

May 17, 2007

VIA COURIER

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

Attention: Video Division

Re: KPXO(TV), Channel 66, Kaneohe, Hawaii
Fac. ID No. 77483
Voluntary Band-Clearing Request
EXPEDITED PROCESSING REQUESTED

Dear Ms. Dortch:

Paxson Hawaii License, Inc. ("ION"), licensee of television station KPXO(TV), Channel 66, Kaneohe, Hawaii (the "Station"), by its attorneys, hereby submits a voluntary band-clearing request seeking authority to: (i) terminate analog broadcasting on Channel 66 and surrender its license for that channel; and (ii) thereafter operate KPXO-DT as a digital-only television station on Channel 41 as currently authorized.

This is filed pursuant to the Commission's voluntary band-clearing procedures¹ and is in keeping with Commission's band-clearing decisions.² As with other requests, grant of this instant one would remove the impediment to and enable early provision of new wireless services, including, potentially, public safety services.³ The termination of analog service by

¹ Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 20845, ¶¶ 57-66 (2000) ("*Upper 700 MHz MO&O and FNPRM*").

² See, e.g., *Letter to WRNN-TV Associates L.P.*, DA 04-2039, 19 FCC Rcd 12343 (2004) (involving WRNN-TV, Kingston, New York) ("*WRNN-TV*").

³ See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 07-72 (rel. April 27, 2007) ("*Further Notice*"). The *Further Notice* contemplated *inter alia* numerous proposals for revising the Upper 700 MHz band plan. At least one such proposal would allocate KPXO(TV)'s Channel 66 to Public Safety. *Id.*, ¶¶ 268-275.

the Station would have a negligible impact on the public. Indeed, the Station's analog service already has been off-the-air since October 15, 2006, when an earthquake of magnitude 6.7 on the Richter Scale damaged the Station's NTSC transmitter (the DTV transmitter was undamaged). The State of Hawaii, owner of the land on which the transmitter building sits, effectively will not permit the repairs necessary for resumption of analog service from the site. In light of the benefits of band-clearing and the extraordinary costs of resuming analog service elsewhere, ION is submitting this instant request.

* * *

Past Precedent and Commission Policy Support Grant

The public interest factors identified in the *Upper 700 MHz MO&O and FNPRM* support grant of ION's request. In the *Upper 700 MHz MO&O and FNPRM*, the Commission said it would "weigh[] the loss of broadcast service and the advent of new wireless service on a case-by-case basis"⁴ and "consider all the relevant public interest factors ... in deciding whether or not to approve the request."⁵ The Commission established a rebuttable presumption favoring grant of certain band-clearing requests, believing that substantial public interest benefits would arise in such circumstances.⁶ The Commission said that it would recognize such a presumption of any request that "would make new or expanded wireless service, such as '2.5' or '3G' services, available to consumers; (2) would clear commercial frequencies that enable provision of public safety services; or (3) would result in the provision of wireless service to rural or other underserved communities."⁷ The Commission further said that under the presumption grant could not result in any one of the following: "(1) the loss of any of the four stations in the designated market area (DMA) with the largest audience share; (2) the loss of the sole service licensed to the local community; or (3) the loss of a community's sole service on a channel reserved for noncommercial educational broadcast service."⁸

As discussed below, the majority of these enumerated public interest factors – in addition to numerous other public interest factors – overwhelmingly supports grant.

A. Presumption Benefit: New Wireless Service

Termination of the Station's analog Channel 66 operations would benefit the public by removing the impediment to and enabling early provision of new wireless services, including, potentially, public safety services. The Commission has not yet finalized allocations in the

⁴ *Upper 700 MHz MO&O and FNPRM*, ¶ 63.

⁵ *Id.*, ¶ 62.

⁶ *Id.*, ¶ 61.

⁷ *Id.* (internal citations omitted).

⁸ *Id.* (internal citations omitted).

