

the past and continued dominance of the only VHF station, we are persuaded that the public interest requires hyphenation of the communities of Lebanon and Lancaster.³³

Hampton Roads has provided no evidence of unique circumstances or other public interest benefits that weigh in favor of its highly unusual proposal. To be sure, Hampton Roads has argued that the proposal furthers the allotment priorities, but Hampton Roads has failed to recognize that the nature of its proposed hyphenated allotment means that it faces a much higher burden than merely reciting that Elizabeth City is a community deserving of a television station.

(5) *New Bedford, Massachusetts-Providence, Rhode Island*

The *New Bedford, Massachusetts-Providence, Rhode Island* case³⁴ provides an apt illustration of just how high an evidentiary hurdle a petitioner faces when seeking to hyphenate communities for allotment purposes. There, the petitioner sought “to consolidate the New Bedford, Massachusetts and Providence, Rhode Island television assignments into one hyphenated television assignment market.”³⁵ The petitioner provided evidence that the “Commission previously recognized the homogeneity and community of interests among New Bedford and the surrounding areas of Rhode Island and Massachusetts” and argued that “the close geographic proximity of Providence and New Bedford has resulted in many common social, cultural, trade, and economic interests and that both ARB and Neilson [sic] designate a Providence-New Bedford television market composed of two Massachusetts and one Connecticut county as well as all five Rhode Island counties and surrounded by the larger Boston

³³ *Amendment of Section 3.606 Table of Assignments, Television Broadcast Stations (Lebanon and Lancaster, Pa.)*, Report and Order, 24 Rad. Reg. 1564, 1566 (1962), ¶¶ 5-6 (footnotes omitted).

³⁴ *Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (New Bedford, Massachusetts-Providence, Rhode Island)*, Notice of Proposed Rule Making, 1986 WL 290816 (1986) (“*New Bedford, Massachusetts-Providence, Rhode Island*”).

³⁵ *New Bedford, Massachusetts-Providence, Rhode Island*, ¶ 1.

and Hartford-New Haven television markets.” The petitioner also noted the significance of the fact that the “Commission treats Providence and New Bedford as a single market for purposes of its cable television and prime time access rules and that it has reported television financial and program data from a ‘Providence-New Bedford’ market.”³⁶ Notwithstanding all of this evidence that would have seemingly cut in favor of granting the petition to hyphenate the communities into one consolidated market, the Commission, in the face of opposition to the petition, decided that

With the Commission’s television hyphenation assignment policies in mind, we find it appropriate to accord the petitioner and other interested parties the opportunity through comments to establish an appropriate record on which to base a determination of whether, in fact, the requisite common interests exist. In particular, petitioner should indicate how the public interest will benefit from a grant of its request.³⁷

Thus, even in a case where the petitioner provided some evidence of commonality and community interdependence, the Commission required a further public interest showing. And recitation of Allotment Priority 2 cannot satisfy the requisite public interest showing because it elides the other significant showing that is required here—namely that the two communities of Norfolk, Virginia, and Elizabeth City, North Carolina, possess unmistakable indicia of commonality and interdependence. (UNC-TV found no subsequent history in the *New Bedford, Massachusetts-Providence, Rhode Island* case, and the Table of Allotments never did consolidate the assignments into one hyphenated allotment market.)

³⁶ *New Bedford, Massachusetts-Providence, Rhode Island*, ¶ 2.

³⁷ *New Bedford, Massachusetts-Providence, Rhode Island*, ¶ 7.

(6) Hugo, Oklahoma-Paris, Texas

The *Hugo, Oklahoma-Paris, Texas* case³⁸ uniquely embodies the hyphenation principles espoused in all three lines of allotment hyphenation cases. There, the Commission ultimately agreed to hyphenate the allotment market of Hugo, Oklahoma-Paris, Texas, for a then-unbuilt channel. (To that extent, then, the case follows the *Huntsville-Decatur, Alabama* precedent, where it was appropriate in a close factual analysis and prior to the application stage to assign a channel to a hyphenated market.) An extended quotation from *Hugo, Oklahoma-Paris, Texas* is warranted to flesh out how the Commission reached its decision to hyphenate that allotment across state lines:

The last question before us is, should Channel 42 be assigned to Hugo, Paris, or to both communities as a hyphenated assignment? In response to our Notice's request for discussion of this question, petitioner has pointed out ". . . The geographical location of Paris, Texas, the county seat of Lamar County, and Hugo, Oklahoma, the county seat of Choctaw County, places these two cities only 24 miles apart, and even though they are in separate states, the population maintains a high degree of local community interests. Both counties lie in the Red River lowland; both counties are highly engaged in agriculture; both counties are among the lower counties in the United States as far as per capita income is concerned; both counties are struggling desperately for economic growth and development and both counties desperately need all of the most modern methods of communications which, of course, must include television." Too, petitioner indicates that in its view it is necessary to have a hyphenated assignment of a commercial station in this area before the channel's activation is economically feasible, in that, it is asserted, that [sic] a hyphenated assignment will be favored by advertisers whereas a non-hyphenated assignment would not have the economic potential needed for activation. *We note the community of interests between Hugo and Paris, cited above, the view of petitioner as to the requirement of hyphenation of a commercial assignment for*

³⁸ *Amendment of the Table of Assignments for Television Broadcast Stations in Section 73.606 of the Commission's Rules and Regulations (Hugo, Oklahoma and Paris, Texas)*, Report and Order, 19 Rad. Reg. 2d 1823 (1970) ("*Hugo, Oklahoma-Paris, Texas*").

