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8/15/13



ORIGINAL

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

201314 A 040

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|--|---|--------------------------|
| In re Applications of |) | |
| |) | |
| Maka'ainana Broadcasting Company, Ltd. |) | File No. BPED-19960418MB |
| |) | Facility ID No. 81548 |
| For a construction permit for a |) | NCE MX Group 95083E |
| new noncommercial educational FM station |) | |
| at Kaneohe, Hawaii |) | |
| |) | |
| Calvary Chapel of Honolulu, Inc. |) | File No. BPED-19960416MA |
| |) | Facility ID No. 81538 |
| For a construction permit for a |) | NCE MX Group 95083E |
| new noncommercial educational FM |) | |
| station at Honolulu, Hawaii |) | |

ACCEPTED/FILED

TO: Marlene H. Dortch, Secretary
For transmission to the Commission

AUG 12 2013

Federal Communications Commission
Office of the Secretary

REPLY TO
"OPPOSITION TO CONSOLIDATED APPLICATION FOR REVIEW"

1. Maka'ainana Broadcasting Company, Ltd. ("MBC") hereby replies to the Opposition filed by Calvary Chapel of Honolulu, Inc. ("CCHI") relative to MBC's Consolidated Application for Review ("CA4R") filed on July 17, 2013 in connection with the above-captioned applications.

2. In its Opposition CCHI does not take issue with any of the substantive arguments presented by MBC in its CA4R. CCHI instead requests that *the Bureau* dismiss MBC's pleading, even though both the CA4R and CCHI's own Opposition are addressed *to the full Commission*. Dismissal by the Bureau would be entirely inappropriate, since the Bureau ordinarily has no authority to act on applications for review.

3. As MBC expressly pointed out in its CA4R, that pleading was filed out of an abundance of caution in order to assure the preservation of MBC's appellate rights. The Commission's bizarre, piecemeal, procedural approach to the captioned applications – with multiple decisions issued both by the full Commission and the Bureau over the course of several years, each purporting to resolve some but not all of the issues related to the captioned application – has necessitated such caution.

4. By way of explanation, the procedural history here starts in 2007, when the full Commission concluded that MBC was the preferable comparative applicant. The Commission then referred the matter to the Bureau for further proceedings. Later that year the Bureau concluded that perhaps MBC was not the preferable comparative candidate, which sent the matter back to the full Commission (since the Bureau lacks the authority to resolve points-related questions). In 2011, the Commission held that MBC was not entitled to certain comparative points, so the Commission sent the matter back down to the Bureau.

5. MBC asked the full Commission to reconsider that aspect of the Commission's 2011 decision, since the Bureau has no authority to dispose of claims relating to comparative points. Simultaneously, MBC submitted, to the Bureau, a petition to deny directed against the CCHI application.

6. By letter dated August 10, 2012, the Bureau purported to dismiss MBC's petition for reconsideration relative to the comparative points question, even though that petition was addressed to the full Commission and the Bureau had no authority to take any action relative to it. At the same time, the Bureau denied MBC's petition to deny. But in taking these actions, the Bureau did not grant or deny or dismiss either of the two applications.

7. Since the Bureau's August 10, 2012 letter appeared to be a formal action disposing of MBC's pleadings, MBC believed that a failure to seek timely review of the letter might be construed as a waiver of the right to seek such review. Accordingly, on September 10, 2012, MBC filed an application for review in which it sought to present to the full Commission questions about flaws in (a) the Bureau's 2012 analysis relative to the CCHI application and (b) the Commission's 2011 disposition of MBC's entitlement to comparative points. The latter questions – involving MBC's comparative points – had never been addressed, much less resolved, by the full Commission because the Bureau had purportedly (and without any legitimate authority, in MBC's view) dismissed the Petition for Reconsideration in which MBC had presented those questions to the Commission.

8. In its Opposition to MBC's September, 2012 Application for Review, CCHI argued that the Bureau's dismissal of MBC's Petition for Reconsideration had been appropriate because, absent some action on the underlying applications, the Commission's 2011 decision was still interlocutory in nature and, thus, MBC's petition was supposedly premature.

9. With the public notices of the grant of the CCHI application and the dismissal of the MBC application, it would appear that, under CCHI's interpretation of the rules, MBC is now clear to seek full Commission review of the comparative points issue. The purpose of MBC's CA4R is to assure that MBC cannot be accused of failing to present its arguments to the Commission in a timely manner. MBC regrets any duplication in its submissions, but believes that the Commission's own piecemeal approach has given MBC no other choice. In any event,

MBC has now presented its case to the Commission, CCHI has had an opportunity to respond, MBC has replied¹, and the matter is now ripe for consideration by the full Commission.

Respectfully submitted,


/s/ Harry F. Cole
Harry F. Cole

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August 12, 2013

¹ In the interest of completeness, MBC hereby incorporates by reference herein the Reply which it filed on November 9, 2012, in response to CCHI's Opposition to MBC's September 10, 2012 Application for Review.

CERTIFICATE OF SERVICE

I, Harry F. Cole, hereby certify that on this 12th day of August, 2013, I caused copies of the foregoing "Reply to 'Opposition to Consolidated Application for Review'" to be placed in the U.S. Postal Service, first class postage prepaid, addressed to the following persons:

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/s/


Harry F. Cole

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