

164208

DUPLICATE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED

AUG 23 2007

Federal Communications Commission
Office of the Secretary

In re Application of)
Educational Media Foundation)
For a Minor Change to the License of)
Noncommercial Educational FM Station)
KHAI, Wahiawa, Hawaii (FIN #164206))

FCC File No. BPED-20070525AHV

To: Marlene H. Dortch, Secretary
Office of the Secretary
Attn: The Commission

REPLY TO RESPONSE TO ORDER TO SHOW CAUSE

Educational Media Foundation ("EMF"), licensee of noncommercial educational FM station KHAI, Wahiawa, Hawaii, by its attorneys, hereby responds to the Response to Order to Show Cause filed by Visionary Related Entertainment, LLC ("Visionary") on August 10, 2007 ("Response"). On July 11, 2007 the Commission issued to Visionary an Order to Show Cause why its stations, KSHK (Kekaha, Hawaii) and KNUQ (Paauilo, Hawaii), should not be required to change channels to accommodate the facilities proposed for KHAI in EMF's above-referenced application. As discussed below, Visionary's Response failed to adequately detail any justification for KSHK and KNUQ retaining their current channels. Thus, Visionary has provided absolutely no evidence that it cannot be accomplished as proposed by EMF. EMF stands ready and willing to fulfill its legal obligations to reimburse Visionary for the costs of changing channels and, with the cooperation of Visionary, believes that such a change can readily be accomplished.

In Visionary's Response, it speculates that it may not be possible for KNUQ to move from Channel 279 to Channel 280 due to the Commission's policy regarding acceptance of supplemental methods for contour prediction. Specifically, according to the Response, KNUQ's licensed facility was initially approved using the Longley-Rice contour prediction method to demonstrate city-grade coverage to its community of license. Generally, the Commission does not take terrain into account to demonstrate community coverage; however, the Commission recognizes an exception to this policy when coverage can be demonstrated from a specific site and FAA approval is received, per *Woodstock and Broadway, Virginia*, 3 FCC Rcd 6398 (1988). Here, EMF is not proposing that KNUQ change its transmitter site or power, and thus there should be no issue with its city-grade contour whether by Longley-Rice or any other supplemental contour prediction method. As the Commission initially granted authority to operate at this site per BLH-19900425KB, consideration of terrain to prove city-grade coverage is acceptable under the *Woodstock* exception. Therefore, Visionary's concerns expressed in the Response, as it relates to KNUQ, are without merit. KNUQ is already a licensed station providing service to its community from the current site, and EMF is simply proposing an equivalent class channel swap.

Visionary's Response with regards to the proposed KSHK channel change is also deficient. The Response vaguely mentions potential technical and financial roadblocks to the channel change but fails to provide actual supporting evidence. In fact, EMF has contacted Visionary to obtain the necessary engineering and financial information for both stations which have not yet been provided by Visionary. EMF stands ready and willing to work with Visionary to determine the "reasonable" costs of the channel change, and to reimburse Visionary for all reasonable costs, as is required by the Commission's rules. See *Circleville and Columbus, Ohio*,

8 FCC 29 159 (1967). To determine what those reasonable costs are, Visionary must cooperate by providing access and information regarding its technical facilities. If EMF could receive Visionary's assistance, both parties could work together to identify and resolve any engineering or financial issues that may arise, as EMF is committed to doing.

Since, as discussed above, Visionary failed to present any compelling reasons to reject the proposed channel change for KNUQ and KSHK, EMF respectfully requests that the Commission grant the KHAI minor change application and order the necessary channel changes.

Respectfully submitted,

EDUCATIONAL MEDIA FOUNDATION

By: 

David D. Oxenford
Karen Ross

Its Attorneys

DAVIS WRIGHT TREMAINE LLP
1919 Pennsylvania Ave., N.W., Ste 200
Washington, D.C. 20006
(202) 973-4200

Dated: August 23, 2007