

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Affiliated Media, Inc. FCC Trust	)	File No. BALCDT-2013125ABD
(assignor)	)	Facility ID No. 49632
	)	
and	)	
	)	
Denali Media Anchorage, Corp.	)	
(assignee)	)	
	)	
Dan Etulain	)	File Nos. BALDTTL-20130125AAL &
(assignor)	)	BALTVL-20130125AAK
	)	Facility ID Nos. 188833 & 15348
and	)	
	)	
Denali Media Southeast, Corp.	)	
(assignee)	)	
	)	
For Consent to Assign the License of Station	)	
KTVA(TV), Anchorage, Alaska; KATH-LD,	)	
Juneau-Douglas, Alaska; and KSCT-LP, Sitka,	)	
Alaska	)	

MEMORANDUM OPINION AND ORDER

Adopted: October 29, 2013

Released: October 30, 2013

By the Chief, Video Division, Media Bureau:

1. The Commission, by the Chief, Video Division, Media Bureau, pursuant to delegated authority, has before it applications for consent to the assignment of the licenses of station KTVA(TV), Anchorage, Alaska, and two low-power television stations to Denali Media Anchorage, Corp., and Denali Media Southeast, Corp. (collectively Denali), subsidiaries of General Communications, Inc. (GCI) (collectively, the Applications), from Affiliated Media Inc. FCC Trust (Affiliated) and Dan Etulain. Northern Lights Media, Inc. (Northern Lights); Coastal Television Broadcasting Company LLC (Coastal); Ketchikan TV, LLC (Ketchikan TV); Vision Alaska I LLC (Vision I); and Vision Alaska II LLC (Vision II) (collectively, Alaska Broadcasters), licensees of nine television stations in Anchorage, Fairbanks, Juneau, and Sitka, Alaska filed a Petition to Deny the Applications.<sup>1</sup> Fireweed Communications, LLC (FWTV), licensee of KYES-TV, Anchorage, Alaska, and Jeremy Lansman (collectively, Fireweed) filed a separate

<sup>1</sup> Northern Lights is the licensee of KTUU-TV, Anchorage, Alaska. Coastal is the licensee of KTBY(TV), Anchorage, Alaska. Ketchikan TV is the licensee of KDMD(DT), Anchorage, Alaska; KUBD(DT), Ketchikan, Alaska; KTNL-TV, Sitka, Alaska; and KXLJ-LD, Juneau, Alaska. Vision I is the licensee of KYUR(DT), Anchorage, Alaska. Vision II is the licensee of KATN(TV), Fairbanks, Alaska, and KJUD(DT), Juneau, Alaska.

Petition to Deny. Walter Gregg filed Informal Objections opposing the transactions.<sup>2</sup> Denali filed oppositions to the Alaska Broadcasters and Fireweed Petitions, as well as to the Gregg Informal Objections, while Affiliated filed an opposition to the Alaska Broadcasters and Fireweed Petitions. For the reasons set forth below, we deny the Petitions and Informal Objections, and grant the above-captioned applications.<sup>3</sup>

## I. BACKGROUND

2. The Alaska Broadcasters argue that GCI holds a unique position in the Alaska media market.<sup>4</sup> According to the Alaska Broadcasters, GCI terrestrial cable systems pass 90 percent of all Alaska television households, more than half of which subscribe to its service.<sup>5</sup> The Alaska Broadcasters state that, because of the unique geographic terrain of Alaska, GCI faces little to no competition from satellite MVPD services such as DISH or DIRECTV.<sup>6</sup> They maintain that local news is produced at stations in the Anchorage market, and then passed through GCI cables to television stations in Juneau and Fairbanks.<sup>7</sup> In addition, they also claim that GCI provides more than a 70 percent share of the consumer broadband market, part of which service is federally financed.<sup>8</sup>

