



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

June 9, 2010

**DA 10-1046**

*In Reply Refer to:*

1800B3-ATS

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In re: **NCE MX Group 439**  
New NCE (FM), Gloucester Point, VA  
Hampton Roads Educational  
Telecommunications Association, Inc.  
Facility ID No. 173962  
File No. BNPED-20071022BGC

**Petitions for Reconsideration  
Petition to Deny**

Dear Counsel:

This letter concerns the referenced application (“Application”) of Hampton Roads Educational Telecommunications Association, Inc. (“Hampton”) for a new noncommercial educational (“NCE”) FM station in Gloucester Point, Virginia.<sup>1</sup> Also before us is (1) a Petition to Deny filed by Fountain on April 30, 2009 (“Fountain Petition”);<sup>2</sup> (2) Petition for Reconsideration filed by CCR on December 18, 2009 (“CCR Petition”);<sup>3</sup> and (3), a Joint Petition for Reconsideration filed by Educational Media Corporation, Liberty, Pensacola Christian College, Inc., Delmarva Education Association, Positive Alternative Radio, Inc., and Fountain on December 24, 2009, and a separate Joint Petition for Reconsideration filed by Silver Fish Broadcasting, Inc. and Airwaves for Jesus, Inc. on December 24, 2009 (collectively, “Joint Petitions” and “Joint Petitioners”), directed to the dismissal of the Joint Petitioners’ applications.<sup>4</sup> For the reasons set forth below, we: deny the Informal Objection; deny the Fountain Petition; grant the CCR Petition and the Joint Petitions to the extent indicated, and deny them in all other respects; and grant the Application.<sup>5</sup>

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<sup>1</sup> See File No. BNPED-20071022BGC, filed October 22, 2007. On October 30, 2008, Chesapeake Catholic Radio (“CCR”), Fountain of Mercy, Inc. (“Fountain”), and Liberty University (“Liberty”) (collectively, “Objectors”) jointly filed an Informal Objection to Hampton’s Application (“Informal Objection”). Hampton filed an Opposition to Informal Objection (“Opposition”) on November 13, 2008. CCR and Fountain filed a Reply (“Reply to Opposition”) on November 25, 2008. Fountain has incorporated its Informal Objection into its Petition to Deny and we will consider its merits in our discussion of that pleading. On July 27, 2009, Fountain filed a Supplement to Informal Objection (“Supplement”). On July 31, 2009, Hampton filed an Opposition to Supplement to Informal Objection (“Opposition to Supplement”). On August 3, 2009, Fountain filed a Reply (“Reply to Objection”). Despite Hampton’s argument that the Supplement is an unauthorized pleading, we will consider it as well as the Reply. See *Lauren A. Colby, Esq.* Letter, 21 FCC Rcd 1248 (MB 2006), citing *Tabback Broadcasting Company*, Memorandum Opinion and Order, 15 FCC Rcd 11899 (2000) (“the limitations on the number and timing of pleadings filed in response to petitions to deny are inapplicable to informal objections”).

<sup>2</sup> On May 5, 2009, Hampton filed an Opposition to Petition to Deny (“Opposition to Fountain Petition”).

<sup>3</sup> On April 30, 2009, CCR filed a Petition for Reconsideration, or in the alternative, Petition to Deny. This petition was denied on November 18, 2009. See *Thomas Lynch, Esq.*, Letter, 24 FCC Rcd 13828 (MB 2009).

<sup>4</sup> On December 30, 2009, Hampton filed a Consolidated Opposition to Joint Petitions for Reconsideration (“Consolidated Opposition”). The dismissed applications are listed in an *Appendix* to this letter.

<sup>5</sup> We also have before us a Request to Reach a Decision (“Request”) filed by Hampton on October 27, 2009. Because this is an unauthorized pleading, we will not consider it.