Upper 700 MHz band, and it still is considering numerous proposed arrangements.⁹ At least one proposal, for example, would allocate KPXO(TV)'s Channel 66 to public safety services, while others would allocate the channel to commercial services. Regardless, KPXO(TV) is the only full power television station (analog or digital) operating in the Upper 700 MHz Band in the state of Hawaii. The Station accordingly stands as the only impediment in Hawaii to the early provision of new wireless services. By clearing the Station, the Commission easily could allow for the early provision of these new services in a manner consistent with Congress's directive that the Commission expeditiously auction this spectrum by January 28, 2008.¹⁰ Although ION is not submitting this request pursuant to a band-clearing agreement, the Commission has not found this aspect dispositive under past precedent nor of sufficient weight to counterbalance the strong public interest benefits supporting grant of this request.¹¹

B. Countervailing Presumption Factors

1. Loss of a "Top Four" Station

The Station is not among the top four rated stations in the DMA, so this factor supports grant.

2. Loss of the Sole Station Licensed to the Community

Although there are no less than 10 and no more than 22 other analog and digital television stations serving portions of the Station's Grade B contour,¹² KPXO(TV) is the sole full power television station licensed to Kaneohe, Hawaii. Accordingly, this second factor identified in the *Upper 700 MHz M&O and FNPRM* is adverse but should not be dispositive. To date, the Commission has granted at least five early band clearing requests involving stations that were the sole television service licensed to their community.¹³

⁹ See *Further Notice*.

¹⁰ Deficit Reduction Act of 2005, Title III, Pub. L. No. 109-171, 120 Stat. 4 (2006)

¹¹ See *WRNN-TV*.

¹² See Exhibit 1, p. 2 and Fig. 3.

¹³ Of these five, *WRNN-TV* was for an Upper 700 MHz Band station and the other four were for Lower 700 MHz Band stations. See *Letter to Johnson Broadcasting of Dallas*, DA 06-2319, 21 FCC Rcd 13459 (Nov. 17, 2006) (involving KLDT(TV), Lake Dallas, Texas); *Letter to WLNY, Inc.*, DA 05-2482, 20 FCC Rcd 14765 (2005) (involving WLNY-TV, Riverhead, New York); *Letter to Commonwealth Public Broadcasting Corp.*, DA 03-2845, 18 FCC Rcd 18517 (2003) (involving WNVT-TV, Goldvein, Virginia); and *Letter to Barry A. Friedman, Esq.*, DA 03-1481, 18 FCC Rcd 9131 (2003) (involving KVMD(TV), Twentynine Palms, California). The Media Bureau has denied one band-clearing request involving a station that was the sole television service licensed to its community, but that factor did not appear determinative. See *Letter to Barry A. Friedman, Esq.*, DA 05-343, 20 FCC Rcd 2389 (Med. Bur. 2005) (denying request regarding KJLA(TV), Ventura, CA) ("*KJLA*") *pet. for recon. pending*.

3. Loss of a Community's Sole Service on a Channel Reserved for Noncommercial Educational Broadcast Service

KPXO(TV) is a commercial station, so grant of this request will not deprive Kaneohe, Hawaii of its sole noncommercial service on a channel reserved for noncommercial educational broadcast service. This third factor accordingly is not implicated.

C. Other Public Interest Factors Favor Grant

Other public interest factors that the Commission said it would consider further support grant of this request. A primary factor is that last year's Hawaiian earthquake is preventing the Station from resuming meaningful NTSC service.¹⁴ As ION previously informed the Commission in its request for STA to suspend operations, the earthquake short-circuited the Station's RF power amplifier modules when they were dislodged while electrified.¹⁵ ION has found that no replacement parts exist for the aging NTSC transmitter, meaning that the Station must replace the entire transmitter to restore analog service. The State of Hawaii, however, will not permit the transmitter building expansion necessary to install a modern transmitter. Although ION has a provision in its tower sublease that provides for a larger transmitter building, the landlord refuses to give effect to this provision because, they maintain, to do so would jeopardize the lease with the State of Hawaii.¹⁶ Without sufficient space to install a new NTSC transmitter next to the DTV transmitter, ION is precluded from resuming NTSC operation at the existing site.

Resuming NTSC service from an alternate site is impractical and cost-prohibitive – especially on an island such as Oahu which has considerable terrain issues and pervasive land use regulations. Operating a new, temporary, and separate NTSC facility far from the KPXO DTV facility would be a difficult and expensive task. Not only would ION have to secure a temporary site, but it also would have to secure the means to microwave programming to the temporary site. Accomplishing both would take a significant amount of time on Oahu, where local zoning processes are relatively protracted. It is highly unlikely that ION could complete such arrangements and resume analog service much before the scheduled termination of analog

¹⁴ President Bush declared the entire state of Hawaii a disaster area. *See* President Bush Signs Major Disaster Declaration For Hawai'i Requested By Governor Lingle, *Press Release* (Oct. 17, 2006) <http://www.hawaii.gov/gov/news/releases/2006/News_Item.2006-10-17.4008>.

