

# COVINGTON & BURLING LLP

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August 15, 2007

## **FILED ELECTRONICALLY**

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

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

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

Dear Ms. Dortch:

KHNL/KFVE License Subsidiary, LLC (a subsidiary of Raycom Media, Inc., or “Raycom”), licensee of KOGG-TV and permittee of KOGG-DT, Wailuku, Hawaii (“the station” or “KOGG”) 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. KOGG is a satellite of KHNL, the NBC affiliate in Honolulu, Hawaii.

The Media Bureau has recognized that KOGG’s digital signal coverage continues to be limited due to the clear and unremediable presence of “clear zoning or environmental legal impediments.”<sup>1</sup> The Bureau recognized these impediments when it granted the original digital

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<sup>1</sup> See 47 U.S.C. § 339(a)(2)(D)(viii)(II), providing that clear and convincing evidence of such impediments provide a basis for waiver of testing under Section 339(a)(2)(D)(vii).

August 15, 2007  
Page 2

signal testing waiver<sup>2</sup> and subsequent renewals.<sup>3</sup> These circumstances have not changed, and therefore renewal of waiver of Section 339(a)(2)(D) is warranted.

In its efforts to find a suitable location for KOGG's digital facilities, Raycom encountered significant environmental and zoning obstacles from government and local interests. These obstacles included (1) the state government's ban on co-location of DTV facilities with the associated analog facilities on Mt. Haleakala; (2) environmental, community, and cultural groups' opposition to the first alternative site selected for construction of the DTV facilities; (3) concerns from University of Hawaii and Department of Defense astronomy observatories about the use of a second alternative site; and (4) objections from several groups (including the State Department of Land and Natural Resources) over the selection of a third alternative site.

Raycom has identified a suitable site for KOGG's digital facilities. This site is the Ulupalakua Ranch site. An FCC Form 301 Minor Modification Application was filed in December 2006 and is currently pending.<sup>4</sup> Barring unforeseen circumstances, it appears that the site owner will soon complete the environmental study and register the tower, and that the site can be operational within five months.

\* \* \*

KOGG's digital signal coverage continues to be limited due to the unremediable presence of clear zoning or environmental legal impediments. Raycom requests extension of the waiver exempting KOGG from digital signal testing in accordance with Section 339(a)(2)(D)(viii) of the Act.

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<sup>2</sup> See *Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004*, Order, 21 FCC Rcd 4813, at ¶ 21 (rel. May 1, 2006) (“*Waiver Order*”).

<sup>3</sup> See *Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004*, Order, MB Dkt. No. 05-317, DA 06-2232 (rel. Oct. 31, 2006) (“*Extension Order*”) at ¶ 9; *Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004*, Order, MB Dkt. No. 05-317, DA 07-1957 (“*Further Extension Order*”) at ¶ 8.

<sup>4</sup> See FCC File No. BMPCDT-20061206AAH.

August 15, 2007  
Page 3

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jennifer A. Johnson". The signature is fluid and cursive, with the first name being the most prominent.

Jennifer A. Johnson

Eve R. Pogoriler

*Counsel for KHNL/KFVE License Subsidiary, LLC*

cc: Nazifa Sawez