Federal Communications Commission
Washington, D.C. 20554
January 27, 2009

In Reply Refer to:
1800B3-ATS

Powell Meredith Communications Company
813 Ventura Park
Irving, TX 75061

IHR Educational Broadcasting
P.O. Box 180
Tahoma, CA 96142

Re: **AM Broadcast Auction 84**
MX Group 84-101

Hilo, Hawaii
Facility ID No. 160596
File No. BNP-20040127ACY

Kihei, Hawaii
Facility ID No. 161239
File No. BNP-20040130ADD

Applications for New AM Station Construction Permits

Dear Applicants:

We have before us two mutually exclusive AM applications. Powell Meredith Communications Company ("Powell") proposes a new AM station at Hilo, Hawaii, and IHR Educational Broadcasting ("IHR") proposes a new AM station at Kihei, Hawaii. As discussed below, we find a dispositive preference for IHR under Section 307(b) of the Communications Act of 1934, as amended[1] (the "Act"), and therefore direct IHR to file its long-form application within 60 days of the date of this letter for a construction permit in that community.

Background. In situations such as the one before us, the grant of an application would normally be resolved by a competitive bidding process.[2] However, in the *Broadcast First Report and Order*, the Commission determined that the competitive bidding procedures should be consistent with its statutory mandate under Section 307(b) of the Act to provide a "fair, efficient, and equitable" distribution of radio services across the nation. To this end, the Commission directed the staff to undertake a traditional Section 307(b) analysis prior to conducting an auction for mutually exclusive AM applications.[3] The Commission also noted that the FM allotment priorities fulfill its obligation under Section 307(b), and

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[1] 47 U.S.C. § 307(b).

[2] *See Implementation of Section 309(j) of the Communications Act-Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses* ("*Broadcast First Report and Order*"), First Report and Order, 13 FCC Rcd 15920 (1998), *recon denied*, Memorandum Opinion and Order, 14 FCC Rcd 8724 (1999), *modified*, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999).

[3] *Broadcast First Report and Order* at 15964-65.

would apply in making a Section 307(b) determination regarding mutually exclusive AM applications before auction.[4]

Discussion. After careful consideration of both applications, we have determined that the IHR proposal is entitled to a dispositive Section 307(b) preference under priority (4) of the applicable allotment priorities. Neither applicant proposes a first or second full-time aural service, or qualifies for a priority (3) preference by providing a first local transmission service to their respective community of license. Thus, both proposals must be evaluated under priority (4), other public interest matters.

Under priority (4), the Commission has generally favored the provision of service to the greatest number of people.[5] The applicants provided the following information regarding the number of persons served by their proposals: Powell states that its Hilo proposal will serve 79,941 persons within its 0.5 mV/m contour, and 58,715 persons within its 2 mV/m contour, and provide nighttime interference-free service to 65,551 persons. IHR states that its Kihei proposal will serve 899,641 persons within its 0.5 mV/m contour, 154,123 persons within its 2 mV/m contour, and provide nighttime interference-free service to 225,457 persons.

Independent population counts by the Commission staff reveal that: Powell's Hilo proposal will serve 71,566 persons within its 0.5 mV/m contour, 58,532 persons within its 2 mV/m contour, and will provide nighttime interference-free service to 58,532 persons;[6] and IHR's Kihei proposal will serve 218,941 persons within its 0.5 mV/m contour, 153,896 persons within its 2 mV/m contour, and will provide nighttime interference-free service to 153,896 persons.

We find it in the public interest to give preference to the IHR proposal, which will serve significantly more persons. Accordingly, IHR's Kihei proposal qualifies for a dispositive Section 307(b)

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[4] *See Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982). The FM allotment priorities are as follows: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local transmission service, and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). The FM allotment priorities were first applied to Section 307(b) determinations in mutually exclusive AM proceedings in *Alessandro Broadcasting Co.*, Decision, 56 RR 2d 1568 (Rev. Bd. 1984).

[5] *See Nelson Enterprises, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 13350 (2004) (finding no error in the use of population coverage to award a Section 307(b) preference under priority (4) and endorsing continued use of population coverage differentials in evaluating Section 307(b) analyses in AM auction applications). *See also Greenup, Kentucky and Athens, Ohio*, Memorandum Opinion and Order, 6 FCC Rcd 1493, 1497 (1991) ("[U]nder priority four, other public interest matters, we will first consider simple net differences in the number of persons newly served by each proposal").

[6] By definition in 47 C.F.R. § 73.182(d), the AM groundwave signal strength necessary to provide primary service to communities with populations of 2,500 or more persons is 2 mV/m, and the AM groundwave signal strength necessary to provide primary service to communities with populations less than 2,500 persons is defined as 0.5 mV/m. Thus, when counting the population within an AM daytime 2 mV/m field strength contour, all communities, regardless of size, are included, but when counting the population within an AM daytime 0.5 mV/m field strength contour, communities with populations of 2,500 or more persons that are located inside the 0.5 mV/m contour but outside the 2 mV/m contour must be excluded from the population count. The practical effect of the rule is that an applicant is not recognized as serving the community if it fails to render the specified signal strength intensity to the community. *See Amendment of the AM Broadcast Station Rules with Respect to Signal Coverage Requirements over Community Business and Factory Areas*, Report and Order, 49 FR 23345 (1984) (Section 73.182(f) specifies the signal levels necessary to render primary service to different types of service areas. Amended rule so that primary service signal strength requirement based only on a population standard); *Tucson Radio, Inc. (KEVT)*, Memorandum Opinion and Order, 35 F.C.C.2d 584 (1972) (*in order to determine the population which a proposed station will be credited with serving*, 47 C.F.R. § 73.182(g) (1972) specified signal strength requirements of 0.5 mV/m for towns with populations under 2,500; 2.0 mV/m for communities with populations between 2,500 and 10,000; and signal strengths of varying higher intensity for city business districts (emphasis added)).

preference under priority (4) of the applicable allotment priorities[7] and IHR will be directed to continue the application process by filing a complete FCC Form 301 application.[8]

Conclusion. Accordingly, IT IS ORDERED that IHR, within 60 days of the date of this letter, is to file a complete FCC Form 301 in connection with its application for a construction permit for a new AM broadcast station at Kihei, Hawaii (File No. BNP-20040130ADD), pursuant to the procedures set forth in the Commission's Rules.[9] With its application, IHR must simultaneously submit the required filing fee for a new commercial AM radio station and an FCC Form 159, Remittance Advice.

The facilities proposed in the FCC Form 301 must comply with all applicable AM rules. Applicants must demonstrate that the proposed facility protects existing stations and earlier filed applications, and that the daytime and nighttime facilities comply with principal city coverage requirements.[10] Any differences between the tech box proposal filed during the AM Auction No. 84 filing window and the complete FCC Form 301 must be minor changes, as defined by the applicable AM service rules,[11] and must not create new application conflicts. In addition, the technical facilities proposed in the FCC Form 301 must maintain (or improve) the level of service, in terms of population, on which the dispositive Section 307(b) preference was based.

The complete FCC Form 301 application must be filed electronically through the Media Bureau's Consolidated Database System (CDBS) online electronic forms system. For information regarding electronic application filing, refer to the April 28, 2000, Public Notice, *Mass Media Bureau Implements Consolidated Database System (CDBS) Electronic Filing of FCC Forms 301, 302, 314, 315, 316, and 347.* When filing the complete FCC Form 301, an applicant must select "Long Form Application for AM Auction No. 84" on the Pre-form for Form 301 (Question 2 – Application Purpose). In addition, the CDBS file number previously issued to the tech box submission filed in the AM Auction No. 84 filing window must be entered on the Pre-form in the field "Eng. Proposal File Number." Instructions for use of the electronic filing system are available in the CDBS User's Guide, which can be accessed from the electronic filing website at **http://www.fcc.gov/mb/elecfile.html.** For assistance with electronic filing, call the Audio Division Help Desk at (202) 418-2831.

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[7] *See Emmetsburg, Sanborn, and Sibley, Iowa and Brandon, South Dakota*, Report and Order, 17 FCC Rcd 8308 (2002) (population served difference of 4,415 persons); *Ashland, California and Rolla and Monroe City, Missouri*, Report and Order, 8 FCC Rcd 1799 (1993) (population served difference of 8,562 persons).

[8] After the FCC Form 301 is filed, the staff will conduct a complete legal and technical analysis. We will issue Public Notices entitled "Broadcast Applications," announcing AM auction applications determined to be acceptable for filing. These notices will be generated by the Consolidated Database System ("CDBS"). Petitions to deny an FCC Form 301 application must be filed within 10 days following release of the Broadcast Applications Public Notice announcing acceptance of the application at issue. *Broadcast First Report and Order*, 13 FCC Rcd at 15985. The staff will dismiss the application filed by Powell (File No. BNP-20040127ACY) upon action taken on the application filed by IHR.

[9] *See* 47 C.F.R. §§ 0.401(b), 1.1104, 1.1109, 73.5005(d), and 73.3512.

[10] *See id.* §§ 73.24, 73.37, and 73.182.

[11] *Id.* § 73.3571.

The staff will return applications not submitted in accordance with the procedures described above. Failure to timely file the complete FCC Form 301 application, **on or before March 30, 2009,** will result in dismissal of the tech box proposal filed during the AM Auction No. 84 filing window for failure to prosecute, pursuant to Section 73.3568 of the Commission's Rules.[12]

Sincerely,

Lisa Scanlan
for

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Lee J. Peltzman, Esq.
Dennis J. Kelly, Esq.

[12] *Id.* § 73.3568.