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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
1998 Biennial Regulatory Review —)
) CS Docket No. 98-54
Part 76 – Cable Television Service)
Pleading and Complaint Rules)

COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION

The National Cable Television Association (“NCTA”), by its attorneys, hereby submits its comments in the above-captioned proceeding. NCTA is the principal trade association of the cable television industry in the United States. Its members include owners and operators of cable television systems serving over 80 percent of the cable television customers in the United States, as well as program networks and equipment suppliers.

DISCUSSION

The FCC seeks comment in this proceeding on ways in which to streamline and simplify its cable pleading and complaint rules. We agree with the Commission’s suggestion that this “would likely serve the public interest by lessening confusion and reducing the regulatory burden on franchising authorities, cable operators, and other interested persons making filings under our Part 76 rules.”¹ We offer some suggestions below.

¹ Notice ¶ 2.

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As the Notice recognizes, there are a variety of differing rules in Part 76 governing the filing and service of petitions and complaints.² Some deadlines for responsive pleadings are triggered by an FCC public notice;³ others hinge on when a complaint or petition is served or even filed at the FCC.⁴ The time allowed for filing in response to an initial pleading also varies based on the type of action requested. In some cases, the rules provide a 30-day response period and a 20-day period for reply;⁵ in other cases the rules require answers and replies on a more expedited schedule.⁶

The Notice seeks comment on “whether these types of differences should be maintained or whether in circumstances of similar pleadings, the process rules associated with those pleadings should be the same.”⁷ To the extent that the Commission can make the filing deadlines for like pleadings uniform, this would certainly help minimize confusion in this area.

While this is an admirable goal, there may be limitations on the Commission’s ability to standardize all Part 76 pleadings, such as statutory deadlines for resolving certain types of disputes. For example, the Communications Act imposes a 120-day deadline on FCC action in

² Notice ¶ 3.

³ See, e.g., 47 C.F.R. § 76.7(a)(1) (must carry complaint).

⁴ See, e.g., 47 C.F.R. § 76.1003 (program access).

⁵ See, e.g., 47 C.F.R. § 76.9 (petition to show cause); 47 C.F.R. § 76.1003 (program access adjudicatory proceeding).

⁶ See, e.g., 47 C.F.R. § 76.916 (petition for recertification: opposition due 15 days after filing and service; replies due 7 days later); 47 C.F.R. § 76.1002 (petition for exclusivity; reply due 30 days after public notice; responses due 10 thereafter).

⁷ Notice, ¶ 3.

response to a must carry complaint,⁸ and rate complaints must be resolved within 90 days after a complaint.⁹ In other cases, such as program access, Congress required the FCC to provide “expedited review” of complaints.¹⁰ Providing a standard 30-day answer/20-day reply cycle may not be feasible, therefore, for all pleadings.

However, with respect to those pleadings for which there is no statutory deadline or expedition requirement, it makes sense for the Commission to adopt standard filing deadlines. To the extent that the Commission can make the deadlines uniform, it should expand the deadlines to provide, for example, 30 days to answer, and 20 days to reply – rather than shorten them. Parties still should be afforded adequate time in which to prepare an accurate response to a complaint or petition.

It would also be useful, at a minimum, for the FCC to adopt a centralized rule that clearly sets forth the filing deadlines for different types of pleadings under the Part 76 cable rules. In so doing, even if all the pleading cycles cannot be conformed, at least practitioners will be able to turn to a convenient place to quickly determine the appropriate filing deadline. Any such rule should also spell out the appropriate timeline for all Part 76 filings, including those that might not have a specific timeline, but rather are governed by the general filing deadlines of Part 1.

Another area where improvements could be made concerns pleading service requirements. Where the deadline for a responsive filing depends on the timing of service of a document, it is particularly important that service be made on the correct entity within an organization. For

⁸ 47 U.S.C. § 614(d)(3).

⁹ Id., § 623(c)(3).

¹⁰ Id., § 628(f)(1) (program access).

example, a complaint might be filed at a cable system level, when in fact the person to whom it should have been directed is located elsewhere (such as company headquarters); valuable time for preparing a response may be lost as that pleading is routed to the appropriate person within the organization. To the extent that the rules use the service date as the time from which a responsive deadline runs, the Commission's rules should ensure, to the maximum extent possible, that service is made on the appropriate party. To that end, the rules should require that if a cable company is represented by counsel, the complainant should attempt to identify that counsel and serve the complaint on counsel as well as the party. Furthermore, in cases where service of the complaint or petition starts the pleading cycle, the FCC should require that service be provided in an expeditious manner -- through hand delivery, overnight delivery, or facsimile, followed by regular U.S. mail delivery.¹¹

Finally, the clock starts in some proceedings from the date of service of a complaint or petition, even though the FCC will later issue a public notice of the filing of that complaint or petition.¹² In those cases, in order to avoid confusion, the FCC should provide that the time for filing a responsive pleading runs from the public notice date, rather than the service date.

¹¹ Cf. 47 C.F.R. § 1.735(f).

¹² See, e.g., 47 C.F.R. § 76.1003(d)(1).

CONCLUSION

We appreciate the Commission's efforts to streamline the rules for filing complaints and petitions in the cable area. Adoption of the changes proposed herein will help to bring some standardization and expedition to filing, without compromising the ability of either side in a dispute to have an adequate opportunity to fairly respond.

Respectfully submitted,



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