

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

In the Matter of Application of)	File No. BPED-19960920MA
)	Facility ID No. 83428
Holy Family Communications, Inc.)	NCE MX Group 960908
)	
For a New Noncommercial FM Station)	Petition for Reconsideration
at Lancaster, New York)	

MEMORANDUM OPINION AND ORDER

Adopted: September 8, 2011

Released: September 9, 2011

By the Chief, Audio Division, Media Bureau

I. INTRODUCTION

1. This Order addresses a Petition for Reconsideration filed by the Mary V. Harris Foundation (“Harris”) of a *Letter Decision*¹ which granted an application by Holy Family Communications, Inc. (“HFC”) to construct a new noncommercial educational (“NCE”) FM station at Lancaster, New York. The *Letter Decision* also dismissed Harris’s mutually exclusive application to construct a new NCE station at Williamsville, New York. For the reasons discussed herein, we deny reconsideration.

2. The Commission tentatively selected HFC’s application for grant based on a comparative point system analysis of the two applications.² The Commission directed the staff to undertake a final review of the application and, following an opportunity for petitions to deny, to grant HFC’s application if no substantial and material issue of fact remained.³ Harris filed a Petition to Deny which was found meritorious, in part, leading to the *Letter Decision*’s exclusion of two points HFC had previously received for diversity of ownership. The *Letter Decision* rejected, however, Harris’s additional challenges to HFC’s qualifications, and granted HFC’s application because HFC’s revised total of three points still exceeded Harris’s two point total.⁴ Harris now seeks reconsideration.

II. DISCUSSION

3. At issue are three arguments rejected in the *Letter Decision*: (1) that HFC should be deemed unqualified because it was not yet incorporated at the time of application; (2) that the Commission should have preferred Harris as a threshold matter because Harris’s proposal to provide a first or second NCE service to 9.46% of the population within the proposed service area came close to the ten percent minimum needed for a fair distribution preference; and (3) that HFC did not qualify for points as an established local entity because no business was conducted at HFC’s claimed local headquarters which was also the residence of two of its principals.

¹ *Mary V. Harris Foundation*, Letter, 22 FCC Rcd 18931 (2007) (“*Letter Decision*”).

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

³ *Id.*

⁴ The expiration date of HFC’s construction permit has been tolled during consideration of the petition for reconsideration of the permit’s grant, at HFC’s request. See 47 C.F.R. § 73.3598(b)(2).

4. Reconsideration is appropriate only where the petitioner shows either a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.⁵ With respect to the corporate status and fair distribution matters, Harris essentially reasserts points that it made previously. Nothing in the petition for reconsideration persuades us to revisit the *Letter Decision's* essential elements and conclusions with respect to these two matters, namely: (1) that HFC's incorporation approximately one month after the date of application was immaterial under the procedures which governed at that time, because HFC established its qualifications as a non-profit educational organization well before an "A" cut-off notice accepting its application and could have filed amendments as of right until a later "B" cut-off date;⁶ and (2) that Harris neither met the ten percent benchmark for receipt of a fair distribution preference nor timely requested a waiver.

5. The sole remaining issue on reconsideration is whether HFC qualified for three points which it received as an established local entity. Such points are intended to distinguish organizations that are most likely to serve community needs immediately because they can "hit the ground running" with local knowledge and accountability from those with a lesser degree of community operations, contact, and interaction.⁷ HFC received established local entity points based on its claim that HFC had maintained a corporate headquarters within 25 miles of Lancaster, New York, since 1996.⁸ A local headquarters must be a primary place of business and not, for example, a post office box, vacation home, attorney's office, or branch office, which would not provide sufficient contact between the station's decision makers and the area to be served.⁹ Furthermore, a headquarters must be operational and not merely the address of an inchoate "paper" organization.¹⁰ Harris argued in its Petition to Deny that HFC's claimed headquarters at 87 Thomas Jefferson Lane, Snyder, New York (the "Snyder address"), was a mere "shell" where no HFC business took place. Harris based its argument solely on the fact that the Snyder address also served as the residence of two of HFC's three principals, James and Joanne Wright. We determined that Harris had not met its burden of demonstrating that the headquarters was insufficient for receipt of points as a local entity.

6. In further support of its claims, Harris now submits copies of forms which HFC filed with the Commission and/or Internal Revenue Service between 1999 and 2005. These forms listed two different addresses – 6325 Sheridan Drive, Williamsville, New York (the "Williamsville address") and 2211 Kensington Avenue, Amherst, New York (the "Amherst address"). Harris argues that the absence

⁵ See *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966); 47 C.F.R. § 1.106.

⁶ Moreover, even under current rules, an applicant for an NCE authorization is not required to submit evidence that it is incorporated at the time of application. Rather, it must certify that it is a nonprofit educational organization with an educational purpose. See *Catholic Social Club of Tennessee, Inc., Putnam County, Tennessee, Inc.*, 26 FCC Rcd 5057, 5059 (MB 2011). *Hammock Environmental and Educational Community Services*, 25 FCC Rcd 12804 (MB 2010).

