



PUBLIC NOTICE

Federal Communications Commission
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DA 04-747

Released: March 19, 2004

**COMMENT SOUGHT ON “REQUEST FOR EXPEDITED DECLARATORY RULING”
CONCERNING THE TERRITORIAL EXCLUSIVITY RULE (SECTION 73.658(B) OF
THE COMMISSION’S RULES)**

“PERMIT BUT DISCLOSE” EX PARTE STATUS ACCORDED

MB Docket No. 04-75

Comment Date: April 28, 2004

Reply Comment Date: May 10, 2004

On February 25, 2004, Max Media of Montana LLC (“Max Media”) filed a “Request for Expedited Declaratory Ruling” (“Request”). The Request seeks a Commission ruling concerning Section 73.658(b) of the Commission’s Rules (47 C.F.R. § 73.658(b)), the “territorial exclusivity” rule. The territorial exclusivity rule, in part, provides that, “No license shall be granted to a television broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization...which prevents or hinders another broadcast station located in a different community from broadcasting any program of the network organization.”

Max Media contends that the NBC television network and Sunbelt Communications Company and companies it controls (“Sunbelt”) have an agreement under which NBC will not renew its current NBC affiliation with Max Media’s KTGF-TV in Great Falls, Montana, when that affiliation agreement expires in 2005. Under this arrangement, Max Media alleges, NBC will, instead, give the affiliation to Sunbelt, which has NBC-affiliated stations in nearby communities. Sunbelt does not have a station licensed to Great Falls, Montana, but would allegedly provide coverage of Great Falls using stations it controls in nearby communities and through booster, translator and low-power television stations that it has applied for in Great Falls. Max Media has filed pleadings in opposition to those license applications.

Max Media contends that the alleged agreement constitutes an arrangement between Sunbelt and a network organization (*i.e.*, NBC) with regard to Sunbelt’s stations in communities other than Great Falls, Montana, which “prevents or hinders another broadcast station located in a different community (*i.e.*, Max Media’s station in Great Falls) from broadcasting any program of the network organization,” in violation of the territorial exclusivity rule. It requests an expedited

declaratory ruling pursuant to Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, and Section 5(d) of the Administrative Procedure Act, § 5 U.S.C. 554(e), in order to terminate this controversy and to resolve a dispute concerning the territorial exclusivity rule.

On March 10, 2004, Sunbelt filed an "Opposition of Sunbelt Communications Company to Request for Expedited Declaratory Ruling" ("Opposition"). In the Opposition, Sunbelt asserts that a declaratory ruling is inappropriate in this case because there is no controversy to terminate or uncertainty to remove. Additionally, it asserts that there is no merit to Max Media's complaint that the territorial exclusivity rule is being violated by Sunbelt or NBC. Rather, it contends, all that is present in this matter is the exercise of normal business judgments by the parties.¹

We invite comment on the Max Media petition.

Ex parte status: In order to permit a full exchange of views on the issues raised in the Request, and Max Media's indication that it is seeking a declaratory ruling rather than specific enforcement action, we have concluded that the public interest would be served by classifying this proceeding, as well as the related pending application proceedings,² as permit-but-disclose under the ex parte rules notwithstanding the existence of related applications and oppositions. Accordingly, by this Public Notice, and pursuant to Section 1.1200(a) of the Commission's Rules, 47 C.F.R. § 1.1200(a), we announce that these proceedings will be governed by permit-but-disclose ex parte procedures that are applicable to nonrestricted proceedings under Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206.

Permit-but-disclose ex parte procedures permit interested parties to make ex parte presentations to the Commissioners and Commission employees and require that these presentations be disclosed in the record of the relevant proceeding. Persons making a written ex parte presentation to the Commissioners or Commission employees must file the written presentation with the Commission, as set forth below, no later than the next business day after the presentation. 47 C.F.R. § 1.1206(b)(1). Persons making oral ex parte presentations must file a summary of the presentation, as set forth below, and deliver copies to the Commissioners or Commission employees involved with the presentation no later than the next business day after the presentation. 47 D.F.R. § 1.1206(b)(2). All ex parte filings must be clearly labeled as such and must reference this Public Notice, DA 04-747, as well as any other applicable docket or file numbers.

¹ On March 12, 2004, Max Media submitted a Reply to the Sunbelt Opposition in which it responds to Sunbelt's arguments and reiterates the claims made in its initial filing.

² Application numbers: BLCT-20000830AFL; BNPTT-20000828BIK; BNPTVB-20030930BBS; BLCT-20000830AFI; BNPTTL-20000829AJY; BNPTTL-20000829AJY; BNPTTL-20000829AIY; BNPTVL-20000829AIZ; BNPTVL-20000829AJN; BNPTTL-20000829AJP; BNPTTL-20000829AJS; BNPTTL-20000829AIX; BNPTVL-20000829AHE; BNPTVL-20000829AKB; BNPTVL-20000829AKA; BNPTVL-20000829AHJ; BNPTVB-20030915ACY; BNPTTL-20000829AHI; BNPTTL-20000829AHH; BNPTTL-20000829AHF; BNPTVL-20000829ALP; BNPTTL-20000829AJW; BNPTTL-20000829AJU; BNPTTL-20000829AJT; BNPTTL-20000829AHO; BNPTTL-20000829AHK; BNPTTL-20000829AHL; BNPTVL-20000829AHM; BNPTVL-20000829AJF; BNPTVL-20000829AJG; BNPTTL-20000829AJJ; BNPTTL-20000829AJL; and BNPTVL-20000829AHN.

Comments must be filed on or before April 28, 2004; and reply comments must be filed by May 10, 2004. Comments and reply comments may be filed using the Commission's Electronic Filing System (ECFS) or by filing paper copies (an original and four copies). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters 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 for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. 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). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand 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 mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. In addition, parties should serve one copy of each filing via email, or five paper copies, on Jane Gross, Jane.Gross@fcc.gov, Federal Communications Commission, Media Bureau, Policy Division, 445 12th Street, S.W., 3-A832, Washington, D.C., 20554.

Availability of Documents. Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C. 20554. These documents also will be available electronically from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII text, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Qualex International, Portals II, 445 12th Street, S.W., Room, CY-B402, Washington, D.C., 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail at qualexint@aol.com. 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 202-418-0531 (voice), 202-418-7365 (TTY).

For further information contact Jane Gross, Media Bureau at (202) 418-2120.

By the Chief, Media Bureau

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