

**JOINT STATEMENT OF  
CHAIRMAN MICHAEL K. POWELL, COMMISSIONER MICHAEL J. COPPS, AND  
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: Applications for Assignment of License and Renewal of License for Stations KESC(FM), Wilburton, Oklahoma, and KMCO(FM), KNED(AM), KTMC(AM), and KTMC-FM (FIN 67582), McAlester, Oklahoma*

On March 1, 2005, the applicants filed a pleading requesting that we recuse ourselves from participation in this proceeding because of ex parte contacts made by Andrew Jay Schwartzman of the Media Access Project. These ex parte communications were in the form of e-mails and oral communications with our offices urging us to overturn the Media Bureau's ruling in this proceeding. In the case of the Offices of the Chairman and Commissioner Adelstein, e-mail presentations were made to the Commissioners and their staff and oral communications were made to the staff; in Commissioner Copps' Office, ex parte presentations were made only to staff. The applicants contend that these communications were prejudicial and "impermissibly 'intruded into the calculus of consideration of individual decisionmakers.'" Request for Immediate Recusals and Investigation Into Prohibited Ex Parte Communications at 7 (quoting *Peter Kiewit Sons' Co. v. United States Army Corps of Engineers*, 714 F.2d 163, 170 (D.C.Cir. 1983)).

Assuming that the applicants are correct and Mr. Schwartzman's communications violated the Commission's ex parte rules – an issue that is being addressed by our Office of General Counsel, *see* 47 C.F.R. § 0.251(g)

<sup>1</sup> – recusal nevertheless is not appropriate. *Power Authority of the State of New York v. FERC*, 743 F.2d 93, 110 (2d Cir. 1984) (ex parte communications do not require an administrative body to disqualify itself). Recusal is required only where there is a serious doubt about the agency's ability to act fairly and impartially; of particular importance in making that assessment is whether the ex parte communications contained information outside the record that the parties did not have an opportunity to rebut. *Id.*

Here, steps have been taken to ensure that the parties receive notice and an opportunity to respond to all of Mr. Schwartzman's contentions concerning the merits of this proceeding. In accordance with our rules, the Office of General Counsel has directed that all written ex parte presentations and summaries of all oral ex parte presentations be sent to the applicants. This measure addresses the applicants' suggestion of potential prejudice due to Mr. Schwartzman's ex parte presentations. The Commission's action in this matter will reflect the fair and impartial consideration of the record, and the applicants will have access to the substance of all ex parte contacts and a full opportunity to respond before the Commission reaches any decision on the merits.

It is of course open to any Commissioner to recuse himself from a proceeding out of an abundance of caution. But to take such action when there is no basis for doing so threatens to encourage unwarranted recusal requests and interfere with the efficient and effective functioning of the agency. We therefore decline to recuse ourselves from this proceeding.

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<sup>1</sup> The Commission's Office of General Counsel has notified Mr. Schwartzman that his communications violated the Commission's ex parte rules.