¹⁵ *See* FCC File No. BLSTA-20061114ADW.

¹⁶ *See* letter from Mount Wilson FM Broadcasters, Inc. d/b/a Mauna Kea Broadcasting Company (attached as Exhibit 2). 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"). 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." *Id.*

broadcast service on February 17, 2009 – and almost certainly not before the October 15th anniversary of the earthquake and the date by which the Station's license could be put at risk absent Commission intervention.¹⁷ Even if the Station could resume temporary analog operation, service losses would be inevitable and likely extensive given the paucity of alternative antenna sites due to island terrain and widespread state land management.

Termination of analog service by the Station would have a negligible impact on the public. Station KPXO-DT already operates full power DTV facilities on its anticipated post-transition channel.¹⁸ The KPXO-DT digital service area entirely encompasses the Station's analog service area,¹⁹ so every person that received the Station's over-the-air analog service could receive the KPXO-DT signal. Furthermore, 100% of those within the Station's Grade B service area are served by at least five other full power analog television stations.²⁰ Moreover, cable and satellite penetration in the Honolulu DMA is the highest in the country at 90%.²¹ After the earthquake, the Station arranged at its own expense to have its analog programming delivered via fiber to all cable operators in the Honolulu DMA, so cable subscribers did not and will not have to obtain additional equipment to view the Station's programming. Accordingly, whether they watch television via cable, satellite, or over-the-air, almost all local residents would continue to have uninterrupted access to the Station's programming and all would continue to have full access to a wide variety of viewing options.²²

Lastly, grant of this request would not negatively impact the DTV transition. As mentioned, station KPXO-DT already operates on its proposed post-transition channel. Indeed, this request essentially is necessitated by the DTV transition. If there was no DTV transmitter in the transmitter building, there would be sufficient space to install a new NTSC transmitter and resume collocated service.

* * *

¹⁷ See 47 U.S.C. 312(g) ("If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period"). Station KPXO-DT, of course, has been on the air continuously since the earthquake.

¹⁸ See *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MB Docket No. 87-268, *Seventh Further Notice of Proposed Rule Making*, Appendix B (Oct. 20, 2006).

¹⁹ See Exhibit 1, Fig. 4.

²⁰ See Exhibit 1, p. 2 and Fig. 1.

²¹ BROADCASTING AND CABLE YEARBOOK, at C-11 (2007)

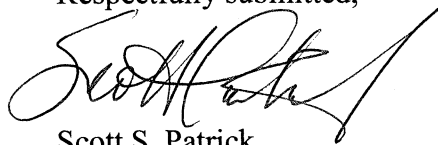
²² Indicative of this is the fact that, since the earthquake, the Station has received no complaints from viewers unable to receive the analog signal.

May 17, 2007

Page 6

For these reasons, ION seeks grant of this band-clearing request. To avoid complications with the potential automatic cancellation of the Station's license in October 2007, we respectfully request expedited processing. Should any further information be desired in connection with this matter, please contact the undersigned.

Respectfully submitted,



Scott S. Patrick

Enclosures

cc(w/): Monica Desai, Esq.
Andrew Long, Esq.
Barbara Kreisman, Esq.
Clay Pendarvis, Esq.
Joyce Bernstein, Esq. ✓
Kim Matthews, Esq.
Ms. Nazifa Sawez
William L. Watson, Esq.
John R. Feore, Jr., Esq.

EXHIBIT 1

Technical Statement of Louis Robert du Treil, Jr.

TECHNICAL STATEMENT
CONCERNING OTHER TELEVISION
SERVICES ANALYSIS FOR KPXO(TV)
KANEHOE, HAWAII
CHANNEL 66

This Technical Statement was prepared on behalf of television station KPXO(TV), Kaneohe, Hawaii concerning an analysis of other television services within its predicted Grade B contour. * As detailed herein, the analysis reveals that there is no population within the KPXO(TV) predicted Grade B contour with less than five other analog full-service licensed television services. Furthermore, considering both analog and digital licensed stations, there are no less than ten and as many as twenty-two, other TV or DTV services within the KPXO(TV) Grade B contour.

The analysis was conducted using the predicted Grade B contour of KPXO(TV) and the predicted Grade B, or equivalent digital Grade B, contours of all other full-service licensed analog and digital television stations with predicted contours overlapping that of KPXO(TV). The Grade B, or equivalent Grade B, contours were calculated according to the conventional contour methods outlined in the FCC Rules using the U.S.G.S. 3-second terrain database. The FCC CDBS Engineering Database was the source of the technical information for the stations under study.

The predicted contours of the subject stations were projected on maps and counts of other analog and digital television services throughout the KPXO(TV) Grade B contour area were made. The population was analyzed using the 2000 Census block data and area was analyzed through numerical integration. Figure 1 is a map showing the predicted KPXO(TV) Grade B contour and the other analog Grade B television services.

* KPXO(TV) is licensed for operation on Channel 66 with a maximum directional peak visual effective radiated power of 95.5 kW with an antenna height above average terrain of 632 m. See FCC File No. BLCT-19980601KE. The KPXO-DT facility is licensed for operation on Channel 41 with a maximum average digital effective radiated power of 34 kW with an antenna height above average terrain of 632 m. See FCC File No. BLC DT-20060705ACA.

Figure 2 is a map showing the predicted KPXO(TV) Grade B contour and the other digital equivalent Grade B contours alone. Figure 3 is a map showing the Grade B and equivalent Grade B contours of all analog and digital facilities together. Figure 4 is a map showing a comparison of the KPXO(TV) analog Grade B contour and the KPXO-DT equivalent digital Grade B contour. Figure 5 is a tabulation of the full-service licensed television stations considered in the analysis.

The numerical results are tabulated and shown on Figures 1 through 3. As indicated in Figure 1, 100% of the population and area within the KPXO(TV) Grade B contour is served by five or more other full-time licensed television services.

As indicated in Figure 2, 100% of KPXO(TV) Grade B contour population and area is served by no less than 2 other digital television services, including that of KPXO-DT on Channel 41. However, as indicated on Figure 2, 99.9% of the population is served by 5 or more other digital television services.

As indicated in Figure 3, 100% of KPXO(TV) Grade B contour population and area is served by no less than 10 and as many as 22 other analog and digital television services, including that of KPXO-DT on Channel 41.

Figure 4 demonstrates that the entire KPXO(TV) Grade B service area is served by the KPXO-DT equivalent Grade B contour. The KPXO-DT equivalent Grade B contour provides service to 0.7% greater population and 17.0% greater land area than the KPXO(TV).