**Background. Hampton Application.** Hampton included in the Application a request for a waiver of Section 73.525 of the Rules, which requires that applications for a new or modified NCE station in the FM reserved band protect nearby television Channel 6 broadcast stations.<sup>6</sup> To satisfy this requirement, NCE applicants must either submit a showing regarding predicted interference or a copy of an agreement between the applicant and the affected Channel 6 station “concurring with the proposed NCE-FM facilities.”<sup>7</sup> Rather than providing the required documentation, Hampton asserted in its waiver request that WTVR-TV, the local Channel 6 station, was not “an affected TV Channel 6 station” within the meaning of Section 73.525 because, as a result of the digital television (“DTV”) transition, that station would vacate Channel 6 before Hampton completed construction of its station.<sup>8</sup>

Hampton was among thirteen mutually exclusive applicants for a NCE FM station construction permit proposing to serve eight different communities in Maryland and Virginia. These applications were designated NCE MX Group 439.<sup>9</sup> Thereafter, the Objectors filed the Informal Objection, arguing that Hampton’s request for a waiver of Section 73.525 of the Rules should be denied, based on the staff’s dismissal of identical waiver requests by other applicants, and that Hampton’s Application should be dismissed. Pursuant to established procedures,<sup>10</sup> on March 31, 2009, the Media Bureau (“Bureau”) determined that Hampton’s Application was entitled to a decisive preference under Section 307(b) of the Communications Act of 1934, as amended (“Act”),<sup>11</sup> and identified Hampton as the tentative selectee in NCE MX Group 439.<sup>12</sup> The staff did not address either the waiver request or the Informal Objection either prior to the issuance of, or in, the *March 31, 2009 MO&O*.

On April 1, 2009, in response to its receipt of many applications containing either agreements contingent on the vacation of Channel 6 allotments or Section 73.525 waiver requests, the staff issued a *Public Notice* “to provide guidance to [NCE] FM stations on television Channel 6 protection requirements.”<sup>13</sup> There, the Bureau stated that it would:

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<sup>6</sup> See 47 C.F.R. § 73.525.

<sup>7</sup> *Id.*

<sup>8</sup> See Application at Exhibit 13 (arguing that WTVR-TV would not be affected by Hampton’s proposal since the new station would not begin broadcasting until after WTVR-TV’s analog transmission was discontinued pursuant to the DTV transition).

<sup>9</sup> *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the October 2007 Filing Window for Noncommercial Educational FM Stations*, Public Notice, 23 FCC Rcd 9508, 9510 (MB 2008).

<sup>10</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 MO&O*”), partially reversed on other grounds, *NPR v. FCC*, 254 F.3d 226 (D.C. Cir. 2001).

<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 *Threshold Fair Distribution Analysis of 21 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 3873, 3885-86 (MB 2009) (“*March 31, 2009 MO&O*”).

<sup>13</sup> *Media Bureau Provides Guidance to NCE FM Stations Regarding Television Channel 6 Protection Requirements*, Public Notice, 24 FCC Rcd 3916, 3916 (MB 2009) (“*April Public Notice*”).

dismiss any NCE FM station application that fails either to (1) satisfy Section 73.525 protection requirements, or (2) include an unconditional consent letter from the affected television Channel 6 station concurring with the proposed NCE FM facilities.<sup>14</sup>

On April 24, 2009, Hampton filed an amendment to the Application (“Amendment”), which included an unconditional consent letter, dated April 24, 2009, from Community Television of Alabama License, LLC (“CTAL”) the licensee of WTVR-TV, stating that Community Television would consent to any interference created by Hampton’s proposed station at Gloucester Point, Virginia.

Fountain subsequently filed the instant Petition, arguing that Hampton’s application was defective from the onset, that Hampton’s recent efforts to cure the defect are insufficient, and that the tentative selection of the application should be rescinded. Fountain further argues that granting tentative selectee status to Hampton’s Application violates Section § 73.3522(b)(2) of Rules, which requires that only applications that are acceptable for filing may be designated as tentative selectees.<sup>15</sup> Finally, Fountain asserts that the Bureau has previously dismissed applications with identical defects to those present in Hampton’s Application.<sup>16</sup> Accordingly, it contends, the Hampton Application should be dismissed.<sup>17</sup>

In its Opposition, Hampton acknowledges that its original application would have caused interference to WTVR-TV. Accordingly, it states that it requested a waiver of Section 73.525 of the Rules, anticipating that because of the DTV transition, “by the time when Hampton’s application could be granted, WTVR-TV would no longer be operating on Channel 6 and there would be no interference.”<sup>18</sup> It also argues that because of the expected DTV transition, “it was perfectly reasonable for Hampton, and other similarly affected applicants, to request a waiver of the TV Channel 6 rules . . .”<sup>19</sup> and states that the Commission “is required to consider and dispose of reasonable requests for waiver of its rules.”<sup>20</sup> Hampton adds that “[a]ll of the other applicants in the MX Group could have also requested such a waiver and thereby constructed applications which would have better served the needs of presently underserved areas. They simply chose not to do so.”<sup>21</sup>

