

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554

In the Matter of)
)
Implementation of the Commercial) MB Docket No. 11-93
Advertisement Loudness Mitigation (CALM))
Act)
)
Withers Broadcasting Company of)
West Virginia)
FRN 0003-7806-32)
WDTV, Weston, West Virginia)
Facility ID #70592)
)
Request for Financial Hardship Waiver

TO: The Commission and the
Chief, Video Division, Media Bureau

REQUEST FOR "FINANCIAL HARDSHIP WAIVER"

Withers Broadcasting Company of West Virginia ("Withers"), licensee of full power digital television station WDTV, Weston West Virginia ("WDTV"), by its attorney, hereby requests a waiver of at least one year's duration of the requirement that WDTV comply with the Commercial Advertising Loudness Mitigation ("CALM") Act. This request is being filed electronically through the FCC's "ECFS" system pursuant to ¶¶49-58 of the *Report and Order* in the above-entitled rulemaking proceeding, FCC 11-182, 26 FCC

Rcd 17222, released December 13, 2011 ("R&O"). In support whereof the following is shown:

Financial Hardship Waiver

¶¶52-53 of the R&O permits "small television stations" to seek a "streamlined" financial hardship waiver if they can show two things: (1) that the station meets the FCC's definition of "small" for this purpose, which is either a station with less than \$14,000,000.00 in annual receipts or is located within markets 150-210; and (2) needs a delay of one year to obtain specified equipment in order to avoid the financial hardship that would be imposed if it were required to be obtain the equipment sooner. This request is timely filed pursuant to ¶57 of the R&O as it is being filed at least 60 days prior to the effective date of the regulations adopted pursuant to the CALM Act, December 13, 2012.

WBC hereby certifies that WDTV is located in the Clarksburg-Weston DMA, which is the 170th largest television market according to Nielsen¹.

Furthermore, as demonstrated in the attached certification, WBC also certifies that it needs a delay of one year to obtain equipment which is compliant with the so-called "A/85" standard as it would suffer a financial

¹Source: **Nielsen Local Television Market Universe Estimates, 2012-2013, effective September 22, 2012** (found online at http://www.tvb.org/media/file/TVB_Market_Profiles_Nielsen_Household_DMA_Ranks2.pdf)

hardship were it to be compelled to acquire new equipment and software prior to December 13, 2012.

WBC therefore believes that it has met the criteria in order for WDTV to be granted a "financial hardship waiver".

WBC hereby certifies that no party to this request is subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. §853a.

WHEREFORE, Withers Broadcasting Company of West Virginia urges that the foregoing request for a "Financial Hardship Waiver" **BE GRANTED.**

Respectfully submitted,

**WITHERS BROADCASTING COMPANY
OF WEST VIRGINIA**



By _____
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DATED: October 11, 2012

CALM ACT WAIVER CERTIFICATION

W. Russell Withers, Jr., pursuant to Section 1.16 of the FCC's Rules, hereby declares as follows:

1. I am President and sole shareholder of Withers Broadcasting Company of West Virginia, licensee of digital television station WDTV, Weston, West Virginia.

2. Pursuant to Section 2(b)(2) of the Commercial Advertisement Loudness Mitigation Act ("CALM Act") and paragraphs 49-58 of the FCC Report and Order in MB Docket No. 11-93, released December 13, 2011, 26 FCC Rcd 17222 (2011), I hereby certify to the FCC that WDTV is in need of a one-year delay in its required compliance with the CALM Act and rules promulgated by the FCC thereunder, and therefore WDTV seeks a "streamlined financial hardship waiver".

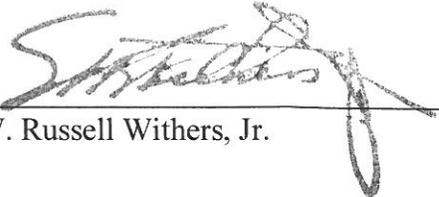
3. WDTV meets the standard for a "small broadcast station" adopted by the FCC in MB Docket No. 11-93. Weston, West Virginia, WDTV's community of license, is located within the Clarksburg-Weston "designated market area" (DMA) as determined by the Nielsen organization. According to a document entitled *Nielsen Local Television Market Universe Estimates*, 2012-2013, effective September 22, 2012, Nielsen has determined that the Clarksburg-Weston DMA is the 170th largest television market in the United States. Therefore, WDTV operates in a market "between 150 and 210".

4. Additionally, WDTV needs a one-year delay to acquire the necessary equipment to comply with the CALM Act in order to avoid the financial hardship that would be imposed were it required to obtain the equipment by the December 13, 2012 effective date of the new CALM Act rules. WDTV has received a cost estimate for the acquisition of the required hardware and software in excess of \$40,000.00. The acquisition of this equipment constitutes a financial hardship on WDTV given its revenues and the costs incurred in the day-to-day operation of the station. A one-year delay in having to acquire this equipment will substantially mitigate the financial hardship imposed on a small market station like WDTV.

5. Accordingly, WDTV is entitled to a financial hardship waiver entitling it to a one-year delay in having to come into compliance with the CALM Act.

The foregoing statements are true and correct and are made under penalty of perjury.

DATED this 11th day of October, 2012.



W. Russell Withers, Jr.