

MCH October 2009 Complaint

On October 7, 2009 a private group called the Media Council Hawai'i ("MCH") filed a "Complaint and Request for Emergency Relief Regarding Shared Services Agreement" ("Complaint") with the Federal Communications Commission ("FCC") asking the FCC to enjoin Raycom Media, Inc. ("Raycom"), owner of the licensee of Channel 23 and Channel 35 in Honolulu, and HITV License Subsidiary, Inc. ("HITV"), licensee of Channel 22 in Honolulu, from implementing, later in October, 2009, a shared services agreement ("SSA") between the Raycom stations and the HITV station. MCH alleged that the transaction, if allowed to be implemented, would result in Raycom taking control of HITV's station, giving it control of three stations in the Honolulu market, without obtaining prior FCC consent in violation of the Communications Act and the implementing rules. MCH urged that the FCC issue an order directing Raycom and HITV to show cause why a cease and desist order should not be issued to enjoin implementation of the SSA and/or to revoke the parties FCC licenses.

On October 16, Raycom filed a Response that urged the FCC to refrain from inserting itself into a private transaction, undertaken by Raycom and HITV in reliance on and in compliance with FCC rules and past precedent, based on speculative, unfounded and inaccurate claims by MCH that the transaction would violate the Communications Act and the FCC rules absent prior FCC approval. The Response further argued that the request for injunctive relief was unprecedented and unwarranted and, thus, that the FCC should not enjoin the implementation of the SSA which the parties intended to execute on October 26.

On October 26, 2009, Raycom and HITV implemented the transaction contemplated by the SSA and certain related agreements ("Transaction Documents"). Although the transaction has been implemented, the Complaint remains pending. The Transaction Documents have been submitted to the FCC, and Raycom, HITV and MCH have made supplemental submissions to the FCC. On May 5, 2010, the FCC released a Public Notice (copy attached) changing the *ex parte* classification of the complaint proceeding from "restricted" to "permit-but-disclose."



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 10-757

Released: May 5, 2010

MEDIA BUREAU ANNOUNCES PERMIT-BUT-DISCLOSE *EX PARTE* STATUS FOR MEDIA COUNCIL HAWAII'S COMPLAINT AND REQUEST FOR EMERGENCY RELIEF REGARDING SHARED SERVICES AGREEMENT BETWEEN RAYCOM MEDIA AND MCG CAPITAL

On October 7, 2009, Media Council Hawai'i ("Media Council") filed a Complaint and Request for Emergency Relief arguing, among other things, that a series of agreements between the licensee of stations KHNL(TV) and KFVE(TV), Honolulu, HI, a wholly owned subsidiary of Raycom Media, Inc. (collectively "Raycom"), and HITV License Subsidiary, Inc. ("HITV"), licensee of station KGMB(TV), Honolulu, Hawaii, would result in an unauthorized transfer of control of station KGMB(TV) to Raycom, in violation of section 310(d) of the Communications Act of 1934 and section 73.3555(b) of the Commission's rules.¹ On October 30, 2009, Media Council filed a letter requesting that the staff alter the *ex parte* status of the complaint proceeding from restricted to permit-but-disclose. On November 9, 2009, counsel for HITV filed an opposition to the request, contending that Media Council has failed "to describe what relevant contribution unspecified members of the public or unidentified Members of Congress can make to the resolution by the Commission of the specific legal issues that have been raised in this proceeding."² Media Council responds that members of the public have legitimate concerns about the loss of diverse viewpoints allegedly resulting from the set of agreements entered into between Raycom and HITV, as well as are concerned about the inability to receive the signals of stations KGMB(TV) and KHNL(TV) due to a change in tower location.

Since the subjects of Media Council's complaint have been served, the instant proceeding is restricted pursuant to section 1.1202(d)(2) of the Commission's rules.³ Contrary to the assertion of HITV, we believe that classifying this proceeding as permit-but-disclose is in the public interest because the proceeding raises issues upon which the public has a demonstrable concern, especially within the affected market. In view of this and in order to assure the staff's ability to discuss and obtain information needed to resolve the issues presented expeditiously, adoption of modified *ex parte* procedures is appropriate. Accordingly, by this Public Notice, and pursuant to Section 1.1200(a) of the Commission's rules,⁴ we

¹ 47 U.S.C. § 310(d); 47 C.F.R. § 73.3555(b) (2002).

² Letter from John Griffith Johnson, Jr., Esq., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated November 9, 2009.

³ 47 C.F.R. § 1.1202(d)(2).

⁴ 47 C.F.R. § 1.1200(a).

announce that the *ex parte* procedures applicable to permit-but-disclose proceedings will govern our consideration of the instant complaint proceeding.⁵

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 Secretary no later than the next business day after the presentation.⁶ Persons making oral *ex parte* presentations must file a summary of the presentation no later than the next business day after the presentation.⁷ All *ex parte* filings must be clearly labeled as such and must reference this Public Notice, DA 10-757.

An original and one copy of all *ex parte* written presentations and memoranda must be filed with the Commission's Secretary. Copies sent by First Class Mail, Express Mail and Priority Mail, must be sent to: Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554. Hand-delivered or messenger-delivered copies must be sent to: Federal Communications Commission, Office of the Secretary c/o Natek, Inc., 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail) must be sent to: Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743. All filings must be made in accordance with Section 1.1206(b)(1) of the Commission's rules.⁸ In addition, one copy of each *ex parte* written presentation and memorandum should be delivered to Best Copy and Printing, Inc., Portals II, 445 12th St. S.W., Room CY-B402, Washington D.C.; and David Brown, Video Division, Media Bureau, 445 12th Street, S.W., Room 2-C828, Washington, D.C. 20554.

For further information, contact David Brown at (202) 418-1600. For Press inquiries, contact Janice Wise at (202) 418-8165.

By: Chief, Media Bureau

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⁵ See 47 C.F.R. §1.1206.

⁶ 47 C.F.R. §1.1206(b)(1).

⁷ 47 C.F.R. §1.1206(b)(2).

⁸ 47 C.F.R. §1.1206(b)(1).

We were very pleased to receive the FCC's decision. The FCC now has held that Raycom's transaction with HITV complies with all FCC rules and policies, as we have said all along. As we have since the launch of Hawaii News Now, our team will continue to provide the best in local news, weather, and sports, along with many other valuable services to those who call Hawaii home.

We recognize that the FCC issued a fine, not because of the HITV transaction but because KFVE's public file was temporarily unavailable. It is our understanding that this issue has been rectified, as the FCC's decision states, and that all materials now are available to the public.