3. The Alaska Broadcasters contend that the anticompetitive potential consequences here are as great or greater than those resulting from the acquisition of NBC Universal Inc. (NBCU) by Comcast Corporation (Comcast) in 2011, and warrant a hearing or the imposition of even stronger conditions on GCI than were imposed on Comcast in the *Comcast-NBCU Order*.<sup>9</sup> They contend that GCI has the ability to reduce or eliminate programming exclusivity by importing the signal of another television station into a market; by carrying a direct feed of the CBS or NBC network signal if it cannot reach a retransmission consent agreement with the affiliates in those other markets; or by demanding that a

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<sup>2</sup> Letter from Walter Gregg to License Renewal Processing Team, Video Div. FCC, File No. BALCDT-20130125ABD (filed Feb. 26, 2013); Letter from Walter Gregg to License Renewal Processing Team, Video Div. FCC, File No. BALTVL-20130125AAK (filed Feb. 26, 2013) (collectively, Gregg Informal Objections).

<sup>3</sup> We deny the Motion to Accord “Permit-But-Disclose” Status filed by certain of the Alaska Broadcasters because we do not believe that changing the *ex parte* status of this proceeding would have assisted the Commission in addressing the arguments raised in the pleadings. Northern Lights, Coastal, and Ketchikan TV Motion to Accord “Permit-But-Disclose” Status, File Nos. BALCDT-20130125ABD & BALTVL-20130125AAK (filed Jan. 31, 2013). Movants have had a full opportunity to make their arguments in their pleadings, and they fail to explain what additional information they could provide in meetings that they did not provide otherwise. The Commission has previously rejected similar motions on this basis. *See, e.g., Wahpeton School District*, Order on Reconsideration, 25 FCC Rcd 5806, 5809, ¶ 14 (Broadband Div. WTB 2010).

<sup>4</sup> Alaska Broadcasters Petition at 1.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.* at 6.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 5.

<sup>9</sup> *Id.* at 2-3, 22-23 (citing *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees*, MB Docket No. 10-56, Memorandum Opinion and Order, 26 FCC Rcd 4238 (2011)) (*Comcast-NBCU Order*).

network move its affiliation to GCI-owned stations. Further, the Alaska Broadcasters argue that GCI will have the ability and incentive to discriminate against content from unaffiliated video providers on its broadband systems. In addition, the Alaska Broadcasters argue that GCI intends to reduce over-the-air service, possibly through the substitution of a shorter transmission tower, in order to increase subscriptions to its cable systems. Finally, the Alaska Broadcasters assert that GCI has threatened to distort the news by compromising the journalistic independence of the Applicants' news operations.

4. Fireweed complains that GCI now seeks to add vertical dominance to what is nearly a horizontal monopoly on the distribution of news and information within Alaska.<sup>10</sup> Fireweed seeks public hearings on the proposed merger in various places in Alaska. Absent such hearings, Fireweed asks that the Commission study the potential for abuse. In particular, it points to GCI's business incentive to give preference to their own broadcast stations to the disadvantage of their competitors, and the likelihood of unfair treatment to competing stations with regard to retransmission consent negotiations.<sup>11</sup> Mr. Gregg expresses a concern about the lack of assurances that GCI will continue over-the-air availability of NBC or CBS programming, and that GCI may terminate their broadcasts in order to drive up subscribership of its cable service.

5. Denali responds that this is a small transaction that involves only a single full-power station. It asserts that the Alaska Broadcasters Petition is speculative and hyperbolic. Instead, it maintains that this small acquisition will create substantial benefits for Alaskans by expanding local news programming; furthering investment in news staff; establishing a state-of-the-art HD news and production facility; and expanding coverage of live, on-location news events and severe weather.<sup>12</sup>

6. Denali maintains that one station, KTUU-TV, holds a near-monopoly in local news production, and that this transaction will actually further competition. It also responds that GCI's launch of a broadcast division is fully consistent with the Commission's rules, and that the Petitioners are fully protected by the Commission's network non-duplication and retransmission consent rules, with which it intends to comply.<sup>13</sup> Denali also argues that the instant transaction has no meaningful similarities to the Comcast-NBCU merger, primarily because of the enormous libraries of content owned by NBCU, and that GCI's broadband internet service is not relevant here.<sup>14</sup> Denali argues that the allegation of news distortion is based on suppositions about unobjectionable statements made by GCI's representatives. In any case, Commission policies do not prevent, according to Denali, the launch of a newscast with a particular editorial perspective, even if such plans existed.<sup>15</sup> Affiliated urges denial of the Petition because the Alaska Broadcasters raise generalized policy concerns regarding common ownership of cable

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<sup>10</sup> Fireweed Petition at 6.

<sup>11</sup> *Id.* at 11.

<sup>12</sup> Denali Opposition to Alaska Broadcasters Petition at 9-12.

<sup>13</sup> *Id.* at 15-21.

<sup>14</sup> *Id.* at 21-23.

<sup>15</sup> *Id.* at 27-28.

systems and broadcast television stations, but that Congress, the courts, and the Commission have all repealed the previous cable/broadcast cross-ownership rule.<sup>16</sup>

7. Denali points out that the Fireweed Petition does not indicate that grant of the Applications would violate any Commission rule or policy, and that any rule changes should take place in a wider rulemaking proceeding.<sup>17</sup> Denali also argues that GCI's intention to invest in the Stations' news operations and community-responsive programming furthers the public interest. Denali and Affiliated both contend that the Commission long ago rejected the concerns of cable providers favoring their broadcast affiliates when it repealed the cable/broadcast cross-ownership rule.<sup>18</sup> Affiliated also notes that the Fireweed pleading was not served on Affiliated and that at most, should be treated as an informal objection. Denali argues that Gregg's concern about terminating on-air network programming is unsupported, speculative, and at odds with the Commission's policy not to regulate programming.<sup>19</sup> Denali also argues that any concerns about removal of programming should be raised in an industry-wide proceeding.<sup>20</sup>

8. In their Reply, the Alaska Broadcasters reiterate their public interest arguments, asserting that the repeal of the cable/broadcast cross-ownership rule does not relieve the Applicants' burden of showing how a grant would serve the public interest.<sup>21</sup> Further, they contend that the *Comcast-NBCU Order* is directly relevant because even though GCI does not own a network, its control over cable and broadband systems give it at least as much potential to demand concessions as Comcast would have.<sup>22</sup> The Alaska Broadcasters also argue that Denali's assurances to comply with Commission rules without enforceable conditions are insufficient,<sup>23</sup> and that a hearing is necessary to identify GCI's true intentions for maintaining or reducing over-the-air service and plans for its broadband service.<sup>24</sup>

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<sup>16</sup> Affiliated Opposition to Alaska Broadcasters Petition at 2 ("Congress repealed the statutory prohibition against cable/broadcast cross-ownership in 1996. See Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(i)(1), 110 Stat. 56, 112 (1996). The D.C. Circuit struck down the Commission's subsequent effort to retain its cable/broadcast cross-ownership rule in 2002. See *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027 (D.C. Cir. 2002), *modified on reh'g*, 293 F.3d 537 (D.C. Cir. 2002). The Commission ultimately repealed its cable/broadcast cross-ownership rule in 2003. See *1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 3002 (2003).")

<sup>17</sup> Denali Opposition to Fireweed Petition at 2.

<sup>18</sup> *Id.* at 2; Affiliated Opposition to Fireweed Petition at 2.

<sup>19</sup> Denali Opposition to Informal Objections, File Nos. BALCDT-20130125ABD, BALDTL-20130125AAL (filed May 14, 2013) (Denali Opposition to Gregg Objection).

<sup>20</sup> *Id.* at 3-4.

<sup>21</sup> Alaska Broadcasters Reply at 5.

<sup>22</sup> *Id.* at 5-7.

<sup>23</sup> *Id.* at 7-9.

<sup>24</sup> *Id.* at 9-11.

9. Fireweed, in its Reply, argues that the Commission's net-neutrality rules are insufficient to prevent blocking of content, and that in an era of accelerating technological change, the Commission should change its rules in the analysis of individual cases of contested interests.<sup>25</sup> In his Reply to the Denali Opposition, Mr. Gregg reiterates his concern, among other things, about Denali's lack of response to his public interest objections.<sup>26</sup>

## II. DISCUSSION

10. The Commission applies a two-step analysis to a petition to deny under the public interest standard. First, it must determine whether the petition contains specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest.<sup>27</sup> These specific allegations must be supported by the affidavit of a person with knowledge of the facts alleged, except for those of which we may take official notice.<sup>28</sup> If the specific allegations make a *prima facie* case, we next examine and weigh the evidence presented, to determine "whether the totality of the evidence raises a substantial and material question of fact justifying further inquiry."<sup>29</sup>

11. The petitions and informal objections fail to meet this statutory burden. We conclude that the petitions to deny and objections do not make a *prima facie* showing that grant of the Applications would be inconsistent with the public interest, convenience and necessity.<sup>30</sup> We find that the Applications do not propose a transaction that would violate any Commission's rule or policy, and that the objections advanced by its proponents are more appropriate for industry-wide proceedings, are unsupported, or are otherwise speculative with regard to future harms.

12. We find further that the facts and public interest concerns addressed in the *Comcast-NBCU Order* are clearly distinguishable from those presented by this single-station transaction. As the Commission stated in the *Comcast-NBCU Order*, the merger between Comcast and NBC Universal proposed "in a single joint venture . . . the broadcast, cable programming, online content, movie studio, and other businesses of NBCU with some of Comcast's cable programming and online content

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<sup>25</sup> Fireweed Reply at 4.

<sup>26</sup> Letter from Walter Gregg to License Renewal Processing Team, Video Div. FCC, File Nos. BALCDT-20130125ABD, BALDTL-20130125AAL (filed Jun. 10, 2013).

<sup>27</sup> 47 U.S.C. §309(d)(1); *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988).

<sup>28</sup> 47 U.S.C. §309(d)(1); 47 C.F.R. 73.5006(b).

<sup>29</sup> *Citizens for Jazz on WRVR v. FCC*, 775 F.2d 392, 395 (D.C. Cir. 1985).

<sup>30</sup> 47 C.F.R. § 1.939(d). We also find that Fireweed failed to properly serve the pleading on either the licensee or its counsel in violation of section 309(d)(1) of the Act and section 1.47 of the Commission's rules. 47 U.S.C. § 309(d)(1); 47 C.F.R. § 1.47. Accordingly, we will dismiss Fireweed's pleading as a petition to deny. We will, however, treat the pleading as an informal objection pursuant to Section 73.3587 of the Rules. 47 C.F.R. § 73.3587. We also reject the charges that the Commission did not allow sufficient public notice to participate in this proceeding. Gregg criticizes the Commission's January 30, 2013 public notice that the Applications were accepted for filing because it failed to identify a right to comment or procedures to do so, and that the newspaper notice with regard to the prospective assignment of KATH-LD lacked certain specifics. However, Gregg does not cite to any rule violation or how any notice is inconsistent with the requirements for full-power and low-power stations, respectively.

businesses.”<sup>31</sup> As noted by the Commission, the merger proposed common ownership of two broadcast networks, 26 broadcast television stations, and NBCU’s cable programming, which included CNBC, MSNBC, Bravo, and USA Network.<sup>32</sup> The Commission noted at the time that the transaction was “unprecedented.” Despite the fact that the allegations here are speculative as to future harms, we will address them briefly below. We agree with Denali and Affiliated that most of these allegations have been directly addressed and rejected by the Commission and/or courts in repeal of the cable/broadcast cross-ownership rule. Others have been addressed and rejected in other, related rulemakings.

#### A. Program Carriage and Exclusivity Issues

13. As an initial matter, we find that there is no *prima facie* demonstration of a violation of Commission rules or policies. Even if any of the multiple allegations regarding program carriage were true – which include speculation about affiliate bypass through a direct network feed,<sup>33</sup> as well as anticompetitive discrimination with regard to retransmission consent,<sup>34</sup> channel placement<sup>35</sup> and channel displacement<sup>36</sup> – they have all been raised and dismissed by this agency and the courts as improper bases to stop the proposed acquisition.

14. In particular, the Commission recognized and dismissed concerns of discrimination and bypass when it repealed the network/cable cross-ownership rule,<sup>37</sup> and the D.C. Circuit in *Fox* relied on this analysis in invalidating the cable/broadcast cross-ownership rule.<sup>38</sup> The Commission’s rules require cable operators to negotiate retransmission consent in good faith,<sup>39</sup> and broadcasters always have the option of invoking their “must carry” rights to compel GCI to carry their programming.<sup>40</sup> Broadcasters also have access to a dispute-resolution process for signal carriage and channel positioning, including the

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<sup>31</sup> *Comcast-NBCU Order* at 4240, ¶ 1.

<sup>32</sup> *Id.*

<sup>33</sup> *See, e.g., Alaska Broadcasters Petition* at 13.

<sup>34</sup> *See, e.g., id.*

<sup>35</sup> *Id.* at 8.

<sup>36</sup> *Id.* at 9.

<sup>37</sup> The Commission found that the losses incurred by local affiliate bypass would outweigh the gains, undermine the value of the cable system, and damage affiliates in which the networks had made substantial investments. *1992 Report*, 7 FCC Rcd at 6166, ¶ 15 (“Although the various scenarios for discrimination and bypassing could conceivably occur, we believe that their merit as arguments to retain the rule is questionable because the strategies are inconsistent with one another and are contrary to the economic interests of network-cable owners.”).

<sup>38</sup> *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1050 (D.C. Cir. 2002) (*Fox*).

<sup>39</sup> 47 C.F.R. § 76.65.

<sup>40</sup> 47 C.F.R. § 76.57.

right to file complaints.<sup>41</sup> The appropriate place to seek broader changes to the current program carriage rules would be an industry-wide proceeding, rather than a specific license assignment request.<sup>42</sup>

15. We give no weight to the Alaska Broadcasters' argument that the reasoning behind *Fox* hinged upon the presence of direct broadcast satellite (DBS) providers to lower the risk of discrimination, and the difficulties of DBS operators to provide service in Alaska somehow makes a repeal of the local cable/broadcast cross-ownership rule inapplicable to the Alaska markets.<sup>43</sup> *Fox* made no exception or qualification for Alaska or any other geographic area. Similarly, we do not give any credence to speculation or hearsay regarding prospective violations posed by other parties.<sup>44</sup>

16. In addition, we find that the reasoning behind the Commission's acceptance of and imposition of conditions in the *Comcast-NBCU Order* has no bearing here. The concern about Comcast's reduction of the local exclusivity of NBC affiliate stations that it did not own and operate<sup>45</sup> is distinguishable here, where the network negotiating third-party stations' affiliation agreements is not a party to the transaction. As Denali points out, the ownership of the Stations would not accord GCI with the leverage necessary to force a top-four television network to drop other affiliates, allow a network bypass, or diminish existing exclusivity rights with other affiliates. Moreover, the acquisition actually increases GCI's reliance on over-the-air distribution of the affiliated networks because the Stations' value depends on that affiliation.<sup>46</sup>

#### B. Discrimination on its Broadband Systems

17. Several parties argue that GCI will have the ability and incentive to discriminate on its broadband network after the transaction is consummated. The Alaska Broadcasters assert that because GCI has over 70 percent of the consumer broadband connections in Alaska, and because GCI will employ its TERRA system to be the only broadband supplier that serves parts of rural Alaska, the Commission must follow its *Comcast-NBCU Order* precedent by identifying the risk that GCI will engage in blocking or discriminating against unaffiliated content distributors.<sup>47</sup> Fireweed alleges that the Commission's net

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<sup>41</sup> 47 C.F.R. § 76.61.

<sup>42</sup> See, e.g., *Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless*, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8749, ¶ 104 (2010) (“[W]e find here that the conditions proposed regarding exclusive handset agreements are not narrowly tailored to prevent a transaction-specific harm. We find that the proposed conditions instead apply broadly across the industry and are therefore more appropriate for a Commission proceeding where all interested industry parties have an opportunity to file comments.”) (footnotes omitted)

<sup>43</sup> Alaska Broadcasters Petition at 16.

<sup>44</sup> For example, the Alaska Broadcasters cite a Coastal executive who heard from a programming syndicator that it “was ‘common knowledge’ among syndicators that GCI intends to acquire affiliates of each of the major networks in Alaska, and then take competing stations off of its cable and broadband systems and carry its own station signals and GCI’s news across Alaska.” However, a declaration supporting a petition to deny must be supported by personal knowledge of factual allegations, rather than hearsay. 47 C.F.R. § 1.939(d); see, e.g., *Living Proof, Inc. Big Pine, California*, Letter, 24 FCC Rcd 2382, 2385 n.29 (Aud. Div. MB 2009) (declining to credit hearsay statements of third party).

<sup>45</sup> *Comcast-NBCU Order* at 4307-08, ¶ 164.

<sup>46</sup> Denali Opposition to Alaska Broadcasters Petition at 16-17.

<sup>47</sup> Alaska Broadcasters Petition at 18-20 (citing *Comcast-NBCU Order*, 26 FCC Rcd at 4275, ¶ 93).

neutrality rules would not prevent the blocking of content offered by Fireweed Communications and others.<sup>48</sup>

18. We disagree with these objections, and conclude that no additional conditions are necessary or appropriate to prevent GCI from discriminating against other content providers over its broadband network. The record indicates that facts underlying the instant transaction are distinguishable from those in the Comcast-NBCU acquisition. GCI's proposed purchase of one full-power and two low power television stations simply does not raise any of the issues regarding access to content that were raised in the *Comcast-NBCU Order*, where NBCU's ownership of video programming assets and the potential to limit competitors' content were the factors that created a risk of discrimination.<sup>49</sup>

### C. Reduction in Over-the-Air Service

19. We deny the Alaska Broadcasters' request for conditions to block GCI from relocating its tower as speculative, premature, and unsupported. According to a declaration submitted by an employee of KTUU-TV, a GCI staffer stated that GCI did not care about the tower currently used by KTVA(TV), which is currently in poor condition, and that it may move the antenna and transmitter to the top of a building in Anchorage, reducing its coverage.<sup>50</sup> We agree with Denali that this speculation about what GCI may or may not do is not only groundless, but premature. As Denali points out, it will not make determinations of whether the tower needs to be replaced until it owns KTVA(TV), but the Commission's rules already impose specific coverage requirements regarding a station's principal community, and Denali states that it is aware of and will abide by those rules.<sup>51</sup>

20. Similarly, we also dismiss Gregg's allegations that GCI seeks to buy up its competitors in order to "snuff out" their on-air programming, based on his belief that a cable company's interest may conflict with that of over-the-air viewers.<sup>52</sup> Gregg does not provide any basis for his assertion that GCI would terminate the Stations' broadcasts, other than a lack of express assurance in the Denali Press Release to continue programming, and the Denali Press Release's stated intention of re-branding the Stations to transform them into a news and entertainment leader and a statewide platform for news and information.<sup>53</sup> This charge is not only speculative, but at odds with the press release itself, which stated that GCI welcomes the challenge of helping restore KTVA(TV) to the community leader it once was and building on KATH and KSCT's reputations. Also, this allegation should only be raised in an industry-wide rulemaking proceeding, as the Commission's repeal of the cross-ownership rule precludes any reliance on this argument here.

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<sup>48</sup> Fireweed Reply at 4 (citing *Preserving the Open Internet; Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, 25 FCC Rcd 17905 (2010) and *Comcast-NBCU Order* at 4275, ¶ 92).

<sup>49</sup> *Comcast-NBCU Order* at 4275, ¶ 93.

<sup>50</sup> Alaska Broadcasters Petition at 8-9 & Att. B, Declaration of R. Paul Treece.

<sup>51</sup> Denali Opposition to Alaska Broadcasters Petition at 23-24 (citing 47 C.F.R. § 73.625).

<sup>52</sup> Gregg KTVA Objection at ¶¶ 4, 5, 7.

<sup>53</sup> *Id.* at ¶ 3 (citing Denali Media Holdings Purchases Anchorage CBS Affiliate and Southeast Alaska NBC Affiliates, Press Release (rel. Nov. 9, 2012)).



