



Federal Communications Commission
Washington, D.C. 20554

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DA 07-4389

Reply Refer To:

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Mary V. Harris Foundation
c/o Donald E. Martin, Esq.
P.O. Box 8433
Falls Church, Virginia 22041

Re: NEW(FM), Lancaster, N.Y.
Facility ID No. 83428
BPED-19960920MA
MX Group No. 960908
Petition to Deny

Dear Counsel:

We have before us a Petition to Deny (“Petition”)¹ filed by Mary V. Harris Foundation (“Harris”) and related pleadings. Harris contests the Commission’s tentative decision to grant a permit to construct a new noncommercial educational (“NCE”) FM station to Holy Family Communications, Inc. (“HFC”), as proposed in the Commission’s *Omnibus Order*.² For the reasons set forth below, we grant the Petition in part and adjust the points awarded to HFC. We find, however, that the adjustment does not alter the outcome of this proceeding and, therefore, grant HFC’s application.

Background. The *Omnibus Order* applied the Commission’s NCE comparative selection criteria³ to seventy-six groups of mutually exclusive NCE FM applications. Harris and HFC were the only applicants in Group No. 960908.⁴ Harris proposed service to Williamsville, New York, and HFC proposed service to Lancaster, New York. Because neither of the applicants proposed the requisite level

¹ Petition to Deny (May 2, 2007).

² See *Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 22 FCC Rcd 6101 (2007) (“*Omnibus Order*”).

³ See 47 C.F.R. §§ 73.7000 – 05. See also *Reexamination of Comparative Standards for Noncommercial Educational Applications*, Report and Order, 15 FCC Rcd 7386 (2000) (“*NCE R&O*”), *affirmed and clarified*, Memorandum Opinion and Order, 16 FCC Rcd 5074, 5106 (2001) (“*NCE MO&O*”), *Erratum*, 16 FCC Rcd 10549, *recon. denied*, Memorandum Opinion and Second Order on Reconsideration, 17 FCC Rcd 13132 (2002) (“*NCE Second Order*”), *aff’d sub nom. American Family Ass’n v. FCC*, 365 F.3d 1156 (D.C. Cir. 2004), *cert. denied*, 543 U.S. 1004 (history concerning non-reserved channels omitted).

⁴ Harris’s application had been dismissed as short-spaced pursuant to Section 73.509, but was reinstated in April 2002. The *Omnibus Order* dismissed HFC’s petition for reconsideration of Harris’s reinstatement, and HFC has not contested that action. See *Omnibus Order*, 22 FCC Rcd at 6167.

of new first or second service to be awarded a fair distribution preference,⁵ the Commission proceeded directly to a point system analysis. Harris and HFC each received two points under the “local diversity of ownership” criterion, which is awarded to applicants with no attributable interests in other radio stations serving the same area.⁶ HFC, but not Harris, received three additional points under the “established local applicant” criterion.⁷ The Commission tentatively selected HFC’s application (the “Application”) for grant based on HFC’s receipt of the most points in the group.⁸ The Petition presents three theories under which Harris should have prevailed over HFC. First, Harris argues that the HFC was unqualified at the time of application, and that the Application should have been dismissed. Second, Harris contends that it should have prevailed as a threshold matter, pursuant to a fair distribution preference. Finally, Harris alleges that HFC did not qualify for any of the points awarded and that Harris, thus, should have received the most points in the group. Harris, therefore, urges the Media Bureau (“Bureau”) not to grant the Application.

Discussion. Eligibility. Harris’s argument that HFC is unqualified turns on the allegation that HFC did not incorporate under New York law until October 25, 1996 – more than one month *after* the HFC application was filed.⁹ Harris notes that the instructions for the current Form 340 indicate that an applicant is not eligible to hold a noncommercial broadcast authorization unless it is: (a) a nonprofit educational institution, (b) a government entity other than a school, or (c) a nonprofit educational organization.¹⁰ Harris asserts that the Commission “has taken the approach that the failure to properly incorporate prior to filing a noncommercial broadcast application is a defect that cannot be cured, and that such applicants must be dismissed.”¹¹ To support this argument, it cites to *Blue Lake Academy, Inc.*, where the Bureau dismissed an application to construct a Low Power FM (“LPFM”) station due to the applicant’s failure to incorporate as a nonprofit entity prior to filing.¹²

HFC contends that Harris’s arguments lack merit for several reasons. First, it argues that Harris failed to timely challenge HFC’s application at the time the application was originally accepted for filing in 1997.¹³ Second, HFC asserts that it was not required to complete the incorporation process by the time of filing because the Commission’s A/B cut-off procedures, then in effect, permitted applicants to make minor amendments as of right through the “B” cut-off date.¹⁴ HFC points out that it was properly

⁵ See 47 U.S.C. § 307(b); 47 C.F.R. § 73.7002.

