



**Minority Media &
Telecom Council**

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September 29, 2014

Hon. Tom Wheeler
Chairman
Hon. Mignon Clyburn
Commissioner
Hon. Ajit Pai
Commissioner
Hon. Jessica Rosenworcel
Commissioner
Hon. Michael O'Rielly
Commissioner
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

Dear Mr. Chairman and Commissioners:

RE: Suggestion to Reverse the Tell City Waiver Decision (DA 14-1365) on the
Commission's Own Motion

Dear Chairman Wheeler and Commissioners:

Your Audio Division has punted to you an important agency policy decision for AM broadcasters - especially minority owners, who disproportionately hold AM licenses and, thus, urgently need relief.¹

¹ The survival of minority ownership in broadcasting is closely linked to the ability of AM radio to thrive because over two-thirds of minority owned broadcast stations are on the AM band. In 2011, the last year for which the FCC released data, of the 559 broadcast stations (AM/FM/TV) held by minorities, 409, or almost 73 percent, of them were AM stations. *See Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report on Ownership of Commercial Broadcast Stations*, 27 FCC Rcd 13814, 13824 (rel. Nov.14, 2012). Minority ownership in AM radio is far higher than in any other FCC-licensed technology. Further, minority owned AM stations tend to have inferior technical facilities (higher frequencies, daytime-only authorizations, complex directional patterns, lower wattages, geographic separation from the central city) and thus especially need FM translators in order to survive and compete.

Hon. Tom Wheeler and Commissioners

September 29, 2014

Page 2.

On September 19, 2014, the Audio Division released *W218CR, Central City, Kentucky*, DA 14-1365 (“Tell City Waiver Decision”).² In this letter denying the unopposed Tell City waiver request, the Audio Division stated that it is “inappropriate for the Bureau to prejudge the outcome of the AM revitalization proceeding by expanding the *Mattoon* policy ... (emphasis added)”.

If it is inappropriate for the Audio Division to take the immediate action requested in the Tell City waiver application, then it is entirely appropriate for the full Commission to speak on this important policy matter for AM broadcasters. See 47 C.F.R. §0.283(c). The Commission may do so by immediately reversing - on its own motion - the Tell City Waiver Decision, and granting the waiver. Pursuant to Section 1.117 of the Commission’s rules, the full Commission has until October 29, 2014 to reverse on its own motion.

The bases for the Tell City waiver are fully set forth in the application itself (FCC File No. BPFT-20121116ALE).

The Tell City waiver denial was an elevation of dated FCC procedures over the public interest. As you will no doubt conclude from the work already done on AM revitalization, the Tell City waiver request was the only immediately implementable AM revitalization solution that would allow a widespread benefit. It requests a removal of FCC regulatory barriers to AM stations acquiring and moving existing FM translators which would benefit both AM revitalization and the listening public.

We recognize that the extensive *Ashbacker* discussion in the Tell City Waiver Decision fully supports the Audio Division’s denial. But, while *Ashbacker* can serve as a basis for a denial which the Audio Division used for that purpose, *Ashbacker* can also allow for a grant of the Tell City waiver – a grant which would be fully supportable under law as detailed in the application.

Indeed, if *Ashbacker* was the extreme bar to the requested Tell City waiver procedures as suggested in the Tell City Waiver Decision, the Commission would not have been able to previously implement a first-come/first-served filing policy for new, vacant allotments prior to auction procedures being adopted (see, e.g. *FM Application Processing*, 59 RR2d 100 (1985)). If *Ashbacker* was the overriding concern for such moves of broadcast stations, the U.S. Court of Appeals in *PMCM TV, LLC v. FCC*, 701 F.3d 380 (D.C. Cir. 2012) would have at least mentioned *Ashbacker* restrictions in ordering the move of television stations from Nevada and Wyoming to New Jersey and Delaware. In the future, the FCC in moving forward with sensible and flexible Commission policies on broadcast station channel re-allotments and re-packings, may find itself unduly constrained by the extreme restrictions upon Commission action suggested by the Tell City Waiver Decision.

The removal of FCC regulatory barriers prohibiting FM translator relocations an appreciable distance is the single most immediate and effective step that the FCC can take today to revitalize AM stations. If an AM station is allowed to search fifty or more miles from its transmitter site for an FM translator it might acquire and move, it is more likely that an FM translator may be immediately obtained for the AM station with Commission procedures routinely taking two months for the grant of an assignment of license, and a modification of facilities, rather than the two or

² MMTC participated in the matter below. See Letters to Chairwoman Mignon Clyburn from David Honig, President, MMTC, February 12, 2013 and September 16, 2013.

Hon. Tom Wheeler and Commissioners

September 29, 2014

Page 3.

more years yet to elapse before possible relief under a prospective AM-only FM translator window. Further, there is simply no public interest reason why an FM translator facility that the marketplace determines could be more efficiently used at another location should be restricted from moving.

We ask that you take the invitation of the Audio Division and reverse now, on the Commission's own motion, the denial of the Tell City waiver request. MMTC would be pleased to supply the Commission and its staff with further information and a comprehensive draft decision document by which it may grant the application if that would be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Honig', written in a cursive style.

David Honig
President

cc: Maria Kirby, Esq.
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Matthew Berry, Esq.
Clint Odom, Esq.,
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/dh