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## FILED ELECTRONICALLY

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

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

**KHNL/KFVE License Subsidiary, LLC  
KOGG-DT, Wailuku, HI  
Facility ID # 34859**

Dear Ms. Dortch:

Pursuant to the procedures set forth in Public Notice DA 05-2979 and Order DA 06-801,<sup>1</sup> KHNL/KFVE License Subsidiary, LLC (“Raycom”), licensee of KOGG-TV and permittee of KOGG-DT, Wailuku, Hawaii (“the station” or “KOGG”),<sup>2</sup> respectfully requests renewal of the 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.

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<sup>1</sup> *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*”); *Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004*, Order, DA 06-801, MB Dkt. No. 05-317 (rel. May 1, 2006) (“*Waiver Order*”).

<sup>2</sup> KOGG is a satellite of KHNL, the NBC affiliate in Honolulu, Hawaii; KHNL is separately seeking a waiver of digital testing.

The circumstances that existed four months ago, when the Media Bureau granted the waiver, still exist and justify a renewal of the waiver.<sup>3</sup> Specifically, KOGG's digital signal coverage continues to be limited due to the unremediable presence of "clear zoning or environmental legal impediments."<sup>4</sup>

As the Media Bureau has recognized,<sup>5</sup> Raycom had to abandon several construction sites after government officials and community representatives objected. The State Department of Land and Natural Resources ("DLNR") prevented Raycom and other Wailuku broadcasters from co-locating their DTV facilities on top of Mt. Haleakala. Raycom worked with other broadcasters, the University of Hawaii Institute for Astronomy ("IFA"), the U.S. Department of Defense Air Force Research Laboratory ("DOD"), local organizations, and governmental agencies to identify a suitable community tower site.

Use of that site (Kalepeamo) was derailed because of opposition from other groups that included environmental and cultural activists. A second site was identified but then had to be abandoned because of concerns about possible interference to Mt. Haleakala astronomy observatories. A third site (Polipoli State Park) also triggered insurmountable opposition, including objections from the DLNR.

Along with several other broadcasters, Raycom finally was able to enter into an agreement for an acceptable site (the Ulupalakua Ranch on the island of Maui). Local law requires the land to be subdivided in order to make the sublease valid. Applications for the right to subdivide the property have been filed.

At this time, construction on the site is set to start in September. Once grading, bringing in power, pouring concrete for the buildings, and establishing footings for the tower is done, Raycom anticipates that the tower and transmitters will be built in the winter of 2006-2007. Barring unforeseen delays, equipment testing should begin in May 2007.

In order for the signals to reach Wailuku from their origination in Honolulu, relay sites are necessary. The first relay receives KHNL-DT's signal (from Honolulu to Haleakala) and transmits it to the second relay. A revocable permit from the DLNR and the Board of Natural Resources ("BLNR") exists for this site, but certain issues must still be resolved. Outstanding matters include (1) the need for adjustments to account for new equipment and for the formation of an LLC by Raycom and other local broadcasters (Maui Television Broadcasters LLC, or "MTVB") and (2) the status of the Conservation District Use Permit ("CDUP") for land use purposes. Permitting for the first relay site is expected to be completed within the next several months.

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<sup>3</sup> See *Waiver Order* at ¶ 21. See also 47 U.S.C. § 339(a)(2)(D)(viii), providing that "a waiver may be renewed upon a proper showing."

<sup>4</sup> See 47 U.S.C. § 339(a)(2)(D)(viii)(II).

<sup>5</sup> See *Waiver Order* at ¶ 21.

The second relay site is controlled by one of the members of MTVB, and is located in Mauna Loa. A BLNR permit for this site has been obtained, but the DLNR must grant its approval in order to allow site modifications. As with the first relay site, the DLNR permitting process is anticipated to conclude within a few months.

Raycom continues in its efforts to resolve the various regulatory issues raised by its efforts to bring DTV service to Wailuku and the island of Maui. KOGG's digital signals continue to be limited due to the "clear zoning impediments" that the Media Bureau recognized in May.<sup>6</sup>

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For the reasons stated herein, there can be no doubt that KOGG's digital signal coverage has been limited due to unremediable zoning and environmental legal impediments. Accordingly, Raycom respectfully requests that the Commission renew the waiver exempting KOGG from digital signal testing in accordance with Section 339(a)(2)(D)(viii)(II) of the Act.

Respectfully submitted,



Eve Pogoriler\*

*Counsel for KHNL/KFVE License Subsidiary, LLC*

\* Admitted only in Massachusetts; not admitted in the District of Columbia, and supervised by principals of the firm.

cc: Nazifa Sawez (by hand delivery)

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<sup>6</sup> See Waiver Order at ¶ 21.