⁶ See 47 C.F.R. § 73.7003(b)(2).

⁷ See 47 C.F.R. § 73.7003(b)(1).

⁸ See *Omnibus Order*, 22 FCC Rcd at 6135-36. HFC and Harris received five and two points respectively.

⁹ Petition at 2.

¹⁰ *Id.* at 3 (citing FCC Form 340, Question II(2)(2007)).

¹¹ Petition at 3.

¹² *Id.* (citing *Blue Lake Academy, Inc.*, 20 FCC Rcd 12066, 12068-69 (MB 2005)).

¹³ Opposition at 2.

¹⁴ *Id.* at 3. HFC argues that it was sufficient that the Application disclosed that the incorporation process was underway. *Id.* HFC also argues that the Commission has allowed amendments to NCE applicants concerning certain basic requirements even post “B” cut-off. See Opposition at 4, citing *Applications of Toccoa Falls College*, Hearing Designation Order, 8 FCC Rcd 3085 (MB 1993) (allowing applicant to amend application to include signature); *Family Stations, Inc.*, Hearing Designation Order, 1986 WL 290789 (MMB 1986) (ordering applicant to provide its articles of incorporation within 30 days of the hearing designation order).

incorporated long before its application was accepted for filing and placed on an “A” cut-off list.¹⁵ HFC further asserts that neither the Commission’s Rules nor FCC Form 340 clearly require an applicant to be incorporated as of the date of filing its application.¹⁶ Finally, HFC argues that *Blue Lake Academy, Inc.*, is inapposite because that case concerns LPFM processing rules which “cannot be applied to an application which was filed and accepted years before those rules came into existence.”¹⁷

LPFM and full service NCE FM stations are licensed to nonprofit educational organizations; individuals are not eligible in those services.¹⁸ As Harris has correctly observed, LPFM applicants, which submit applications within brief filing windows, are required to document their corporate status at the time of filing.¹⁹ However, Harris cites no authority for the proposition that this standard has ever been applied to pre-2001 NCE applicants that filed under A/B cut-off procedures. Accordingly, we find Harris’s reliance on *Blue Lake Academy, Inc.* to be misplaced. Under A/B cut-off procedures, the staff accepted an application for an NCE FM construction permit by placing that application on an “A” cut-off notice, which triggered a period for the filing of mutually exclusive applications. Thereafter, the staff issued a “B” cut-off notice accepting the mutually exclusive filings. A/B cut-off procedures differed from filing windows in several significant ways.²⁰ For example, there was often considerable lag time between the filing of lead “A” applications and conflicting “B” applications, and the lead applicant was, therefore, afforded significant latitude to adjust its proposal in the interim.²¹ As HFC correctly notes, applicants could amend as a matter of right until issuance of a “B” cut-off notice.²² HFC was incorporated on October 25, 2006, substantially prior to publication of an “A” cut-off notice on April 16, 1997.²³ We find that its basic qualifications were established long before the applicable deadline.

This conclusion is consistent with the Commission’s treatment of similarly situated NCE applicants that filed under the former A/B cut-off procedures. For example, in the *Omnibus Order*, the Commission considered the impact of an amendment that established an applicant’s corporate status. In that case, Pioneer Public Broadcasting Company, Inc. (“PPBC”) had initially filed as an unincorporated non-profit organization, and did not incorporate until just before the date on which parties were required to submit point supplements.²⁴ While the Commission declined to accept PPBC’s claim to be an “established” local applicant, the Commission did not question PPBC’s basic qualifications. We find no reason to reach a different conclusion in the instant case.

¹⁵ *Id.* at 3. HFC also notes that the Application was initially returned as unacceptable for filing for prohibited overlap. By the time the Application was reinstated, HFC had incorporated. *Id.* at 2.