Hampton next asserts that the *April Public Notice* was released because “the Media Bureau found it necessary to clarify the Channel 6 protection requirements, because prior to the issuance of the [*April Public Notice*, those requirements were not clear.”<sup>22</sup> Hampton states that “the staff wished to provide guidance as to what applicants needed to do to comply with [Channel 6 protection] requirements.”<sup>23</sup> It further states that the *April Public Notice* “was issued in order to enable applicants like Hampton to

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<sup>14</sup> *Id.* at 3916.

<sup>15</sup> Petition at 2, *citing* 47 C.F.R. § 73.3522(b)(2). *See also* Informal Objection at 1-2.

<sup>16</sup> Petition at 2. *See also* Informal Objection at 2, *citing Serendipity Education Broadcasting, Inc.*, Letter, 23 FCC Rcd 15392 (MB 2008).

<sup>17</sup> Reply at 5.

<sup>18</sup> Opposition to Petition at 2.

<sup>19</sup> Opposition to Supplement at 3.

<sup>20</sup> Opposition to Petition at 2, *citing U.S. v. Storer Broadcasting Co.*, 351 U.S. 192, 201-202 (1956).

<sup>21</sup> Opposition to Petition at 4.

<sup>22</sup> *Id.* at 3.

<sup>23</sup> Opposition to Supplement at 3.

conform their applications to the requirements of the rules as interpreted by the staff. . . .”<sup>24</sup> Accordingly, Hampton states that it “followed the teachings of [the *April Public Notice*] to the letter” and “obtained an unconditional consent letter” from Community Television.<sup>25</sup>

In response, Fountain argues that Hampton’s Amendment is defective and should be rejected. Fountain notes that the Amendment was not signed by an officer of the corporation and that Hampton did not obtain concurrence from the licensee of WTVR-TV as of October 22, 2007, but instead of the licensee of WTVR-TV as of April 4, 2009.<sup>26</sup> Hampton responds that the Amendment was indeed signed by an officer of the corporation, and includes exhibits identifying the signer as such.<sup>27</sup> Hampton further argues that it complied with the *April Public Notice* by filing the amendment with the unconditional consent letter.<sup>28</sup>

Other Applications. The CCR Petition seeks reconsideration of the dismissal of its application on November 19, 2009, arguing that the dismissal was premature.<sup>29</sup> CCR further argues that the Bureau is required by Section 307(b) of the Act to grant the most number of applications possible and that it can grant its own application *in addition* to Hampton’s Application.<sup>30</sup> Lastly, CCR states that the Commission’s policy to only grant one application per MX group is arbitrary and capricious in violation of Section 706(2)(A) of Administrative Procedure Act (“APA”).<sup>31</sup> The Joint Petitioners likewise seek reinstatement of their applications pending the Bureau’s final decision on the Fountain Petition and the Application. They note that reinstatement would also allow for a settlement and the possibility of granting more than one application in MX Group 439.<sup>32</sup>

**Discussion. Channel 6 Protection.** As an initial matter, we acknowledge that Hampton’s Application was defective at the time of filing because it failed to comply with the Channel 6 protection requirements of Section 73.525 of the Rules and therefore was subject to dismissal.<sup>33</sup> Prior to the selection of Hampton as tentative selectee on March 31, 2009, and the issuance of the *April Public Notice*, the staff dismissed numerous NCE applicants which had, like Hampton, requested a waiver of Section 73.525 based on the DTV transition and the expected termination of analog Channel 6 operations. Accordingly, it was error for the staff not to dismiss the Application. However, had the staff dismissed the Application prior to its selection as tentative selectee, as requested in the Informal Objection, Hampton would have been permitted to file a curative amendment and sought reinstatement of its

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 2-3.

<sup>26</sup> Supplement at 4-5.

<sup>27</sup> Opposition to Supplement at 2.

<sup>28</sup> *Id.* at 2-3.

