

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

In the Matter of
Standardized and Enhanced Disclosure
Requirements for Television Broadcast
Licensee Public Interest Obligations
Request for Partial Waiver of Online
Public Inspection File Requirements
MM Docket No. 00-168

MEMORANDUM OPINION AND ORDER

Adopted: January 31, 2013

Released: January 31, 2013

By the Chief, Media Bureau

I. INTRODUCTION

1. KTBS, LLC ("KTBS"), the licensee of television station KTBS-TV, Shreveport, Louisiana, (Facility ID No. 35652), has filed a request for a partial waiver of Section 73.3526 of the Commission's rules insofar as that rule requires the station to upload its quarterly issues/programs lists for the prior renewal term covering the period June 1, 1997 to May 31, 2005, to the Commission's online public inspection file site. We note that KTBS expressly indicates that it would retain the paper version of its issues/programs lists for this same period in its public inspection file at the station. For the reasons stated below, we grant Petitioner a partial waiver pursuant to Section 1.3 of the Commission's rules, and allow it and other similarly situated stations, as described below, to refrain from posting issues/programs lists from a prior renewal term to the online public file, under certain conditions.

II. BACKGROUND

2. Enhanced Disclosure Report and Order. On April 27, 2012, the Commission adopted new enhanced disclosure rules requiring television broadcast stations to post their public inspection files online to both improve the public's access to information and facilitate dialogue between broadcast

1 Letter from James P. Riley, Counsel for KTBS, LLC, to Marlene H. Dortch, Secretary, FCC (December 6, 2012) ("Waiver Request").

2 See 47 C.F.R. §§ 73.3526, 73.3527; Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, MB Docket No. 00-168, Report and Order, 27 FCC Rcd 4535, Appendix A (2012) ("Enhanced Disclosure Report and Order"). Although KTBS specifically seeks a partial waiver of Section 73.3526(e)(11)(i), which provides that issues/programs lists are part of a station's public inspection file, that provision does not address the required location of the public inspection file or the issues/programs lists component of the file. Rather, the requirement to post the public inspection file online, including issues/programs lists, is found in Section 73.3526(b)(2) of the rules. It is this requirement from which KTBS appears to seek relief and we will consider its request accordingly.

3 See 47 C.F.R. § 1.3,

stations and the communities they serve.<sup>4</sup> The Commission also found that making the public file available online would foster increased public participation in the licensing process.<sup>5</sup> The information provided in the public file is important to persons who wish to participate in a station's license renewal proceeding. For example, as discussed in the *Enhanced Disclosure Report and Order*, when broadcasters fall short of their obligations or violate Commission rules, the public's ability to alert the Commission by filing complaints or petitions to deny the renewal of a station's broadcast license is essential. The Commission relies on the public's access to quarterly issues/programs lists found in stations' public files to inform citizens' complaints and petitions to deny concerning the sufficiency of licensees' service to their communities of license during their prior license term.<sup>6</sup> These lists report a station's programs during the preceding three-month period that have provided the "most significant treatment" of local community issues. Additionally, they describe the issue discussed and provide the program title, date, time, and duration of broadcast, as well as a brief narrative description of the discussion.<sup>7</sup>

3. Given the importance of issues/programs lists to the renewal process, Section 73.3526(e)(11)(i) requires stations to maintain all quarterly issues/programs lists in the public file "until final action has been taken on the station's next license renewal application."<sup>8</sup> The *Enhanced Disclosure Report and Order* requires full power and Class A television stations to transition from an in-station public file to an online public file hosted by the Commission beginning on August 2, 2012, and to complete that transition – including uploading all existing issues/programs lists currently in the public file – by February 4, 2013.<sup>9</sup> Ordinarily, this would include all issues/programs lists for a station's expiring eight-year license term. Where, however, a station's license renewal application for the period preceding the current eight-year term was deferred, as here, the public file could include issues/programs lists for the deferred term as well – for a total period of 16 years.

4. *Petitioner's Waiver Request.* KTBS seeks permission not to upload the issues/programs lists for the prior, pending renewal period of June 1, 1997 to May 31, 2005, which are currently being

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

<sup>5</sup> *Id.*

<sup>6</sup> *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Report and Order, 98 FCC 2d 1075, ¶ 3 (1984), *recon. denied*, 104 F.C.C.2d 357 (1986), *aff'd in part, remanded in part, Action for Children's Television v. FCC*, 821 F.2d 741 (D.C. Cir. 1987). See also *Revisions of Applications for Renewal of License of Commercial and Noncommercial AM, FM, and Television Licensees*, Report and Order, 49 RR 2d 740, 46 Fed. Reg. 26236 ¶¶ 14, 26, 29 (1981), *recon. denied*, 87 FCC 2d 1127 (1981), *aff'd sub nom. Black Citizens for Fair Media v. FCC*, 719 F.2d 407 (D.C. Cir. 1983).

<sup>7</sup> 47 C.F.R. §§ 73.3526(e)(11).

<sup>8</sup> 47 C.F.R. §§ 73.3526(e)(11)(i).

<sup>9</sup> See *Enhanced Disclosure Report and Order*, 27 FCC Rcd at 4587, ¶ 116. Specifically, stations were required to upload any new public file documents starting on August 2, 2012, with limited exceptions for the political file and letters and email from the public. Stations have six months – until February 4, 2013 – to upload into the online database any public file documents that existed prior to the August 2, 2012 effective date, with the exception of the existing political file and letters and emails from the public. *Id.*

maintained in their public file.<sup>10</sup> KTBS timely sought renewal of its license in 2005 for the period of June 1, 2005 to June 1, 2013.<sup>11</sup> While no member of the public filed an objection to the renewal application, action has been deferred due to unresolved enforcement issues unrelated to the station's issue programming or its documentation of it.<sup>12</sup> Because the Commission has not granted KTBS's 2005 renewal application, its current public file contains issues/programs lists for its current renewal term (June 1, 2005 – present) and the prior pending renewal term (June 1, 1997 - May 31, 2005).<sup>13</sup>

5. KTBS argues that uploading issues/programs lists that range from eight to sixteen years old will be burdensome to the station and will not provide any benefit to the public. Specifically, KTBS estimates that it will take a month of full-time work to upload its detailed and thorough issues/programs lists.<sup>14</sup> KTBS also notes that no member of the public objected to the renewal application filed in 2005, which covers the 1997-2005 renewal period.<sup>15</sup> Moreover, KTBS states that it will continue to maintain the prior pending renewal period issues/programs lists, and make them available for public inspection at the KTBS main studio until the Commission acts upon its pending 2005 renewal petition.<sup>16</sup> It also states that it will upload to the Commission's online public inspection file site all issues/programs lists for the current renewal term, from June 1, 2005 to the present.

### III. DISCUSSION

6. 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.<sup>17</sup> We conclude that Petitioner has demonstrated good cause for a waiver. First, we believe a waiver is consistent with existing renewal application processing policy. The Commission's renewal processing policy is to review each renewal application individually, and not in combination with prior pending renewal requests. Before the start of the current renewal cycle, we issued a Public Notice noting that licensees filing a new renewal application, whose last renewal application remains pending, are only required to provide information

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<sup>10</sup> See Waiver Request at 1.

<sup>11</sup> See Waiver Request at 1; BRCT-20050131ALR.

<sup>12</sup> See Waiver Request at 1. KTBS's prior renewal application was granted in 1997, and licensed KTBS from June 1, 1997 to June 1, 2005. See BRCT-19970203KZ.

<sup>13</sup> See Waiver Request at 2.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> 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 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.

and certifications in their new renewal application for the current renewal term, and not for the entire time elapsed since their last grant.<sup>18</sup> As such, requiring stations to upload issues/programs lists from the prior period may confuse members of the public that wish to participate in the current term renewal process. The public had an opportunity to review the 1997-2005 issues/programs lists at the time the station sought renewal in 2005, but, as KTBS asserts, no member of the public opposed the prior renewal application.<sup>19</sup> Further, KTBS has shown that moving its issues/programs lists covering the prior renewal period to the online public file will impose some burden.<sup>20</sup> Having KTBS keep the 1997-2005 issues/programs lists available at the station is a reasonable alternative to posting online, alleviating the risk of confusion that could arise from posting the prior renewal cycle lists, while also providing the public access to this material. Accordingly, we will waive compliance with the requirement that KTBS post its issues/programs lists online, pursuant to Section 73.3526(e)(11)(i) of the Commission's rules, for its prior unopposed renewal period, from June 1, 1997 to May 31, 2005, on the condition that it make all issues/programs list for that period available to the public at the station until final action has been taken on the license renewal application covering the prior renewal period. We stress that KTBS remains subject to the other requirements of Section 73.3526 and the *Enhanced Disclosure Report and Order*, including the requirement that it upload most other existing public file documents online – including all issues/programs lists for the current renewal term - by February 4, 2013.

7. Because we believe that many other stations are similarly situated, we also grant the same waiver for other similarly situated stations. Such stations may choose to make their issues/programs lists from prior pending renewal terms<sup>21</sup> available to the public at the station in lieu of uploading them to the online public file. To be similarly situated, a station's prior renewal application must have been: 1) unopposed by any member of the public, and 2) deferred due to enforcement matters unrelated to the station's obligation to air programming responsive to the needs and interests of its community or the recordkeeping related thereto. We note that this waiver does not apply to KTBS or any other station for documents and materials covered under the current renewal term. Given the importance of issues/programs lists for complaints or petitions to deny the renewal of a station's broadcast license, we stress that all stations are required to comply with Section 73.3526(e)(11)(i) for each station's current renewal cycle. Finally, we extend a similar waiver to noncommercial educational stations that are similarly situated with respect to their issues/programs list upload obligations under Sections 73.3527(b)(2) and 73.3527(e)(8).

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<sup>18</sup> See *Media Bureau Announces Revisions to License Renewal Procedures and Form 303-S License Renewal Application; Television License Renewal Filings Accepted Beginning May 1, 2012*, Public Notice, DA 12-380, rel. Mar. 12, 2012.

<sup>19</sup> Waiver Request at 2.

<sup>20</sup> We acknowledge that uploading 8 additional years of quarterly files will place an appreciable additional burden on the station, although we do not believe that properly organized issues/programs lists should take a month to upload as claimed by KTBS. See Waiver Request at 2.

<sup>21</sup> License expiration dates for the current term span from October 1, 2012 to August 1, 2015, depending upon the state of license. See <http://transition.fcc.gov/mb/video/files/tv-dates.pdf>. License expiration dates from the prior term spanned from 2004 to 2007.

**IV. ORDERING CLAUSES**

8. 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 KTBS, LLC IS GRANTED for KTBS, LLC and any similarly situated station on the condition that it make all issues/programs list for the prior renewal period available to the public at the station until final action has been taken on the license renewal application covering the prior renewal period.

9. 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