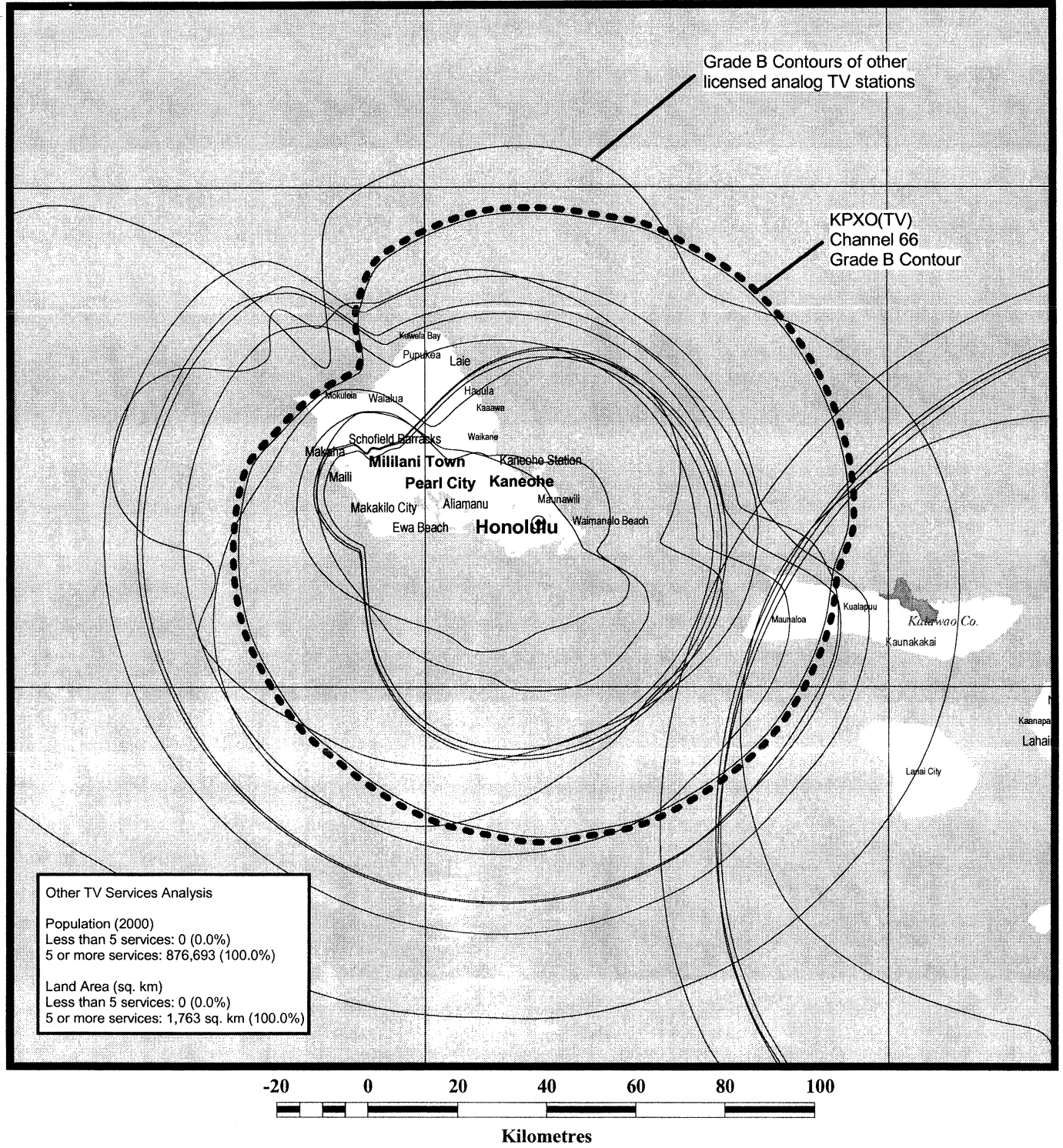
This statement was prepared by me or under my direction and it is true and correct to the best of my knowledge and belief.



Louis Robert du Treil, Jr., P.E.

