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FILED ELECTRONICALLY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

**Re: TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST
MB Docket No. 05-317**

**Raycom National, Inc.
KOGG-DT, Wailuku, HI
Facility ID # 34859**

Dear Ms. Dortch:

Pursuant to the instructions set forth in Public Notice DA 05-2979,¹ Raycom National, Inc., licensee of KOGG(TV) and permittee of KOGG-DT, Honolulu, Hawaii (“the station” or “KOGG”)² respectfully requests waiver of Section 339(a)(2)(D) of the Communications Act to prohibit testing of KOGG’s digital signal coverage to decide whether a satellite system may deliver a distant digital signal to a viewer within the Grade B contour of KOGG’s analog signal. As described below, KOGG’s buildout of digital

¹ *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*, Public Notice, DA 05-2979 (rel. Nov. 17, 2005) (“*Waiver Notice*”).

² KOGG is a satellite of KHNL, the NBC affiliate in Honolulu, Hawaii, which is Nielsen DMA Market Rank # 72. For similar zoning and environmental legal impediments, KHNL is also seeking, via a separate request, waiver of digital signal testing pursuant to Section 339(a)(2)(D)(viii) of the Act.

facilities has been limited due to “clear zoning or environmental legal impediments” and accordingly such waiver is warranted under Section 339(a)(2)(D)(viii)(II) of the Act.³

Raycom National, Inc. (“Raycom National”), a wholly owned, direct subsidiary of Raycom Media, Inc., was granted a construction permit on January 4, 2001, to operate KOGG’s DTV facilities on Channel 16 (File No. BPCDT-19991029AEH). However, as the Commission is aware and has publicly acknowledged, KOGG and other television stations in Hawaii have faced unique delays in finding viable sites for their DTV facilities.⁴ Following is a summary of how these clear, unremediable zoning and environmental impediments have limited buildout of KOGG’s DTV service:

As an initial matter, the State Department of Land and Natural Resources has prohibited Wailuku broadcasters, including Raycom National, to co-locate DTV facilities with associated NTSC stations on top of Mt. Haleakala due to predicted interference to the telescopes and associated systems of the University of Hawaii Institute for Astronomy (“IFA”) and the U.S. Department of Defense Air Force Research Laboratory (“DOD”). Unable to use its existing analog site and due to the limited number of other locations on the island of Maui that would be suitable for a new DTV tower site, Raycom National was compelled to work with other local broadcasters, as well as with the IFA, DOD, and other local organizations and government agencies, to find a new community tower site.

Although the first site identified, known as “Kalepeamo,” was deemed sufficient for several stations’ DTV facilities, use of this site was blocked by steadfast opposition from community groups, environmentalists, and cultural activists. In November 1998, a second possible site, nicknamed “the Saddle,” was ruled out because of its proximity to astronomy observatories at Mt. Haleakala. Specifically, engineering studies indicated that radio frequency emissions from the DTV operations would far exceed the maximum level for the telescopes in use by the IFA and DOD as established by the International Astronomers Union.

Working with community representatives, the broadcasters next identified a site at Polipoli State Park as suitable for a joint DTV tower. In May 2001, a preliminary engineering study found the site to be generally acceptable, but subject to numerous drawbacks including lack of electrical and telephone infrastructure and a challenging terrain for microwave paths. Despite these limitations and to prevent further delays, Raycom

³ See *Waiver Notice* at 2.

⁴ See, e.g., *Requests for Extension of the Digital Television Construction Deadline – Commercial Television Stations with May 1, 2002 Deadline*, Order, 18 FCC Rcd 22705 ¶ 15 (2003).

National and the other broadcasters decided in September 2001 to pursue a joint agreement to lease land on Polipoli State Park. Unfortunately, the broadcasters encountered significant community resistance to their use of the Polipoli site, including opposition from a local group of individuals who hunt wild pig in the area. In addition, the State Department of Land and Natural Resources raised an objection because Polipoli is located in a forest reserve area. Attempting to address these concerns, the broadcasters conducted several site studies and met with government officials and community representatives. In spite of these efforts, it became clear that opposition to construction of DTV facilities on the Polipoli site could not be overcome in a timely manner.

Forced to abandon plans to use the Polipoli site, Raycom National and the other broadcasters then spent considerable time, effort and money to find another potential site located at Ulupalakua, District of Makawao. In May 2005, the parties entered into an Easement and Option to Sublease the property from the existing lessee. However, to actually enter into the sublease and begin construction of the DTV tower, they must first obtain government permits and rights to subdivide the property. Although applications for those approvals remain pending, the parties have proceeded with a necessary environmental study. Raycom National is working diligently to resolve these and any other remaining issues so that KOGG's DTV service can be brought to viewers in Wailuku and the island of Maui as quickly as possible.

* * *

Based on the foregoing, there can be no doubt that KOGG's digital signal coverage has been impeded by unremediable zoning and environmental legal impediments. Accordingly, Raycom respectfully requests that the Commission grant a waiver exempting KOGG from digital signal testing in accordance with Section 339(a)(2)(D)(viii)(II) of the Act.

Respectfully submitted,



Matthew S. DelNero
Counsel for Raycom National, Inc.

cc: Nazifa Sawez (by hand delivery)