<sup>29</sup> CCR Petition at 3.

<sup>30</sup> *Id.* at 3-5

<sup>31</sup> *Id.* at 5-6.

<sup>32</sup> Joint Petitions at 2.

<sup>33</sup> 47 C.F.R § 73.3566(a) (“Applications which are determined to be patently not in accordance with the FCC rules, regulations, or other requirements, unless accompanied by an appropriate request for waiver, will be considered defective and will not be accepted for filing or if inadvertently accepted for filing will be dismissed. Requests for waiver shall show the nature of the waiver or exception desired and shall set forth the reasons in support thereof.”).

Application *nunc pro tunc* within 30 days of its dismissal.<sup>34</sup> Moreover, the *March 31, 2009 MO&O* specifically affords tentative selectees the opportunity to cure any defects in their applications, provided that curative amendments are minor and do not alter the fair distribution preference.<sup>35</sup> Because Hampton's Amendment meets these criteria, we find that Fountain's objections to Hampton's Application do not warrant denial of the Application.

Defects in the Curative Amendment. Signature of Officer of the Corporation. Fountain also argues that the Amendment is defective because it is signed by Bobbie Fisher, who is identified as "Assistant Secretary," but is not disclosed as an officer of the corporation in Section II, part 6.a. of the Amendment.<sup>36</sup> Section 73.3513(a) of the Rules requires that an amendment to an application be signed by an officer if the applicant is a corporation.<sup>37</sup> Fountain correctly notes that Bobbie Fisher is not properly identified as being a Hampton officer. However, Hampton has provided minutes for the meeting of its Board in which Ms. Fisher was elected as Assistant Secretary.<sup>38</sup> We find these records to be sufficient to establish that Ms. Fisher was an officer of the corporation at the time she signed the certification of the Amendment and the omission was therefore not fatal.<sup>39</sup>

*Licensee of WTVR-TV on "Snapshot Date."* The Amendment included a letter signed by Ted Kulhman, Chief Financial Officer of CTAL, the licensee of WTVR-TV as of April 2, 2009. As Fountain notes, at the time of the filing window (known as the "snapshot date"), WTVR-TV was licensed to Elcom of Virginia License Subsidiary, LLC ("Elcom"). Fountain argues that "Hampton's curative effort failed because it did not obtain the consent from Elcom, licensee of WTVR-TV as of the snapshot date."<sup>40</sup>

Fountain misconstrues the snapshot date. In the NCE context, the snapshot date is a specific date used as a reference for all comparative filings in a given MX window and used in conducting a fair

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<sup>34</sup> Under Commission policy, NCE applicants are given one 30-day opportunity to correct all acceptability defects and to be reinstated *nunc pro tunc*. See *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, 56 RR 2d 776, 49 Fed. Reg. 47331 (Aug. 2, 1984). Cf. *Heartland Ministries, Inc.*, Letter, 25 FCC Rcd 3572 (MB 2010) (suggesting that applicant could have complied with Section 73.525 by timely filing a curative amendment to its defective application within 30 days of its dismissal, rather than waiting 18 months).

<sup>35</sup> *March 31, 2009 MO&O*, 24 FCC Rcd at 3887, n.41 ("If a tentative selectee's application is found unacceptable for filing, it is dismissed. The applicant then has one opportunity to submit a curative amendment and a petition for reconsideration requesting reinstatement *nunc pro tunc* within 30 days. The amendment must be minor and may not alter the fair distribution preference. See 47 C.F.R. § 73.3522(b)(1). The staff will not reinstate the application of a tentative selectee that is unable to cure all defects.") 47 C.F.R. § 73.3573 describes major amendments and minor amendments to applications for construction permits for proposed NCE FM stations.

<sup>36</sup> Supplement to Informal Objection at 4. See also Amendment at Section VI.

<sup>37</sup> 47 C.F.R. § 73.3513(a) ("applications, amendments thereto, and related statements of fact required by the FCC must be signed by . . . an officer, if the applicant is a corporation").

<sup>38</sup> Opposition to Supplement at Exhibit A.

