

DOW, LOHNES & ALBERTSON, PLLC
ATTORNEYS AT LAW

SCOTT S. PATRICK
DIRECT DIAL 202-776-2885
spatrick@dowlohn.com

WASHINGTON, D.C.
1200 NEW HAMPSHIRE AVENUE, N.W. · SUITE 800 · WASHINGTON, D.C. 20036-6802
TELEPHONE 202-776-2000 · FACSIMILE 202-776-2222
www.dowlohn.com

ONE RAVINIA DRIVE · SUITE 1600
ATLANTA, GEORGIA 30346-2108
TELEPHONE 770-901-8800
FACSIMILE 770-901-8874

April 5, 2006

VIA ELECTRONIC FILING

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

Re: MB Docket No. 03-15
KPXO-DT (Kaneohe, Hawaii)
Facility ID No. 77483
FCC File No. BPCDT-19991022AAZ
Request for Waiver of July 1, 2006 Replication/Maximization Deadline

Dear Ms. Dortch:

Paxson Hawaii License, Inc. ("Paxson"), permittee of KPXO-DT (Kaneohe, Hawaii) (the "Station"), by its attorneys, hereby respectfully requests waiver of the Commission's July 1, 2006 replication/maximization interference protection deadline. Due to circumstances beyond Paxson's control, it cannot construct the maximized facilities for the Station specified in FCC File No. BPCDT-19991022AAZ and certified in FCC File No. BCERCT-20041103AGP prior to July 1st. The State of Hawaii effectively will not approve the requisite additional building space at the transmitter site that would allow the Station to implement the authorized facilities. Paxson, however, is resolutely committed to serving the largest service area allowed and, after a thorough analysis, has determined that the Station may operate with an ERP that still allows for maximization and is more than sufficient to replicate NTSC service.¹ However, because this maximized service area still falls short of that certified, Paxson respectfully requests waiver of the Commission's rules.

¹ Paxson presently intends to submit an application for a construction permit specifying these facilities. In the event this construction permit application is not granted in time for Paxson to implement such facilities by the July 1st deadline, Paxson hereby requests extension of the Station's existing STA (FCC File No. BEDSTA-20050414ADH), which the Commission said in its *Public Notice* (*infra* note 5) it would extend automatically.

Construction of Certified Facilities Prevented

Paxson is prevented from implementing certified facilities essentially because the State of Hawaii effectively will not approve construction necessary to house the requisite digital equipment. The Station's NTSC and DTV transmitting antennas are on the Wiliwilinui Ridge tower located on a remote mountaintop in southeastern Oahu. The Wiliwilinui Ridge tower site is on state-owned land leased to Mauna Kea Broadcasting Company ("Mauna Kea").² Paxson is a sublessee. When Paxson submitted its FCC Form 381 Pre-Election Certification, it relied upon a provision in its sublease that provided for a larger transmitter building. Mauna Kea, however, has concluded that it cannot give effect to this provision without placing its own lease with the State of Hawaii into jeopardy.³ According to Mauna Kea, expanding the existing building or constructing a new one would encroach upon the public hiking trail and possibly increase the visual impact of the location, either of which would "immediately put [Mauna Kea's] State lease in jeopardy and possibly void a separate and very tentative agreement with the State Department of Land and Natural Resources."⁴

A larger transmitter building is necessary for Station operation at the certified ERP. The transmitter site literally is in the tropics, and the warm, humid, and salty environment at Wiliwilinui Ridge requires use of relatively extensive cooling and ventilation equipment in the transmitter building. The current building is at full capacity and has no room for the additional equipment required for the Station to increase power to the certified ERP. At the time that Paxson filed its Form 381 certification, it reasonably believed pursuant to the sublease that the Station would have access to more space for housing the necessary additional equipment. For reasons beyond Paxson's control, however, Mauna Kea believes it cannot make such space available. Accordingly, Paxson is unable to install the additional equipment required for operation at the certified ERP.

Satisfaction of Waiver Standard

Paxson submits that this waiver request satisfies the standards set forth in its June 14, 2005 *Public Notice*.⁵ Although the Station is prevented from operating at the certified ERP, it has determined that the constraints of the existing transmitter building nonetheless will permit

² Officially, the lessee is Mount Wilson FM Broadcasters, Inc. dba Mauna Kea Broadcasting Company.

³ See attached correspondence from Mauna Kea explaining their position.

⁴ *Id.*

⁵ *Public Notice* at 3. The *Public Notice* applied to requests for waiver of the July 1, 2005 replication/maximization deadline applicable to stations in the top 100 markets affiliated with the top 4 networks. Paxson understands, however, that similar standards will apply to requests for waiver of the July 1, 2006 replication/maximization deadline.

operation at an ERP that still maximizes service beyond the NTSC Grade B contour.⁶ All those receiving the Station's analog signal still would receive the Station's digital signal. Moreover, few viewers in the Station's market rely wholly on over-the-air television reception. The Honolulu DMA has the highest cable penetration in the United States, with a 90 percent cable penetration rate.⁷

In its *Second DTV Periodic Review Report and Order*,⁸ the Commission adopted a July 1, 2006 replication/maximization interference protection deadline for all DTV licensees not subject to the July 1, 2005 deadline. The Commission stated that, in cases where a station was unable to meet the applicable deadline due to "circumstances beyond a station's control," it would "grant extensions of the applicable replication or maximization interference protection deadline on a six-month basis if good cause is shown."⁹ To receive such a waiver, broadcasters were required to make a showing "similar to that required to obtain a waiver of the DTV construction deadlines."¹⁰

In its June 14, 2005 *Public Notice*, the Commission recognized that certain stations, although unable to reach 100% maximization or replication, would nevertheless be able to come close to meeting the applicable coverage requirements.¹¹ The Commission requested that licensees of such stations submit the following information in conjunction with any request for waiver of the July 1 deadline: "(1) how close to full replication/maximization the station will be as of the deadline; (2) the reason the station is unable to fully comply; (3) the cost to the station and the impact on viewers if the station were required to fully comply; (4) whether the station will be able to modify its operation to fully comply after analog operation terminates (*e.g.*, relocate their DTV antenna to the top of the tower); and (5) any other relevant factors."¹²

Paxson responds to these specific inquiries as follows: (1) the proposed operations will reach 99.53% of the certified service area population and 100.67% of the Grade B service area

⁶ Other than reducing ERP, all other aspects of the facility authorized in the certified construction permit will be implemented (*e.g.*, HAAT, antenna, antenna pattern, site location, etc.).

⁷ Broadcasting and Cable Yearbook 2006, at C-11 (2005).

⁸ Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, *Report and Order*, 19 FCC Rcd 18279 (rel. Sept. 7, 2004) ("*Report and Order*").

⁹ *Id.*, ¶ 87. See also *Public Notice*.

¹⁰ *Report and Order*, ¶ 87.

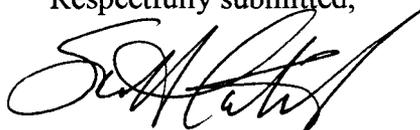
¹¹ *Public Notice* at 3. The *Public Notice* applied to requests for waiver of the July 1, 2005 replication/maximization deadline applicable to stations in the top 100 markets affiliated with the top 4 networks. Paxson understands, however, that similar standards will apply to requests for waiver of the July 1, 2006 replication/maximization deadline.

¹² *Id.*

population;¹³ (2) the Station is prevented from operating at the certified ERP because the State of Hawaii effectively will not approve the necessary transmitter building construction; (3) N/A; (4) it is unknown at this time whether circumstances will permit an increase in ERP post-transition; (5)(a) the Honolulu DMA has the highest cable penetration in the country; and (5)(b) the proposed operations still expand service beyond the existing NTSC operations.

Based upon the foregoing, Paxson believes that it has shown good cause for the Commission to grant waiver of the July 1, 2006 deadline for the Station. Should any questions arise, please contact the undersigned.

Respectfully submitted,



Scott S. Patrick

cc: Shaun Maher (FCC)

¹³ Specifically, the proposed service area population is 882,555 persons. The certified service area population is 886,748 persons. The Grade B service area population is 876,693 persons.

ATTACHMENT

Correspondence from Mauna Kea Broadcasting Company

March 31, 2006

Mr. David Glenn
Corporate Engineering
Paxson Communications Corporation
11300 Fourth Street North
Suite 180
St. Petersburg, FL 33716

Mr. Glenn,

As requested, this correspondence will set forth our position regarding additional building space at the Wiliwilinui Ridge tower site where DTV television station KPXO-DT, owned by Paxson Communications Corporation, is authorized to operate. Notwithstanding language in your sublease that addresses the issue of additional building space at the site, we regrettably have concluded that it is not possible to provide such space at this time – whether by expanding the existing transmitter building or by constructing a new building.

As you know, Mauna Kea Broadcasting Company leases the site from the State of Hawaii. The transmitter building at the site is at maximum capacity. Any expansion of the existing building or construction of a new building almost certainly would encroach upon the public hiking trail that passes the site and increase the site's visual impact. Either of these events would immediately put our State lease in jeopardy and possibly void a separate and very tentative agreement with the State Department of Land and Natural Resources, which in turn could jeopardize the ability of all stations to continue broadcasting from Wiliwilinui Ridge. We therefore have concluded that we cannot provide additional transmitter building space to KPXO-DT at this time.

We appreciate your understanding in the matter and regret the inconvenience this may cause.

Sincerely,

A handwritten signature in black ink that reads "Saul Levine". The signature is fluid and cursive, with the first name "Saul" being more prominent and the last name "Levine" following in a similar style.

Saul Levine
Mauna Kea Broadcasting Company