¹⁶ *Id.* at 5. Specifically, HFC notes that Section 73.503(a) provides that: “A noncommercial education FM Broadcast station *will be licensed* only to a nonprofit educational organization and upon showing that the station will be used for the advancement of an educational program.” 47 C.F.R. § 73.503(a) (*emphasis added*).

¹⁷ *Id.* at 6.

¹⁸ See 47 C.F.R. §§ 73.503(a) (NCE), 73.853(a)(1) (LPFM).

¹⁹ See FCC Form 318, Question II(2).

²⁰ See, e.g., *NCE Second Order*, 17 FCC Rcd at 13136 (2002) (acknowledging differences between applications filed under A/B cut-off procedures and those submitted in filing windows).

²¹ See *id.* at n.18. Conversely, applications filed during filing windows are not subject to further competing applications after the window closes.

²² See 47 C.F.R. § 73.3522(b) (1999).

²³ See *Noncommercial Educational FM Broadcast Applications*, Public Notice, Rep. No. A-311 (Apr. 16, 1997). There was no “B” cut-off list published in this group.

²⁴ See *Omnibus Order*, 22 FCC Rcd. at 6118.

Threshold Fair Distribution Analysis. When mutually exclusive applications for permits to construct NCE FM stations propose to serve different communities, the Commission makes a threshold determination as to whether grant of any of the applications would best further the fair, efficient, and equitable distribution of radio service among communities, pursuant to Section 307(b) of the Communications Act of 1934, as amended.²⁵ An NCE FM applicant is eligible to receive a Section 307(b) preference if it would provide a first or second reserved channel NCE aural service to at least ten percent of the population (in the aggregate), provided that the population served is at least 2,000 people, within the proposed station's 60 dBu contour.²⁶ The Commission determined that neither applicant in Group No. 960908 was eligible for a fair distribution preference because neither would provide a first or second NCE service to at least ten percent of the population.

Harris argues that its proposed first or second NCE service to 28,453 people (9.46 percent of the population) comes very close to the ten percent threshold and should be preferred over HFC's proposed first or second NCE service to only 4,886 people (5.53 percent of the population).²⁷ Harris asserts that a waiver of the ten percent threshold would serve the public interest by bringing new service to substantially more people than HFC's proposal. Harris acknowledges that the Commission denied a similar waiver request in the *Omnibus Order*. Nevertheless, Harris maintains that the equities of the current case are different because Harris could have achieved the ten percent benchmark had it reconfigured its technical proposal to eliminate service to a population center, thereby reducing overall service by 16,143 people. Harris contends that such a result would not have been an efficient use of spectrum and highlights the arbitrary nature of applying a ten percent benchmark to this proceeding.²⁸

The facts of this case are similar to those addressed in the *Omnibus Order*'s discussion of Group No. 980510.²⁹ There, the Commission declined to waive the ten percent fair distribution benchmark for an applicant that proposed an aggregated first and second NCE service to approximately 25,000 people (9.33 percent of the population that the station would serve). As in the present case, the applicant had argued that its proposal should be treated as comparatively superior because its fair distribution service level came relatively close to the ten percent benchmark.³⁰ The Commission ruled that such engineering differences between proposals that do not meet the criteria for a threshold fair distribution preference are properly considered under the technical parameters criterion of the point system, which is conducted only when no applicant is entitled to a decisive Section 307(b) preference.³¹

Harris's argument that a ten percent threshold is arbitrary and inefficient is not compelling. The Commission must necessarily draw numerical lines in establishing threshold qualifications, and has the

²⁵ See 47 U.S.C. § 307(b); 47 C.F.R. § 73.7002(a). The Media Bureau has delegated authority to make Section 307(b) determinations in NCE cases. See *NCE Order*, 15 FCC Rcd at 7397. See also 47 C.F.R. §§ 0.61 and 0.283.

²⁶ See 47 C.F.R. § 73.7002(b).

²⁷ See Petition at 5. Specifically, Harris states that it would provide a second service to 28,453 of the 300,673 people residing within the proposed 60 dBu contour of its proposed station, whereas HFC would provide a second service to only 4,886 of 88,434 people. Neither applicant would provide a first NCE service.

²⁸ See Petition at 6.

²⁹ See *Omnibus Order*, 22 FCC Rcd at 6113-14.

³⁰ *Id.* at 6314. No applicant in this group received points for superior technical parameters because their differences were not decisional under that criterion.