<sup>39</sup> See Fed. R. Evid. 803(6) (corporate records exception to hearsay rule). The Bureau has also granted applicants significant leeway in complying with the Section VI certification requirement. See *New Bohemia Group, Inc.*, Letter, 24 FCC Rcd 1357, 1358-1359 (MB 2009) (finding that applicant complied with Section 73.3513 where the application was signed by a director instead of an officer and that director had delegated authority to act as a corporate officer).

<sup>40</sup> Supplement to Informal Objection at 4.

distribution or a point system analysis.<sup>41</sup> The population data provided for NCE applicants must be as of the established snapshot date, thus ensuring that all applications in a group are judged from the same date of reference.<sup>42</sup> The snapshot date does not apply to compliance with Section 73.525, which does not affect an applicant's comparative position. Notably, the *April Public Notice* did not require that unconditional consent letters be from the licensee as of the snapshot date, but rather merely stated that it must be "from the affected television Channel 6 station. . . ."<sup>43</sup> As such, we find that Hampton correctly obtained the consent of the licensee of WTVR-TV as of the date Hampton filed its Amendment.

Premature Dismissal. CCR argues that the dismissal of its application was premature because the Bureau had yet to reach a final decision on the Fountain Petition and Hampton's Application.<sup>44</sup> The Joint Petitioners likewise seek reinstatement of their applications pending the outcome of the Bureau's decision regarding the Fountain Petition and the Hampton Application. Because we had not ruled on Fountain's Petition – and therefore had not made a finding that there was "no substantial and material question concerning the grantability of the tentative selectee's application" – dismissal of the competing applications was premature.<sup>45</sup> Therefore, we will grant the CCR Petition and the Joint Petitions for the purpose of acknowledging that the dismissal of those parties' applications was premature, and will otherwise dismiss them as moot based on the grant of Hampton's Application herein.

Granting of more than one application per MX group. CCR and the Joint Petitioners also seek reinstatement of their applications so that the Bureau could grant additional applications in the MX Group. CCR argues that the dismissal of its application violates Section 307(b) of the Act by not granting both the Hampton Application *and* its own application, stating that that Section 307(b) "requires the Commission to allocate broadcast frequencies in a fair, efficient and equitable manner" and that if the Commission had designated it *and* Hampton as tentative selectees, it "would have brought about the greatest increase in first and second NCE FM service to the public" in the region.<sup>46</sup> The Joint Petitioners state that they wish to retain their standing to participate in a settlement, which "could facilitate the issuance of more than a single permit in the MX Group."<sup>47</sup>

We reject these arguments. In the *NCE Comparative MO&O*, the Commission considered a geographic-based processing proposal that would have sanctioned the tentative selection of more than one applicant in a mutually exclusive application group.<sup>48</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

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<sup>41</sup> See, e.g., *Comparative Consideration of 76 Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 22 FCC Rcd 6101, 6103 (2007) (setting a "snapshot date" of June 4, 2001, and noting, "any changes made after that snapshot date could potentially reduce, but could not increase, an applicant's points").

<sup>42</sup> See *NCE MO&O*, 16 FCC Rcd at 5083 ("Of overall concern to us in this area is that we are comparing applications that use the same data. Reliance on information as of the close of the window will ensure that applicants have essentially a common reference date. With a common reference date and a common method of calculating population, the staff will analyze applicants on a similar basis.") (internal cites omitted).

<sup>43</sup> *April Public Notice*, 24 FCC Rcd at 3916.

<sup>44</sup> CCR Petition at 2. See Public Notice, Broadcast Actions, Report No. 47118 (MB November 24, 2009).

<sup>45</sup> *Hawaii Public Radio, Inc.*, Letter, 25 FCC Rcd 3967 (MB 2010).

<sup>46</sup> CCR Petition at 2.

<sup>47</sup> Joint Petitions at 2.

<sup>48</sup> *NCE MO&O*, 16 FCC Rcd at 5104.

selection of an inferior applicant as a secondary selectee.<sup>49</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>50</sup> The Commission recently upheld this licensing policy.<sup>51</sup> Therefore, in keeping with the Commission's processing guidelines, we reject CCR and the Joint Petitioner's contention that more than one application in the MX group could be granted based solely on its position in the mutually exclusive chain and the absence of any direct conflict with the tentative selectee, Hampton.<sup>52</sup>

Violation of the APA. Lastly, CRR argues that the Commission's policy of only choosing one tentative selectee per MX group, as established in *NCE Comparative MO&O* and as applied to the *March 31, 2009 MO&O*, violates Section 706(2)(A) of the APA.<sup>53</sup> CCR previously raised this argument in its April 30, 2009, petition,<sup>54</sup> which was denied.<sup>55</sup> We believe that CCR's argument was adequately addressed in the Bureau's decision and we will therefore not revisit it here.