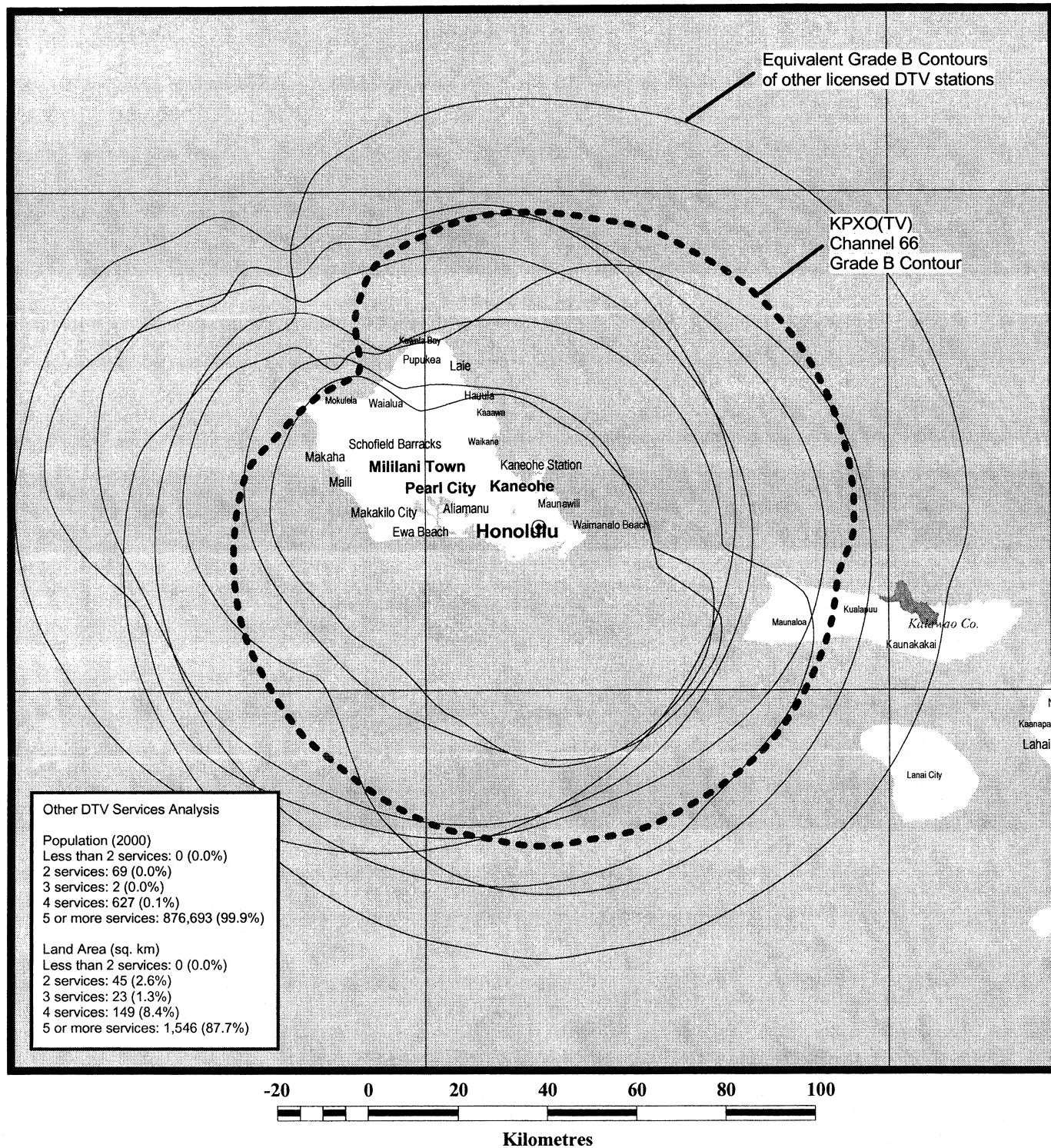
du Treil, Lundin & Rackley, Inc.
201 Fletcher Ave.
Sarasota, Florida 34237

April 26, 2007



OTHER FULL-SERVICE ANALOG TV SERVICES ANALYSIS FOR KPXO(TV)

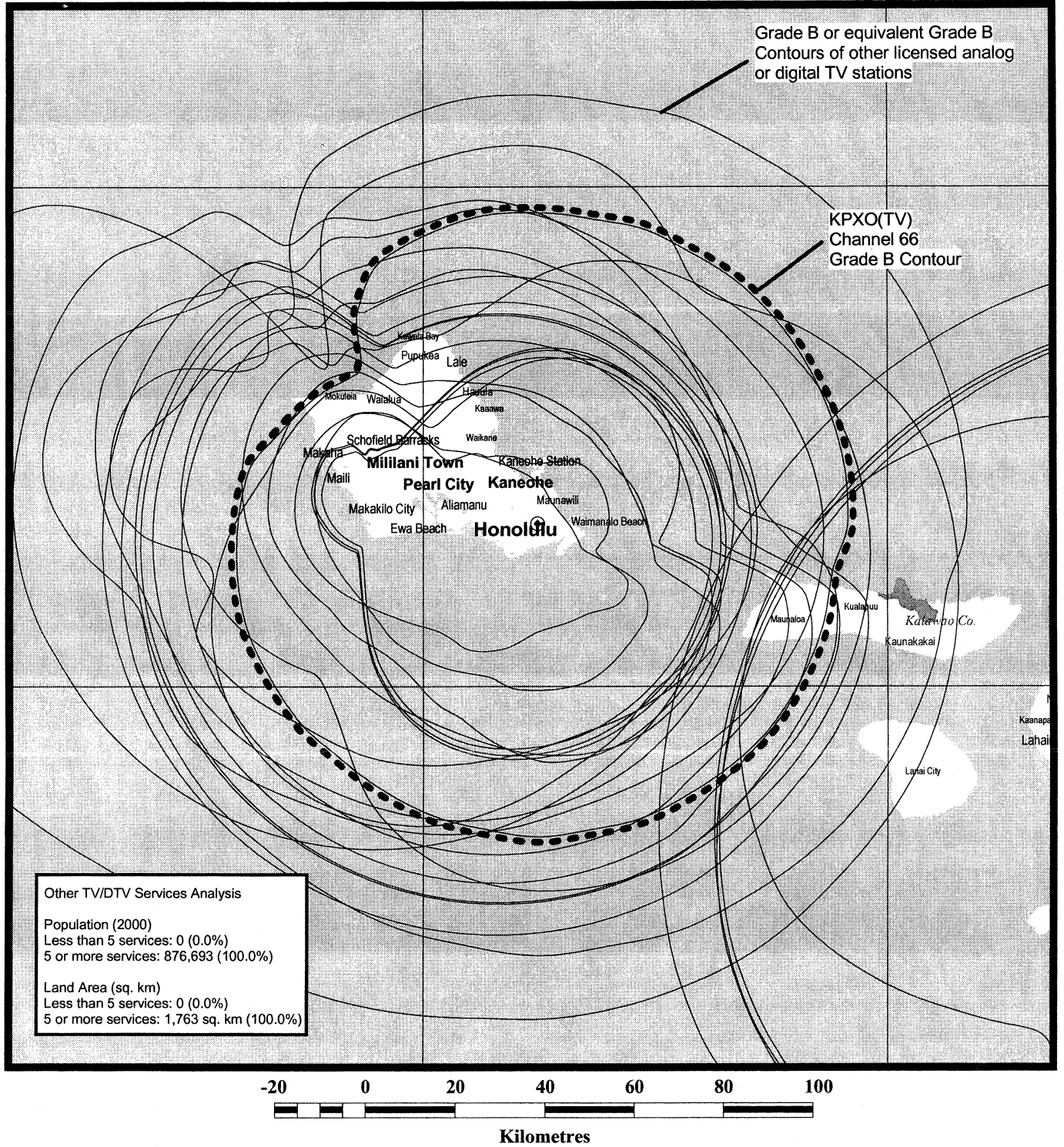
duTreil, Lundin & Rackley, Inc. Sarasota, Florida



Other DTV Services Analysis	
Population (2000)	
Less than 2 services:	0 (0.0%)
2 services:	69 (0.0%)
3 services:	2 (0.0%)
4 services:	627 (0.1%)
5 or more services:	876,693 (99.9%)
Land Area (sq. km)	
Less than 2 services:	0 (0.0%)
2 services:	45 (2.6%)
3 services:	23 (1.3%)
4 services:	149 (8.4%)
5 or more services:	1,546 (87.7%)

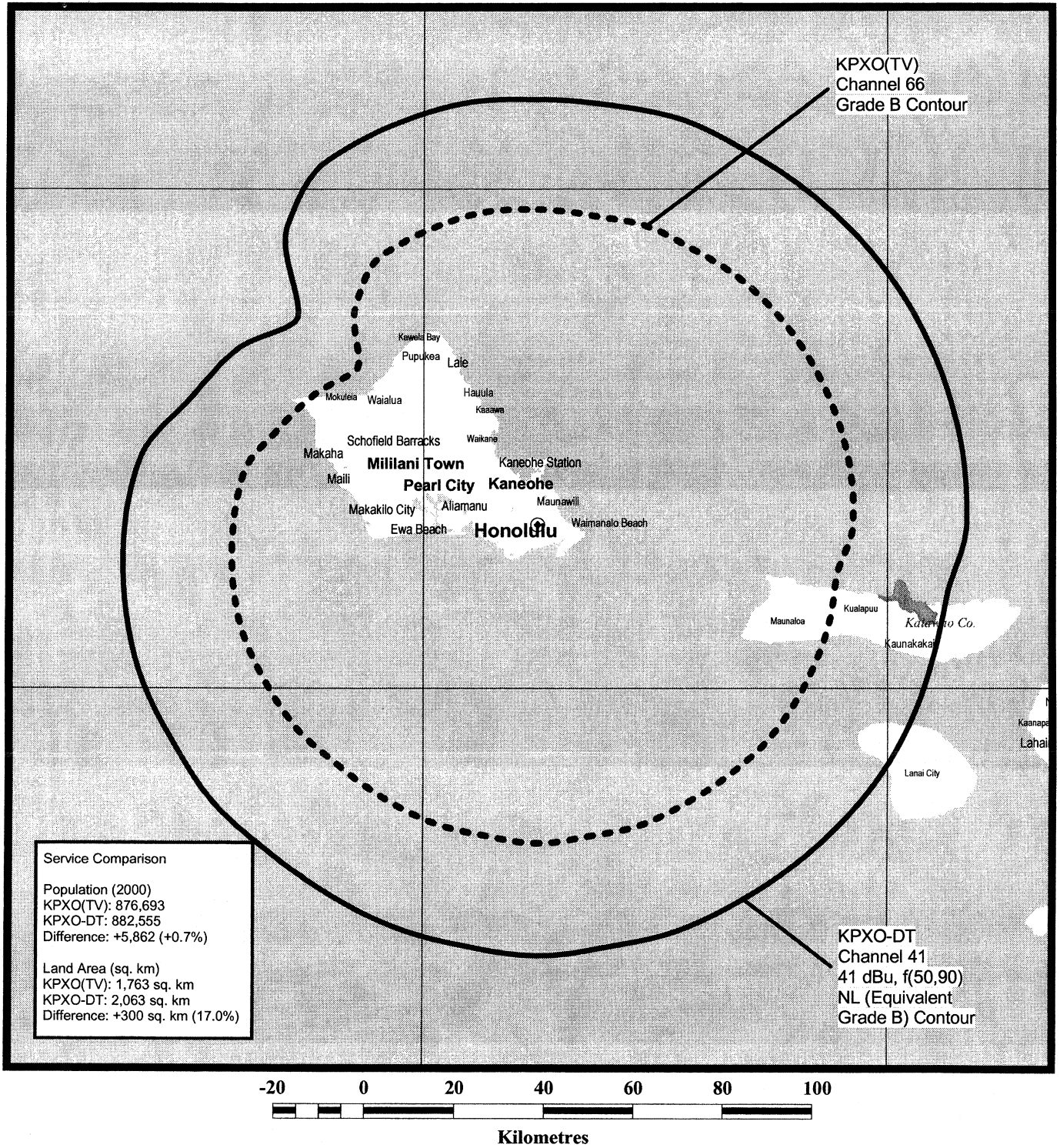
OTHER FULL-SERVICE DIGITAL TV SERVICES ANALYSIS FOR KPXO(TV)

duTreil, Lundin & Rackley, Inc. Sarasota, Florida



OTHER FULL-SERVICE ANALOG & DIGITAL TV SERVICES ANALYSIS FOR KPXO(TV)

duTreil, Lundin & Rackley, Inc. Sarasota, Florida



SERVICE COMPARISON FOR KPXO(TV) AND KPXO-DT

duTreil, Lundin & Rackley, Inc. Sarasota, Florida

**TECHNICAL STATEMENT
CONCERNING OTHER TELEVISION
SERVICES ANALYSIS FOR KPXO(TV)**

Stations Considered in Other Services Analysis

Call Sign	City	State	Channel
DTV Stations			
KHON-TV	HONOLULU	HI	8
KHET	HONOLULU	HI	18
KIKU	HONOLULU	HI	19
KA AH-TV	HONOLULU	HI	27
KWHE	HONOLULU	HI	31
KITV	HONOLULU	HI	40
KPXO	KANEOHE	HI	41
KWBN	HONOLULU	HI	43
TV Stations			
KHON-TV	HONOLULU	HI	2
KGMV	WAILUKU	HI	3
KITV	HONOLULU	HI	4
KFVE	HONOLULU	HI	5
KAIH-TV	WAILUKU	HI	7
KGMB	HONOLULU	HI	9
KMEB	WAILUKU	HI	10
KHET	HONOLULU	HI	11
KMAU	WAILUKU	HI	12
KHNL	HONOLULU	HI	13
KWHE	HONOLULU	HI	14
KOGG	WAILUKU	HI	15
KIKU	HONOLULU	HI	20
KA AH-TV	HONOLULU	HI	26
KBFD	HONOLULU	HI	32
KALO	HONOLULU	HI	38
KWBN	HONOLULU	HI	44
KKAI	KAILUA	HI	50
KUPU	WAIMANALO	HI	56

EXHIBIT 2

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,



Saul Levine

Mauna Kea Broadcasting Company