

# NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS

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September 17, 2014

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The Honorable Thomas Wheeler  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: Request of Black Television News Channel for Waiver of Advertising Ban, MB Docket No. 14-77**

Dear Chairman Wheeler:

The National Association of Black Owned Broadcasters, Inc. ("NABOB")<sup>1</sup> supports the request for waiver filed by Black Television News Channel ("BTNC") for a limited, temporary waiver of Section 335 of the Communications Act,<sup>2</sup> to the extent that section may prohibit advertising on channels that Direct Broadcast Satellite ("DBS") providers are required to set aside for noncommercial programming. For the reasons set forth below, NABOB submits that grant of the requested waiver will serve the public interest.

The ownership of broadcast radio and television stations has been in steady decline ever since: (1) Congress repealed the minority tax certificate policy in 1995, (2) the Supreme Court decided *Adarand* in 1995,<sup>3</sup> and

<sup>1</sup> NABOB is the only trade association representing the interests of African American owners of: radio and television stations, radio and television networks, and other telecommunications facilities, around the country. As the voice of the Black broadcast industry, NABOB has been instrumental in shaping national government and industry policies since 1976. NABOB has two principal goals: to increase the number of African American owners of telecommunications facilities and to improve the business climate in which they operate.

<sup>2</sup> 47 U.S.C. § 335(b)(1).

<sup>3</sup> *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).

(3) Congress passed the Telecommunications Act of 1996. The repeal of the tax certificate and the *Adarand* decision have resulted in the Commission having no meaningful programs to promote minority ownership -- a condition that has now existed for 19 years. In addition, the passage of the Telecommunications Act of 1996 allowed a massive consolidation of ownership of broadcast facilities into a number of large companies. As a result of that massive consolidation, the number of television stations owned by African Americans now is down from 20 to 4.

Recently, the Commission made television joint sales agreements (“JSAs”) attributable and established a two year period for licensees to come into compliance. NABOB applauded that decision. As a result of the JSA policy change, licensees in JSA arrangements have made some small steps toward selling stations in these JSA situations, and some African American and other minority entrepreneurs have been able to take advantage of these spinoffs to acquire stations. NABOB is optimistic that such spinoff opportunities will grow over the next two years.

Unfortunately, any possible spinoffs caused by the JSA policy change are highly unlikely to significantly alter the landscape for African American television station ownership. Given the current state of the industry and Congressional and regulatory policy, the ownership of television stations by African Americans is not likely to improve significantly in the near future.

The satellite television service proposed by BTNC could therefore provide a very important service to underserved African American communities nationwide. In addition, the partnership that BTNC is proposing to enter into with Florida A&M University (“FAMU”), a prominent historically Black university, will have direct benefits to the learning experience of students at the University and the surrounding community. As BTNC has explained:

BTNC is willing to enter into additional enforceable commitments that will bind BTNC to concrete and measureable outputs – each of which serves the public interest. BTNC will also submit whatever reporting and documentation related to these conditions the Commission feels is appropriate. As explained below, these enforceable conditions include

- showing 14 hours of daily news, informational, and educational programming from 6 am-midnight (minus limited commercial advertising consistent with the waiver grant);
- operating as a non-profit during the period of the waiver, with no revenue going to shareholders, and all monies going directly back into supporting the development of news, informational, and educational programming, and the infrastructure to support that programming;
- contributing financially to the FAMU School of Journalism & Graphic

Communication, to support courses and programs for the training of journalists;

- contributing much needed capital improvements to the FAMU broadcast training facility for HBCU students and National Association of Black Journalists trainees;
- creating at least 80 new jobs in categories including news anchors, journalists, writers, producers, production staff, engineers, broadcast sales people, marketing executives, graphic designers, virtual reality production specialists, and others;
- creating at least 40 internship and mentorship programs related to news and media;
- providing hands-on training for in-depth investigative reporting, hands-on training for local, community reporting, and hands-on training in a newsroom including both broadcast journalism and television production; and
- including two minutes per hour of promotional air time dedicated to the promotion of HBCUs and National Association of Black Journalists training services, activities, and events.<sup>4</sup>

The Commission must, of course, weigh these clear benefits against the potential impact on its rule of granting the waiver. BTNC has described the limited, temporary waiver it seeks:

Black Television News Channel (“BTNC”) hereby requests a limited, temporary three- year waiver of the Commission’s ruling banning advertising on the channels set aside for noncommercial educational programmers on Direct Broadcast Satellite (“DBS”) systems.<sup>5</sup>

BTNC then goes on in detail explaining the legal basis for granting the requested waiver. BTNC demonstrates clearly that the Commission has the authority to grant the requested waiver.<sup>6</sup> BTNC responds to the Media Bureau’s previous decision, in which it concluded that the ban on advertising was statutory, and demonstrates the error in the analysis in that decision.<sup>7</sup>

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<sup>4</sup> BTNC Request for Limited, Temporary Waiver (“BTNC Waiver”), filed May 6, 2014, at 5-6.

<sup>5</sup> BTNC Waiver at 1.

<sup>6</sup> BTNC Waiver at 14-24.

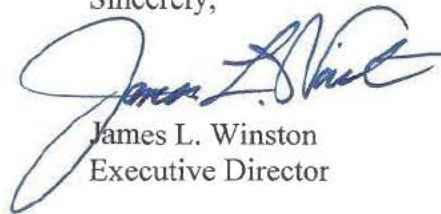
<sup>7</sup> BTNC Waiver at 15-20, responding to Order and Declaratory Ruling, *BTNC, Inc. Request for Temporary Waiver*, 25 FCC Rcd 3565, ¶ 5 (2010).

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BTNC has demonstrated an extensive history of spending years to launch its channel, has provided substantial programming commitments, and has shown that its request is limited and temporary. This is clearly a unique case, and it is unlikely that another party could come to the Commission with a similar history and list of commitments seeking a similar waiver. Thus, it is unlikely that grant of the requested waiver would have any significant impact on the enforcement of the Commission's rule going forward.

Given the significant potential public interest benefits that would result from a grant of the requested waiver, and the limited negative impact grant of the waiver would have on the future enforcement of the Commission's rule, the Commission should grant the requested waiver. The public interest will be well served by such a grant.

Sincerely,

A handwritten signature in blue ink, appearing to read "James L. Winston". The signature is fluid and cursive, with the first name "James" being particularly prominent and overlapping the last name "Winston".

James L. Winston  
Executive Director

cc: The Honorable Commissioner Mignon Clyburn  
The Honorable Commissioner Jessica Rosenworcel  
The Honorable Commissioner Ajit Pai  
The Honorable Commissioner Michael O'Rielly