**Conclusion/Actions.** We have evaluated the Application and find it fully compliant with all pertinent statutory and regulatory requirements. We further find that grant of the Application will further the public interest, convenience, and necessity.

Accordingly, IT IS ORDERED that the October 30, 2008, Informal Objection of Chesapeake Catholic Radio, Fountain of Mercy, Inc., and Liberty University IS DENIED.

IT IS FURTHER ORDERED that the April 30, 2009, Petition to Deny of Fountain of Mercy, Inc., IS DENIED.

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<sup>49</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>50</sup> *Id.*

<sup>51</sup> In rejecting the same arguments that CCR and Joint Petitioners raise here, the Commission stated that only one application from each mutually exclusive group would be granted and that the remaining applications, even if not mutually exclusive with the tentative selectee, should be dismissed. 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, 25 FCC Rcd 1681, 1716 (2010) (“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>52</sup> See also *A. Wray Fitch*, Letter, 25 FCC Rcd 2597 (MB 2010) (denying Petition for Reconsideration which sought grant of a dismissed applicant's application on the grounds it was not mutually exclusive with the MX Group's tentative selectee).

<sup>53</sup> CCR Petition at 5-6.

<sup>54</sup> *Supra* at n.3

<sup>55</sup> See *Thomas Lynch, Esq.*, 24 FCC Rcd at 13830-31.

IT IS FURTHER ORDERED that the December 18, 2009, Petition for Reconsideration filed by Chesapeake Catholic Radio, Inc., IS GRANTED to the extent indicated herein and IS DISMISSED AS MOOT in all other respects.

IT IS FURTHER ORDERED that the December 24, 2009, Joint Petition for Reconsideration filed by Educational Media Corporation, Liberty University, Pensacola Christian College, Inc., Delmarva Education Association, Positive Alternative Radio, Inc., and Fountain of Mercy, Inc., and the December 24, 2009 Joint Petition for Reconsideration filed by Silver Fish Broadcasting, Inc. and Airwaves for Jesus, Inc., ARE GRANTED TO THE EXTENT INDICATED, AND ARE DISMISSED AS MOOT IN ALL OTHER RESPECTS.

IT IS FURTHER ORDERED that the application filed by Hampton Roads Educational Telecommunications Association, Inc. (File No. BNPED-20071022BGC) for a construction permit for a new noncommercial educational FM station in Gloucester Point, Virginia, IS HEREBY GRANTED, subject to the condition that Hampton Roads Education Telecommunications Association, Inc. must operate technical facilities substantially as proposed for a period of four years of on-air operations.<sup>56</sup>

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>56</sup> See 47 C.F.R. § 73.7002(c).

## APPENDIX

**Positive Alternative Radio, Inc.**

BNPED-20071016AAY, Surry, Virginia, Facility ID No. 172388

**Pensacola Christian College**

BNPED-20071018DFM, Williamsburg, VA, Facility ID No. 122741

**Liberty University, Inc.**

BNPED-20071019ADZ, West Point, VA, Facility ID No. 173467

**Educational Media Corporation**

BNPED-20071019AHI, Claremont, VA, Facility ID No. 172972

**Silver Fish Broadcasting, Inc.**

BNPED-20071022AKA, Chincoteague, VA, Facility ID No. 175450

**Silver Fish Broadcasting, Inc.**

BNPED-20071022AKD, Eastville, VA, Facility ID No. 175438

**Airwaves for Jesus, Inc.**

BNPED-20071022AUD, Exmore, VA, Facility ID No. 176872

**Delmarva Education Association**

BNPED-2001022BBV, Gloucester Point, VA, Facility ID No. 173712

**Chesapeake Catholic Radio, Inc.**

BNPED-20071022BDH, Chincoteague, VA, Facility ID No. 175705

**Fountain of Mercy, Inc.**

BNPED-20071022BML, Gloucester Point, VA, Facility ID No. 174335