

## EXHIBIT 38

### **Request for Approval of Early Commencement of Post-Transition DTV Operation Station KMEB(TV/DT), Wailuku, Hawaii (Facility ID No. 26428)**

The Hawaii Public Television Foundation (“HPTF”) hereby requests approval to commence post-transition DTV service for noncommercial educational television station KMEB(TV/DT), DTV Channel 10, Wailuku, Hawaii (“KMEB”). A special operating condition in the KMEB-DT post-transition DTV facility construction permit in FCC File No. BMPEDT-20080620AMY states that the station is not to commence operation pursuant to the permit prior to February 17, 2009 without prior Commission approval. Accordingly, HPTF seeks authority to commence post-transition DTV Channel 10 operation under its construction permit as of **January 15, 2009** as part of the state-wide early transition to DTV for Hawaii.<sup>1</sup> HPTF also respectfully requests that the Commission re-issue the KMEB-DT post-transition permit in File No. BMPEDT-20080620AMY without the relevant condition or otherwise grant the requested relief.

In accordance with *In the Matter of Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, the early digital operation of KMEB’s post-transition DTV facility will not cause impermissible interference to other stations; will allow HPTF to continue to serve existing viewers until the DTV transition date; and will ensure that HPTF meets the February 17, 2009 deadline for commencement of full, authorized post-transition service.<sup>2</sup> Indeed, KMEB-DT’s full, authorized post-transition DTV service obligations will be met as of January 15, 2009, immediately upon commencement of operation of the facilities in File No. BMPEDT-20080620AMY.

HPTF submits that operation of KMEB’s post-transition DTV Channel 10 facility in FCC File No. BMPEDT-20080620AMY prior to February 17, 2009 will not cause impermissible interference to any other station. *See* Engineering Statement submitted with HPTF’s application for construction permit in FCC File No. BMPEDT-20080620AMY (also attached as Exhibit 38). In addition, early operation of the KMEB-DT post-transition DTV facility starting on January 15, 2009 is necessary to allow HPTF to complete its transition to DTV with the least amount of disruption to current viewers.

As HPTF has previously informed the Commission, KMEB and several other full-power analog television stations must cease analog broadcasting prior to the DTV transition date and relocate to a new antenna tower in order to transition to digital service. In order to minimize the disruption in service to viewers, HPTF has coordinated with other full-power television stations in Hawaii to transition all full-power television service to digital on January 15, 2009. After that date, all full-power television service in Hawaii will be broadcast only in digital.

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<sup>1</sup> *See FCC Launches Web Site Dedicated to Hawaii’s Early Transition to Digital on January 15*, FCC News Release, DOC-285893A1 (rel. Nov. 17, 2008); *see also* <http://www.dtv.org/Hawaii>.

<sup>2</sup> Report and Order, MM Docket No. 07-91, FCC 07-228 (Rel. Dec. 31, 2007), at ¶ 121, et seq.

HPTF is concurrently filing a notification with the Commission of its intent to terminate KMEB's analog service as of January 15, 2009, and will conduct the required viewer notifications regarding the station's digital transition.

HPTF is a noncommercial educational licensee and operates KMEB on a noncommercial educational basis. The licensee is therefore exempt from FCC filing fee requirements, pursuant to Section 1.1114 of the Commission's Rules, and the facility is exempt from FCC regulatory fees, pursuant to Section 1.1162 of the Rules.