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November 17, 2014

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FCC Mail Room

Ms. Marlene H. Dortch
 Secretary
 Federal Communications Commission
 445 12th Street SW
 Washington DC 20554

Re: **WAY Media, Inc., W218CR, Central City, KY, 1800B3-CEG, BPFT-20121116ALE**

Dear Ms. Dortch:

The National Association of Broadcasters (NAB) supports the Application for Review filed by WAY Media, Inc. (WAY) and the Minority Media and Telecommunications Council (MMTC) of the Audio Division's denial of the waiver request in the above-captioned matter.¹ Reversal of the Division's decision would promote the public interest in localism by providing AM radio stations more flexibility to improve both signal quality and local programming services through the use of FM translators.

The underlying request for waiver of Section 74.1233(a)(1) of the rules sought authority for WTCJ-AM, Tell City, Indiana, to use an FM translator located in Central City, Kentucky. Granting that waiver would have enabled the station to overcome harmful interference that hindered listenership and threatened the economic viability of WTCJ, which has a 66-year history of serving its local community. Indeed, WTCJ is the only broadcast station licensed to serve Tell City. These circumstances warrant approval of the waiver request.

The Audio Division denied the waiver request partly because the Division thought it widely applicable to the AM industry, and thus more appropriately addressed in a rulemaking proceeding, such as the AM Revitalization proceeding.² Division Decision at

¹ Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, to Robert D. Augsberg, WAY Media, Inc., DA 14-1365, 1800B3-CEG (Sep. 19, 2014) (Division Decision); Application for Review, WAY Media, Inc., W218CR, Central, KY, for a Minor Change (Oct. 17, 2014) (Application).

² *Revitalization of the AM Radio Service*, Notice of Proposed Rulemaking, 28 FCC Rcd 15221 (2013) (AM NPRM).

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3. However, this decision is contrary to the Commission's approach in similar "Mattoon Waivers," pursuant to which more than 500 AM stations have obtained waivers to relocate FM translators.³

As evidenced by this very instance, waivers provide more timely relief than a rulemaking. For AM stations whose financial challenges grow more urgent every day, time is of the essence. Struggling AM stations can ill afford to wait for the initiation and resolution of a lengthy rulemaking proceeding. The FCC's current industry-wide AM Revitalization proceeding remains pending more than two years after its first discussion at the 2012 NAB Radio Show, despite the fact that the AM NPRM addresses largely non-controversial changes to mostly technical rules. Moreover, granting the waiver request would not preclude the Commission from subsequently reforming the industry-wide rule.

As the Commission recognizes, technical limitations and unique interference concerns have contributed to the migration of AM radio listeners to other media, thereby threatening the sustainability of AM radio services. AM NPRM, 28 FCC Rcd at 15222. Yet, AM radio "remains an important source of broadcast entertainment and information programming, particularly for locally oriented content." *Id.*

Granting the Tell City waiver would provide AM stations more flexibility to obtain and relocate FM translators, thereby extending the proven public interest benefits of AM broadcasters' use of FM translators. As with Mattoon Waivers, any perceived obstacles to approval of the Tell City waiver can be resolved through procedural protections, such as reasonable conditions for public notice and spectrum availability in a market.

NAB also notes its concern about recent Media Bureau decisions that have narrowed the availability of Mattoon Waivers. Specifically, the Bureau seems, without reason, to have altered the standards for such waivers mid-stream, including adding a new obligation that translators rebroadcast the relevant AM station for a period of at least four years.⁴ It also recently denied a waiver to an applicant who had previously proposed one minor modification relocation of a translator,⁵ despite the clear statement in the original Mattoon Waiver that applicants not have a "history of filing serial minor modification applications."⁶ These new limits serve only to undercut the public interest benefits that such waivers provide. Fewer AM radio stations will be able to use an FM translator to improve signal quality, add new programming during nighttime hours, and better compete in the media marketplace. For the benefit of AM radio listeners,

³ Application at 5-6 (also citing waivers of the main studio and other rules as instances when the Commission granted waivers that were widely applied to hundreds of broadcasters).

⁴ See, e.g., *Hope Christian Church of Marlton, Inc.*, File No. BPFT-20140915ADB (Oct. 27, 2014).

⁵ *Harry C. Martin*, Letter, DA 14-1524, W289AZ, Trenton, NJ, File No. BPFT-2014076AEP (MB Oct. 22, 2014).

⁶ *John F. Garziglia*, Letter, 26 FCC Rcd 12685 (MB 2011) (emphasis added).

especially in smaller and rural markets, NAB would encourage the Commission to review this new direction the Bureau has adopted regarding Mattoon Waivers.

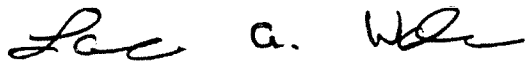
With respect to the Tell City waiver, NAB respectfully requests that the Commission approve the Application for Review and reverse the Division's decision to deny this request. Doing so would directly promote the Commission's goal of revitalizing AM radio service.

Respectfully submitted,

NATIONAL ASSOCIATION OF BROADCASTERS

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A handwritten signature in black ink, appearing to read "Rick Kaplan".

Rick Kaplan

Jerianne Timmerman

Larry Walke

CERTIFICATE OF SERVICE

Michael J. Geissinger, the director of operations for the legal department at the National Association of Broadcasters, hereby certifies that he caused a true copy of the foregoing "Letter of Support" to be mailed via US Mail, on this 17th day of November, 2014, to the following:

Peter H. Doyle, Esq.
Chief, Audio Division, Media Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

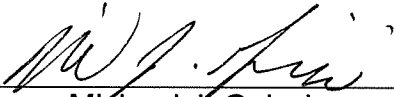
Honorable Tom Wheeler
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