

Chairman Julius Genachowski
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

In re: MB Docket No. 10-56
Application Comcast/NBCU

Dear Mr. Chairman:

The recent resolution of a complaint by MASN against Time Warner under the conditions imposed by the *Adelphia Transaction Order* demonstrates the need for an accelerated process to resolve complaints and subsequent appeals to the full Commission.¹ Although Time Warner Cable filed its appeal of the Media Bureau Order affirming an adverse arbitration decision in October 2008, the Commission did not resolve the appeal until December 2010 -- more than two years after TWC filed its appeal and more than 3 years after MASN initially invoked the complaint process established by the *Adelphia Order*. For the Commission's remedies to have value, parties must have confidence that the Commission will resolve complaints in a timely manner.

Press reports indicate that the Commission is considering granting the Applications for transfer of licenses in the above captioned proceeding, subject to conditions. Public Knowledge, Consumers Union, Free Press, and Media Access Project ("Petitioners") filed timely *Petitions to Deny* in this proceeding. Although Petitioners continue to maintain that grant of the merger would not be in the public interest, Petitioners recognize that if the Commission does permit the merger to go forward parties should have certainty that conditions will be enforced in a timely manner.

Petitioners therefore propose that the FCC establish an accelerated review process for applications for review to the full Commission from decisions related to enforcement of any merger conditions made on delegated authority.² On receiving such an application, the Chairman will circulate the decision, the application, any opposition, and any reply to opposition to all Commissioners with a request that each Commissioner vote within 30 days whether to affirm the Bureau decision without opinion. If any Commissioner fails to vote within 30 days, that Commissioner will be deemed to have voted to affirm the Bureau without written opinion by default. However, if even a single Commissioner votes against summarily affirming the Bureau, the Commission shall instead consider the application under its standard procedures.

The proposed procedure satisfies the statutory requirement that all parties have a right to an appeal from a decision on delegated authority to the full Commission. At the

¹ *TCR Sports Broadcasting Holding, LLP d/b/a/ Mid-Atlantic Sports Network v. Time Warner Cable* (released Dec. 22, 2010).

² It is generally understood that initial resolution of complaints will take place on delegated authority.

same time, it will prevent applications for review from lingering for years due to administrative neglect. Because parties may not appeal a decision to a reviewing court until the Commission resolves the application for review,³ facilitating swift resolution of applications for review will serve the interests of all parties and the public interest.

Legal Authority

Section 5(c) of the Act⁴ governs actions decided on delegated authority and subsequent appeals. Section 5(c)(4) requires that “any person aggrieved” by a decision made under delegated authority shall have the right to file an appeal, “and every such application shall be passed upon by the Commission.” However, Section 5(c)(4) also permits the Commission to establish “the time and manner” by which a review will proceed. Further, Section 5(a) requires the Chairman “to promote prompt and efficient disposition of all matters within the jurisdiction of the Commission.”⁵

The Chairman therefore has discretion to determine the method by which the Commission shall resolve appeals, provided that the members of the Commission have a genuine opportunity to “pass” on the merits of the appeal. Accordingly, the Chairman may establish the following expedited proceeding for resolving an appeal of a decision made on delegated authority. On receipt of the appeal, the Chairman shall circulate the appeal to all Commissioners asking the Commissioners to vote within 30 days on whether to summarily affirm the Bureau decision. Further, the Chairman may establish that a failure to vote either yes or no will be deemed an affirmative vote to affirm. If even a single Commissioner votes to not to affirm, the Commission shall consider the appeal under its standard procedures.

Under this proposal, every Commissioner shall have the opportunity “to pass” on the appeal and determine whether to summarily affirm the Bureau decision. Nothing in the statute prohibits the Commission from establishing a deadline to return a vote or from creating a default presumption in the event a Commissioner fails to vote by the deadline. Nor does any provision of the statute prevent the Commission from requiring a unanimous vote to affirm without opinion. All that is required under the plain language of the statute is that the Commission grant an appeal of right that provides for a genuine opportunity for the Commission as a whole “to pass” on the application for review. The fact that the statute explicitly authorizes the Commission to affirm without any written opinion, and that Congress has emphasized that the Chairman encourage the “prompt and efficient disposition” of Commission business, further support adoption of an expedited process where no Commissioner expresses interest in reversing or otherwise substantively examining the decision of the Bureau.

³ 47 U.S.C. §155(c)(6).

⁴ 47 U.S.C. §155(c).

⁵ 47 U.S.C. §155(a).

Conclusion

All parties are best served when complaints are resolved quickly and without undue administrative delay. By adopting the proposed expedited procedure for processing appeals from Bureau level determinations related to merger conditions, the Commission can help to minimize the cost to parties of vindicating their rights while providing the appeal guaranteed by the Communications Act.

Respectfully submitted,

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