³¹ *Id.*; 47 C.F.R. § 73.7003(b)(4).

discretion to do so.³² In setting the benchmark for the fair distribution preference, the Commission took into account that applicants receiving a fair distribution preference can prevail on that basis alone. Because of the substantial weight accorded to this preference, the Commission established standards to ensure that only the most significant differences would be decisional.³³ The differences between the two proposals in this case are not decisional under those standards. Harris did not request a waiver of these standards when it filed its point supplement, and does not justify grant of a waiver in the instant Petition. That Harris might have qualified for a fair distribution preference had it originally made a different technical proposal is immaterial. The Commission's procedures encourage applicants to apply for the facilities that they wish to construct and does not permit them to alter their technical proposals thereafter for purposes of enhancing their comparative positions.³⁴

Local Diversity of Ownership. Parties with attributable interests in other radio authorizations cannot receive points for the local diversity of ownership criterion if the principal service contours of the proposed and authorized stations overlap.³⁵ HFC is the licensee of WLOF(FM), Attica, New York. HFC claimed points for local diversity of ownership based on a 2001 study, in which its engineer determined that WLOF(FM)'s 70 dBu service contour would be tangential to, but would not overlap with, that of its proposed station. Harris, however, produces its own engineering study showing that the 70 dBu contours of the HFC stations, in fact, overlap.³⁶ Harris argues that HFC erroneously claimed and received points for local diversity of ownership.

HFC has since commissioned a new study, which confirms a contour overlap, though slightly smaller than that alleged by Harris.³⁷ HFC argues that the overlap is tiny, amounting to less than one square kilometer and only 0.115 percent of the combined coverage areas of both stations.³⁸ HFC asserts that such overlap is *de minimis* and should not be cognizable. HFC relies on several cases in which the Commission waived rules to allow small, otherwise prohibited overlaps. For example, HFC observes that the Commission waived the former television one-to-a-market rule to permit common ownership of television stations with overlapping Class B contours encompassing less than one percent of both the area and population of each station.³⁹ Similarly, HFC argues that the Commission has considered as *de*

³² See *NCE MO&O*, 16 FCC Rcd at 5092 (citing *Attribution of Broadcast and Cable/MDS Interests*, Report and Order, 14 FCC Rcd 12559, 12590 (1999)).

³³ See *NCE MO&O*, 16 FCC Rcd at 5088.

³⁴ See 47 C.F.R. § 73.7004(f); *NCE MO&O*, 16 FCC Rcd at 5084 -86 (June 2001 snap shot date used to determine size of population and service level for Section 307(b), but area served, *i.e.*, technical proposal, determined as of an earlier date and may not be amended except for good cause).

³⁵ See 47 C.F.R. § 73.7003(b)(2).

³⁶ According to Harris, the overlap area covers 1.57 square kilometers and 327 people. Harris alleges that this amounts to 1.11 percent of the population and 2.16 percent of the area covered by the proposed station. Reply, Exhibit 1 at 3.

³⁷ Specifically, HFC concedes that there is an overlap of 0.92 square kilometers, with a maximum width of 0.27 kilometers (886 feet). Opposition, Exhibit 1 at 3. HFC states that the proposed station's contour would overlap 1.26 percent of the total area within the existing WLOF(FM) contour. *Id.* HFC is silent about the size of the overlap in terms of population and percentage of the proposed new station's contour.

³⁸ *Id.*

³⁹ See *Hubbard Broadcasting, Inc.*, Letter, 2 FCC Rcd 7374 (1987); *KSOO-TV, Inc.*, Memorandum Opinion and Order, 43 FCC Rcd 879, 880 (1973); *WNE Licensee, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 12677, 12682 (MMB 1998).

minimis short-spacings of one mile or less⁴⁰ and overlaps amounting to less than one percent of a station's individual or combined service areas in connection with requests for waivers of engineering rules.⁴¹

Harris replies that HFC's overlap cannot be considered *de minimis*, even under a one-percent standard, because the overlap represents 2.16 percent of the area within the 70 dBu contour of the proposed station. Harris further argues that a waiver would be inappropriate because the overlap results from Harris's own engineering choices and Harris has not demonstrated any public interest that would flow from such a waiver.⁴² Finally, Harris contends that the cases cited by HFC are distinguishable because none involved the receipt of a preference over a competing applicant.

It is undisputed that there is a small area of overlap between HFC's proposal and its licensed station. Assuming *arguendo* that an overlap of this size would be *de minimis* in the context of a request for waiver of an engineering or ownership prohibition, it does not automatically follow that the overlap is not cognizable for purposes of awarding a comparative preference. The Rules do not prohibit overlap of commonly controlled NCE stations. Rather, the Rules prefer applicants that do not propose to serve areas served by another commonly owned station. The Commission adopted the diversity of ownership preference to make it more likely that the listening public will hear a variety of viewpoints from different NCE sources.⁴³ People living within HFC's area of overlap can already receive HFC's viewpoint. Although the overlap encompasses a relatively small area and population, we cannot find that HFC's proposal qualifies for the same preference awarded to parties like Harris which does not hold interests in any station that currently provides service to its proposed service area. Accordingly, we find that HFC does not qualify for the two points it claimed for this criterion, and that those points should be deducted from those awarded previously. After this adjustment, HFC has three remaining points, which still exceeds the two points the Commission awarded to Harris.

Established Local Applicant Points. HFC received its remaining three points under the established local applicant criterion. The Rules define a "local applicant" as one "physically headquartered, having a campus, or having 75 percent of board members residing within 25 miles of the reference coordinates for the community to be served, or a governmental entity within its area of jurisdiction."⁴⁴ With respect to the applications in MX Group No. 960908, an applicant is considered "established" if it has met the definition of "local" for no fewer than the two years immediately preceding

⁴⁰ See *Baltimore Radio Show, Inc.*, Order, 5 FCC Rcd 3712 (1990) (waiver of minimum spacing rules for applicant to construct a new commercial FM station, where short-spacing was under a mile and served the public interest by avoiding potentially serious environmental problems at fully spaced sites); See also *R&L Broadcasters*, Memorandum Opinion and Order, 7 FCC Rcd 5551, 5552 (1992) (waiver to permit short-spacing of 1.3 miles, approximately one percent of the required spacing, in rugged mountain range where interference to short-spaced station was unlikely).

⁴¹ See *WREL, Inc.*, Memorandum Opinion and Order, 68 FCC2d 1043 (1978), *aff'd*, 45 R.R. 2d 319 (1979) (waiver of former radio contour overlap rule for overlap of 8.1 sq. miles with 185 people, with area of overlap comprising 2 percent of one station's service area and 0.5 percent of the other's, where applicant surrendered authorization for a third station).

⁴² See Reply at 6 (citing *Caloosa Television Corporation*, Memorandum Opinion and Order, 3 FCC Rcd 3656 (1988), *on recon.* 4 FCC Rcd 4762 (1989) (waiver of spacing rules based on combination of several public interest factors); *Time Warner, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 15300 (CSB 1997) (waiver of broadcast/cable cross-ownership rule denied for applicant that had not argued that grant would provide any public interest benefit).

⁴³ See *NCE R&O*, 15 FCC Rcd at 7400.

⁴⁴ 47 C.F.R. § 73.7000.

the “snap shot” date of June 4, 2001.⁴⁵ HFC certified that it has maintained its headquarters at 87 Thomas Jefferson Lane, Snyder, New York, within 25 miles of Lancaster, without interruption since 1996.⁴⁶

Harris observes that the headquarters address is also the residence of two of HFC’s three principals, and that the third principal is not local. Harris argues that HFC has not demonstrated that the residence is a *bona fide* active headquarters facility. Specifically, Harris faults HFC for not explaining what it does at the headquarters. Harris asserts that the Commission must, therefore, assume that HFC is a shell organization with no activities in the community, and ineligible to receive any points for this criterion.⁴⁷

HFC responds that Harris misunderstands the basis for its “established local applicant” claim. HFC highlights that it is relying on a local headquarters, not on the residences of 75 percent of its governing board, and argues that it is thus immaterial that only two-thirds of its board members reside there. HFC contends that it was not required to disclose more about its history or activities.⁴⁸ Harris replies that it fully understands, but disputes, HFC’s claim to have a local headquarters. According to Harris, a claim that one’s residence also serves as a corporate headquarters “gives rise to the legitimate inference that the corporation and its headquarters are at least modest in nature, and perhaps even empty shells . . . [whereas] the FCC was quite clear that it expects the applicant’s headquarters to be a functioning facility that is actually operating and accomplishing something productive [rather than a p]hony facade.”⁴⁹

The Commission has stated that a “local headquarters or residence must be a primary place of business or primary residence and not, for example, a post office box, lawyer’s office, branch office, or vacation home, which would not provide sufficient contact between the station’s decision and policy makers and the area to be served.”⁵⁰ Harris is correct that a headquarters must be operational. As the Commission has said:

It has never been our intent to award the established local applicant credit to organizations engaged in virtually no activities in the community of interest. . . . A shell organization's mere paper existence for two or more years establishes no “operations,” “contact,” or “continuing interaction with the community” from which the organization might “hit the ground running.” Paper existence serves neither to “establish the applicant's educational credentials in a particular locality” nor “to foster participation by truly local entities in noncommercial educational broadcasting.”⁵¹

Harris is incorrect, however, that use of a residence as a corporate headquarters gives rise to a presumption that the corporation is a shell or that its headquarters is feigned. That a corporate address is

⁴⁵ *Id.*; 47 C.F.R. § 73.7300(b)(1).

⁴⁶ *See* HFC Point Supplement , Exhibit 1 at 3.

⁴⁷ *See* Petition at 7-9.

⁴⁸ *See* Opposition at 13.

⁴⁹ Reply at 6 -7.

⁵⁰ *NCE R&O*, 15 FCC Rcd at 7410.

⁵¹ *NCE Second Order*, 17 FCC Rcd at 13137-8 (footnotes omitted).

also a residence does not, standing alone, raise a substantial and material question about an applicant's eligibility for points.⁵² The Commission's rules do not preclude NCE licensees from being headquartered in a residence, and Harris has not shown that such a location is prohibited by any applicable New York law. Nor has Harris demonstrated that the location is a vacation home, branch office, or the equivalent.

Although Harris alleges a lack of community-based operations, that allegation is based entirely on the Application's silence about HFC's particular uses of its headquarters. Harris has not submitted any information that would support a finding that HFC is a "shell organization" with a "mere paper existence."⁵³ The Application identified the headquarters' address and the date from which HFC claimed to have continuously maintained the headquarters. The burden was on Harris to present additional facts sufficient to support its claim that the alleged headquarters is only a facade. Although we understand that the type of information that a petitioner can gather to support such a claim in a residential neighborhood would likely differ from that available at a commercial building, Harris alleges no facts whatsoever. Harris has not raised any substantial and material question of fact concerning whether the Commission correctly awarded three points to HFC as an established local applicant. Therefore, no rebuttal by HFC was required.⁵⁴ HFC's position as the applicant with the most points in Group No. 960908 has not changed.

Ordering Clauses. Accordingly, IT IS ORDERED, That the Petition to Deny filed on May 2, 2007, by Mary V. Harris Foundation IS GRANTED to the extent indicated herein and DENIED in all other respects.

IT IS FURTHER ORDERED, That the application of Holy Family Communications, Inc. to construct a new NCE station at Lancaster, New York (File No. (File No. BPED-19960920MA) IS GRANTED CONDITIONED UPON its compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

⁵² *Compare Calvary Chapel of Honolulu*, Letter, DA-07-4138 __ FCC Rcd at __ (Oct. 3, 2007) (substantial and material question raised by petitioner's site visit and investigation, which revealed that applicant's claimed local headquarters in commercial building had no listing on building directories or doors, applicant was unknown by the attendant likely to first greet visitors, had no telephone, had no record of activities on the internet, and was unknown to others in the community).

⁵³ *Id.*

⁵⁴ *See NCE Second Order*, 17 FCC Rcd at 13137-8 (*emphasis added*) ("In the event that a petitioner *succeeds in raising a substantial and material question* about whether the applicant correctly claimed to be 'established,' there would be many ways for the applicant to demonstrate that it indeed was an established force 'operating within the community' throughout the pertinent two-year period. These could include, for example, the applicant's showing that it convened meetings with the community, taught classes at its local campus, undertook community programs and/or activities, regularly generated income or incurred expenses from community-based assets, engaged in active planning of its program service for the community, or similar ongoing community-based operations by the organization within the two-year period").

IT IS FURTHER ORDERED, That the mutually exclusive application of Mary V. Harris Foundation (File No. BPED-19970516MA) IS DISMISSED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Holy Family Communications, Inc.
c/o Denise Moline, Esq.