



**Federal Communications Commission  
Washington, D.C. 20554**

**April 14, 2010**

**DA 10-637**

*In Reply Refer to:*

1800B3-JWR

Released: April 14, 2010

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In re: **MX Group 510**  
New NCE(FM), Kailua, Hawaii  
Hawaii Public Radio, Inc.  
Facility ID No. 173751  
File No. BNPED-20071018ANN

**Petitions for Reconsideration  
Petition to Deny**

Dear Counsel:

We have before us the application of Hawaii Public Radio (“HPR”) for construction permit for a new noncommercial educational (“NCE”) FM station in Kailua, Hawaii (“HPR Kailua Application”).<sup>1</sup> Also before us are: (1) a Petition to Deny the Application filed on November 5, 2009, by Cedar Cove Broadcasting, Inc. (“Cedar Cove”), applicant for construction permit for a new NCE FM station at Kailua Kona, Hawaii;<sup>2</sup> and (2) separate Petitions for Reconsideration filed on November 5, 2009, by Cedar Cove and by Kanu O Ka Aina Learning Ohana (“Kanu”), applicant for construction permit for a new NCE FM

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<sup>1</sup> File No. BNPED-20071018ANN.

<sup>2</sup> HPR filed an Opposition to the Petition to Deny on November 17, 2009, and an “Errata” thereto on November 20, 2009. Cedar Cove filed a Reply on December 4, 2009.

station at Waimea, Hawaii.<sup>3</sup> The Cedar Cove and Kanu Petitions are directed against the Media Bureau's October 6, 2009, action<sup>4</sup> finding a dispositive preference for the HPR Kailua Application under Section 307(b) of the Communications Act of 1934, as amended ("Act") in NCE Group 510.<sup>5</sup>

Also before us are: (3) three petitions for reconsideration filed on December 11, 2009, by HPR (collectively, the "HPR Petitions"), the tentative selectee of NCE Group 510, directed to the dismissal of its *other* applications for construction permits to construct new NCE FM stations at Naalehu, Pepeekeo, and Kula, Hawaii, respectively; (4) two petitions for reconsideration filed by Wren Communications, Inc. ("Wren") on December 16, 2009, directed to the dismissal of its two applications for construction permits for new NCE FM stations at Lahaina and Mountain View, Hawaii, respectively; and (5) a petition for reconsideration filed by Lanai High and Elementary School ("LHES") on December 16, 2009, directed to the dismissal of its application for construction permit to build a new NCE FM station at Lanai City, Hawaii. Finally, we have before us: (6) the petition for reconsideration filed December 16, 2009, by Cedar Cove, directed to the dismissal of its application for a construction permit to build a new NCE FM station at Kailua Kona, Hawaii. The HPR, Wren, LHES, and Cedar Cove petitions are all directed to the November 16, 2009, *Public Notice* issued by the Chief, Audio Division, pursuant to the *Tentative Selectee Order*, dismissing their applications.<sup>6</sup> The applications are listed in an *Appendix* to this letter.

For the reasons set forth below, we: dismiss the November 5, 2009, Kanu and Cedar Cove petitions for reconsideration; grant the December 16, 2009, Cedar Cove petition for reconsideration and the HPR, Wren, and LHES petitions for reconsideration to the extent indicated, and deny them in all other respects; deny the Cedar Cove petition to deny; and grant the HPR Kailua Application.

**Background.** HPR, Kanu, Cedar Cove, Wren and LHES are five of the applicants that filed a total of 57 mutually exclusive applications for an NCE FM station construction permit to serve different communities in Hawaii. These applications were designated NCE Group 510 in the *Tentative Selectee Order*.<sup>7</sup> Only three applications proposed a first NCE service preference: HPR for Kailua, Kanu for Waimea, and Cedar Cove for Kailua Kona.<sup>8</sup> Pursuant to established procedures,<sup>9</sup> on October 6, 2009, the Media Bureau ("Bureau") determined that the HPR Kailua Application<sup>10</sup> was entitled to a decisive

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<sup>3</sup> All of the petitions for reconsideration in this proceeding are unopposed.

<sup>4</sup> See *Threshold Fair Distribution Analysis of 28 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in October 2007 Window*, Memorandum Opinion and Order, 24 FCC Rcd 12390 (2009) ("*Tentative Selectee Order*").

<sup>5</sup> 47 U.S.C. §307(b).

<sup>6</sup> *Broadcast Actions*, Public Notice, Report No. 47112 (Nov. 16, 2009).

<sup>7</sup> See *Tentative Selectee Order*, 24 FCC Rcd at 12400 ¶ 34.

<sup>8</sup> 32 applications were eliminated from comparative consideration because they did not claim eligibility for a "fair distribution" preference or did not support their claim. *Tentative Selectee Order*, 24 FCC Rcd at 12401 ¶ 35. Twelve additional applications were eliminated because they did not claim a "first NCE service preference." *Id.* at 12401 ¶ 36. Ten additional applications were eliminated because the next best proposal of Kanu would serve at least 5,000 more people. *Id.* at 12401 ¶ 37.

<sup>9</sup> See 47 C.F.R. § 73.7002 (procedures for selecting among mutually exclusive applicants for stations proposing to serve different communities); see also *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386 (2000) ("*NCE Comparative Order*"); Memorandum Opinion and Order, 16 FCC Rcd 5074, 5105 (2001) ("*NCE Comparative MO&O*"), *reversed in part on other grounds*, *NPR v. FCC*, 254 F.3d 226 (D.C. Cir. 2001).

<sup>10</sup> File No. BNPED-20071018ANN.

preference under Section 307(b) of the Act<sup>11</sup> because this proposal would provide new NCE service to at least 5,000 more people than Cedar Cove's next best proposal.<sup>12</sup> The *Tentative Selectee Order* identified HPR as the tentative selectee in NCE Group 510, accepted for filing the HPR Kailua Application, set a 30-day period for filing petitions to deny that Application, and indicated that, if, after that 30-day petition period had run, there was no substantial and material question concerning the HPR Kailua Application, it would, by *Public Notice*, dismiss the other mutually exclusive applications and grant the HPR Kailua Application.<sup>13</sup>

Cedar Cove and Kanu filed Petitions for Reconsideration of the *Tentative Selectee Order* on November 5, 2009, each arguing that its application does not conflict with the HPR Kailua Application and therefore may be granted. On that same day, Cedar Cove filed a Petition to Deny the HPR Kailua Application.

On November 10, 2009, the Bureau dismissed all other applications in NCE Group 510. The *Public Notice* announcing these actions was released on November 16, 2009. In response to that *Public Notice*, HPR, Wren, LHES, and Cedar Cove filed timely petitions for reconsideration of the dismissal of their applications, arguing that dismissal of their applications was premature and/or that their applications did not conflict with the HPR Kailua Application and also could be granted.

**Discussion.** *Appeals of Interlocutory Decision. Kanu and Cedar Cove Petitions.* In its Petition for Reconsideration, Kanu seeks reconsideration of the Commission's NCE Section 307(b) procedures, specifically paragraph 82 of the *Tentative Selectee Order*, which specifies that the Commission intended to dismiss the mutually exclusive applications if, after a 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application. In this regard, Kanu asserts that it does not oppose the issuance of a construction permit to HPR, but contends that, rather than dismissing its application, the Commission should have conducted an additional "simple, unambiguous second-order analysis" for other qualified applicants, that is, Kanu and Cedar Cove, which are not in conflict with the tentative selectee.

In its November 5, 2009, Petition for Reconsideration, Cedar Cove raises similar arguments. It states that it does not challenge the selection of HPR as the tentative selectee of the Group, but requests that the staff conduct an additional analysis of the remaining applicants in NCE Group 510, *i.e.*, Cedar Cove and Kanu, to allow for a second new NCE service. Cedar Cove states that the analysis would not place an undue administrative burden on the Commission and would be consistent with similar actions already taken by the Commission in this proceeding, citing the *Tentative Selectee Order*, as modified.<sup>14</sup>

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<sup>11</sup> 47 U.S.C. § 307(b). A Section 307(b) analysis is ordinarily conducted at the staff level because the Bureau has delegated authority to make Section 307(b) determinations in NCE cases. See *NCE Comparative Order*, 15 FCC Rcd at 7397.

<sup>12</sup> See *Tentative Selectee Order*, 24 FCC Rcd at 12401 ¶ 38.

<sup>13</sup> *Tentative Selectee Order*, 24 FCC Rcd at 12414-15 ¶82. On November 4, 2009, the Bureau released a *Memorandum Opinion and Order* modifying the *Tentative Selectee Order* based on several settlement proposals, of which the staff was previously unaware, that permitted the subdivision of NCE Groups 530 and 537 into smaller groups of mutually exclusive applications, then enabling the staff to issue additional NCE construction permits. *Threshold Fair Distribution Analysis of 28 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in October 2007 Window*, Memorandum Opinion and Order, 24 FCC Rcd 13615 (MB 2009) (the "*Modification Order*"). The *Modification Order* did not affect NCE Group 510.

<sup>14</sup> Cedar Cove cites the *Modification Order* at ¶ 1.

Specifically, Cedar Cove states that after the tentative selectees were determined for NCE Groups 530 and 537, the *Modification Order*, based on the non-mutual exclusivity of the remaining applicants, granted additional applications from these Groups.

We find that the Kanu and November 5, 2009, Cedar Cove Petitions for Reconsideration are procedurally improper, and they will be dismissed. Section 1.106(a)(1) of the Commission's Rules specifically prohibits petitions for reconsideration of interlocutory actions.<sup>15</sup> The *Tentative Selectee Order*, which did not dispose of a single application in NCE MX Group 510, clearly was an interlocutory action.<sup>16</sup>

*Post-Selection Appeals of Tentative Selectee.* In its three petitions for reconsideration, HPR states that the dismissal of its Naalehu, Pepeekeo, and Kula applications was premature. It contends that the dismissals occurred prior to action on Cedar Cove's timely filed petition to deny, which put in issue the tentative selection of the HPR Kailua Application. HPR requests that its applications be reinstated.

In its two petitions for reconsideration, Wren states that the applications are not mutually exclusive with the HPR application whereas the Mountain View and Lahaina applications were mutually exclusive with six and eleven other applications, respectively. Wren states that grant of its applications would be in the public interest.

In its petition for reconsideration, LHES also asserts that the dismissal of the applications is "premature," in that the Cedar Cove petition to deny, which raises substantial and material questions of fact concerning the grantability of the HPR application, was not considered. LHES states that notwithstanding the foregoing, its application is not mutually exclusive with the HPR application, whereas prior to the dismissals, its application was mutually exclusive with two other applications. LHES requests that its application be reinstated and processed as a singleton.

Finally, the December 16, 2009, Cedar Cove Petition incorporates by reference its earlier November 5, 2009, Petition to Deny and Petition for Reconsideration (the "Pleadings"). Cedar Cove argues that it has demonstrated how other applications in the Group "could and should have" been granted, and requests that its application be reinstated pending resolution of those pleadings.

In the *Tentative Selectee Order*, the staff stated that "the Application filed by Hawaii Public Radio, Inc. (File No. BNPED-20071018ANN) is ACCEPTED FOR FILING and TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Kailua, Hawaii. If, after a 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we intend, by public notice, TO DISMISS" the other mutually exclusive applications.<sup>17</sup> In the instant case, Cedar Cove timely filed a petition to deny against the tentative selectee, and Cedar Cove and Kanu filed petitions for reconsideration of the *Tentative Selectee Order*. Because we had not ruled on those petitions – and therefore had not made a finding that there was "no substantial and material question concerning the grantability of the tentative selectee's

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<sup>15</sup> 47 C.F.R. §1.106(a)(1).

<sup>16</sup> See *Bennett v. Spear*, 520 US 154, 178 (1977) (holding an agency's action is final and reviewable only if, *inter alia*, it "mark[s] the 'consummation' of the agency's decision making process - it must not be of a merely tentative or interlocutory nature.") (internal quotes and cites omitted). See also *Tentative Selectee Order*, at Paragraphs 38 and 82 (explaining that "HPR-Kailua is the tentative selectee in Group 510. . . . [that the] Application filed by Hawaii Public Radio, Inc. (File No. BNPED-20071018ANN) is TENTATIVELY SELECTED. . . . [and that a] a 30-day petition to deny period . . . concerning the grantability of the tentative selectee's application [would run]") (emphasis in original).

<sup>17</sup> *Tentative Selectee Order*, 24 FCC Rcd at 12414 ¶ 82.

application,” – dismissal of the competing applications was premature. Therefore, we will grant the HPR, Wren, LHES, and December 16, 2009, Cedar Cove petitions for reconsideration to the extent that it was error to dismiss those parties’ applications prior to grant of the HPR Kailua Application.

Substantively, however, we find that the HPR, Wren, LHES, and December 16, 2009, Cedar Cove petitions for reconsideration are without merit. In the *NCE Comparative MO&O*, the Commission considered a geographic-based processing proposal that would permit the tentative selection of more than one applicant in a mutually exclusive application group.<sup>18</sup> The Commission rejected this proposal, noting that although it might be beneficial to select more than one applicant, doing so could potentially result in the selection of an inferior applicant as a secondary selectee.<sup>19</sup> Instead, the Commission determined that the better approach would be to dismiss all non-selected applicants in a group, even if a particular application is not mutually exclusive with the primary selectee of the group.<sup>20</sup>

Furthermore, Cedar Cove’s specific reliance on the *Modification Order* to support the further analysis of the applications in NCE Group 510 is misplaced. In the *Tentative Selectee Order*, the Commission preliminarily stated that the applicants had an opportunity to settle among themselves<sup>21</sup> and were then subject to a simplified, comparative process codified in the Commission’s Rules.<sup>22</sup> In the *Modification Order*, several timely-filed settlement agreements resulted in the creation of a number of technically unrelated subgroups. Unlike in the NCE comparative processing policy, the Commission has not limited the number of grants from an MX Group settlement(s). Thus, the staff properly considered each of the subgroups which were created through action on the settlement agreements based on non-comparative changes in these groups. This reasoning is inapplicable in a context where a mutual exclusivity is initially resolved under the NCE comparative procedures. We therefore will deny the HPR, Wren, LHES, and December 16, 2009, Cedar Cove petitions for reconsideration in all other respects.

*Cedar Cove Petition to Deny.* In its Petition to Deny, Cedar Cove states that the HPR Kailua Application is defective, and should be dismissed or not given a “fair distribution credit.” Specifically, Cedar Cove states that the HPR Kailua Application includes a TV Channel 6 study (“Study”) wherein it purports to protect TV Channel 6 Station KLEI-TV, Kailua Kona Hawaii, pursuant to Section 73.525(d) of the Rules.<sup>23</sup> Cedar Cove states that the Study is deficient because it does not include the required

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<sup>18</sup> *NCE Comparative MO&O*, 16 FCC Rcd at 5104.

<sup>19</sup> *Id.* at 5105 (“... after the best qualified applicant is selected, it is possible that remaining applicants that are not mutually exclusive with this primary selectee and thus potentially secondary selectees, may also be significantly inferior to other applicants that are eliminated because they *are* mutually exclusive with the primary selectee. Rather than issue authorizations to applicants whose potential for selection stems primarily from their position in the mutually exclusive chain, we believe it is appropriate to dismiss all of the remaining applicants and permit them to file again in the next filing window.”) (emphasis in original).

<sup>20</sup> *Id.* The Commission recently reaffirmed this “one per group” processing policy. See *Comparative Consideration of 59 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in the October 2007 Filing Window*, Memorandum Opinion and Order, FCC 10-29, at ¶ 139 (rel. Feb. 16, 2010) (“*NCE Point Order*”) (“Finally, we note that we previously concluded that only one application should be granted out of each mutually exclusive group, while providing the competing applicants the opportunity to file again in the next filing window. Accordingly we direct the staff to deny petitions for reconsideration based on the theory that the dismissed application is not mutually exclusive with the granted application.” (internal citations omitted)).

<sup>21</sup> See *Tentative Selectee Order* 24 FCC Rcd at 12390 ¶ 2, citing *Window Opened to Expedite Grant of New NCE Station Construction Permits*, Public Notice, 22 FCC Rcd 19438 (MB 2007).

<sup>22</sup> 47 C.F.R. §§ 73.7000 - 7005.

<sup>23</sup> 47 C.F.R. § 73.525(d), which governs the technical facilities required of applicants for reserved-band (Channels

certification that the applicant has coordinated its proposal with the affected TV station. Cedar Cove also asserts that HPR's proposed site is not co-located with KLEI-TV, as contemplated by 73.525(d), in that, at the time HPR filed its Kailua Application, KLEI-TV was licensed at a site located 0.75 kilometers from the HPR site. Cedar Cove concludes that the Commission should not credit HPR's "first and second service" claim as a result of its non-compliance with the rule.

In addition, Cedar Cove asserts that HPR falsely certified that it was entitled to a diversification preference by failing to disclose that it is the licensee of KKUA(FM), Wailuku, and K234AN, Waimea, and that the 70 dB $\mu$  contours of those stations overlaps the 70 dB $\mu$  contour of its proposed station.<sup>24</sup> Cedar Cove contends that in the absence of a timely divestiture, the Commission must attribute these stations to HPR. In this regard, Cedar Cove states that although HPR's selection was based on "fair distribution coverage" and not on the "point system," the Commission relies on the accuracy and truthfulness of its licensees and applicants. Thus, the Commission should not grant the HPR Kailua Application.

HPR submits technical data to support its contention that the HPR Kailua Application complies with Section 73.525(d).<sup>25</sup> In addition, HPR states that although it erroneously certified its entitlement to a diversification point credit, it did not do so to mislead the Commission. HPR submits a declaration under penalty of perjury from its President, Michael Munson, that, at the time the application for construction permit was filed he had no knowledge that the contours of the translator station and the proposed station would overlap.<sup>26</sup>

In assessing the merits of a petition to deny under Section 309(d) of the Act, we determine first whether the petitioner makes specific allegations of fact that, if true, would demonstrate that grant of the application would be *prima facie* inconsistent with the public interest.<sup>27</sup> If the Commission determines

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201-220) that will be collocated with television Channel 6 stations.

<sup>24</sup> Petition to Deny at 2 and n.1.

<sup>25</sup> Opposition at 2-4 and Attachment 2, Engineering Statement of Donald E. Mussell, Jr. In its November 20, 2009, *Errata* to its Opposition, HPR submitted a corrected copy of Attachment 2 including two antenna patterns inadvertently omitted from the original Opposition. Among the claims in the Opposition is that the HPR Kailua Application proposes operation from the same site at which KLEI(FM) had operated on Channel 6 since approximately June of 2004, more than three years before HPR filed its Kailua application. Opposition at 2 and Attachment 1, Declaration of Richard Charles Bergson, President of tower owner Island Airwaves, Inc., and Attachment 2, Engineering Statement at 1.

<sup>26</sup> Opposition, Attachment 3. Munson declares that,

[b]ased upon the information provided to me by engineering counsel, as well as my own general knowledge of the contours, at the time I filed the application I was not aware the principal community contours of those stations would overlap, and consequently, I fully believed at that time that HPR qualified for the diversification credit. At no time was this certification made with an intention to mislead the Commission.

*Id.*

<sup>27</sup> See *Astroline Communications Co. v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988). The Commission determines whether a petitioner has met this threshold inquiry in a manner similar to a trial judge's consideration of a motion for directed verdict: "if all the supporting facts alleged in the affidavits were true, could a reasonable fact finder conclude that the ultimate fact in dispute had been established." *Gencom Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987), cited in *Edwin L. Edwards*, Memorandum Opinion and Order and Notice of Apparent Liability, 16 FCC Rcd 22236, 22248 (2001).

that the petitioner has satisfied the threshold determination, it proceeds to determine whether, on the basis of the application, the pleadings filed, or other matters which [the Commission] may officially notice, the petitioner has presented a “substantial and material question of fact” to warrant further inquiry.<sup>28</sup>

As an initial matter, we note that KLEI-TV is now licensed on digital channel 25 has terminated analog television service on channel 6, and therefore Cedar Cove's Channel 6 argument is now moot.<sup>29</sup> With respect to Cedar Cove's false certification argument, Section 1.17(a)(2) of the Rules provides that no person may provide, in any written statement of fact, “material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.”<sup>30</sup> In expanding the scope of Section 1.17 in 2003 to include written statements that are made without a reasonable basis for believing the statement is correct and not misleading, the Commission explained that this requirement was intended to more clearly articulate applicant obligations, ensure that applicants exercise due diligence in preparing written submissions, and enhance the effectiveness of the Commission's enforcement efforts.<sup>31</sup> Thus, even absent an intent to deceive, a false statement may constitute an actionable violation of Section 1.17 of the Rules if it is provided without a reasonable basis for believing that the statement is correct and not misleading.<sup>32</sup>

Here, the record of this proceeding does not include any evidence of an intent to deceive. Rather, there appears to be an erroneous certification that the HPR Kailua Application qualified for a diversification preference based on HPR President Munson's good faith but mistaken belief that the KKUA(FM) and K234AN contours would not overlap those of the HPR Kailua Application. Moreover, given that Munson declared under penalty of perjury that HPR claimed the diversification preference based in part on the information provided by HPR's engineering consultant, we cannot find that the certification was made without a reasonable basis for believing it to be true.<sup>33</sup>

**Conclusions/Actions:** Accordingly, we find that Cedar Cove has not established a substantial and material question of fact as to whether grant of the HPR Kailua Application is in the public interest.

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<sup>28</sup> *Id.* See also 47 U.S.C. § 309(d)(2).

<sup>29</sup> On February 12, 2008, the staff granted KLEI(TV)'s application for covering license for digital operation on Channel 25, File No. BLCDDT-20070202ABM, and it ceased analog broadcasting on Channel 6 as of January 15, 2009. See File No. BDERCT-20090410APN.

<sup>30</sup> 47 C.F.R. § 1.17(a)(2).

<sup>31</sup> *Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4016-4017, 4021 (2003), *recon. denied*, Memorandum Opinion and Order, 19 FCC Rcd 5790, *further recon. denied*, Memorandum Opinion and Order, 20 FCC Rcd 1250 (2004).

<sup>32</sup> See *In the Matter of Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, 18 FCC Rcd at 4017 (stating that the revision to Section 1.17 is intended to “prohibit incorrect statements or omissions that are the result of negligence, as well as an intent to deceive”).

<sup>33</sup> We note that, in the context of the point system selection process, the full Commission has not sanctioned applicants that erroneously claimed a fair distribution preference or a comparative point. See, e.g., *NCE Point Order* at ¶¶ 38 (applicant's claim of a fair distribution preference based on second NCE service found to be “mistaken” because applicant did not consider aural service provided by another NCE station covering much of the area on which the applicant based its fair distribution claim; the Commission rejected the applicant's claim of a fair distribution preference, but did not sanction the applicant), 113 (same). Nevertheless, we caution HPR to be attentive to its application certifications in the future because (as noted above) a false statement, even absent an intent to deceive, may constitute an actionable violation of Section 1.17 of the Rules.

Therefore, its Petition to Deny will be denied, and as contemplated by the *Tentative Selectee Order*, paragraph 82, there is no basis for further analysis of the applications in the Group, and the proceeding is terminated. We also find that the "premature" dismissal of the applications was harmless error.

Additionally, we have examined the HPR Kailua Application and find that it complies with all pertinent statutory and regulatory requirements and that its grant will further the public interest, convenience, and necessity.

Accordingly, IT IS ORDERED, that the November 5, 2009, Petitions for Reconsideration filed by Kanu O Ka Aina Learning Ohana and Cedar Cove Broadcasting, Inc. ARE DISMISSED.

IT IS FURTHER ORDERED, that the petition for reconsideration filed by Cedar Cove Broadcasting, Inc. on December 16, 2009, IS GRANTED TO THE EXTENT INDICATED, AND IS DENIED IN ALL OTHER RESPECTS.

IT IS FURTHER ORDERED, that the three Petitions for Reconsideration filed by Hawaii Public Radio, Inc. on December 11, 2009, the two Petitions for Reconsideration filed by Wren Communications, Inc. on December 16, 2009, and the Petition for Reconsideration filed by Lanai High and Elementary School on December 16, 2009, ARE GRANTED TO THE EXTENT INDICATED, AND ARE DENIED IN ALL OTHER RESPECTS.

IT IS FURTHER ORDERED, that the Petition to Deny filed by Cedar Cove Broadcasting Inc. on November 5, 2009, IS DENIED.

IT IS FURTHER ORDERED, that the Application (File No. BNPED-20071018ANN) of Hawaii Public Radio for a new noncommercial educational FM station in Kailua, Hawaii, IS GRANTED subject to the condition that Hawaii Public Radio must operate technical facilities substantially as proposed for a period of four years of on-air operations.<sup>34</sup>

Sincerely,

Peter H. Doyle, Chief  
Audio Division  
Media Bureau

cc: Kanu O Ka Aina Learning Ohana  
Hawaii Public Radio Inc.  
Cedar Cove Broadcasting, Inc.  
Wren Communications, Inc.

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<sup>34</sup> See 47 C.F.R. § 73.7002(c).



## APPENDIX

### **Hawaii Public Radio Applications**

BNPED-20071018ANT, Naalehu, Hawaii, Facility ID No. 172435

BNPED-20071018ANU, Pepeekeo, Hawaii, Facility ID No. 172433

BNPED-20071018ANV, Kula, Hawaii, Facility ID No. 172431

### **Wren Communications, Inc. Applications**

BNPED-200701022ATS, Lahaina, Hawaii, Facility ID No. 176511

BNPED-20071022ATU, Mountain View, Hawaii, Facility ID No. 176576

### **Lanai High and Elementary School Application**

BNPED-20071018ARX, Lanai City, Hawaii, Facility ID No. 175435

### **Cedar Cove Broadcasting, Inc. Application**

BNPED-20071018AAQ, Kailua Kona, Hawaii, Facility ID No. 175368