

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Modernization of Media Regulation) MB Docket Nos. 17-317 and 17-105
Initiative)

**PETITION FOR WAIVER
AMERICA’S PUBLIC TELEVISION STATIONS
AND THE PUBLIC BROADCASTING SERVICE**

America’s Public Television Stations (“APTS”)¹ and the Public Broadcasting Service (“PBS”),² on behalf of their noncommercial educational (NCE) public television station members and their nearly 600 qualified NCE TV translator stations (collectively, “Public Television”), petition for a waiver of the FCC’s new requirement for “baseline” MVPD carriage elections, by email, no later than October 1, 2020, for qualified NCE translator stations to continue existing MVPD carriage. This new requirement is not codified in the FCC’s rules, but was put forth in the Report and Order in the referenced proceeding (“2020 Report and Order”)³

¹ APTS is a non-profit organization whose membership comprises the licensees of nearly all of the nation’s CPB-qualified noncommercial educational television stations. The APTS mission is to support the continued growth and development of a strong and financially sound noncommercial television service for the American public.

² PBS, with over 330 member stations across the country, offers all Americans the opportunity to explore new ideas and new worlds through television and online content. Each month, PBS reaches nearly 100 million people through television and nearly 30 million people online, inviting them to experience the worlds of science, history, nature, and public affairs; to hear diverse viewpoints; and to take front row seats to world-class drama and performances.

³ *Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative*, MB Docket Nos. 17-105, 17-317, Report and Order, 35 FCC Rcd 1636 (2020) (2020 Report and Order).

and in the recent Public Notice in DA-812, released July 30, 2020.⁴ Waiver is appropriate in this situation and will best serve the public interest.

BACKGROUND AND WAIVER REQUEST

As part of the Media Modernization proceeding, the FCC sought to modernize and streamline a number of outdated and burdensome FCC rules relating to the satellite carriage election and MVPD carriage election process. APTS and PBS have participated in the proceedings representing the interests of Public Television. As APTS and PBS explained in comments in the initial MVPD electronic delivery proceeding back in 2018, NCE television stations, by statute, do not have retransmission consent rights – only mandatory carriage rights.⁵ Moreover, APTS and PBS pointed out that NCE television stations were never part of the FCC’s triennial MVPD election process and are not required to re-notify or renew their carriage requests for MVPD cable operators every three years.⁶ APTS and PBS also pointed out that qualified NCE translators merely “retransmit” the programming of the primary NCE television station and, therefore, MVPD and satellite carriage communications with the primary stations are sufficient. In response, the Commission and its staff worked very hard to amend the rules and streamline the process for all stakeholders, including Public Television, in a way that greatly reduces regulatory burdens and modernizes the election process.

However, in the 2020 Report and Order (which dealt with MVPD notices for “small” broadcasters), the FCC imposed a new “baseline” election requirement on NCE translators: Such translators must send an “election notice” to MVPDs by October 1, 2020, even if the NCE

⁴ *Announcement of OMB Approval for Changes to Carriage Election Notice Rules for Certain Television Stations*, DA 20-812, released July 30, 2020.

⁵ See APTS and PBS Comments in *Electronic Delivery of MVPD Communications*, MB Docket No. 17-317 (rel. December 14, 2017) (“NPRM”).

⁶ *Id.* at page 5 and footnote 5.

translators are not changing their election status. That is, to continue the “status quo” of carriage, NCE translators would now be required to complete a brand-new burden of sending an election notice to MVPDs. Because NCE translators (like NCE stations) cannot change their election status (i.e., NCE translators cannot elect retransmission consent), this “baseline” requirement is regulatory make-work and does not serve any necessary or legitimate purpose – taken in context, the “baseline” could only reasonably be continuation of the status quo (i.e., continued carriage unless there is a change in circumstances).

Moreover, given that NCE translators have enjoyed continued MVPD carriage for decades without making a new carriage election, it would be a tremendous, expensive, and time-consuming burden on Public Television’s nearly 600 NCE translators (many serving small, rural communities) to research, identify, and notify the MVPDs currently carrying the NCE translators (including the many very small cable operators in rural communities). There is, at this point, no known source for that information for NCE translators – it would have to be compiled from scratch, for each NCE translator station and for each MVPD.

APTS and PBS believe that Public Television’s qualified NCE translators will be unable to comply with this new requirement by October 1, 2020 and that this new obligation will disrupt the status quo (i.e., continued MVPD carriage of these translators), thereby jeopardizing the receipt of Public Television’s programming, including its educational programming, COVID-related information, emergency information, and election coverage, by the almost 18 million Americans that are accustomed to receiving programming content from these NCE translators. Given the impact of the COVID pandemic on our country and the strain on our nation’s educational systems, APTS and PBS believe that any disruption of Public Television content and

services to the public would be contrary to the public interest. For these reasons, APTS and PBS urge the FCC to grant a rule waiver for all NCE translators.

WAIVER STANDARD

Under the *WAIT Radio* standard (and subsequent D.C. Circuit waiver decisions), a rule may be waived where the particular facts make strict compliance inconsistent with the public interest; the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis; and waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.⁷ APTS and PBS submit that requiring qualified NCE translators to make these “baseline” notifications to secure the status quo of on-going MVPD carriage, under the set of circumstances described herein, would be strict compliance inconsistent with the public interest (and without a corresponding public benefit). Taken in context, the “baseline” notification requirement imposes an undue hardship on the public television licensees of NCE translators and their primary NCE transmitters. No Commission policy is harmed by allowing qualified NCE translator stations to continue with the status quo until such time as a change in circumstances affects continued MVPD carriage. The public would not be harmed by waiver; instead, grant of the waiver would assure that existing public television service to the public continues.⁸ Allowing qualified NCE translators to avoid burdensome carriage “elections” and maintain existing and long-standing MVPD carriage would best serve the public interest and would well serve Americans relying on MVPD carriage in

⁷ *WAIT Radio v. FCC*, 418 F2d 1153, 1157, (DC Cir 1969), affirmed by *WAIT Radio v. FCC*, 459 F2d 1203 (DC Cir 1972); *Northeast Cellular Telephone Co. v. FCC*, 897 F2d 1164, 1166 (DC Cir 1990).

⁸ Moreover, pursuant to 47 C.F.R. § 76.64(h)(5), NCE translators will of course respond promptly to any messages or calls from MVPDs received via the contact information provided in the LMS database.

small, rural communities served by the nearly 600 qualified NCE translator stations that are part of Public Television.

For all these reasons, APTS and PBS respectfully request waiver of the “baseline” MVPD carriage election requirements for qualified NCE translators.

Respectfully submitted,

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