



Federal Communications Commission  
Washington, D.C. 20554

October 3, 2007

DA 07-4138

In Reply Refer To:

1800B3-IB

Released: October 3, 2007

Calvary Chapel of Honolulu, Inc.  
c/o Matthew McCormick, Esq.  
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Re: NEW(FM), Kaneohe, HI  
Facility ID No. 81548  
BPED-19960418MB  
MX Group No. 95083E  
**Petition to Deny**

Dear Counsel:

We have before us a Petition to Deny ("Petition")<sup>1</sup> filed by Calvary Chapel of Honolulu, Inc. ("CCHI") and related pleadings. CCHI contests the Commission's tentative decision to grant a permit to construct a new noncommercial educational ("NCE") FM station to Maka'ainana Broadcasting Company, Ltd. ("MBC"), as proposed in the Commission's *Omnibus Order*.<sup>2</sup> For the reasons set forth below, we grant the Petition in part by referring this matter to the Commission for further consideration.

**Background.** The *Omnibus Order* applied the Commission's NCE comparative selection criteria<sup>3</sup> to seventy-six groups of mutually exclusive NCE FM applications. Group 95083E consisted of the MBC and CCHI applications, along with an application filed by a third party, Bible Broadcasting Network, Inc. ("BBN"). MBC proposed service to Kaneohe, Hawaii, and the other applicants proposed service to Honolulu. Because none of the applicants proposed the requisite level of new first or second service to be awarded a fair distribution preference,<sup>4</sup> the Commission proceeded directly to a point system analysis. MBC and CCHI each received three points under the "established local applicant" criterion.

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<sup>1</sup> Petition to Deny (May 2, 2007).

<sup>2</sup> See *Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 22 FCC Rcd 6101 (2007) ("*Omnibus Order*").

<sup>3</sup> See 47 C.F.R. §§ 73.7000 – 05. See also *Reexamination of Comparative Standards for Noncommercial Educational Applications*, Report and Order, 15 FCC Rcd 7386 (2000) ("*NCE R&O*"), *affirmed and clarified*, Memorandum Opinion and Order, 16 FCC Rcd 5074, 5106 (2001) ("*NCE MO&O*"), *Erratum*, 16 FCC Rcd 10549, *recon. denied*, Memorandum Opinion and Second Order on Reconsideration, 17 FCC Rcd 13132 (2002) ("*NCE Second Order*"), *aff'd sub nom. American Family Ass'n v. FCC*, 365 F.3d 1156 (D.C. Cir. 2004), *cert. denied*, 543 U.S. 1004 (history concerning non-reserved channels omitted).

<sup>4</sup> See 47 U.S.C. § 307(b); 47 C.F.R. § 73.7002.

MBC, but not CCHI, received two additional points under the “local diversity of ownership” criterion, which is awarded to applicants with no attributable interests in other radio stations serving the same area.<sup>5</sup> The Commission tentatively selected MBC’s application (the “Application”) for grant based on MBC’s receipt of the most points in the group.<sup>6</sup> CCHI, however, urges the Media Bureau (“Bureau”) not to grant the Application.

**Discussion.** *Standing.* CCHI alleges that it is a party in interest with standing to file the Petition, both as a mutually exclusive applicant in Group 95083E and as the licensee of KLHT(AM), Honolulu, Hawaii, which operates in the same market as MBC’s proposed station.<sup>7</sup> MBC disputes CCHI’s claim of standing based on a theory that the Commission has not passed upon major changes in CCHI’s governing board, and that those changes warrant immediate dismissal of CCHI’s application pursuant to Section 73.3573 of the Commission’s rules (the “Rules”).<sup>8</sup> Assuming *arguendo* that CCHI underwent a major change in ownership and that such a change might be relevant at a future date were CCHI chosen as tentative selectee,<sup>9</sup> we would nevertheless reject MBC’s over-reaching argument that the change would negate CCHI’s present interests in this proceeding for the purpose of conferring standing. MBC cites no legal authority for that position. Moreover, in view of waivers that the Commission has granted to NCE applicants that underwent routine and inevitable ownership changes over a substantial period during which the Commission was unable to act on NCE applications, it would be inconsistent to penalize NCE petitioners that potentially are similarly-situated.<sup>10</sup>

*Failure to Update Application.* CCHI argues that MBC lacks the basic qualifications to be a Commission licensee because MBC failed to report several changes in its governing board, thereby violating Section 1.65 of the Rules and demonstrating a lack of candor.<sup>11</sup> Pursuant to Section 1.65, all Commission applicants are responsible for the continuing accuracy of their applications and, therefore, must amend pending applications whenever the information furnished is no longer substantially accurate and complete.<sup>12</sup> NCE applicants must report “substantial and significant” changes, including changes with the potential to reduce their comparative positions under the point system.<sup>13</sup> Information generally must be reported within 30 days of the change.<sup>14</sup> However, because action on NCE applications was delayed for a considerable period due to litigation, the Bureau anticipated by late 2004 that many NCE applications were no longer up-to-date. The Bureau reminded NCE applicants of their Section 1.65

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<sup>5</sup> See 47 C.F.R. § 73.7000(b)(2). CCHI’s proposed service area overlapped that of its existing station, KLHT(AM), Honolulu.

<sup>6</sup> See *Omnibus Order*, 22 FCC Rcd at 6133. Specifically, MBC, CCHI, and BBN received five, three, and zero points respectively.

<sup>7</sup> See Petition at 2; 47 U.S.C. § 309(a)(1).

<sup>8</sup> See Opposition at 1 – 3; 47 C.F.R. § 73.3573(b)(3).

<sup>9</sup> MBC’s argument for dismissal of CCHI’s application is premature and will not be considered. See 47 C.F.R. § 73.7004(a) (petitions lie against tentative selectees only).

<sup>10</sup> See *Omnibus Order*, 22 FCC Rcd at 6125.

<sup>11</sup> See Petition at 4 – 8.

<sup>12</sup> See 47 C.F.R. § 1.65.

<sup>13</sup> *Id.*; *Section 1.65 Amendment Deadline Established for Noncommercial Educational FM and FM Translator Station Applicants*, Public Notice, 19 FCC Rcd 24740 (2004) (“*Section 1.65 Notice*”).

<sup>14</sup> See 47 C.F.R. § 1.65.

obligations, and set a deadline of January 21, 2005, for NCE applicants to update their applications electronically.<sup>15</sup> MBC did not update the Application.

CCHI demonstrates that MBC failed to report to the Commission several changes which MBC had disclosed in annual reports to the Hawaii Department of Commerce and Consumer Affairs, Business Registration Division (the “Hawaii BRD”).<sup>16</sup> The Application, which was prepared in April 1996, lists five MBC board members. MBC’s reports to the Hawaii BRD list three board members at the end of 1996, four from 1997 through 2005, and five in 2006.<sup>17</sup> CCHI highlights, in particular, that MBC disclosed to the Hawaii BRD, but not to the Commission, that Dr. Christopher Racine (“Racine”), who has interests in several television stations and has been a defendant in four civil lawsuits, has been a member of MBC’s governing board since 1997.<sup>18</sup> CCHI concedes that television interests do not affect the points qualifications of NCE radio station applicants, and that a corporate officer’s involvement in civil litigation is not necessarily disqualifying, but contends that MBC’s failure to disclose its association with Racine for over eleven years demonstrates that MBC acted deceptively in order to avoid closer scrutiny of the Application by other stations in the market, competing applicants, and litigants.<sup>19</sup> MBC responds that the board changes at issue were not so significant as to require a report to the Commission and that MBC kept the public informed by routinely reporting the changes to the Hawaii BRD in publicly-available documents. MBC highlights that the ownership changes would not have affected MBC’s point qualifications. With respect to Racine (whom MBC describes as a “prominent” individual that it is proud to have on its board), MBC states that it would have had no motive to hide that relationship; that Racine’s lawsuits were resolved years ago and involved routine commercial disputes; and that CCHI’s prediction of heightened scrutiny of or opposition to applications involving Racine did not materialize with respect to numerous television applications that Racine filed during the same time period.<sup>20</sup>

Assuming *arguendo* that MBC should have reported its governing board changes, we would not find this matter material to MBC’s basic qualifications. Section 1.65 violations are potentially disqualifying only if an applicant has an intent to conceal information or if omissions of reportable information are so numerous and serious as to undermine the applicant’s basic qualifications.<sup>21</sup> In this regard, lack of candor, which can also be disqualifying, is the concealment, evasion, or other failure to be

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<sup>15</sup> See Section 1.65 Notice, 19 FCC Rcd at 24740.

<sup>16</sup> See Petition, Exs. 4, 6.

