

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

| | | |
|--|---|----------------------|
| In the matter of |) | |
| |) | |
| WMGM-TV, Wildwood, NJ |) | |
| (Facility ID No. 61111) |) | |
| |) | |
| Request for Waiver of Section 73.1943 of the |) | MB Docket No. 12-218 |
| Commission’s Rules |) | |
| |) | |
| Standardized and Enhanced Disclosure |) | |
| Requirements for Television Broadcast Licensee |) | |
| Public Interest Obligations |) | |

MEMORANDUM OPINION AND ORDER

Adopted: August 6, 2012

Released: August 6, 2012

By the Chief, Media Bureau:

I. INTRODUCTION

1. Access.1 New Jersey License Company, LLC (“Access.1”), the licensee of television station WMGM-TV, Wildwood, NJ (“WMGM” Facility ID No. 61111), 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 Waiver Request from James L. Winston, Counsel, Access.1, to Marlene H. Dortch, Secretary, FCC (July 31, 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. WMGM is an NBC-affiliate licensed to Wildwood, New Jersey and assigned to the Philadelphia DMA (the "Philadelphia 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 31, 2012, WMGM 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 on July 1, 2014, like other smaller market network affiliates. WMGM makes several arguments in support of this waiver request.

5. First, WMGM asserts that it is not the primary NBC affiliate serving the Philadelphia DMA. It states that WCAU, licensed to Philadelphia, PA (Facility ID No. 63153), is the primary NBC affiliate

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 Waiver Request at 1.

and that the digital service contours of these two stations cover different areas, overlapping only slightly.¹³

6. Second, WMGM argues that its location in the Philadelphia DMA – currently the fourth ranked DMA in the country¹⁴ – does not reflect market realities.¹⁵ WMGM states that its service area has always been the Atlantic City market, but because Nielsen’s market rankings do not rank Atlantic City as a separate market, WMGM is instead included as part of the Philadelphia DMA.¹⁶ However, WMGM argues that it remains a small market station and only competes in the Atlantic City portion of the Philadelphia DMA.¹⁷ WMGM also argues that as a small market station, it has limited staff to fulfill online political filing obligations and to address any implementation issues.¹⁸

7. Finally, WMGM asserts the Commission recognized it as a small market station when in 1995 it granted WMGM’s request that it be permitted to 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 Philadelphia DMA.¹⁹ WMGM states the Commission has continued to grant this waiver every year up to the present.²⁰ Furthermore, in granting WMGM’s regulatory fee waiver request in 1995, the Commission had stated that “WMGM-TV’s predicted Grade B contour does not reach Philadelphia or any other major metropolitan area within the Philadelphia Market,” and WMGM argues its current predicted digital signal contour continues not to reach Philadelphia or any other major metropolitan area within the Philadelphia market.²¹

8. For all the reasons stated above, WMGM 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.²²

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.²³ We conclude that Petitioner has

¹³ *Id.* at 2.

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

¹⁵ Waiver Request at 2. 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). As described in Section 76.55(e)(2) of the Commission’s Rules, as of January 1, 2000, commercial broadcast television stations’ markets are defined by Nielsen Media Research’s Designated Market Areas (“DMAs”). *See* 47 C.F.R. § 76.55(e)(2).

¹⁶ Waiver Request at 2.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 2 & n.3 (citing Letter from Marilyn J. McDermott, Associate Managing Director for Operations, FCC, to Dennis J. Kelly, Counsel, WMGM, (Aug. 9, 1995) (“WMGM 1995 Waiver Letter”).

²⁰ *Id.* at 2.

²¹ *Id.* at 2 & n.4 (citing WMGM 1995 Waiver Letter).

²² *Id.* at 2.

²³ *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,

demonstrated good cause for a waiver. WMGM has shown that it serves – and has served – a smaller market, Atlantic City, New Jersey,²⁴ and that it is not the primary network-affiliate in the Philadelphia DMA.²⁵ In 1995, the Commission granted WMGM’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 WMGM continues to be treated like a small market station for regulatory fee purposes today.²⁶ 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.²⁷ Petitioner has therefore shown that good cause exists for grant of the instant waiver request. We will therefore waive compliance with the requirement that WMGM post its political file documents online, pursuant to Section 73.1943(d) of the Commission’s rules, until July 1, 2014.²⁸ We stress that WMGM 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 Access.1 New Jersey License Company, LLC, the licensee of television station WMGM-TV, Wildwood, NJ (Facility ID No. 61111), IS GRANTED to the extent described above.

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

(...continued from previous page)

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.

²⁴ See *supra* ¶¶ 6-7.

²⁵ See *supra* ¶ 5.

²⁶ See *supra* ¶ 7 & note 19.

²⁷ See *supra* ¶ 3.

²⁸ We recently granted a waiver of the same provision for a television station in very similar circumstances. See *WHAG-TV, Hagerstown, MD*, (Facility Id No. 25045), *Request for Waiver of Section 73.1943 of the Commission’s Rules*, MB Docket No. 12-216, Memorandum Opinion and Order, DA 12-1216, 2012 WL 3108672 (MB rel. Jul. 30, 2012).