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SEP 23 2011

Federal Communications Commission
Office of the Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.622(l) of the)	RM - 11636
Commission's Rules and Regulations, Post)	
Transition Table of DTV Allotments,)	MB Docket No. 11-139
Television Broadcast Stations)	DA 11-1401
(Hampton-Norfolk, Virginia; Norfolk,)	
Virginia-Elizabeth City, North)	
Carolina))	

TO: Marlene Dortch, Secretary
Federal Communications Commission
Attn: Chief, Video Division, Mass Media Bureau

**COMMENTS OF HAMPTON ROADS EDUCATIONAL TELECOMMUNICATIONS
ASSOCIATION, INC.**

Hampton Roads Educational Telecommunications Association, Inc. ("HRETA"),
by its attorney, hereby submits the following Comments in support of the Notice of Proposed
Rulemaking ("NPRM") in this proceeding.

1. This proceeding involves a change in location of NCE Television Station
WHRO-TV to Norfolk, Virginia-Elizabeth City, North Carolina. It was initiated as a result of a
Petition for Rulemaking filed by HRETA on December 1, 2010. Pursuant to that petition, the
Commission issued an NPRM. The NPRM was published in the Federal Register on August 31,

2011, at 78 FR 54189. The NPRM as published specified that Comments are due no later than September 30, 2011. Thus, these Comments are timely.

2. There are three requirements necessary to obtain a change of community of license pursuant to Section 1.420(i) of the Commission's Rules. First, the new allotment must be mutually exclusive with the existing allotment. Second, the allotment to the new community must better serve the Commission's allotment priorities and policies than maintaining the allotment to the existing community. Third, the change must not deprive a community of its sole existing broadcast station. See, *Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (Bessemer and Tuscaloosa, Alabama)*, Report and Order, 5 FCC Rcd 669 (1990), para. 8 n. 9 ("*Bessemer R&O*"). The proposed change of location of WHRO-TV complies with all of these three requirements.

3. As to the first requirement, HRETA does not propose to relocate the transmitter site for WHRO-TV, nor does HRETA propose to operate on different channels. Thus, HRETA's proposal to change its community of license to Norfolk-Elizabeth City is mutually exclusive with its existing authorization at Hampton-Norfolk. See *Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (San Bernardino and Long Beach, California)*, Report and Order, 13 FCC Rcd 9 (1998), para. 2. The predicted community contours of the station will remain the same and there will be no change in the area or population served by the station with its over-the-air signals. As shown in an engineering statement submitted with HRETA's Petition for Rulemaking, WHRO-TV will provide the required city grade signal to Elizabeth City. WHRO-TV's programming will not change, except to the extent needed to serve the needs of Elizabeth City.

4. As to the second requirement, the Commission's consideration of whether the proposed allotment better serves the allotment priorities and policies than does the current allotment is essentially a consideration of the public interest. In order to determine where the public interest lies, the Commission must consider the following allotment priorities:

- (1) Provide at least one television service to all parts of the United States;
- (2) Provide each community with at least one television broadcast station;
- (3) Provide a choice of at least two television services to all parts of the United States;
- (4) Provide each community with at least two television broadcast stations; and
- (5) Assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities.

See *Sixth Report and Order on Television Allotments*, 41 FCC 148, para. 63 (1952). It is axiomatic, of course, that these "television allotment priorities are not rigidly applied." *Bessemer R&O*, para. 14; accord *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989) ("*Community of License R&O*"), para. 25.

5. Elizabeth City, North Carolina, presently has no local television station. Descriptive material concerning the community of Elizabeth City, North Carolina, was submitted with HRETA's original Petition and is incorporated herein by reference. Elizabeth City is a major city obviously deserving of a local television broadcast station. It has a population of 17,188 persons (2000 Census), and is the center of the Elizabeth City Micropolitan Statistical Area, which has a population of 57,267 (2004 Census estimate). It is home to two colleges, a constituent university of the University of North Carolina system, and the largest U.S. Coast

Guard command in the nation. It is fully incorporated with a mayor and city council. It has a daily newspaper, *The Daily Advance*; and it has two AM broadcast stations and three FM broadcast stations.

6. It is evident, therefore, that the community of Elizabeth City deserves a television broadcast station. Thus, the proposed allotment at Elizabeth City serves the objectives of Priority #2 of the Commission's allotment priorities by providing that community with a first television broadcast station. It does not deprive any community of a television station, because Hampton will continue to receive service from its existing local station, WVEC-TV. Hampton will no longer have two television stations (Priority 4), but Elizabeth City will have a first television station as required by Priority 2, which ranks higher than Priority 4. Thus, the proposed change creates a preferential arrangement of allotments, consistent with the priorities and with the Commission's mandate under Section 307(b) of the Communications Act, to promote a fair, efficient and equitable distribution of service.

7. As shown in its original Petition, HRETA will not abandon, in any way, its long-standing obligation to meet the needs of Hampton, Virginia. Hampton is part of the Norfolk Metropolitan Area and WHRO-TV will continue to be licensed to Norfolk. Therefore, the HRETA will continue to consult with community leaders in Hampton, ascertain the needs of that community and develop programming to meet those needs, just as it has done for many years.

8. In short, the proposed change in location of Station WHRO-TV fully complies with all of the pertinent Commission rules and policies. It will also create a preferential arrangement of allotments, consistent with the mandate of Section 307(b) of the

Communications Act to allocate spectrum in a fair, efficient and equitable manner. Thus, the proposal serves the public interest and should be adopted.

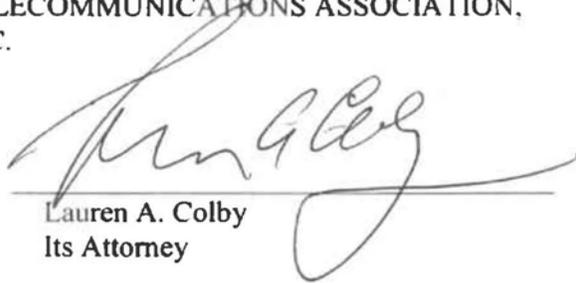
Respectfully submitted,

September 23, 2011

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