



PUBLIC NOTICE

Federal Communications Commission
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DA 11-1177
July 8, 2011

COMMENT SOUGHT ON NCTA PETITIONS REGARDING SECTION 652 OF THE COMMUNICATIONS ACT

PLEADING CYCLE ESTABLISHED

Docket No. WC 11-118

Comments: August 22, 2011

Reply Comments: September 21, 2011

On June 21, 2011, the National Cable and Telecommunications Association (NCTA) filed a petition for declaratory ruling and a conditional petition for forbearance.¹ In both petitions, NCTA seeks to limit or prevent the application of section 652 of the Communications Act of 1934, as amended,² to mergers and acquisitions between cable operators and certain competitive local exchange carriers (LECs).³ Specifically, NCTA asks the Commission to clarify that section 652 does not restrict transactions between cable operators and competitive LECs.⁴ If the Commission decides that section 652 does apply to such transactions, NCTA seeks forbearance from this restriction or, in the alternative, from the section 652(d)(6)(B) requirement that the relevant local franchising authorities approve of such waiver.⁵ Finally,

¹ See Petition for Declaratory Ruling To Clarify 47 U.S.C. § 572 in the Context of Transactions Between Competitive Local Exchange Carriers and Cable Operators, WC Docket No. 11-118 (filed June 21, 2011) (NCTA Petition for Declaratory Ruling); Conditional Petition for Forbearance from Section 652 of the Communications Act for Transactions Between Competitive Local Exchange Carriers and Cable Operators, WC Docket No. 11-118 (filed June 21, 2011) (NCTA Petition for Forbearance).

² 47 U.S.C. § 572; see also 47 C.F.R. § 76.505.

³ Section 652 places cross-ownership restrictions on certain transactions. See 47 U.S.C. § 572.

⁴ See, e.g., NCTA Petition for Declaratory Ruling at 5.

⁵ See NCTA Petition for Forbearance at 5–6. NCTA argues that the Commission has authority under section 10 to address these petitions because “cable operators are seeking relief on behalf of their CLEC divisions or affiliates” and “because most transactions implicated by this petition would involve telecommunications carriers both as purchasers and as sellers.” See *id.* at 1 n.3; see also 47 U.S.C. § 160(a) (authorizing the Commission to “forbear from applying any regulation or any provision of this chapter to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets” if certain criteria are satisfied).

if the Commission declines to grant the petitions, “NCTA requests that the Commission establish substantive standards and time limits to facilitate expeditious consideration of waiver requests, including standards that apply to LFAs.”⁶

Parties may file comments on either or both petitions on or before **August 22, 2011** and reply comment on or before **September 21, 2011**. All pleadings should reference **WC Docket No. 11-118**.

All filings must be addressed to the Commission’s Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Suite TW-A325, Washington, DC 20554. Parties should also send a copy of their filings to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, or by e-mail to CPDcopies@fcc.gov. Parties shall also serve one copy with the Commission’s copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS) or by filing paper copies.

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>. Filers should follow the instructions provided on the website for submitting comments.
 - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov and include the following words in the body of the message: get form <your email address>. A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. **Parties are strongly encouraged to file comments electronically using the Commission’s ECFS.**

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

- The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand

⁶ NCTA Petition for Declaratory Ruling at 4.

deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-488-5300, facsimile 202-488-5563, or via e-mail at fcc@bcpiweb.com.

Ex Parte Rules. This Public Notice establishes certain procedural requirements relating to consideration of the National Cable and Telecommunications Association Petition. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁷ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information regarding this proceeding, contact Tim Stelzig, Competition Policy Division, Wireline Competition Bureau, 202-418-0942.

⁷ 47 C.F.R. §§ 1.1200 *et seq.*

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