<sup>17</sup> *Id.* CCHI also shows that MBC’s 2007 report to the Hawaii BRD originally listed three board members of which only one was an original member, but that MBC, in a letter characterizing that filing as an error, requested that the Hawaii BRD correct its records to reflect that MBC had a five member board of which three were original members. See Reply, Ex. 4.

<sup>18</sup> See Petition at 5 – 8.

<sup>19</sup> *Id.* at 7 – 8.

<sup>20</sup> See Opposition at 6 – 8, n.5 – 6, Ex. B. CCHI replies that MBC may have wanted to hide its relationship with Racine because a television station that Racine operates, KALO(TV), has violated Commission rules on multiple occasions. See Reply at 9, n.9; *Pacifica Broadcasting Co.*, Notice of Apparent Liability, 22 FCC Rcd 8253 (MB 2007) (failure to file three ownership reports); *Pacifica Broadcasting Co.*, Forfeiture Order, 19 FCC Rcd 8497 (EB 2004) (broadcasting from unauthorized transmitter site).

<sup>21</sup> See *David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253 (D.C. Cir. 1991) (citing *Valley Broadcasting Co.*, Decision, 4 FCC Rcd. 2611, 2618 (Rev. Bd. 1989)).

fully informative accompanied by intent to deceive.<sup>22</sup> CCHI has not submitted *prima facie* evidence of intentional concealment, or of numerous and/or serious violations by MBC. At all times since the filing of MBC's application, MBC has retained no fewer than three of its five original board members, *i.e.*, over fifty percent, and thus there was no potential "major" change in ownership to report.<sup>23</sup> Nor would MBC's qualifications for points have changed had it updated the ownership information. CCHI has not shown that the lawsuits at issue resulted in any adjudication that would be cognizable under the Commission's Character Policy.<sup>24</sup> Finally, MBC's regular filing of ownership information with the Hawaii BRD, while not a substitute for timely Application amendments at the Commission, cuts against CCHI's theory that MBC was trying to conceal its true ownership from competitors and others in Hawaii.<sup>25</sup>

*Diversity of Ownership Points.* CCHI argues that MBC has attributable interests in other radio stations serving the same area and, therefore, should not receive two points under the local diversity of ownership criterion. Specifically, CCHI alleges that several stations licensed to the University of Hawaii ("UH") are attributable to MBC through a common UH/MBC governing board member, Ms. Momi Cazimero ("Cazimero").<sup>26</sup>

For purposes of the NCE point system, an "attributable interest" is defined as "an interest of an applicant, its parent, subsidiaries, their officers, and members of their governing boards that would be cognizable under the standards in the notes to Section 73.3555."<sup>27</sup> MBC's Application disclosed that Cazimero sat on the governing boards of both organizations in 1996, and responded "yes" that a party to the application had an interest in another broadcast station.<sup>28</sup> In 2001, MBC amended the Application to reflect that MBC's governing documents prevented MBC and its directors from having interests in other radio stations that would overlap the proposed station, as of the June 2001 snapshot date used to evaluate an applicant's maximum point system qualifications.<sup>29</sup> CCHI argues, however, that because MBC did not amend the portion of the Application reflecting Cazimero's position with UH, the Commission must attribute UH's interests to MBC even though Cazimero no longer sits on the UH board.<sup>30</sup> MBC replies

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<sup>22</sup> See *San Francisco Unified School District*, Hearing Designation Order and Notice of Apparent Liability, 19 FCC Rcd 13326, 13334 (2004).

<sup>23</sup> Moreover, as noted *supra*, the Commission has waived the rules concerning major changes in many instances.

<sup>24</sup> See *Policy Regarding Character Qualifications in Broadcast Licensing*, Policy Statement and Order, 5 FCC Rcd 3252 (1990), *recon on other grounds*, 6 FCC Rcd 3448 (1991), *modified on other grounds*, 7 FCC Rcd 6564 (1992).

<sup>25</sup> See generally *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 206 (1990) (no intent to deceive where applicant, *inter alia*, disclosed the information at issue on the public record before another agency).

<sup>26</sup> See Petition at 8 – 9; Ex. 6

<sup>27</sup> See 47 C.F.R. § 73.7000. Note 1 to Section 73.3555 reflects that interests can be direct or indirect. See 47 C.F.R. § 73.3555, n.1. Note 2 sets forth various cognizable interests including those of certain owners, partners, stockholders, officers, directors, and time brokers. *Id.* at n.2. The rule also identifies certain interests in an applicant's equity and/or debt as being attributable, but matters of equity and debt are not at issue in the instant proceeding. See 47 C.F.R. § 73.7000. When MBC filed its application in 1996, there were no attribution standards for NCE applicants, but such standards were adopted in 2000 along with the point system. See *NCE R&O*, 15 FCC Rcd at 7418-20.

<sup>28</sup> See Application, Questions II(B), II(10)(a), Exhibit 1A.

<sup>29</sup> See MBC Board Resolution to Amend the ByLaws (June 4, 2001) (MBC Point Supplement, Exhibit 1 and Petition, Exhibit 1); 47 C.F.R. 73.7003(b)(1).

<sup>30</sup> See Petition at 8.

that Cazimero's term on the UH board expired in June 1997, four years before the snapshot date, and that UH's stations are, therefore, not attributable to MBC.<sup>31</sup>

We find that MBC correctly excluded Cazimero's prior interests when it claimed points for diversity of ownership. At most, MBC overlooked that statements in its Application and Point Supplement could be read as possibly inconsistent with one another. MBC has explained to our satisfaction that the most recent information is correct and that UH's broadcast interests were no longer attributable to MBC on the snapshot date.

*Established Local Applicant Points.* Finally, CCHI asserts that MBC is only feigning to be an "established local applicant" and that the Commission's award of three points to MBC for that criterion was erroneous. MBC's certification that it qualifies for "established local applicant" points is based on a local headquarters at 875 Waimanu Street in Honolulu, within 25 miles of Kaneohe.<sup>32</sup> However, a CCHI employee states under penalty of perjury that when he visited that address on April 30, 2007, the parking attendant had not heard of MBC, no signage outside the building or on office doors indicated MBC's presence, and MBC's name was not listed in building directories located on the parking level, ground floor lobby, or sixth floor (which the parking attendant suggested housed some radio tenants).<sup>33</sup> CCHI states that "there is not a hint of MBC's presence there or of any activity on the part of MBC other than prosecution of its application."<sup>34</sup> In particular, CCHI alleges that MBC is not listed in the local telephone book or with directory assistance; an internet search that CCHI performed shows no educational, civic, or community functions or activities by MBC; and CCHI knows of no local event or broadcast program that MBC has produced.<sup>35</sup>

MBC responds that its headquarters since 1997 has been 875 Waimanu Street, Suite 110, which serves as the primary locus of operation for several businesses of MBC board member Racine.<sup>36</sup> MBC states that the building's directory and the front doors of suites do not list all tenants "[b]ecause of signage limitations and the interests of privacy."<sup>37</sup> MBC emphasizes that absence of a directory listing for MBC does not establish the lack of an office.<sup>38</sup> MBC also contends that CCHI's allegedly fruitless search for MBC was not genuine. In particular, MBC states that the CCHI employee who conducted the search has frequently visited Suite 110 on other CCHI business with station KALO(TV) with maintains studios in that suite, and that CCHI's employee refused an offer of assistance when he encountered a Suite 110 employee elsewhere in the building while allegedly searching for MBC.<sup>39</sup> MBC also states that CCHI's

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<sup>31</sup> See Opposition, Attachment D.

<sup>32</sup> See Point Supplement, Ex.1. CCHI has never claimed to qualify for those points by virtue of a local governing board.

<sup>33</sup> Petition at 3 – 4; Declaration of Clif Burchfield, Traffic Director, KLHT(AM) (Petition, Ex. 2).

<sup>34</sup> Petition at 4.

<sup>35</sup> See Reply at 4-5; Declaration of William D. Stonebraker, President, CCHI (June 3, 2007) at 4-5 (Reply, Ex.1) ("Stonebraker Declaration").

<sup>36</sup> See Opposition at 4.

<sup>37</sup> *Id.*; Declaration of Christopher Racine, MBC Director (May 15, 2007) (Opposition, Ex. B) at 1 ("Racine Declaration").

<sup>38</sup> See Racine Declaration at 1.

<sup>39</sup> See Declaration of Donald Laidlaw, Employee, KALO(TV) (May 15, 2007) (Opposition, Ex. E). The CCHI employee disputes this allegation, in part, stating that he had been in Suite 110 infrequently and had not seen any (footnote continued...)

President has met repeatedly with Racine in Suite 110 on matters related to MBC's application, a claim that CCHI disputes.<sup>40</sup> MBC acknowledges that MBC was formed primarily for the purpose of filing the Application, and claims no other past or present business activities, but argues that the Commission's sole criteria for the "established local applicant" criterion is a physical presence in proximity to the proposed community of license.<sup>41</sup> MBC also argues that it could not be feigning its qualifications because it established the Waimanu Street headquarters well before the Commission adopted the point system.<sup>42</sup>

Of the factors for which an applicant can receive points, the most points are awarded to "established local applicants." The Rules define a "local applicant" as one "physically headquartered, having a campus, or having 75 percent of board members residing within 25 miles of the reference coordinates for the community to be served, or a governmental entity within its area of jurisdiction."<sup>43</sup> With respect to the applications in MX Group No. 95083E, the applicant is considered "established" if it has met the definition of "local" for no fewer than the two years immediately preceding the "snap shot" date of June 4, 2001.<sup>44</sup> A "local headquarters or residence must be a primary place of business or primary residence and not, for example, a post office box, lawyer's office, branch office, or vacation home, which would not provide sufficient contact between the station's decision and policy makers and the area to be served."<sup>45</sup> The requirements for "established local" applicants are phrased in terms of the basic characteristics of the applicant, not the relationships that the parties to the application may have with other organizations.<sup>46</sup> The Commission purposefully adopted a narrow definition of "established local" entities and has repeatedly declined to expand that definition, thereby increasing the likelihood that *organizations* most knowledgeable, responsive, and accountable to their local community would be awarded licenses, keeping localism points meaningful, and avoiding possible abuses.<sup>47</sup> The Commission has rejected applicants' claims to qualify for "established local applicant" points, when those claims were based on circumstances at variance from those specifically recognized by the Commission.<sup>48</sup>

The outcome of the present case depends on the extent to which a local address can be considered an "established" local "headquarters" if there is no indication that the applicant regularly used the alleged "headquarters" in connection with community activities. The Commission has addressed this issue previously by saying:

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evidence of MBC's presence during those infrequent visits. *See* Declaration of Clifton Burchfield, CCHI Employee (June 1, 2007) (Reply, Ex. 2).

<sup>40</sup> *See* Racine Declaration at 2 - 3. Although CCHI's President acknowledges meeting with Racine in Suite 110, he states that the meetings concerned station KALO(TV), CCHI did not know MBC claimed to be headquartered there, and the only MBC-related conversation with Racine was a brief settlement discussion which took place by telephone. *See* Stonebraker Declaration at 3.

<sup>41</sup> *See* Opposition at 5, n.3.

<sup>42</sup> *Id.*

<sup>43</sup> 47 C.F.R. § 73.7000.

<sup>44</sup> *Id.*; 47 C.F.R. § 73.7300(b)(1).

<sup>45</sup> *NCE R&O*, 15 FCC Rcd at 7410.

<sup>46</sup> *See Omnibus Order*, 22 FCC Rcd at 6116, n.89.

<sup>47</sup> *Id.* at 6114, n.81 (citing *NCE MO&O*, 16 FCC Rcd at 5091).

<sup>48</sup> *See, e.g., Omnibus Order*, 22 FCC Rcd at 6115 - 17.

It has never been our intent to award the established local applicant credit to organizations engaged in virtually no activities in the community of interest. In the *NCE R&O*,<sup>[49]</sup> for example, we indicated an expectation of “contact” between the station's policy makers and the area to be served. Similarly, in the *NCE MO&O*,<sup>[50]</sup> we stressed that an established local applicant's interaction with the community would be “continuing,” building upon its past experiences. For example, we indicated that an organization that has been local for two or more years would have already “become such a part of the community” as to have the knowledge and accountability needed to “hit the ground running,” unlike organizations that do not begin “operating within a community” until later. A shell organization's mere paper existence for two or more years establishes no “operations,” “contact,” or “continuing interaction with the community” from which the organization might “hit the ground running.” Paper existence serves neither to “establish the applicant's educational credentials in a particular locality” nor “to foster participation by truly local entities in noncommercial educational broadcasting.”

. . . In the event that a petitioner succeeds in raising a substantial and material question about whether the applicant correctly claimed to be “established,” there would be many ways for the applicant to demonstrate that it indeed was an established force “operating within the community” throughout the pertinent two-year period. These could include, for example, the applicant's showing that it convened meetings with the community, taught classes at its local campus, undertook community programs and/or activities, regularly generated income or incurred expenses from community-based assets, engaged in active planning of its program service for the community, or similar ongoing community-based operations by the organization within the two-year period.<sup>51</sup>

Assuming *arguendo* that CCHI, through settlement discussions with Racine, knew or should have known that Racine's office was MBC's claimed headquarters, that would not resolve the issue that CCHI has raised. CCHI has submitted un rebutted documentation showing that MBC is unknown by an employee in the position to have first contact with visitors to the headquarters building; is not listed in the building's directory and signs; has no telephone listing; and that public record of MBC consists primarily of routine corporate filings with governmental agencies. There is no indication that MBC was in regular contact with the community, and it appears highly unlikely that the community would be able to contact MBC readily. These facts are sufficient to raise a substantial and material question as to whether MBC has been merely an inchoate organization for which Racine's office has served as a “paper” address.

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<sup>49</sup> See *supra* n.3.

<sup>50</sup> *Id.*

<sup>51</sup> *NCE Second Order*, 17 FCC Rcd at 13137-8 (footnotes omitted).

MBC could have resolved these issues had it responded to the Petition with a showing of meaningful and continuing operations, contact, or interaction with the community since 1999. MBC's corporate purpose is to "own and operate a noncommercial radio station, produce and broadcast educational and informational programming and to train native Hawaiians, Pacific Islanders, and Asians in all aspects of radio station operations particularly the production of programming that will address issues of concerns to these people" as well as "to educate the community"<sup>52</sup> A good portion of these goals -- program production, training, and community education -- can be accomplished without receipt of a Commission license. Nevertheless, MBC has declined to make such a showing.

MBC argues that Racine's office is a sufficient "headquarters" based what that office is *not* -- a post office box, lawyer's office, branch office, or vacation home. The Commission gave those examples as the types of addresses that might be located in a community but nevertheless would not provide sufficient contact between the applicant and the community to support the award of "established local applicant" points. However, there is nothing in the record to establish that Racine's office is much more than a place where Racine -- one of five MBC directors -- works regularly on non-MBC matters.<sup>53</sup> The relationship between Racine's office and MBC would thus be less than that associated with a vacation home or branch office. Based on the current record, MBC's claim to be an "established local applicant" is no stronger than claims that the Commission rejected in the *Omnibus Order*.<sup>54</sup>

**Conclusion.** The Commission delegated to the Media Bureau responsibility to consider petitions to deny and to act on any routine issues that may be raised, including whether the applicant is eligible for the points the Commission awarded in the *Omnibus Order*. The Commission specified that the staff should refer certain matters to the Commission or an Administrative Law Judge, however, if needed to resolve a question of fact, rule on a novel issue, or pick a successor tentative selectee. Such referral is appropriate if the Bureau finds that (1) assuming the truth of the facts alleged, the tentative selectee would be able to claim only the same or fewer points than the Commission awarded to any competing applicant in the same group; (2) the proceeding raises a new or novel question; or (3) there is a substantial and material question of fact.<sup>55</sup> Assuming that the facts presented by CCHI are true, the record would not adequately support MBC's claim of eligibility under the "established local applicant" criterion. Exclusion of those points potentially alters the outcome of Group 95083E. Accordingly, we will refer this matter to the Commission for further consideration.

We hereby provide a period of 30 days from release of this decision for MBC to produce any additional factual documentation that it may wish the Commission to consider concerning MBC's claim to be an "established local applicant" and to serve that documentation on the mutually exclusive applicants. We further provide an additional 15-day period thereafter for the other parties to file a response.

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<sup>52</sup> See Articles of Incorporation (Apr. 18, 1996) (Opposition, Ex. C); Application, Ex. 1. See also Petition, Exs. 3,6.

<sup>53</sup> Compare *NCE Second Order*, 17 FCC Rcd at 13137 (becoming established through "active and continuous non-broadcast activities in the community for two or more years."). Racine's Waimanu Street office has not even functioned as a mailing address for MBC. See Petition, Exs. 1,3, 5, 6 (Auahi Street address on 1996 Application; Bishop Street address on 2001 Point Supplement; change of address in 2002 to a Honolulu post office box that also has been used since 1998 for filings with the Hawaii BRD).

<sup>54</sup> See *Omnibus Order*, 22 FCC Rcd at 6115 – 18.

<sup>55</sup> *Id.* at 6162, n.230.

**Ordering Clause.** Accordingly, IT IS ORDERED, That the Petition to Deny filed on May 2, 2007, by Calvary Chapel of Honolulu, Inc. IS GRANTED to the extent indicated herein and DENIED in all other respects.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Maka'ainana Broadcasting Company, Ltd.  
Bible Broadcasting Network, Inc.