



Federal Communications Commission
Washington, D.C. 20554

October 7, 2011

DA 11-1684

In Reply Refer to:

1800B3-MFW

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Ms. Lola Stradford Richey
Network of Glory
P.O. Box 10916
Greenville, SC 29603

In re: **Petition to Request Waiver of the
Underwriting Rules**

Dear Ms. Richey:

We have before us the referenced August 8, 2011, "Petition to Request Waiver of the Underwriting Rules" ("Waiver Request") filed by Network of Glory, Inc. ("Network"), licensee of five noncommercial educational ("NCE") stations (the "Stations"),¹ for waiver of the Commission's "underwriting rules" to permit the Stations to broadcast commercial advertisements.

Background. In the Waiver Request, Network states that its stations serve rural, low socioeconomic populations that cannot financially support the operational expenses of its stations. It states that the Commission has previously acknowledged the need to extend broadcasting to rural and underserved populations. Network contends that its stations attempt to accomplish those goals, but that it cannot maintain ongoing operations without commercial advertising support.² It also states that the "present economic climate in the United States has placed a dire financial strain on many private and government funding agencies." It claims that it has unsuccessfully applied for several grants from private foundations and governmental agencies. Network therefore requests that the Commission waive the rules and permit it to air limited commercial announcements under three conditions: (1) commercial advertisements will be run only at the top of the broadcast hour; (2) commercial advertisements will not interrupt regular station programming; and (3) any commercial announcements and their scheduling will be retained in the Stations' public inspection files for public review and scrutiny.

Discussion. An applicant seeking waiver of a Rule has the burden to plead with particularity the facts and circumstances that warrant such action.³ Thus, an applicant for waiver "faces a high hurdle even at the starting gate."⁴ Although the Commission must consider carefully all waiver requests, such

¹ Network is the licensee of Stations WAKP(FM), Smithboro, Georgia; WGBQ(FM), Lynchburg, Tennessee; KEJA(FM), Kale, Arkansas; KJOG(FM), Cleveland, Oklahoma; and KEIS(FM), York, Nebraska.

² Waiver Request at 1.

³ See *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir, 1987) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968)).

⁴ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1972), *cert. denied*, 93 S.Ct. 461 (1972) ("*WAIT Radio*") (finding that the Commission may decide in some instances that rule waiver serves the public interest if an applicant's proposal will not undermine the policy served by the rule). See also *Thomas Radio v. FCC*, 716 F.2d 921, 924 (D.C. Cir. 1983).

requests must be supported by a compelling showing in order to be granted.⁵ A waiver from the Commission is appropriate if special circumstances⁶ warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.⁷ Generally, the Commission may grant a waiver of its rules in a particular case only if the relief requested would not undermine the policy objective of the rule in question, and would otherwise serve the public interest.⁸

The Commission's interest in creating a "noncommercial" service has been to remove the programming decisions of public broadcasters from the "normal kinds of commercial market pressures under which broadcasters in the unreserved spectrum usually operate."⁹ In order to maintain the essential character of the noncommercial service, Section 399B of the Communications Act of 1934, as amended,¹⁰ and Sections 73.503(d) and 73.621(e) of the Commission's Rules¹¹ specifically proscribe the broadcast of announcements by public broadcast stations which promote the sale of goods and services of for-profit entities in return for consideration paid to the station.¹²

We will deny the Waiver Request for several reasons. First, it is axiomatic that the Commission cannot waive the provisions of the Communications Act.¹³ Accordingly, we could not grant the requested relief even were we inclined to do so.

Second, even were we not barred from waiving the statutory prohibition against airing commercial announcements on NCE stations, we would deny the Waiver Request. Permitting Network to air commercial announcements would undermine the statutory and regulatory purposes in authorizing NCE stations – that is, to encourage the development of a public broadcasting system that is free from extraneous influence and control. Finally, the difficulty of an NCE licensee to secure funding, while

⁵ *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

⁶ *See, e.g., Gulf Coast Community College*, 20 FCC Rcd 17157 (MB 2005) (finding special circumstances present for waiver of a Form 301 filing deadline, but issuing a Notice of Apparent Liability for failure to timely file the application).

⁷ *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see also WAIT Radio*, 418 F.2d at 1159 (stating that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis).

⁸ *WAIT Radio*, 418 F.2d at 1157.

⁹ *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Second Report and Order, 86 FCC 2d 141, 142 (1981).

¹⁰ 47 U.S.C. § 399B, which states, in relevant part, that "No public broadcast station may make its facilities available to any person for the broadcasting of any advertisement."

¹¹ 47 C.F.R. §§ 73.503(d); 73.621(e), which state that "No *promotional* announcement *on behalf of for-profit entities* shall be broadcast at any time in exchange for the receipt, in whole or in part, of consideration to the licensee, its principals, or employees" (emphasis in original).

¹² *In the Matter of Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice, 7 FCC Rcd 827 (1992).

¹³ *See, e.g., D & B Broadcasting Co., Inc.*, 69 FCC 2d 1116, 1116 n.3 (1978) (the Commission cannot waive the requirements of the Communications Act); *see also Applied Life Ministries*, Letter, 2011 WL 3343014, 26 FCC Rcd ____ (MB Aug. 3, 2011) (Commission cannot waive the statutory 30-day period for filing petitions for reconsideration).

regrettable, is not so unique and unusual in itself as to warrant a waiver of the prohibition against broadcasting commercial advertisements. Many NCE licensees face similar circumstances, and allowing NCE licensees to air advertising simply because they face difficulty in obtaining grants and donations would eviscerate the underwriting rules. We believe that the public interest is better served by requiring strict adherence to those Rules.

Accordingly, the August 8, 2011, "Petition to Request Waiver of the Underwriting Rules" filed by Network of Glory, Inc., IS HEREBY DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau