



CRISINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re)
)
Comcast Corporation)

MB Docket No. 10-56

Accepted/Files

APR 27 2016

To: Marlene H. Dortch, Secretary

Federal Communications Commission
Office of the Secretary

For transmission to: The Commission

DOCKET FILE COPY ORIGINAL

MOTION FOR LEAVE TO FILE RESPONSE TO "OBJECTION"

Entertainment Studios, Inc. and the National Association of African American-Owned Media ("Petitioners") hereby move for leave to file a Response to the "Objection" submitted herein by Comcast Corporation ("Comcast") with respect to the Petitioners' Consolidated Reply. Although styled as an "Objection" – a pleading form not generally provided for in the Commission's rules¹ – Comcast's submission is little more than a motion urging the Commission to "disregard" Petitioners' Reply. The basis for its objection is Comcast's self-serving reading of the Commission's rules establishing pleading deadlines. Petitioners believe that that reading is incorrect and that, contrary to Comcast's claim, Petitioners' Reply was timely. Petitioners' belief is explained in the Response included as an attachment hereto and being separately filed simultaneously herewith. Since Comcast's "Objection" consists of newly-presented arguments as to which Petitioners have had no opportunity to respond, fundamental fairness dictates that

¹ As noted in Petitioner's Response, Comcast's "Objection" is not actually limited to procedural challenges to the Reply; rather, Comcast also takes the opportunity to address the merits of the Reply. The result is an odd cross between a "motion to disregard" and a surreply. In any event, Comcast should have requested leave to file its "Objection". It failed to do so. While Petitioners could raise their own procedural "objection" to Comcast's "Objection", Petitioners are not inclined to follow Comcast in its lunge for the capillaries.

No. of Copies rec'd 0+4
List ABCDE

Petitioners should be afforded such an opportunity. Accordingly, Petitioners hereby request leave to submit the accompanying response.

Respectfully submitted,

Harry F. Cole sr

/s/ Harry F. Cole
Harry F. Cole

Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street – 11th Floor
Arlington, Virginia 22209
703-812-0483
cole@fhhlaw.com

*Counsel for the National Association of African
American-Owned Media and
Entertainment Studios, Inc.*

April 27, 2016

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re)
)
Comcast Corporation) MB Docket No. 10-56
)

To: Marlene H. Dortch, Secretary

For transmission to: The Commission

RESPONSE TO "OBJECTION"

1. Entertainment Studios, Inc. and the National Association of African American-Owned Media ("Petitioners") hereby respond to the "Objection" submitted by Comcast Corporation relative to the Petitioners' Consolidated Reply to Comcast, Aspire and Revolt. Comcast asserts that the Reply was late-filed and should not be considered. Comcast's calculation of the deadline for filing the Reply, however, is not entirely accurate, and its assertions are unfounded.

2. The Petition initiating this round of submissions was a formal pleading seeking specific, if extraordinary, relief in the unusual circumstances surrounding Comcast's conduct following the 2011 disposition of the applications in Docket No. 10-56. It was not an *ex parte* "comment" on the applications that were the original subject of that docketed proceeding because those applications were acted on five years ago, and that action has long since become final. Rather, the Petition requested initiation of new Commission action in light of Comcast's misconduct following that action.

3. A copy of the Petition was formally served on Comcast by mail. The rules provide that oppositions to petitions may be filed within 10 days of the filing of the petition, plus an additional three days if the petition is served by mail. *See* Sections 1.45(b), 1.4(h). Understanding its Petition to be subject to these provisions, the Petitioners calculated that oppositions could be

filed up to and including April 6, *i.e.*, 13 days following the March filing of the Petition. Comcast filed its Opposition on April 4, 2016, declining, intentionally or otherwise, to avail itself of the full available time as calculated by the Petitioners. But at least one party – Aspire – did file a letter constituting, in effect, an opposition to the Petition on April 5, 2016, one day *after* the deadline as calculated by Comcast.¹ This confirms Petitioners’ calculation of the deadline for oppositions.

4. A total of three submissions were filed in opposition to the Petition: Comcast’s Opposition and letters disputing aspects of the Petition filed by Aspire and Revolt. Petitioners were obligated to respond with a single consolidated reply. *See* Section 1.45(c). And that consolidated reply was to be filed “within 5 days *after the time for filing oppositions ha[d] expired*”. *Id.* (emphasis added). In other words, the deadline for replies is determined by the date by which any oppositions *could* have been filed, not by when Comcast happened to file its own opposition. Thus, the earliest that Petitioners’ reply would have been due would have been April 13, 2016, since intervening weekends and holidays are not counted when a response period is less than seven days. *See* Section 1.4(g).

5. The rules also provide for an additional three days if the pleading to which the reply is directed is served by mail. Those additional three days (plus two days because of an intervening weekend) took the deadline for the reply to Monday, April 18, 2016. Neither Aspire nor Revolt bothered to serve copies of their responses on the Petitioners by any means.² In light of that failure

¹ While the Aspire letter is dated April 4, 2016, according to ECFS it was received and posted on April 5. *See* Attachment A hereto.

² Comcast, by contrast, did provide Petitioners a copy of its Opposition by email on the day it was filed (at 8:18 p.m.). Aspire and Revolt may have thought that service of their responses on Petitioners was unnecessary because *ex parte* communications are normally permitted in “permit-but-disclose” proceedings and Docket No. 10-56 was declared to be such a proceeding. *See* Public Notice, DA-10-457, released March 18, 2010. But Section 1.1206(a) provides that *ex parte* communications are permissible in permit-but-disclose proceedings only “until the proceeding is no

to serve responses by hand or electronically, Petitioners understood that they would be entitled, at a minimum, to the additional three days that would have been permitted had Aspire and Revolt at least mailed copies of their letters to Petitioners. Since Petitioners' Reply was filed on April 15, 2016, it was early, not late.

6. While Comcast claims that the Commission should disregard Petitioners' Reply, Comcast is itself unable to do so. Instead, Comcast includes in its Objection a surreply of sorts addressing the merits of Petitioners' Reply. That, of course, is ordinarily inappropriate (absent specific leave to do so, which Comcast did not bother to request) and, therefore, objectionable. But Comcast's carefully limited assertions are nothing more than conclusory claims that fail to acknowledge, much less address, the specifics of Petitioners' showing. That failure suggests that Comcast has no effective response to Petitioners' showing.

Respectfully submitted,

/s/ Harry F. Cole
Harry F. Cole

Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street – 11th Floor
Arlington, Virginia 22209
703-812-0483
cole@fhhlaw.com

*Counsel for the National Association of African
American-Owned Media and
Entertainment Studios, Inc.*

April 27, 2016

longer subject to administrative reconsideration or review or to judicial review". The actions taken in Docket No. 10-56 attained that status several years ago.

Attachment A

Image taken from Docket No. 10-56
Listing on ECFS, April 22, 2016

| <u>Proceeding Number</u> | <u>Name of Filer</u> | <u>Law Firm Name</u> | <u>Date Received</u> | <u>Date Posted</u> ▼ | <u>Exparte</u> | <u>Type of Filing</u> | <u>Pages</u> |
|--------------------------|---|--|----------------------|----------------------|----------------|-----------------------|--------------|
| <u>10-56</u> | <u>Comcast Corporation</u> | <u>Gibson, Dunn & Crutcher LLP</u> | 04/21/2016 | 04/21/2016 | No | OTHER | 3 |
| <u>10-56</u> | <u>Comcast Corporation and NBCUniversal Media LLC</u> | | 04/14/2016 | 04/15/2016 | No | LETTER | 1037 |
| <u>10-56</u> | <u>Comcast Corporation</u> | | 04/08/2016 | 04/13/2016 | No | REPORT | 15 |
| <u>10-56</u> | <u>Comcast Corporation</u> | | 04/08/2016 | 04/12/2016 | No | REPORT | 1 |
| <u>10-56</u> | <u>Entertainment Studios</u> | | 04/11/2016 | 04/11/2016 | Yes | NOTICE OF EXPARTE | 4 |
| <u>10-56</u> | <u>Comcast Corporation</u> | | 04/08/2016 | 04/08/2016 | No | LETTER | 15 |
| <u>10-56</u> | <u>Entertainment Studios</u> | | 04/07/2016 | 04/08/2016 | Yes | NOTICE OF EXPARTE | 1 |
| <u>10-56</u> | <u>Aspire Channel, LLC</u> | | 04/05/2016 | 04/05/2016 | No | LETTER | 5 |
| <u>10-56</u> | <u>Comcast Corporation</u> | <u>Gibson, Dunn & Crutcher LLP</u> | 04/04/2016 | 04/05/2016 | No | OPPOSITION | 136 |
| <u>10-56</u> | <u>Keith Clinkscales</u> | <u>Law Offices of Barbara Shulman</u> | 04/01/2016 | 04/01/2016 | No | LETTER | 1 |

CERTIFICATE OF SERVICE

I, Harry F. Cole, hereby certify that, on this 27th day of April, 2016, I have caused copies of the foregoing "Motion for Leave to File Response to 'Objection'" to be sent by electronic mail or placed in the U.S. mail, first class postage prepaid (as indicated below), addressed to the following:

The Honorable Tom Wheeler, Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
(By email – Tom.Wheeler@fcc.gov)

The Honorable Mignon Clyburn, Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
(By email – Mignon.Clyburn@fcc.gov)

The Honorable Jessica Rosenworcel,
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
(By email – Jessica.Rosenworcel@fcc.gov)

The Honorable Ajit Pai, Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
(By email – Ajit.Pai@fcc.gov)

The Honorable Michael O'Rielly, Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
(By email – mike.o'rielly@fcc.gov)

Jonathan B. Sallet, General Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
(By email – Jonathan.Sallet@fcc.gov)

Melissa M. Ingram, Vice President
Business Affairs and Channel Operations
ASPiRE
2077 Convention Center Concourse – Suite 300
Atlanta, Georgia 30337
(By first class mail)

David P. Murray, Esquire
Jessica F. Greffenius, Esquire
Willkie, Farr & Gallagher, LLP
1875 K Street, N.W.
Washington, D.C. 20006
Counsel for Comcast Corporation
(By first class mail)

Kathryn A. Zachem
David Don
Regulatory Affairs
Lynn R. Charytan
Julie P. Laine
*Comcast NBCUniversal Transaction
Compliance*
Francis M. Buono
Ryan G. Wallach
Legal Regulatory Affairs
Comcast Corporation
300 New Jersey Avenue, N.W., Suite 700
Washington, D.C. 20001
(By first class mail)

Keith T. Clinkscales, Chief Executive Officer
Revolt Media and TV LLC
1700 N. Broadway – 17th Floor
New York, New York 10019

/s/ Harry F. Cole
Harry F. Cole