



Federal Communications Commission
Washington, D.C. 20554
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Dear Counsel:

We here consider a complaint from Priority Communications, Inc. (Priority) alleging that an officer of Magnum Communications, Inc. (Magnum) violated the Commission's ex parte rules by making an ex parte presentation in a restricted proceeding.¹ We find that Magnum did violate the ex parte rules and admonish it to be more careful in the future.

BACKGROUND

This allegation arises from an e-mail² sent by Magnum's president Michael Stapleford (Stapleford) to David Dombrowski (Dombrowski), an official of the Commission's Enforcement Bureau stationed at the Philadelphia office. Stapleford's e-mail forwarded to Dombrowski a complaint from a listener of Magnum's station WQCK(FM),³ Philipsburg, Pennsylvania, indicating that the station was receiving interference from Priority's FM translator station, W290BO, Brookeville, Pennsylvania.

Previously, in 2007, Magnum had filed a request for an Order to Cease Operations against Priority's FM translator, forwarding several listener complaints that Priority's station was causing interference to Magnum's. The Audio Division of the Commission's Media Bureau assigned Magnum's complaint File No. 20070726AMU and directed Priority to respond to the

¹ See Complaint, Request for Sanctions and Request for Disqualification, filed August 25, 2010, by Priority (Complaint).

² See Letter from James D. Bradshaw, Deputy Chief, Audio Division, to Priority Communications, Inc. (Aug. 20, 2010), attachment. The e-mail indicates that it was sent June 17, 2010.

³ The station had previously been called WJOW(FM).

listener complaints.⁴ Correspondence among the Audio Division, Priority, and Magnum ensued.⁵ The complaint proceeding remains pending.

EX PARTE COMPLAINT

Priority asserts that Stapleford's e-mail violated the ex parte rules. In Priority's view, File No. 20070726AMU should be deemed a restricted proceeding in which ex parte presentations are prohibited, and Stapleford's e-mail was an ex parte presentation to an FCC decision-maker, inasmuch as it addressed the merits of the interference allegations and was not served on Priority.⁶ Priority further asserts that an appropriate sanction for this violation would be a substantial monetary forfeiture and an order disqualifying Magnum from participation in the complaint proceeding.⁷ Priority contends that disqualifying Magnum would not cause harm to the public, because the public is able to complain of any interference directly to the Commission and does not need Magnum to serve that purpose. Magnum did not respond to Priority's complaint.

DISCUSSION

We find that Stapleford's e-mail violated the ex parte rules. Pursuant to the provisions of 47 C.F.R. § 1.1202(d)(2), both the person who files a request to revoke an authorization, which is served on the subject of the request, and the person who is the subject of the request are parties to a proceeding for purposes of the ex parte rules. Because complaint proceedings are not classified otherwise by the ex parte rules, they are deemed restricted proceedings.⁸ Thus, we find that Stapleford's e-mail to Dombrowski was a prohibited ex parte presentation.

Nevertheless, we find no basis for the harsh sanctions proposed by Priority. The various submissions made in connection with File No. 20070726AMU indicate that Priority and Magnum have consistently served each other,⁹ indicating that Magnum generally respects its

⁴ See Letter from James D. Bradshaw, Deputy Chief, Audio Division, to Priority Communications, Inc. (Nov. 26, 2007).

⁵ Detailed in Complaint at 2-3.

⁶ See Complaint at 2-5. Under the ex parte rules, a presentation is a communication going to the merits or outcome of a proceeding. See 47 C.F.R. § 1.1202(a). A written ex parte presentation is a written presentation not served on all the parties to the proceeding. See 47 C.F.R. § 1.1202(b)(1). Ex parte presentations are prohibited in restricted proceedings. See 47 C.F.R. § 1.1208. Priority contends that the e-mail does not fall into any exception that would permit an ex parte communication.

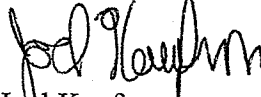
⁷ See Complaint at 5-6.

⁸ See 47 C.F.R. § 1.1208.

⁹ See, e.g., Letter from Paul A. Cicelski to James D. Bradshaw, Deputy Chief (Jul. 24, 2008) (showing service on Priority's counsel); Response to Request for Order to Cease Operations, filed July 27, 2007 (showing service on Magnum's counsel).

obligations under the ex parte rules. Stapleford's e-mail, which, unlike Magnum's other submissions, does not indicate the involvement of counsel, is an isolated exception. Further, the Media Bureau forwarded the e-mail to Priority, as it had previous listener complaints referred by Magnum, giving Priority ample opportunity to respond and thus negating any possibility of prejudice. Priority points to no precedent for the harsh penalty it seeks on similar facts, and we know of none. While we admonish Magnum to ensure that its principals and employees comply with the ex parte rules in the future, we see no reason to impose further sanctions.

Sincerely yours,



Joel Kaufman

Associate General Counsel and Chief
Administrative Law Division
Office of General Counsel