⁷ See *Reexamination of Comparative Standards for Noncommercial Educational Applications*, Memorandum Opinion and Second Order on Reconsideration, 17 FCC Rcd 13132, 13137 (2002).

⁸ See 47 C.F.R. § 73.7000.

⁹ *Reexamination of Comparative Standards for Noncommercial Educational Applications*, Report and Order, 15 FCC Rcd 7386, 7410 (2000).

¹⁰ *Comparative Consideration of 33 Groups of Mutually Exclusive Applications for Permits to Construct Noncommercial Educational Broadcast Stations*, Memorandum Opinion and Order, 26 FCC Rcd 9058, 9082-85 (2011) ("Kaneohe, Hawaii"); *Reexamination of Comparative Standards for Noncommercial Educational Applications*, Memorandum Opinion and Second Order on Reconsideration, 17 FCC Rcd 13132, 13137-38 (2002).

of the Snyder address on these filings raises an issue as to whether any business has been conducted there, and indicates that the Snyder address is, at most, a branch office. Harris argues that the Williamsville address is most likely HFC's domicile because HFC also used that address on IRS forms pertaining to three other HFC stations: WLOF, Attica, New York (now Elma, New York); WQOR, Olyphant, Pennsylvania; and WHIC, Rochester, New York. Harris also shows that HFC's filings with the IRS for 2005 and 2006 stated that the board members who reside at the Snyder address had devoted zero hours per week to the corporation's business during those years. Harris therefore concludes that even had HFC maintained its headquarters at the Snyder address, there is a question as to whether HFC had ceased to have a local headquarters prior to grant of the application in 2007.

7. We observe that HFC, which is the licensee of several operating broadcast stations, does not exist merely on paper. In fact, the corporation, as licensee of WLOF, has been serving communities also within 25 miles of Lancaster since 1999. Harris does not question the ongoing activities of HFC itself, but rather whether HFC might have conducted its business from a location other than its claimed headquarters. Harris' arguments are flawed both procedurally and substantively. The new information that Harris submits is based on public documents which existed well before its last opportunity to present such matters. Harris' arguments will be denied pursuant to Section 1.106(c), which provides for consideration of new information on reconsideration only if the petitioner could not have submitted it earlier or if consideration is required in the public interest.¹¹ Moreover, even had these matters been timely presented, they would have made no difference in HFC's qualifications as an established local applicant. HFC submits maps to show that the Williamsville and Amherst addresses, like the Snyder address, are within 25 miles of the community of Lancaster – approximately 6.5 miles for Williamsville and approximately 10.5 miles for Amherst.¹² Thus, even had HFC moved its headquarters to the Williamsville or Amherst address for the relevant years, while retaining only a branch office in Snyder as alleged, HFC nevertheless would have continuously maintained a local headquarters.

8. Moreover, HFC shows through affidavits, governing documents, minutes of board meetings, and other supporting documents that its headquarters has been at the Snyder address continuously since 1996, and that meaningful corporate activity has taken place there. For example, most meetings of the board of directors have taken place at the Snyder headquarters.¹³ With respect to concerns raised by Harris about HFC mailing addresses, HFC shows that corporate correspondence from the New York Secretary of State and HFC's bank have been sent to the Snyder address. HFC explains that it also has received mail as a matter of convenience at Mr. Wright's dental business, which is currently located at the Williamsville address, and was formerly at the Amherst address. These facts present no material question as to whether the Snyder location functioned as something less than a headquarters, such as a post office box, lawyer's office, or branch office.¹⁴ With respect to the statement on IRS forms that the Wrights devoted no time to HFC in 2005 and 2006, HFC submits a letter from its accountant explaining that the statement was a mistake by the accounting firm, which had forgotten to ask how many hours each principal had worked those years. The accountant indicates that he has amended the tax returns to reflect that Jim Wright spent at least 20 hours a week and Joanne Wright approximately 15 hours a week for HFC, comparable to the hours each devoted to the organization in prior years.¹⁵

¹¹ 47 C.F.R. § 1.106(c).

¹² See HFC Opposition, Exhibit 4.

¹³ See HFC Opposition, Exhibits 1-3.

¹⁴ Compare *Kaneohe, Hawaii*, 26 FCC Rcd at 9084 (local office of one corporate director insufficient to qualify as local headquarters for receipt of established local applicant points where the office merely housed the pending application of an inchoate organization which conducted no activities from that location).

¹⁵ Letter from Phillip Gallston, PA (Dec. 14, 2007), HFC Opposition, Exhibit 4.

III. ORDERING CLAUSE

9. Accordingly, IT IS ORDERED that, the Petition for Reconsideration filed by Mary V. Harris Foundation is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau