



Federal Communications Commission  
Washington, D.C. 20554

August 17, 2000

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and QED Accountability Project  
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Re: Application for Assignment of License of WQEX(TV) Channel \*16,  
Pittsburgh, PA from WQED Pittsburgh to Cornerstone TeleVision, Inc.  
and Application for Assignment of License of WPCB-TV, Channel 40,  
Greensburg, PA from Cornerstone TeleVision, Inc. to Paxson Pittsburgh  
License, Inc.

Dear Ms. Campbell:

This is in reference to the letter dated December 20, 1999 from you on behalf of Alliance for Progressive Action (APA) and the QED Accountability Project (QED).<sup>1</sup> In your letter, you assert that Senator John McCain and the applicants in the above-referenced assignment application proceeding violated the Commission's ex parte rules and you request that the Commission impose appropriate sanctions.

Specifically, you state that APA and QED filed a petition to deny the above-referenced assignment applications and a petition to deny WQED's application for renewal of stations WQED and WQEX on July 1997 and June 1999, respectively. You claim that Senator McCain violated the ex parte rules governing restricted proceedings by failing to serve APA and QED with copies of two letters to FCC Chairman William E. Kennard in which Senator McCain requested that the Commission act on the assignment applications on or before the Commission's open agenda meeting on December 15, 1999. You claim that the prohibited ex parte presentations had the intended effect of pressuring the

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<sup>1</sup> Letter from Angela J. Campbell, Esq., Institute for Public Representation, Georgetown University Law Center, to Christopher Wright, Esq., General Counsel, Federal Communications Commission (FCC) (dated Dec. 20, 1999); *see also* Letter from John R. Feore, Jr., Counsel to Paxson Pittsburgh License, Inc., and Steven A. Lerman, Counsel to WQED Pittsburgh, to Christopher J. Wright, Esq., General Counsel, FCC (dated Dec. 23, 1999) (responding to and denying the allegations contained in the Dec. 20 Letter).

Commission to act because the Commission did act on the assignment applications on December 15, 1999, approving them.<sup>2</sup> You also assert that the fact that the applicants would benefit from having the Commission rule on the applications by December 15, 1999 suggests that they solicited Senator McCain to send the two letters in violation of the ex parte rules.

In restricted proceedings such as the instant assignment application proceeding, ex parte presentations to Commission decision-making personnel are prohibited. In addition, section 1.1210 of the Commission's rules provides that "[n]o person shall solicit or encourage others to make any presentation which he or she is prohibited from making under the provisions of this subpart."

Section 1.1202(a) of the rules defines a "presentation" as a communication directed to the merits or outcome of a proceeding. Inquiries relating solely to the status of a proceeding or expressing concern about administrative delay are not presentations and are permissible communications under the ex parte rules.<sup>3</sup> However, "... a status inquiry which ... indicates a view as to the date by which a proceeding should be resolved ... is a presentation." 47 C.F.R. §1.1202(a). Under special provisions of the ex parte rules, oral communications in a restricted proceeding requesting action by a particular date are permissible provided that a summary of the communication is filed in the record of the proceeding and served by the person making the presentation on the other parties to the proceeding. 47 C.F.R. §§1.1202 and 1.1204(a)(11).

Senator McCain's November 17 and December 10 letters provide expressly that they are not intended to influence the manner in which the Commission decides the matter under consideration. The November letter states the "[t]his letter is not written to secure a favorable resolution for any party on any substantive issues pending before the Commission." Similarly, the December 10 letter states:

The sole purpose of this request is to secure final action on a matter that has now been pending for over two years. I emphasize that my purpose is not to suggest in any way *how* you should vote - merely *that* you should vote .... This letter is not written to obtain favorable disposition of any matter on behalf of any party to any proceeding before the Commission.

(Emphasis in original.) The letters thus focus exclusively on administrative delay and Senator McCain's concern that the matter be resolved expeditiously. There is,

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<sup>2</sup> *Memorandum Opinion and Order*, FCC 99-393 (adopted Dec. 15, 1999 and released Dec. 29, 1999), *order on reconsideration*, FCC 00-25 (adopted and released Jan. 28, 2000).

<sup>3</sup> 47 C.F.R. §1.1202(a) Note; *see Fine Music, Inc. (WFMI)*, 8 FCC 2<sup>nd</sup> 529, 530 (1967) (an inquiry or complaint directed to administrative delay "is well established as a proper subject of communication between" a Congressman and the Commission under the ex parte rules).

accordingly, no evidence in the text of the letters indicating that the applicants solicited improper *ex parte* contacts from Senator McCain that were designed to influence the Commission's decision on the merits. Nevertheless, both letters, in the context of focusing on the issue of administrative delay, request that the Commission act on the applications by the Commission's regularly scheduled December 15 open meeting. The November 17 letter states:

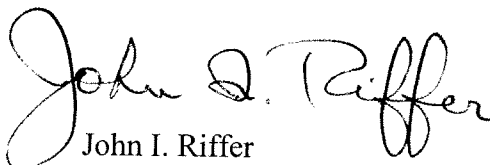
The delay that has already occurred appears incompatible with the responsible execution of the Commission's statutory duties, and further delay would be unacceptable. Please be advised, therefore, that consistent with this Committee's oversight responsibilities I respectfully request that the Commission act on these applications at its regularly-scheduled monthly meeting in December if it has not acted on them in the interim.

Likewise, the December 10 letter refers to Senator McCain's prior, November 17 request that action be taken by the meeting date, and notes that the applications do not appear on the Commission agenda for that up-coming meeting. It asks for an explanation concerning why the Commission will or will not be prepared to act on the applications at the meeting.

These communications, because they ask for action by a specific date, were presentations as defined by the Commission's *ex parte* rules. Accordingly, they should have been served on the parties to the proceeding. We note, however, that both the November 17 and December 10 letters explicitly requested that the Commission treat the letters "in compliance with all ... procedural rules." On December 15, 1999, the Commission's staff did provide the parties with all of the Commissioners' responses to the letters, and provided Alliance with Senator McCain's in-coming letters, albeit belatedly. Because the in-coming letters expressed no view as to how the Commission should resolve the underlying proceeding, however, it appears that Alliance was not prejudiced by its inability to respond to the letters. We further note that Senator McCain's December 10 letter expressly stated that he would not entertain any oral responses of any kind from the Commission staff, "[i]n order to assure that no oral *ex parte* communications on the merits of the applications take place." It thus appears that the *ex parte* violations here were inadvertent.

In view of the foregoing, we conclude that no further action on this matter is warranted.

Sincerely yours,

A handwritten signature in cursive script that reads "John I. Riffer". The signature is written in dark ink and is positioned above the typed name and title.

John I. Riffer  
Assistant General Counsel  
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The Honorable John McCain  
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