

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

In the matter of)	
)	
WHAG-TV, Hagerstown, MD)	
(Facility ID No. 25045))	
)	
Request for Waiver of Section 73.1943 of the)	MB Docket No. 12-216
Commission’s Rules)	
)	
Standardized and Enhanced Disclosure)	
Requirements for Television Broadcast Licensee)	
Public Interest Obligations)	

MEMORANDUM OPINION AND ORDER

Adopted: July 30, 2012

Released: July 30, 2012

By the Chief, Media Bureau:

I. INTRODUCTION

1. Nexstar Broadcasting, Inc. (“Nexstar”), the licensee of television station WHAG-TV, Hagerstown, MD (“WHAG,” Facility ID No. 25045), has filed with the Media Bureau the above-captioned request for a waiver¹ of the August 2, 2012 deadline for posting its political file online according to newly adopted Section 73.1943(d) of the Commission’s rules.² Pursuant to Section 73.1943(d), as supplemented by Section 73.3526(b)(3), the top four network affiliates in the top 50 markets must commence posting their political file documents online on the Commission’s website by the effective date of the *Enhanced Disclosure Report and Order*.³ For the reasons stated below, we grant Petitioner a waiver pursuant to Section 1.3 of the Commission’s rules, and allow it to refrain from posting its political file online until July 1, 2014.

II. BACKGROUND

A. Enhanced Disclosure Requirement With Respect to the Online Political File

2. On April 27, 2012, the Commission adopted new enhanced disclosure rules requiring television broadcast stations to post their public file information online to both facilitate dialogue between broadcast stations and the communities they serve and increase public participation in licensing.⁴ The Commission also found that making the political file component of the public file available online will

¹ Letter from Gregory L. Masters, Counsel for WHAG-TV, to Marlene H. Dortch, Secretary, FCC (July 17, 2012) (“Waiver Request”).

² See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MB Docket No. 00-168, Report and Order, 27 FCC Rcd 4535, 4589, Appendix A, Section 73.1943(d) (2012) (“*Enhanced Disclosure Report and Order*”).

³ See *Enhanced Disclosure Report and Order*, 27 FCC Rcd at 4589-90, Appendix A, Sections 73.1943(d) & 73.3526(b)(3).

⁴ See *Enhanced Disclosure Report and Order*, 27 FCC Rcd at 4542, ¶ 12.

enable candidates, the public, journalists, educators and the research community to identify the sponsors of political advertisements, and that this transparency would enable the electorate to make informed decisions and hold elected officials accountable.⁵ Newly adopted Section 73.1943(d) of the Commission's rules requires television station licensees or applicants to begin posting the contents of their political files on the Commission's website by the effective date of the rule, August 2, 2012.⁶ However, the Commission chose to exempt "all stations not in the top 50 DMAs, and all stations in the top 50 DMAs that are not affiliated with the top four national television broadcast networks" from having to post their political file documents online until July 1, 2014.⁷ Hence, smaller market stations and stations unaffiliated with the top four networks are permitted to keep their political files at the station in the traditional manner until July 1, 2014, at which time they too must commence posting any new political material on the Commission's website.

3. In adopting an exemption for small market and non-affiliated stations that allows them to delay posting their political files online, the Commission's stated purpose was to ease implementation for broadcasters during the initial transition to the online public file, while also giving the Commission time to ensure that the online public file system is implemented effectively.⁸ The Commission noted that, because the contents of the political file are time-sensitive, stations must place records in the political file "immediately absent unusual circumstances."⁹ The Commission stated that it was appropriate to require stations with greater market reach to undertake this time-sensitive transition first, as they will be more likely to have dedicated resources to address any implementation issues that arise, if necessary.¹⁰ Moreover, the Commission stated that limiting initial compliance to network affiliates in the largest markets, while easing initial implementation for broadcasters, will at the same time provide the public with online access to the political files of stations garnering the vast majority of political advertising time and money.¹¹

B. Petitioner's Waiver Request

4. WHAG is an NBC-affiliate licensed to Hagerstown, Maryland and assigned to the Washington, DC (Hagerstown, MD) DMA (the "Washington, DC DMA"), one of the top 50 DMAs.¹² As an affiliate of a top four network in one of the top 50 DMAs, absent a waiver, it would have to comply with the August 2, 2012 implementation deadline by which licensees must commence posting their political files on the Commission's website. On July 17, 2012, WHAG filed a waiver request letter arguing that it should be treated as a *de facto* small market station and be required to start posting its political file online only on July 1, 2014, like other smaller market network affiliates. WHAG makes several arguments in support of this waiver request.

5. First, WHAG asserts that it is not the primary NBC affiliate serving the Washington, DC

⁵ *Id.* at 4543, ¶ 16.

⁶ *See Enhanced Disclosure Report and Order*, 27 FCC Rcd at 4589, Appendix A, Section 73.1943(d).

⁷ *Enhanced Disclosure Report and Order*, 27 FCC Rcd at 4551; *see also id.* at 4590, Appendix A, Section 73.3526(b)(3).

⁸ *Id.* at 4558, ¶ 46.

⁹ *Id.* at 4558, ¶ 46 & n.142 (citing *infra* at 4562-64, ¶¶ 55-58; 47 C.F.R. § 73.1943(c)).

¹⁰ *Id.* at 4558, ¶ 46 & n.143 (citing the Named State Broadcasters Association Comments at 7 ("Undoubtedly, these costs would fall even more heavily on smaller television stations.")).

¹¹ *Id.* at 4558-59, ¶ 48.

¹² Letter Waiver Request from Gregory L. Masters, Counsel for WHAG-TV, to Marlene H. Dortch, Secretary, FCC at 1 (July 17, 2012) ("Waiver Request").

market. It states that WRC-TV, licensed to Washington, DC (Facility ID No. 47904), is the primary NBC affiliate and that the digital service contours of these two stations cover different areas, overlapping only slightly.¹³

6. Second, WHAG argues that its location in the Washington, DC DMA – currently the eighth ranked DMA in the country¹⁴ – does not reflect market realities, but is instead the result of historical happenstance. WHAG states that its service area has always been Hagerstown, Maryland - a small market,¹⁵ and that, prior to 1996, Arbitron had ranked Hagerstown as the 192nd-ranked television market based on the number of households it served.¹⁶ However, after Arbitron ceased publication of its television market rankings, the Commission switched to relying on DMA studies prepared by The Nielsen Company for purposes of calculating regulatory fees and for determining local markets for cable carriage rights.¹⁷ This resulted in Hagerstown and WHAG being reassigned to the then-seventh ranked market, the Washington, DC DMA.¹⁸ Accordingly, WHAG argues that it remains a small market station even though it is assigned to a top 50 DMA.

7. WHAG further asserts the Commission recognized it as a small market station when in 1998 it granted WHAG's request that it pay regulatory fees in accordance with those assessed upon "remaining market stations" – i.e., stations not in the top 100 television markets as determined by Nielsen – as opposed to the fees applicable to stations assigned to the Washington, DC DMA.¹⁹ WHAG states that in so deciding the Commission relied upon the *Television and Cable Factbook 1997*, which indicated that the number of DMA television households served by WHAG was "equivalent [to] a remaining market station."²⁰ WHAG adds that the *Television & Cable Factbook 2012* currently shows that each of the six stations licensed to Washington, DC serves over 2.3 million households in the Washington, DC DMA, whereas WHAG serves less than a quarter of that number of households in the same DMA.²¹

8. Finally, WHAG argues that, as a small market station, it has limited staff available both to

¹³ *Id.* at 1.

¹⁴ See *Television & Cable Factbook 2012* at A-1.

¹⁵ Waiver Request at 2.

¹⁶ *Id.* Each county in the United States is allocated to a market. Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. §534(h)(1)(C). At the time the Commission implemented the 1992 Cable Act, it relied on Arbitron Rating Co.'s assignment of counties to Areas of Dominant Influence ("ADIs"). See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, MM Docket No. 92-259, Report and Order, 8 FCC Rcd 2965, 2975, ¶ 37 (1993) (implementing the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992)).

¹⁷ The Commission switched to using Nielsen's DMAs for purposes of assessing regulatory fees on television stations in 1996. *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, MD Docket No. 96-84, Report and Order, 11 FCC Rcd 18774, 18786, ¶ 30-32 (1996).

¹⁸ Waiver Request at 2.

¹⁹ *Id.* at 2 & n.3 (citing *Fee Decisions of the Managing Director Available to the Public*, Public Notice, DA 98-2009, 13 F.C.C.R. 20357 (Oct. 9, 1998) (granting request for reduction of FY 1997 regulatory fee and for reconsideration of a letter ruling dated July 30, 1997 for WHAG-TV at Hagerstown, MD (June 2, 1998)).

²⁰ *Id.* at 2 & n.4 (citing Letter from Thomas M. Holleran, Acting Associate Managing Director of Operations, FCC, to Melodie A. Virtue, Counsel for WHAG (undated)).

²¹ *Id.* at 2 & n.5 (citing *Television & Cable Factbook 2012*, A-3, A-255-60, A-608).

fulfill online political filing obligations and to address any implementation issues.²² Accordingly, it asks for additional time to begin uploading its online political file in accordance with the implementation schedule established for small market and non-affiliate stations.²³

III. DISCUSSION

9. Pursuant to section 1.3 of the Commission's rules, the Commission may waive any provision of its rules if it determines that good cause has been shown.²⁴ We conclude that Petitioner has demonstrated good cause for a waiver. WHAG has shown that it serves – and has served – a smaller market, Hagerstown, Maryland,²⁵ and that it is not the primary network-affiliate in the Washington, DC market.²⁶ In 1998, the Commission granted WHAG's request that it be treated as a “remaining market station” (a station falling outside the top 100 markets as ranked by Nielsen) for purposes of paying its regulatory fees, and WHAG continues to be treated like a small market station for regulatory fee purposes today.²⁷ Accordingly, requiring it to meet the same implementation deadline as the top affiliates in the top 50 markets would run counter to the rationale underlying the exemption for smaller market stations and would be inconsistent with the public interest.²⁸ Petitioner has therefore shown that good cause exists for grant of the instant waiver request. We will therefore waive compliance with the requirement that WHAG post its political file documents online, pursuant to Section 73.1943(d) of the Commission's rules, until July 1, 2014. We stress that WHAG remains subject to the other requirements of the *Enhanced Disclosure Report and Order*, including the requirement to begin posting other public file documents online on August 2, 2012.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. §§ 1.3 the request for waiver filed by Nexstar Broadcasting, Inc., licensee of television station WHAG-TV, Hagerstown, MD (Facility ID No. 25045), IS GRANTED to the extent described above.

²² *Id.* at 2.

²³ *Id.* at 3.

²⁴ See 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)(*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied* 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

²⁵ See *supra* ¶¶ 6-7.

²⁶ See *supra* ¶ 5.

²⁷ See *supra* note 19.

²⁸ See *supra* ¶ 3.

11. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules, 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau