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

FILED/ACCEPTED

SEP 25 2012

Federal Communications Commission  
Office of the Secretary

In re Applications of	)	
	)	
Maka'ainana Broadcasting Company, Ltd.	)	File No. BPED-19960418MB
New Non-Commercial Educational Station, Kaneohe, Hawaii	)	Facility Id. No. 81548 NCE MX Group 95083E
Calvary Chapel of Honolulu, Inc.	)	File No. BPED-19960418MA
New Non-Commercial Educational Station, Honolulu, Hawaii	)	Facility Id. No. 81538 NCE MX Group 95083E

To: Office of the Secretary  
Attn: The Commission

**OPPOSITION TO APPLICATION FOR REVIEW**

Calvary Chapel of Honolulu, Inc. ("Calvary Chapel"), tentative selectee in the above captioned NCE MX Group, opposes the Application for Review filed by Maka'ainana Broadcasting Company, Ltd. ("MBC") on September 10, 2012. MBC's Application for Review does nothing more than reargue issues that were previously considered and decided by the Commission and the Media Bureau (the "Bureau") based on a complete review of the record and established authority.<sup>1</sup> Regarding MBC's application for a new NCE station at Kaneohe, Hawaii (the "MBC Application"), both the Commission and the Bureau held that MBC "cannot rely on the activities of its local directors *with other organizations* to overcome its own lack of local activity ..."<sup>2</sup> Regarding Calvary Chapel's application for a new NCE station at Honolulu, Hawaii, (the "Calvary Chapel Application"), the Bureau correctly concluded, based on

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<sup>1</sup> See *Letter from Peter H. Doyle to Calvary Chapel of Honolulu, Inc.*, 22 FCC Rcd 17654 (M.B. 2007) ("Bureau Letter Decision"); *Comparative Consideration of 33 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, 26 FCC Rcd 9058 (2011) (the "NCE MO&O"); *Letter from Peter H. Doyle to Harry F. Cole and Scott Woodworth*, DA 12-1314 (M.B. 2012) ("Second Bureau Letter Decision").

<sup>2</sup> See *NCE MO&O*, 26 FCC Rcd at ¶ 96 (*emphasis added*).

established precedent and the record in this proceeding, that Calvary Chapel was entitled to a waiver of Section 73.3573 of the Commission's Rules based on a gradual, routine and inevitable change of its governing board. MBC raises no new factual or legal arguments in its Application for Review to rebut the Commission's and Bureau's well-reasoned conclusions with respect to the MBC Application or the Calvary Chapel Application. For these reasons, Calvary Chapel respectfully requests that the Commission dismiss MBC's Application for Review.

#### **I. THE MBC APPLICATION.**

1. MBC claims that the Bureau had no authority to dismiss its July 21, 2011 Petition for Reconsideration of the *NCE MO&O*. The Bureau dismissed MBC's Petition for Reconsideration because it was interlocutory and prohibited by Section 1.106(a)(1) of the Commission's Rules.<sup>3</sup> In the *NCE MO&O*, the Commission stated that an applicant that disputes the Commission's point determinations, "should not raise such matters as petitions for reconsideration of the instant Order because the point hearings herein take no final action on any application, and petitions for reconsideration do not lie against such interlocutory decisions."<sup>4</sup> Despite the Commission's clear warning, MBC filed a Petition for Reconsideration of the *NCE MO&O*, which the Bureau properly dismissed pursuant to delegated authority.<sup>5</sup>

2. The Bureau went a step further and considered MBC's substantive argument that the Commission failed to consider the "extensive community involvement" of MBC's principals when it determined that MBC was not eligible for any points as an "established local applicant."

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<sup>3</sup> See *Second Bureau Letter Decision*, at p. 4.

<sup>4</sup> *NCE MO&O*, 26 FCC Rcd at ¶ 103 (citing 47 C.F.R. § 1.106(a)(1) and *Patrick J. Vaughn, Esq.*, 22 FCC Rcd 11165 (M.B. 2007)).

<sup>5</sup> In the *NCE MO&O*, the Commission delegated authority to the Bureau to consider and dispose of any petitions except those that include issues that are novel or require Commission or Administrative Law Judge consideration. *Id.* at ¶¶ 104-05. The failure of MBC to follow the Commission's express directive not to file a petition for reconsideration is not a novel issue or one that requires Commission or Administrative Law Judge consideration.

As Calvary Chapel noted in its opposition, this argument is contrary to the extensive record in this proceeding. The Commission and the Bureau both considered this issue and held that, based on established precedent, MBC “cannot rely on the activities of its local directors *with other organizations* to overcome its own lack of local activity ...”<sup>6</sup> MBC’s Petition for Reconsideration merely reiterated its opposition to the Commission’s conclusion. Thus, the Bureau properly dismissed MBC’s Petition for Reconsideration pursuant to delegated authority noting that “[t]he Commission also has explicitly rejected MBC’s argument ... [and] MBC has shown no error in these determinations.”<sup>7</sup>

## II. THE CALVARY CHAPEL APPLICATION.

3. The Calvary Chapel Application was filed in April 1996. The Commission determined that Calvary Chapel was the tentative selectee in June 2011. During this 15 year period, as documented in the record in this proceeding, three of Calvary Chapel’s five board members changed, which changes were gradual, inevitable and routine.

4. In the *2007 NCE MO&O*, the Commission recognized that it would be unreasonable to penalize NCE applicants for gradual, routine and inevitable changes in their boards over the substantially long period between the filing of an application and action on an application.<sup>8</sup> In the same order, the Commission also directed the Bureau to waive the major change rule for similarly situated applicants and stated that “[w]e expect that many pending NCE applicants that have experienced 50 percent ownership changes will qualify for such waivers.”<sup>9</sup>

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<sup>6</sup> *NCE MO&O*, 26 FCC Rcd at ¶ 96 (*emphasis added*); see also *Bureau Letter Decision* at pp. 7-8; *Second Bureau Letter Decision* at pp. 4-5.

<sup>7</sup> *Second Bureau Letter Decision* at p. 5.

<sup>8</sup> See *Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, 22 FCC Rcd 6101, ¶ 59 (2007) (the “*2007 NCE MO&O*”).

<sup>9</sup> *Id.* at ¶ 60.

The Bureau, based on this delegated authority and the record in this proceeding, concluded that the changes to Calvary Chapel's board were gradual, inevitable and routine and it thus waived Section 73.3573 of the Commission's Rules.

5. In its Application for Review, MBC does not raise any new factual issues but rather continues to argue that Stephen Holck's departure from the board somehow undercuts the gradual and inevitable changes to Calvary Chapel's board. These circumstances, however, do not support MBC's conclusion that the changes to Calvary Chapel's Board were neither gradual nor inevitable.<sup>10</sup> As the Bureau noted in the *Second Bureau Letter Decision*, the Commission's main concern is that a board's changes are not an outgrowth of a party's desire to gain control over an NCE applicant, and there is nothing in the record that indicates that Mr. Holck's departure, or the other changes to Calvary Chapel's Board, were a result of anyone's desire to maintain control.<sup>11</sup>

6. MBC also disagrees with the Bureau's conclusion that the circumstances surrounding Calvary Chapel's board changes are consistent with previous waiver cases. As the Bureau noted in its decision, the examples discussed by the Commission in the *2007 NCE MO&O* were "not intended to be an exhaustive list of circumstances in which waiver would be appropriate."<sup>12</sup> The germane point is that, in order to qualify for a waiver under the Commission's directive in the *2007 NCE MO&O*, any changes to their governing body must be gradual and routine and not an outgrowth of a party's desire to gain control of the applicant.

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<sup>10</sup> Further, Mr. Holck's departure is an internal matter between Calvary Chapel and Mr. Holck and has no relevance to the Calvary Chapel Application. The only relevant fact to this proceeding is that Mr. Holck left the board and was replaced by Mr. Loo. MBC's attempt to tarnish the reputation of Mr. Holck and Calvary Chapel through Mr. Holck's departure is nothing more than an attempt to distract from the fact Calvary Chapel's gradual change in ownership is consistent with the Commission's policy in this area.

<sup>11</sup> *Second Bureau Letter Decision*, at p. 6; see also *2007 NCE MO&O*, 22 FCC Rcd at ¶ 58.

<sup>12</sup> *Second Bureau Letter Decision*, at p. 6.

MBC does not provide any factual information that supports a conclusion that the three changes to Calvary Chapel's Board over a period of nine years were a result of someone's desire to retain control of Calvary Chapel. In fact, Mr. Stonebraker, who is the head of the Board and the Pastor of Calvary Chapel (and in such role has control of the day-to-day functions of Calvary Chapel), has been the head of the Board and has been the Pastor since April 1996 (when Calvary Chapel filed the Application). Thus, the Bureau's grant of a waiver was consistent with the Commission's directive in the *2007 NCE MO&O*.

7. Finally, perhaps recognizing the weakness of its legal argument regarding Calvary Chapel's gradual and routine board changes, MBC continues to speculate that Calvary Chapel has lacked candor in this proceeding, but provides no credible evidence to support its claim. MBC believes that because Calvary Chapel has not responded directly to its hearsay statements about the circumstances surrounding Mr. Holck's departure from that Board that Calvary Chapel has lacked candor. Nothing could be further from the truth. Calvary Chapel explained the circumstances of Mr. Holck's departure. As discussed above, the relevant point is that Mr. Holck left the Board after a leave of absence and was replaced by Fabian Loo. The Bureau in its decision agreed, holding that MBC has not made a *prima facie* showing of a intent to deceive, but instead chooses "only to pose a series of rhetorical questions."<sup>13</sup> In its Application for Review, MBC does not provide any evidence to support its speculative claims of misrepresentation and lack of candor and these claims should be summarily dismissed.

### **III. CONCLUSION.**

8. MBC's Application for Review is nothing more than a restating of arguments previously made by MBC and duly considered by both the Commission and the Bureau. The

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<sup>13</sup> *Second Bureau Letter Decision*, at p. 8.

Bureau's actions in the *Second Bureau Letter Decision* are consistent with the authority delegated to the Bureau by the Commission. Further, the Bureau's conclusions on the substantive issues raised by MBC are consistent with the Commission's rules, policies and precedent. For these reasons, Calvary Chapel respectfully requests that the Commission dismiss MBC's Application for Review.

Respectfully submitted,

**CALVARY CHAPEL OF HONOLULU,  
INC.**

By: 

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September 25, 2012

Its Attorney

CERTIFICATE OF SERVICE

I hereby certify that on this 25<sup>th</sup> day September, 2012, I caused copies of the foregoing **“Opposition to Application for Review”** to be mailed via first-class postage prepaid mail to the following:

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