

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

In the Matter of

Black Television News Channel

Request for Limited, Temporary Waiver of
the Commission's Advertising Ban on
Noncommercial National Educational
Programming Suppliers

MB Docket No. 14-77

To: The Commission

REPLY COMMENTS OF BLACK TELEVISION NEWS CHANNEL

Numerous parties representing a broad range of constituencies support Black Television News Channel's ("BTNC") request for a temporary, three-year waiver of the Commission's advertising ban on DBS set-aside channels, so that BTNC may launch the nation's first news and educational channel dedicated to the woefully underserved African-American community. By contrast, not a single party has filed comments opposing BTNC's request. This is hardly surprising because BTNC's request is overwhelmingly in the public interest. BTNC's launch will help correct the shameful level of minority media ownership that exists today and further the diversity and competition goals of the Communications Act, as well as advance other public interest goals. Particularly given this overwhelming support and zero opposition, combined with the detailed reasons set forth in BTNC's waiver petition, the Commission has abundant good cause to promptly grant BTNC's request, and thereby foster a diverse and significant source of news, informational, and educational programming to serve the African-American community and the nation as a whole.

Parties supporting BTNC include a member of Congress, Historical Black College and University (“HBCU”) educators and students, Mayor John Marks who currently serves as the Vice Chairman of the United States Conference of Mayors’ Communications Committee, a faith-based organization, media representatives, and others.¹ These constituencies recognize the vital need for a news and educational channel dedicated to the African-American community as part of the FCC’s fundamental obligation to promote “diversity of media voices.”² For example, Congressman Steve Southerland, II encourages the FCC to grant BTNC’s request, noting it “will shed light on the unique social, economic, and political challenges facing many of our minority communities and will seek to build a bridge to provide a better understanding between our nation’s diverse cultures.”³ Indeed, BTNC has committed to produce and show 14 hours per day of original news, informational, and educational programming that will

¹ See Letter from U.S. Rep. Steve Southerland, II, to Tom Wheeler, Chairman, FCC (May 29, 2014) (filed June 9, 2014) (“Southerland Letter”); Letter from John R. Marks, III, Mayor, City of Tallahassee, to Tom Wheeler, Chairman, FCC (Apr. 1, 2014) (filed June 4, 2014) (“Tallahassee Mayor Letter”); Letter from Ann Wead Kimbrough, Dean, Florida A&M University, to Tom Wheeler, Chair, FCC (May 5, 2014) (filed May 27, 2014) (“FAMU Letter”); Letter from Rodney A. Roberts, Interim Division Director, Florida A&M University, School of Journalism & Graphic Communication, to Tom Wheeler, Chair, FCC (June 5, 2014) (filed June 9, 2014); Letter from Ronnie E. Mackey, Jr., Broadcast Journalism Student, Florida A&M University, Vice President of the Student Government Association, to Tom Wheeler, Chair, FCC (June 2, 2014) (filed June 9, 2014); Letter from Eric Winkfield to Tom Wheeler, Chair, FCC (June 2, 2014) (filed June 9, 2014); Letter from Pastors Carlos & Nicky Collins, Higher Dimension Church Tallahassee, to Tom Wheeler, Chair, FCC (June 2, 2014) (filed June 4, 2014); Letter from Gary C. Wordlaw, General Manager, Bounce TV, New Orleans, to Tom Wheeler, Chairman, FCC (May 20, 2014) (filed June 4, 2014); Letter from L. Michelle Hayes, LMichelleMedia.co, to Tom Wheeler, Chair, FCC (June 3, 2014) (filed June 4, 2014); Letter from James L. Cooper to T. Wheeler, Chairman, FCC (May 23, 2014) (filed May 27, 2014).

² 47 U.S.C. § 257(b).

³ Southerland Letter at 1.

focus on the African-American community – and will back that commitment with enforceable conditions.⁴

BTNC will also create numerous jobs and benefits to the economy. BTNC is similarly willing to enter into an enforceable commitment to create at least 80 new jobs initially in categories including news anchors, journalists, writers, producers, production staff, engineers, broadcast sales people, marketing executives, graphic designers, virtual reality production specialists, and others; to create at least 40 internship and mentorship programs related to news and media; and to provide hands-on training for investigative reporting and local, community reporting.⁵

To accomplish these objectives, BTNC has formed a partnership with the journalism school of one of the nation’s premier Historically Black Colleges and Universities, FAMU, which will become the geographic headquarters for BTNC’s operations. BTNC will provide FAMU with a new state-of-the-art media training center, significant capital improvements to its existing broadcast training facility, the creation of numerous jobs, and an enhanced curriculum that will allow for intensive training in in-depth and investigative reporting, as well as training in the coverage of culturally specific issues, and a steady outlet for news serving an underserved audience, among other important curriculum enhancements. As Rodney Roberts of FAMU’s School of Journalism & Graphic Communication notes, “[t]his relationship will greatly enhance our current curriculum, and further strengthen our vision and effort of providing students

⁴ See BTNC Request for Limited, Temporary Waiver, MB Docket No. 14-77, at 24-25 (FCC filed May 6, 2014) (“BTNC Waiver Request”).

⁵ See *id.* at 25.

with state of the art instruction, resources and opportunities.”⁶ And as John R. Marks, III, the Mayor of Tallahassee states, “Florida State University’s Center for Economic Forecasting has estimated that the network will contribute approximately \$33.6 million dollars annually to the Tallahassee community, and will create over 100 clean jobs, paying 150% of the city’s average MSA.”⁷

Given these enormous benefits, and the decline in diverse sources of news and information, there is no reason for the Commission to delay in granting BTNC’s request. As BTNC’s request demonstrated in detail, the Commission has the legal authority to waive its advertising ban on “noncommercial” programming.⁸ The Commission’s advertising ban is not a statutory requirement; instead, it reflects the Commission’s own interpretation of the term “noncommercial.” Yet Congress nowhere indicated that “noncommercial programming” must exclude advertising. Nor does the term “noncommercial” necessarily suggest or imply such a restriction. To the contrary, as the Commission’s order implementing section 335 recognizes, the touchstone of whether an entity is “noncommercial” is whether it operates in a non-profit manner. Thus, the Commission can waive the advertising ban for BTNC, without running afoul of the statute, by clarifying that this ban is not a statutory requirement, but instead reflects a Commission interpretation that can be waived for good cause shown.⁹

⁶ FAMU Letter at 1.

⁷ Tallahassee Mayor Letter at 1.

⁸ See BTNC Waiver Request at 14-20.

⁹ See, e.g., *King Broad. Co. v. FCC*, 860 F.2d 465, 470 (D.C. Cir. 1988) (FCC may permissibly change its approach to interpreting a statute so long as it provides a reasonable explanation); see also *NLRB v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 787 (1990) (agency is free to re-examine initial interpretation of statute in light of

The Commission could further conclude that BTNC otherwise meets the statutory definition of noncommercial, so long as BTNC operates in a non-profit manner. As set forth in BTNC’s waiver request, BTNC has structured its operations to ensure that it will operate as a non-profit for the duration of the waiver.¹⁰ BTNC has made an enforceable commitment that, for the duration of the waiver, any revenues will be used to cover only expenses and to further invest in the development of educational programming and the infrastructure to support that programming. All revenues that exceed expenses will be plowed back into BTNC – no profit will be distributed to any of BTNC’s investors.

In the case of BTNC, the Commission’s advertising ban is unintentionally subverting the very goals that Congress sought to promote when in enacted section 335: to encourage the inclusion of diverse voices in the media that would serve the informational needs of diverse and underrepresented audiences. Granting a waiver will further the public interest. And, BTNC’s proposed enforceable conditions will help to guarantee that these public interest benefits are realized.

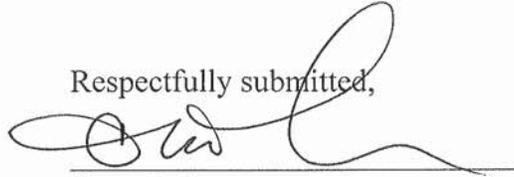
In sum, for the reasons set forth above and in BTNC’s waiver request, the Commission should promptly grant BTNC a temporary (three-year) waiver of its advertising ban on noncommercial educational programming to allow an underserved audience access to important news and educational programming; HBCUs access to media training, development, and employment opportunities; and the public at large to

changed circumstances); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (an agency may change its position if it can “show that there are good reasons for the new policy” and “that the new policy is permissible under the statute”).

¹⁰ See BTNC Waiver Request at 5-6, 24-25.

benefit from additional debate and discourse through a diverse and independent media voice.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Evan T. Leo', written over a horizontal line.

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