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

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

FILED/ACCEPTED

OCT 17 2011

Federal Communications Commission
Office of the Secretary

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

REPLY COMMENTS OF HAMPTON ROADS EDUCATIONAL TELECOMMUNICATIONS ASSOCIATION, INC.

Hampton Roads Educational Telecommunications Association, Inc. ("HRETA"), by its attorney, hereby replies to the Comments in Opposition, filed in this proceeding by the University of North Carolina ("UNC"), and Charter Communications ("Charter"). In reply thereto, it is alleged:

1. This proceeding involves a change in the station location of TV Broadcast Station WHRO-TV from Hampton-Norfolk, Virginia, to Norfolk, Virginia-Elizabeth City, North Carolina. The change takes place entirely within the Norfolk-Portsmouth-Newport News, Virginia, Designated Market Area ("DMA") as defined by Nielsen Media Research. The counties which comprise that DMA include the counties of Camden, North Carolina, and

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Pasquotank, North Carolina. See definition of market area as published in *Broadcasting & Cable Yearbook 2010*, attached hereto as Exhibit A. Elizabeth City, North Carolina, straddles the counties of Camden and Pasquotank, North Carolina. WHRO-TV is currently licensed to Hampton-Norfolk, Virginia, both of which places are located entirely within the DMA. Thus, the move is a move entirely within the DMA.

2. Currently, Charter operates a series of cable systems serving the Outer Banks of North Carolina. UNC operates a station in Edenton, North Carolina, which is carried on these systems. WHRO-TV is not carried on the systems, because Charter takes the position that the systems' headend is situated too far from Hampton-Norfolk. A grant of the proposed rulemaking would level the playing field in the market by granting access to those cable systems by both UNC's station and WHRO-TV.

3. Predictably, UNC opposes the rulemaking. UNC's station competes directly with WHRO-TV for audience and contributors. Thus, maintenance of the *status quo* suits UNC just fine. As for Charter, it has repeatedly refused to carry WHRO-TV on its systems, even when offered substantial sums of money to do so. Whatever the case, we do not understand Charter's position. It will not cost them anything to carry WHRO-TV. The public interest, on the other hand, will be served by a grant of the rulemaking which will level the playing field in the DMA.

4. In a recent case, the Commission was required to determine whether to hyphenate a market, *i.e.*, the Fresno-Visalia, California TV market, by adding the communities of Merced and Porterville to that market. In granting the requested hyphenation, the Deputy Chief, Cable Services Bureau, remarked that:

> "Such 'hyphenation' of a market is based on the premise that stations licensed to any of the named communities in the

> hyphenated market do, in fact, compete with all stations licensed to such communities. Market hyphenation 'helps equalize competition' where portions of the market are located beyond the Grade B contours of some stations in the area yet the stations compete for economic support." (Footnotes omitted.) *In the Matter of Amendment of Section 76.51 of the Commission's Rules to Include Merced and Porterville, California in the Fresno-Visalia-Hanford-Clovis Television Market*, 15 FCC Rcd 64 (2000). (Emphasis in the original.)

Here, the issue is slightly different. What we are seeking is the hyphenation of an allotment as compared to the hyphenation of a market. However, the principles involved are exactly the same. There has to be a sufficient commonality of interests between the two communities, *i.e.*, Norfolk, Virginia and Elizabeth City, North Carolina, and that commonality of interest is decisively established by the fact that both communities are situated within the same DMA. Hence, the arguments advanced by UNC and Charter are without merit and should be firmly rejected.

5. UNC's comments are incredibly lengthy: some 80 pages with attachments, none of which are even remotely related to the issue in this proceeding. What UNC seems to be doing, is trying to redefine the market. The Commission, however, relies upon Nielsen. As the Mass Media Bureau recently stated, "A station's market is its 'designated market area,' or DMA, as defined by Nielsen Media Research." *In the Matter of KJLA, LLC*, DA 11-1489, released August 31, 2011. Here, Nielsen's definition of the market is dispositive of the issue. By definition, a DMA is a market having commonality of interests. Thus, HRETA has met the test for a hyphenated allotment. That is all there is to it.

6. UNC and Charter argue that Norfolk and Elizabeth City are not part of the same Metropolitan Statistical Area ("MSA"). In deciding whether to hyphenate, the

Commission does not use the MSA; it uses DMA's. Thus, in the *Fresno* case, cited *supra*, the Commission added Merced to the market, even though it is 50 miles from Fresno; the FCC used the DMA as the test.

7. UNC argues that the Commission is not proposing a hyphenated assignment but is, instead, merely proposing to move WHRO-TV to Elizabeth City. The source of this argument escapes us. The NPRM clearly states that the proposed allotment is to be situated at "Norfolk, Virginia-Elizabeth City, North Carolina." Somebody just has not read the NPRM.

8. Opponents also argue that the allotment should be denied because it can be accomplished without making any changes in the technical parameters of Station WHRO-TV. That argument is ridiculous. It is an argument <u>for</u> the allotment; not against the allotment. The fact that WHRO-TV already provides a city grade signal to Elizabeth City simply confirms the commonality of interests between WHRO-TV's existing allotment and its proposed allotment.

9. Opponents further argue that WHRO-TV has not submitted a list of the programming that it will broadcast to satisfy the needs of Elizabeth City. That, too, is a ridiculous argument. HRETA has agreed to do what it must do once the allotment is changed, *i.e.*, to conduct regular ascertainment in Elizabeth City and broadcast programs to meet the needs disclosed by that ascertainment. The FCC has never required the proponent of an allotment to do more, and opponents cite no case to the contrary.

10. At footnote 18 of its Comments, UNC cites a number of cases for the proposition that Elizabeth City cannot be hyphenated with Norfolk. All of these cases are at least 20 years old and none are relevant. These are cases dealing with brand new allotments.

This is a case where an existing, already hyphenated allotment, is simply being changed without leaving the DMA.

11. UNC and Charter also claim that HRETA's bylaws somehow prevent HRETA from changing the WHRO-TV allotment. That too is a specious argument, since the bylaws can be amended at any time.

12. As for the *Hampton-Norfolk-Portsmouth-Newport News, Virginia*, case which resulted in the original hyphenated allotment for WHRO-TV, it dealt with the definition of a market. It was decided in 1983, and we do not know exactly how Nielsen defined the market at that time. However, the current definition of the market clearly includes both Elizabeth City and Norfolk and, as shown in the *Fresno* case, cited *supra*, the Commission defers to Nielsen when it comes to defining markets. No matter how the opponents try to argue otherwise, the Nielsen definition is the determinative factor. Based on that determination, Norfolk and Elizabeth City are part of the same market.

13. Although UNC seeks to make an issue of the fact that Virginia Beach was not included in the initial definition of the Hampton-Norfolk market, the issue of inclusion in the DMA is nowhere mentioned in the decision. In the recent decisions, however, it is held to be determinative. See, *Fresno*, *supra*.

14. Charter accuses HRETA of filing its petition in order to achieve carriage of the WHRO-TV signal by Charter's systems in the Outer Banks. HRETA pleads guilty.[1] However, that does not detract from the fact that Elizabeth City is a large community, clearly deserving of its first television service and that, once this rulemaking is concluded, HRETA will have an absolute obligation to ascertain public needs in Elizabeth City and program accordingly.

[1] These cable systems are already in the DMA so that, if WHRO-TV was a commercial station, no change in its allotment would be needed to obtain carriage. It is only because WHRO-TV is non-commercial that a change is needed.

15. In conclusion, HRETA has satisfied the requirements to move WHRO-TV from Hampton-Norfolk to Norfolk-Elizabeth City. Thus, HRETA's proposal should be adopted.

Respectfully submitted,

October 17, 2011

HAMPTON ROADS EDUCATIONAL TELECOMMUNICATIONS ASSOCIATION, INC.

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EXHIBIT A

New York, NY (1)

DMA TV Households: 7,433,820
% of U.S. TV Households: 6.495

WCBS-TV New York, ch. 2, CBS
WNBC New York, ch. 4, NBC
WNYW New York, ch. 5, Fox
WABC-TV New York, ch. 7, ABC
WWOR-TV Secaucus, NJ, ch. 9, MyNetworkTV
WPIX New York, ch. 11, CW
***WNET** Newark, NJ, ch. 13, ETV
***WLIW** Garden City, NY, ch. 21, ETV
***WNYE-TV** New York, ch. 25, ETV
WPXN-TV New York, ch. 31, ION Television
WXTV Paterson, NJ, ch. 41, Univision
WSAH Bridgeport, CT, ch. 43, Azteca America
WNJU Linden, NJ, ch. 47, Telemundo
***WEDW** Bridgeport, CT, ch. 49, ETV
***WNJN** Montclair, NJ, ch. 50, ETV
WTBY-TV Poughkeepsie, NY, ch. 54, IND
WLNY Riverhead, NY, ch. 57, IND
***WNJB** New Brunswick, NJ, ch. 58, ETV
WMBC-TV Newton, NJ, ch. 63, IND
WRNN-TV Kingston, NY, ch. 63, IND
***WFME-TV** West Milford, NJ, ch. 66, ETV
WFTY-TV Smithtown, NY, ch. 67, IND
WFUT-TV Newark, NJ, ch. 68, TeleFutura

DMA Counties	State	TV Households	DMA Counties	State	TV Households
Fairfield	CT	325,740	Dutchess	NY	104,230
Bergen	NJ	333,540	Kings	NY	865,890
Essex	NJ	273,970	Nassau	NY	431,640
Hudson	NJ	221,690	New York	NY	744,560
Hunterdon	NJ	46,520	Orange	NY	127,120
Middlesex	NJ	278,160	Putnam	NY	34,240
Monmouth	NJ	235,940	Queens	NY	771,390
Morris	NJ	177,440	Richmond	NY	172,550
5505530cean	NJ	224,690	Rockland	NY	93,860
Passaic	NJ	159,650	Suffolk	NY	481,260
Somerset	NJ	117,740	Sullivan	NY	28,590
Sussex	NJ	54,700	Ulster	NY	69,150
Union	NJ	183,420	Westchester	NY	342,160
Warren	NJ	41,750	Pike	PA	22,870
Bronx	NY	469,360			

New York, NY

Norfolk Portsmouth Newport News, VA

Norfolk-Portsmouth-Newport News, VA (43)

DMA TV Households: 718,020
% of U.S. TV Households: .627

WTKR Norfolk, VA, ch. 3, CBS
WSKY-TV Manteo, NC, ch. 4, IND
WAVY-TV Portsmouth, VA, ch. 10, NBC
WVEC Hampton, VA, ch. 13, ABC
***WHRO-TV** Hampton-Norfolk, VA, ch. 15, ETV
WHRE Virginia Beach, VA, ch. 21, IND
WGNT Portsmouth, VA, ch. 27, CW
WTVZ-TV Norfolk, VA, ch. 33, MyNetworkTV
WVBT Virginia Beach, VA, ch. 43, Fox
WPXV-TV Norfolk, VA, ch. 46, ION Television

DMA Counties	State	TV Households	DMA Counties	State	TV Households
Camden	NC	3,960	Isle of Wight	VA	13,750
Chowan	NC	5,900	James City	VA	30,160
Currituck	NC	9,630	Mathews	VA	3,940
Dare	NC	14,790	Newport News City	VA	73,490
Gates	NC	4,560	Norfolk City	VA	87,790
Hertford	NC	8,870	Northampton	VA	5,550
Pasquotank	NC	15,800	Portsmouth City	VA	38,530
Perquimans	NC	5,430	Southampton	VA	10,560
Accomack	VA	15,270	Suffolk City	VA	31,230
Chesapeake City	VA	78,290	Surry	VA	2,780
Gloucester	VA	14,560	Virginia Beach	VA	162,150
Hampton City	VA	53,700	York	VA	27,310

Maps courtesy of Nielsen Media Research

CERTIFICATE OF SERVICE

I, Traci Maust, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage prepaid, this 17th day of October, 2011, to the following:

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