*economic feasibility, and the fact that none of the participating parties objects to the hyphenated assignment of Channel 42 to Hugo-Paris. Although it is our desire to avoid where possible hyphenated assignments, the circumstances in this proceeding bring us to the conclusion that it is in the public interest to assign Channel 42 to Hugo, Oklahoma-Paris, Texas. We wish to emphasize that this decision to hyphenate this assignment of Channel 42 is made in light of the specific circumstances in this case, and that we are not establishing a precedent for other assignments involving other circumstances.*³⁹

Thus, where the *Hugo, Oklahoma-Paris, Texas* made showings regarding the commonalities between the communities (i.e., following the *Lebanon-Lancaster, Pennsylvania* category of hyphenation cases) and regarding the economic feasibility of the allotment (i.e., following the *Tucson-Nogales, Arizona* category of hyphenation cases), Hampton Roads has not provided any support to demonstrate that its proposal satisfies any of the three “categories” of cases in which the Commission has been willing to deviate from its general policy of not assigning channels to hyphenated communities. Moreover, of course, there is opposition here to Hampton Roads’ hyphenation proposal, and the Commission expressly identified the *Hugo, Oklahoma-Paris, Texas*, situation as *sui generis*.⁴⁰

³⁹ *Hugo, Oklahoma-Paris, Texas*, 19 Rad. Reg. 2d at 1826, ¶ 8 (emphases added) (ellipses in original).

⁴⁰ It should be noted that the *Hugo, Oklahoma-Paris, Texas* hyphenation was apparently short-lived. While counsel for UNC-TV has been unable to determine definitively when the hyphenation was removed, or if the hyphenation was ever, in fact, “codified,” a review of the analog Table of Allotments in the Code of Federal Regulations, 47 C.F.R. § 73.606, going back to 1981 reveals assignment of Channel 42 to the *unhyphenated* market of Hugo, Oklahoma.

C. WHRO-TV's Proposal to Re-Hyphenate Its Community of License from Hampton-Norfolk to Norfolk, Virginia-Elizabeth City, North Carolina, Is Unprecedented and Contrary to Well-Established Commission Practice, and the Public Interest Is Unlikely to Be Served By the NPRM's Proposal of Only Elizabeth City As the New Community of License

Hampton Roads' proposal to re-hyphenate its community of license from Hampton-Norfolk, Virginia, to Norfolk, Virginia-Elizabeth City, North Carolina, must be rejected. The Commission's Station Location rule, 47 C.F.R. § 73.1120, does not contemplate hyphenated communities of license.⁴¹ It comes as no surprise, then, that the Commission's Consolidated Database System (CDBS) shows only *one* hyphenated community of license for a full-power television station: WHRO-TV, Hampton-Norfolk, Virginia.⁴² As noted above, when granting WHRO-TV's hyphenated community of license, it was clear that the only reason for doing so was to forestall the possibility that the city of Hampton would not fully participate in the operations of WHRO-TV. In other words, hyphenation of the WHRO-TV community of license was a *sui generis* event, tied directly to the city of Hampton, and not a generalized right of WHRO-TV that it may now transfer to another city in another state.

⁴¹ While this was, perhaps, more clear under the prior iteration of the rule—which specifically contemplated hyphenated communities of license for radio stations that met certain enumerated criteria but expressly prohibited them for all television stations—it remains the law. *Compare* 47 C.F.R. § 73.1120(b) (1986) (“AM and FM stations (not TV stations) will be licensed to serve more than one community or other political subdivision only where a satisfactory showing is made”) with 47 C.F.R. § 73.1120 (1987) (eliminating subsection (b) from the rule).

⁴² Even when wrestling with the vexing issue of adequate television service for New Jersey, the Commission rejected calls for the use of hyphenated communities of license “by which a station would have a primary service responsibility to two communities or, in the case of a ‘New Jersey’ hyphenation, a primary responsibility to one community and at least a portion of a state.” *Petition for Inquiry into the Need for Adequate Television Service for the State of New Jersey*, Second Report and Order, 59 F.C.C. 2d 1386 (1976), ¶ 13. The Commission’s rejection of community of license hyphenations stemmed from its belief that “‘hyphenation’ of the form advocated by the Coalition and others would create inflexible service obligations and likely could produce an unmanageable and unneeded precedent.” *Id.* ¶ 16.

Moreover, even in cases where the Commission has hyphenated an allotment market, the Commission has simultaneously made clear that it was not also permitting the hyphenation of a station's community of license.⁴³ Thus, even if the Commission were to grant Hampton Roads' proposal to hyphenate the allotment for assignment purposes, Hampton Roads would still have to choose *between* the unhyphenated community of license of Norfolk, Virginia, and the unhyphenated community of license of Elizabeth City, North Carolina. Thus, to the extent that the *NPRM*, in proposing to make just Elizabeth City WHRO-TV's new community of license, implicitly recognizes the long-standing policy against hyphenation of a community of license, the *NPRM* was correct. *See NPRM*, ¶ 8 (proposing WHRO-TV's new community of license as the unhyphenated community of Elizabeth City, North Carolina).

Nevertheless, it strains credulity to imagine that Hampton Roads, whose very name itself is enmeshed with Hampton-Norfolk and the entire Hampton Roads geographic region, would opt to change its community of license to and primarily serve the interests of the unhyphenated community of Elizabeth City North Carolina—a much smaller city located outside the geographic region of Hampton Roads, in a different state, where none of its constituent school district owners are (or even can be) located.

It is of no small moment—though completely ignored by Hampton Roads in its Petition and comments—that Hampton Roads' bylaws and articles of incorporation expressly limit

⁴³ *See, e.g., Hugo, Oklahoma-Paris, Texas*, ¶ 9 (“However, while we are departing from the usual practice and making a hyphenated assignment in §73.606 of the Rules, we point out that this does not mean that the station using the assignment, if and when applied for and authorized, will be licensed to both cities.”); *Tucson-Nogales, Arizona*, ¶¶ 8, 10 (acknowledging that the hyphenation of the Tucson-Nogales assignment market would permit the station to change its community of license from Nogales to Tucson).

ownership of a stake in the licensee company to *Virginia* school districts.⁴⁴ As owners of Hampton Roads, those Virginia schools districts control the programming decisions for WHRO-TV, decisions which, understandably and appropriately, serve the needs and interests of residents of Hampton-Norfolk and the Hampton Roads geographic area. In fact, in recent years, Hampton Roads' organizational documents were modified to "institutionalize a formal role for the superintendants of WHRO's [eighteen] owner school divisions."⁴⁵ That WHRO-TV's service is focused on its 18 constituent local school or school district owners, all of which are located in Virginia in the greater Hampton Roads geographic area, is borne out by Hampton Roads' 2010 Annual Report, which observes:

*All of the products, programs, initiatives and services we provide each year are designed to fulfill the needs of the people of southeastern Virginia, whether they be in the area of entertainment, education or engagement – or all three.*⁴⁶

⁴⁴ See Bylaws of Hampton Roads Educational Telecommunications Association, Inc. (March 10, 2010), Art. IV, § 4.1 ("The members of this Corporation (the "HRETA Members") shall be as defined in the Articles of Incorporation.") (filed with the Commission on May 25, 2010); Amended and Restated Articles of Incorporation of Hampton Roads Educational Telecommunications Association, Inc. § III.A ("The Members of the Corporation shall be comprised of School Boards of the school divisions of the Commonwealth of Virginia located within the service area of the Corporation which have applied for and been accepted as Members.") (filed with the Commission on May 25, 2010). These organizational documents are attached to these comments as Exhibit 3.

⁴⁵ See A Brief History of WHRO, available at <<http://whro.org/home/insidewhro/history.htm>> ("In October of 2003, in the first substantive modification of WHRO's governing documents since the corporation's charter in 1961, amended Articles of Incorporation were filed with the State Corporation Commission, providing a structure to more effectively ensure that the value of WHRO's assets are protected and increased; and to institutionalize a formal role for the superintendents of WHRO's fourteen [now 18] owner school divisions.").

⁴⁶ Hampton Roads Educational Telecommunications Association, Inc., Annual Report 2010, at 7 (unnumbered) (emphases added) (copy attached as Exhibit 2), available at <<http://whro.org/home/documents/WHRO-AnnlRept10.pdf>>

The Hampton Roads-centric service concept which is part and parcel of the very existence of WHRO-TV's licensee,⁴⁷ while entirely appropriate for a station licensed to Hampton-Norfolk, is difficult, if not impossible, to reconcile with the localism obligations that would attend the change of WHRO-TV's community of license to Elizabeth City (either solely or in hyphenation with Norfolk).