#### D. Journalistic Independence

21. The Alaska Broadcasters argue that GCI has made threats of news distortion that are contrary to the public interest,<sup>54</sup> and that the Applications lack the necessary commitment to journalistic integrity upon which the Commission conditioned the approval of the *Comcast-NBCU* proceeding.<sup>55</sup> Specifically, the Alaska Broadcasters allege that GCI has explicitly told other stations and potential employees that it plans to tailor the news to be more “business-friendly” that would assure viewpoints favorable to GCI’s corporate interests.<sup>56</sup>

22. The allegations regarding journalistic independence are speculative and based on hearsay, but, even if true, would be insufficient to make out a *prima facie* showing that grant of the Applications would be inconsistent with the public interest. The First Amendment and section 326 of the Communications Act bar us from withholding approval of a transaction based on a change in editorial perspective. Licensees are entitled to exercise “good faith” editorial discretion.<sup>57</sup>

#### III. ORDERING CLAUSES

23. Having reviewed the applications, pleadings, and other facts before us, we conclude that, not only will grant of the applications comply with Commission rules, but that grant will serve the public interest, convenience, and necessity.

24. ACCORDINGLY, IT IS ORDERED, That the Petition to Deny filed by the Alaska Broadcasters, and the Informal Objection filed Walter Gregg, ARE DENIED.

25. IT IS FURTHER ORDERED, That the Petition to Deny filed by Fireweed Communications LLC, IS DISMISSED, and, when considered as an Informal Objection, DENIED.

26. IT IS FURTHER ORDERED, That the Motion to Accord “Permit-But-Disclose” Status filed by Northern Lights Media, Inc.; Coastal Television Broadcasting Company LLC; and Ketchikan TV, LLC, IS DENIED.

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<sup>54</sup> Under Commission precedent, the Commission’s news distortion policy is limited in scope, and requires an analysis of both the “substantiality” and “materiality” of a specific allegation. *TVT License, Inc.*, Memorandum Opinion and Order 22 FCC Rcd 13591, 13595 ¶¶ 16-17 (Vid. Div. MB 2007). Such an analysis would be premature based solely on the speculations raised in the Petition.

<sup>55</sup> Alaska Broadcasters Petition at iv, 20-21 (citing *Comcast NBCU Order* at 4322-4323).

<sup>56</sup> *Id.* at 21; *id.*, Decl. of William A. Fielder, III at 2; *id.*, Decl. of Scott Centers at 2; *id.*, Decl. of Andrew MacLeod at 2.

<sup>57</sup> *See, e.g.*, Letter from Chief, Video Division, Media Bureau, FCC to Kenneth C. Howard, Jr., Esq., 22 FCC Rcd 12744, 12747 (Vid. Div. MB 2007) (“Journalistic or editorial discretion in the presentation of news and public information is the core concept of the First Amendment’s Free Press guarantee, and licensees are entitled to the broadest discretion in the scheduling, selection and presentation of news programming.”); Letter from Chief, Video Division, Media Bureau, FCC to Victoria Strange, 22 FCC Rcd 12846, 12848 (Vid. Div. MB 2007) (“[T]he FCC is prohibited by section 326 of the Act from censoring programs or from interfering with freedom of expression in broadcasting. The choice of what is or is not covered in the presentation of broadcast news is a matter committed to the licensee’s good faith discretion.”).

27. IT IS FURTHER ORDERED, That the above-captioned application to assign the licenses of KTVA(TV), Anchorage, Alaska and six translator stations from Affiliated Media, Inc. FCC Trust to Denali Media Anchorage, Corp., File No. BALCDT-20130125ABD, IS GRANTED.

28. IT IS FURTHER ORDERED, That the above-captioned application to assign the licenses for KATH-LD, Juneau-Douglas, Alaska, and KSCT-LP, Sitka, Alaska, from Daniel R. Etulain to Denali Media Southeast, Corp., File Nos. BALDTTL-20130125AAL & BALTVL-20130125AAK, IS GRANTED.

29. These actions are taken pursuant to Section 0.61 and 0.283 of the Commission's rules, 47 C.F.R. §§ 0.61, 0.283, and Sections 4(i) and (j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(d).

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau