the February 15, 2007 deadline. Waiver requests are available for public review on the Commission's Electronic Comment Filing System (ECFS) under Docket 05-317.

In order to ensure action before July 15, 2007, any Opposition must be filed no later than April 9, 2007. Stations requesting a waiver may file a Response to an Opposition no later than April 23, 2007. 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, and should be served on the affected parties. See 47 C.F.R. ¶ 1.47.

Nine stations listed on the Attachment which were previously granted waivers⁷ filed for second extensions. In order to ensure action before April 30, 2007, any Oppositions to such further extensions should be filed with the Commission and served on the relevant parties by March 30, 2007, and any Responses to such Oppositions must be filed and served no later than April 6, 2007.

For additional information, contact Nazifa Sawez of the Video Division, Media Bureau, at (202) 418-7059 or nazifa.sawez@fcc.gov or Joyce Bernstein of the Video Division, Media Bureau, at (202) 418-1647 or

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

⁶ *See id.* (providing that waiver requests must be filed "not less than 5 months prior to the implementation deadline.").

⁷ *See In the Matter of Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004*, 39 Communications Reg. (P&F) 1035 (2006) ("*Digital Testing Waiver Extension Order*").

joyce.berstein@fcc.gov or Rosalee Chiara of the Policy Division, Media Bureau, at (202) 418-0754 or rosalee.chiara@fcc.gov TTY: (202) 418-7172.

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STATIONS REQUESTING A WAIVER

WALB-DT	Albany, GA
WFXL-DT	Albany, GA
KLAX-DT	Alexandria, LA
KULR-DT	Billings, MT
KFYR-DT	Bismarck, ND
WNKY-DT	Bowling Green, KY
WWNY-DT	Carthage, NY
KRII-DT	Chisholm, MN
WBOY-DT	Clarksburg, WV
KCBY-DT	Coos Bay, OR
KDLH-DT	Duluth, MN
KVAL-DT	Eugene, OR
KIEM-DT	Eureka, CA
WJRT-DT	Flint, MI
WANE-DT	Ft. Wayne, IN
KFBB-DT	Great Falls, MT
KHAS-DT	Hastings, NE
KTRK-DT	Houston, TX
KABC-DT	Los Angeles, CA
WABC-DT	NY, NY
KNOP-DT	North Platte, NE
WPVI-DT	Philadelphia, PA
KPIC-DT	Roseburg, OR
KGO-DT	San Francisco, CA
KTRK-DT	San Francisco, CA
WTVG-DT	Toledo, OH
WNYF-DT	Watertown, NY
WTRF-DT	Wheeling, WV
KAUZ-DT	Wichita Falls, TX

STATIONS REQUESTING A WAIVER EXTENSION

WBNX-TV	Akron, OH
WFFF-DT	Burlington, VT
WSMH-DT	Flint, MI
KHNL-DT	Honolulu, HI
WDSU-DT	New Orleans, LA
WNBC-DT	New York, NY
KFTR-DT	Ontario, CA
KVOA-DT	Tucson, AZ
KOGG-DT	Wailuku, HI