It is axiomatic that “[a] television station has only one city of license and, therefore, only one primary service obligation.”⁴⁸ This principal derives from the Commission's black-letter Station Location rule: “Each AM, FM, TV and Class A TV broadcast station will be licensed to the principal community or other political subdivision which it primarily serves.”⁴⁹ Under the proposal put out for comment by the Commission in the *NPRM*, WHRO-TV would have to serve, as its primary service obligation, Elizabeth City, North Carolina. Even under Hampton Roads' hyphenated proposal, one of two primary service obligations would be to serve the needs and interests of residents of Elizabeth City. But, in fact, the Petition itself makes clear (and Hampton Roads' comments reiterate) that WHRO-TV's principal mission will not be only to the community of Elizabeth City nor the dual communities of Norfolk, Virginia, and Elizabeth City, North Carolina—no, in fact Hampton Roads proposes a primary service obligation to no fewer than *three* communities:

⁴⁷ See Inside WHRO, Vision, available at <<http://whro.org/home/insidewhro/statement.htm>> (“WHRO will be a dynamic and vital organization that improves the civic, educational and cultural life **of the Hampton Roads community** through broadcast, communications, and media services.” (emphasis added)); 2010 Annual Report, available at <<http://whro.org/home/documents/WHRO-AnnlRept10.pdf>> (“Next year, WHRO will celebrate its 50th anniversary – an achievement that rightfully belongs **to the people of Hampton Roads**” (emphasis added)).

⁴⁸ *Petition for Inquiry into the Need for Adequate Television Service for the State of New Jersey*, Second Report and Order, 59 F.C.C. 2d 1386 (1976), ¶ 15.

⁴⁹ 47 C.F.R. § 73.1120.

Furthermore, Hampton 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.⁵⁰ Therefore, the Petitioner 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.⁵¹

It is clear, then, that Hampton Roads has no intention to change the principal mission and primary service obligations of WHRO-TV from serving Hampton-Norfolk, Virginia, (and the rest of the Hampton Roads geographic region) to *primarily* serve the needs and interests of Elizabeth City, North Carolina. The sole “evidence” offered by Hampton Roads regarding its ability and intent to *primarily* serve the needs and interests of Elizabeth City is the single sentence observing that “WHRO-TV’s programming will not change, except to the extent needed to serve the needs of Elizabeth City”⁵²—no examples of programming or ascertainment relating to Elizabeth City are provided. Tellingly, the Petition spends more time—three sentences—discussing how Hampton Roads will not abandon Hampton than about how Hampton Roads will serve the community of Elizabeth City.⁵³ No amount of posturing about addressing the needs of Elizabeth City can mask the fact that WHRO-TV’s principal mission will

⁵⁰ According to the *NPRM*, WHRO-TV would not continue to be licensed to Norfolk. *See NPRM*, ¶ 8 (proposing WHRO-TV’s new community of license as the unhyphenated community of Elizabeth City, North Carolina). The Commission’s proposal to license WHRO-TV solely to the community of Elizabeth City, North Carolina, begs the question whether Hampton Roads even wishes to continue with this proceeding, since the Elizabeth City-only proposal would seem to remove a keystone component of Hampton Roads’ Petition. It is unclear whether Hampton Roads is aware that the *NPRM* proposes only Elizabeth City as WHRO-TV’s community of license: Hampton Roads’ comments filed on September 23, 2011, in this proceeding make no mention of the *NPRM*’s Elizabeth City-only proposal, and the comments continue to reference the proposed hyphenated community of license.

⁵¹ Petition at 4, ¶ 7.

⁵² Petition at 2, ¶ 3.

⁵³ *See* Petition at 4, ¶ 7.

always be Hampton Roads.⁵⁴ Indeed, given the fact that Hampton Roads has not stated any intention to build or occupy a main studio in Elizabeth City, it is difficult to imagine just how Hampton Roads can be successful serving, as its primary localism obligation, the needs of this distant community. These significant questions, issues, and impairments to WHRO-TV's ability to adequately serve Elizabeth City counsel strongly against grant of the proposal.

III. Conclusion

For all the reasons set forth above, Hampton Roads' Petition should be denied.

September 30, 2011

Respectfully submitted,

THE UNIVERSITY OF NORTH CAROLINA

By:



Marcus W. Trathen
Stephen Hartzell
BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
Suite 1600
Wachovia Capitol Center
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300
Facsimile: (919) 839-0304

Its Attorneys

⁵⁴ As Hampton Roads itself has promised, as its "Stewardship" value: "WHRO will use its financial resources in a prudent and accountable manner for the benefit of the community." See, e.g., Inside WHRO: Vision, Mission, Values, available at <http://whro.org/home/insidewhro/statement.htm>. The "community" referenced is, of course, as plain as the organization's name itself: *Hampton Roads* Educational Telecommunications Association, Inc. It is difficult to discern how the expenditure of resources to primarily cover issues of interest to the Elizabeth City, North Carolina, community will be a benefit to the Hampton Roads community.

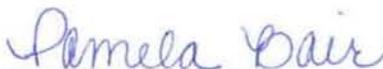
CERTIFICATE OF SERVICE

Except as otherwise noted below, I, Pamela Bair, do hereby certify that I have this 30th day of September 2011, deposited a copy of the foregoing **COMMENTS IN OPPOSITION** in the United States Mail, post pre-paid, and addressed to the following:

Barbara Kreisman, Chief
Video Division, Media Bureau
Federal Communications Commission
445 Twelfth Street S.W.
Washington, D.C. 20554
(via hand-delivery)

Joyce Bernstein
Federal Communications Commission
445 Twelfth Street S.W.
Washington, D.C. 20554
(via email)

Hampton Roads Educational Telecommunications Association, Inc.
Lauren A. Colby, Esq.
10 E. Fourth Street
P.O. Box 113
Frederick, Maryland 21701



Pamela Bair

Exhibit 1

Original Grant of WHRO-TV Construction Permit

FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D. C.

PUBLIC NOTICE - B

7963

Jh

Report No. 3825

BROADCAST ACTION

July 18, 1961

The Commission en banc, by Commissioners Minow (Chairman), Lee, Craven, Ford and Cross, took the following action on July 17:

Hampton Roads Educational
Television Association
(c/o W. E. Campbell
402 E. Charlotte St.)
Norfolk, Va.

Granted CP for a new TV station to operate on commercial Channel 15 with ERP visual 274 kw and aural 110 kw; antenna height 480 ft. (BPCT-2885); waived Sect. 3.607(b) of the rules to permit station to be licensed to "Hampton-Norfolk". The applicant is an unincorporated noncommercial association of The School Boards of the Cities of Hampton and Norfolk and proposes, initially, that the programs will be 100% educational and designed for use in classrooms.

- FCC -

FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D.C. 7506

Approved by Circulation
To Commission en banc
(NNM, REL, TAMC, FWF, JSC)
July 17, 1961

July 10, 1961

INTER-OFFICE MEMORANDUM

FOR: Circulation
TO: The Commission
FROM: Chief, Broadcast Bureau
SUBJECT: Application (BPCT-2885) for construction permit
for a new non-commercial educational television
broadcast station to serve Norfolk, Virginia,
filed by:

Hampton Roads Educational Television Association
Norfolk, Virginia

Date filed: May 29, 1961

Dates amended: June 5, 1961 and June 9, 1961

Zone: 1 Population: 305,872

Channels assigned to Norfolk-Portsmouth-Newport News:
3, 10, 13, 15, *21, 33

Channel assigned to Norfolk-Portsmouth: 27

Channel requested: 15

Channels authorized: 3, 10, 13, 27, 33

Antenna height above average terrain: 480 feet

ERP, visual: 214 kw

Address of applicant: Hampton Roads Educational
Television Association
W. E. Campbell, Fiscal Agent
402 East Charlotte Street
Norfolk 10, Virginia

RECOMMENDED ACTION: Grant application in accordance with attached
specifications.

1. The Applicant.

The applicant is an unincorporated non-commercial association of The School Boards of the Cities of Hampton and Norfolk which have associated under the provisions of Section 15-15.3, Code of Virginia, Acts of Assembly, 1960, which authorizes county school boards to so associate themselves in order to establish and operate educational television broadcast stations. The association is governed by a Board of Trustees composed of designated members of each school board. Members of the governing board, all of whom are citizens of the United States, are as follows: Hunter Booker Andrews,

Chairman, attorney; Gordon Butler Cutler, Trustee; President of Citizen's National Bank, Hampton, Virginia; B. J. Willis, Sr., Trustee, retail furniture merchant; Vincent J. Thomas, Vice Chairman, retail and wholesale fuel and steamship agent; Elnora Hodge, Secretary, secretary employed by Norfolk school board; and W. E. Campbell, Fiscal Agent, Assistant Superintendent for Business and Finance of Norfolk school board. Other members of the Norfolk and Hampton school boards, who are also citizens of the United States, are as follows: (Hampton), Wade Lanier Traynham, dentist; George Lester Lockwood, building contractor; Doris Despar Smith, housewife; Donald Fred Talbott, Jr., ship hull designer; Lealie Mitchell Ware, telephone company supervisor; (Norfolk), Francis N. Crenshaw, attorney; Kathleen Griffin, investigations secretary, Immigration and Naturalization Service, Department of Justice; Joseph A. Leslie, Jr., retired newspaper editor; Joseph C. Nelson, life insurance salesman; and Stanley C. Walker, manufacturer, fabricator and erector of structural steel.

2. Personnel.

The applicant employs a staff of six teachers and one director, Mrs. Grace J. Waters, who are trained and experienced in the production of educational television programs as a result of four years of cooperation with the local commercial television stations. In addition, the applicant states that it will employ sufficient engineering staff to operate the transmitting equipment.

3. Program Plans.

The applicant proposes to broadcast from 9:00 a.m. to 11:30 a.m., Monday through Friday, a total of 12.5 hours weekly during the school year. Initially, the programs will be 100% educational and designed for use in classrooms. No network affiliation is proposed. The applicant does not propose the construction of a studio until after one year of operation; instead, during the first year of operation, it will utilize the studio facilities of the three local commercial television stations to record its programs on video tape and then microwave them to the applicant's transmitter.

4. Financial Qualifications.

Estimated cost of construction:	\$127,997
Estimated annual operating expense:	80,000

Plan for financing:

The applicant will require cash in the amount of \$116,523 for the construction and initial operation of the proposed television broadcast station, and will require a total amount of \$201,248 in the first year of operation. The

Cities of Norfolk and Hampton are to contribute funds on a pro rata basis, to be determined by the number of students enrolled in each city. As of March 31, 1961, Hampton had unencumbered funds in excess of \$653,900 and, as of April 30, 1961, Norfolk had in excess of \$8,700,000. The applicant appears to be financially qualified to construct and operate the proposed television broadcast station.

5. Engineering Considerations.

The applicant proposes to construct a new non-commercial educational television station utilizing commercial Channel 15 to serve Norfolk, Virginia, with an effective visual radiated power of 214 kw from an antenna 480 feet above average terrain. The site, antenna system, transmitter, and other facilities specified in the instant application are those formerly used by Station WVEC-TV (which is now on Channel 13 at a different site). The proposed transmitter site is located approximately 10 miles north of the center of Norfolk in Hampton, Virginia, and from this site line-of-sight transmission and the minimum required signal (80 dbu) will be provided to the entire city. The main studio location will be determined later; however, it is proposed to share temporarily the studio of a commercial television station in Norfolk. Norfolk has a population of 305,872 according to the 1960 census. The proposed operation meets the technical requirements of the Commission's Rules.

6. Other Considerations.

(a) While Station WVEC-TV operated on Channel 15 with the identical facilities being proposed herein, it was brought to the Commission's attention by Station WVEC-TV that many of its Channel 15 viewers experienced interference due to the second harmonic radiation of the local oscillators of nearby receivers tuned to Station WAVY-TV, Channel 10, Portsmouth. ^{1/} The existence of this interference was confirmed by a special field investigation by the Commission's Field Engineering and Monitoring Bureau in a report of July 1958. (Project No. XL-42).

Recognizing that operation on Channel 15 now would recreate the problem that previously existed, the applicant's consulting engineer was informally contacted by the staff. The applicant's representative stated that the

^{1/} The interference was concluded to be caused as follows:

Channel 10 aural carrier frequency:	197.75 mc
Television set intermediate frequency:	41.25 mc
Television set local oscillator frequency:	239.00 mc
2nd Harmonic of local oscillator:	478.00 mc
Channel 15 visual carrier frequency:	477.25 mc
Visible beat frequency:	0.75 mc

applicant had been warned of the potential interference, but, based on the following considerations, which it feels far outweigh any potential interference hazard, wishes to proceed on Channel 15 as proposed:

- (1) Taking over the idle Channel 15 plant facilities affords an unique opportunity to get into operation at a substantial savings in cost.
- (2) By virtue of the previous commercial operation of WVEC-TV on Channel 15, there are in existence a substantial number of receiver installations in the area to be served that are still equipped and oriented for reception of Channel 15.
- (3) On the whole, the more vital receiving installations, such as are planned for school installations, will be at locations where it is not anticipated radiations from other nearby receivers will be a problem.

(b) The applicant requests a waiver of Section 3.607(b) of the Commission's Rules in order to permit the proposed station to be licensed to "Hampton-Norfolk". In support of the request, it is urged that the applicant is, in effect, a joint venture of Norfolk and Hampton which will be supported by both cities and is designed to provide educational programming for the school population in both cities; that the station will not have a main studio for its first year of operation, but will utilize the studios of the existing commercial stations in the area; that Channel 15 is assigned to Norfolk-Portsmouth-Newport News on a hyphenated basis; that Hampton is located within 15 miles of Norfolk; and that these circumstances present a unique situation which warrants grant of the requested waiver.

7. Staff Comments.

(a) The applicant has been warned of the potential interference problem but has concluded that it wishes to proceed on Channel 15. The Bureau sees no reason to quarrel with its judgment.

(b) The Commission's past policy has been to deny requests for dual licensing and, instead, where indicated, grant requests for waiver of Section 3.652(a) of the Rules to permit only dual identification on the air. The applicant's arguments in support of its waiver request appear to be weak. Nonetheless, since the present application proposes a non-commercial station, there are no compelling reasons to deny the requested waiver since it will not have an economic impact on commercial competitors. Accordingly, to forestall the possibility that a failure to grant the requested waiver might have an adverse effect on the City of Hampton's participation in the applicant, the Broadcast Bureau believes a grant of the waiver request would be warranted.

8. Recommendation.

In view of the foregoing, it is recommended that the requested waiver of Section 3,607(b) of the Rules be granted, to allow the proposed station to be licensed to "Hampton-Norfolk", and that the subject application be granted in accordance with the attached specifications.

Jo Juntella
Kenneth A. Cox *cox*
Chief, Broadcast Bureau

Attachment *SRS*

JWMayer:RFBreden:EHWilson:HGKelley:smh/bf:B

Legal Counsel:
Cohn and Marks, Esqs.

Engineering Consultant:
Jules Cohen

Exhibit 2

Hampton Roads Educational Telecommunications Association, Inc. Annual Report 2010
(available at <http://whro.org/home/documents/WHRO-AnnlRept10.pdf>)

ANNUAL REPORT

2010



WHRO IS DEDICATED TO ENHANCING THE LIVES OF THE CITIZENS

in the communities it serves by responding to their need to be engaged, educated, entertained and enlightened. We are:

- A premier provider of products and services for educators and life long learners using the best technology available;
- A trusted and valued civic space where citizens can explore diverse issues in a thoughtful manner;
- A financially capable and sustainable organization delivering an excellent return on the community's investment.
- A provider of quality programming and services for television and radio audiences.

When WHRO adopted this mission statement in June of 2005, it was with the full knowledge and understanding that the goals were lofty but achievable, and in complete sync with our history of service to the Hampton Roads community. Since that time five years ago, we have employed creativity, technology, hard work and dedication to expand our programming and services where appropriate, to enhance them when- and wherever possible, and to ensure that the quality of our work never wavers.

Like many in our industry over that five year period, WHRO has undergone dramatic changes, both in leadership and technology – and has faced the dual challenges of a recession and significant reductions in federal and state funding. Unlike many in our industry, WHRO was able to finish this year with no reduction in programming or services, and with an even greater dedication to the work that lies ahead.

Next year, WHRO will celebrate its 50th anniversary – an achievement that rightfully belongs to the people of Hampton Roads – to visionaries who saw the potential for public media, and most especially to the viewers, listeners, educators and students who have understood that value for nearly half a century.

Herewith some of our accomplishments during FY2010 – and our assurance that the best is yet to come.



Barry Pollara
Chairman, WHRO Board of Directors



Bert Schmidt
President and Chief Executive Officer



We continued the work begun when we received a \$2,412,648 Enhancing Education Through Technology (E2T2) grant, made available under the American Recovery and Reinvestment Act of 2009 (ARRA). By last year, we had completed and delivered the following online courses to each of our 18 school division owners. English 9, 10, 11, and 12; U.S./VA Government; Earth Science; Algebra I; and Financial Literacy. This year, we delivered Biology, Geometry, U.S. History, and Algebra II/Trigonometry. Utilizing ARRA E2T2 funding, we'll continue developing courses, including Astronomy!

Also this year, we received the inaugural Education Center Enterprise Innovation Award from the National Educational Telecommunications Association (NETA), a professional association that serves public television licensees and educational entities in all 50 states, the U.S. Virgin Islands and Puerto Rico. The award, the first given by NETA, recognizes the evolution of public broadcasting into public media, and the reorganization of public broadcasters' educational services for measurable impact, efficiency, cost-savings, and stronger market position.

WHRO was recognized by APTS with its EDGE Award, citing our Hampton Roads Virtual Learning Center, a networked learning environment that provides courses and community forums for students, faculty and staff throughout Hampton Roads. The EDGE award cited HRVLC for "standing out as an innovative use of digital technology that provides educational services while laying the foundation for a variety of new, revenue generating, educational, digital services."

We were one of seven stations nationwide chosen to create and test localized digital education services in schools, utilizing content from the PBS Digital Learning Library. We'll continue to refine the service during the 2010-2011 school year in preparation for a full roll-out in 2011, when local schools can begin using the service on an everyday basis in their classrooms.

During FY2010, we continued our long standing tradition of serving educators and children with a variety of activities and programs, including Tech Trek, a comprehensive training workshop for teachers on how to incorporate technology into their classrooms; the Great Computer Challenge, a joint project of WHRO, C.I.I. and ODU, which gives students in grades K-12 the opportunity to demonstrate their skills in various computer applications and computer programming; and the Geddy Awards, an annual contest that recognizes the innovative use of technology within the schools.

Public radio was born in Hampton Roads in 1973 as WTGM, and two years later, the license was acquired by public television station WHRO. In 1978, the FM letters were changed to WHRO, featuring National Public Radio programming, classical, jazz and folk music. The station prospered, and a subsequent feasibility study indicated the viability of two public radio stations. It took nearly seven years from concept to reality, but in September 1990, WHRO 89.5FM became WHRV 89.5FM, with a format of NPR, news and information, and non-classical music. The new frequency, 90.3, assumed the WHRO call letters, and became a 24-hour classical music station. Today, both WHRV and WHRO continue to thrive.

During FY2010, public radio took its show on the road – literally. In November, WHRV produced a live remote broadcast of its flagship public affairs program, *HearSay with Cathy Lewis*, from the historic Richard Charlton Coffee House in Williamsburg – and in the spring of 2010, another live broadcast of *Sinnett in Session*, featuring composer, drummer and jazz announcer Jae Sinnett. On the WHRO 90.3 side, Raymond Jones began recording his *Connoisseur Classics* (90.3-2) programming from the Williamsburg studio in the spring.

We were honored by the Virginia Association of Broadcasters for a variety of innovative and compelling programming:

- Best Station Promotion for *What It Takes to Give*, fundraising spots produced by Sondra Woodward.
- Best Documentary or Public Affairs Program for the Infant Mortality edition of WHRV's flagship call-in talk show *HearSay with Cathy Lewis*, produced by Tayla Burney and Danny Epperson, and hosted by Cathy Lewis.
- Best Human Interest Series category for its local segments from the visit of the NPR StoryCorps van. The series was produced by Sondra Woodward and Heather Mazzoni.
- Best Public Service/Community Event category for *Defenestration*, an online local music and art gallery, created by Dave Voightritter.

SpeakEasy (89.5-2) continued to offer listeners a 24/7 service of talk programs not available to 89.5 members – like the second hour of *The Diane Rehm Show* and the much-missed *Whaddya Know*. In October, *nTenna* (89.5-3) aired a live remote broadcast from the Port Warwick Festival – our first HD station to do so.

WHRO FM again recorded and aired interviews with local, national and international artists appearing in performances of the Virginia Arts Festival. Local concerts by the Virginia

Chorale, the Virginia Symphony Orchestra and the Virginia Opera were broadcast. *Connoisseur Classics* (90.3-2) continued to attract listeners from around the world, playing a wide range of classical music not usually found on the air or online – rarely performed operas and symphonies, and 20th century compositions. *The 1920's Network* (90.3-3), with its format of big band and swing music, continued to have more than 100,000 listener-hours per month.

In 2007, our board of directors asked us to concentrate on expanding our FM services, and by the end of FY2010, the FCC had granted us two new FM licenses that will cover the Middle Peninsula area, one on 88.5 (for NPR listeners) and one on 89.9 (for classical music fans).

We also won at auction a station on the Eastern Shore at 98.3, which will feature WHRO's classical music format; and we entered into negotiations to purchase a station at 90.1 to provide NPR service to the Eastern Shore.

These stations will be coming on the air in FY2011, bringing NPR and classical music services to parts of eastern Virginia currently not served by public radio.

FY2010 was a year of change on WHRO TV. In April 2009, after four decades in television news, many of them spent on public television, Bill Moyers retired from the airwaves, ending the run of his successful *Journal*. A month later, a new program premiered in its Friday timeslot: *Need to Know*, a TV- and web- newsmagazine from PBS that gives the viewer "a healthy dose of insight, perspective and wit. *Need to Know* cuts through the noise of nonstop news to bring the most compelling stories of the week and of our times."

A new lineup of Saturday night British comedies was introduced in April, including old favorites and series never before seen in Hampton Roads – *After You've Gone*, *Keeping Up Appearances*, *May to December* and *One Foot in the Grave*.

In September 2009, we aired the brilliant *The National Parks*, a new documentary by Ken Burns. Working with a grant from producing station WETA, and with the help of a middle school social studies teacher and a university professor, WHRO's Center for Regional Citizenship produced a brochure to draw attention to Hampton Roads' rich African American heritage.



Our underwriting and development departments facilitated partnerships for two events that focused on *The National Parks*:

- The Norfolk Tides Organization (Triple-A Affiliate of the Orioles) sponsored a WHRO Night with several activities to spotlight the premiere of *The National Parks*.
- The Colonial Williamsburg Foundation hosted a screening of *The National Parks*, and a performance by Clay Jenkinson as President Theodore Roosevelt.

In April of 2010, on the anniversary of Yom HaShoah, Holocaust Remembrance Day, we aired a new adaptation of *The Diary of Anne Frank*, in which screenwriter Deborah Moggach incorporated passages of the diaries previously excised by the family – making it the most accurate version ever. To enhance the impact of the adaptation, we partnered with Virginia Wesleyan College to host a screening and panel discussion, “Anne Frank: Lessons for a New Century,” featuring scholars from the college’s Religious Studies Department.

Our Friday night programs – *What Matters* and *Another View* – celebrated anniversaries in 2010. *What Matters*, now in its third year, continued to bring stimulating conversation around issues of import in Hampton Roads, like light rail and other transportation issues, physical education in schools, candidates for local office and a host of others, earning it both an Emmy nomination and a VAB award. Since its debut in February 2009, we’ve produced close to 70 different episodes of *Another View*, focusing on issues of relevance to the African American community (but of interest and importance to everyone.) *Another View* received the 2010 Unity Award from the City of Hampton Unity Commission for its work in bridging the racial gap in Hampton Roads.

We continued our five-year tradition of producing a high quality, HD television historical documentary in FY2010: *Hampton 400: From the Sea to the Stars*, a documentary celebrating the 400th anniversary of the oldest continuous English speaking community in North America. It’s a story of valor, sacrifice, leadership, community, education, hard work, technology, military, science and economic advancement.

We produced and aired *A New Beginning*, the fourth installment in our series, *Civil War in Hampton Roads*, and received the award for Best Documentary from the Virginia Association of Broadcasters.

FY2010 was a year in which we saw, once again, both the endurance and impact of our television productions. Three years ago, we produced the television documentary “*Surviving Abundance: Overweight Kids in Crisis*,” which focused on childhood obesity. This year, with