

**Marcus Spectrum Solutions, LLC**

Consulting Services in  
 Radio Technology and Policy  
 8026 Cypress Grove Lane  
 Cabin John, MD 20818 USA  
 January 25, 2008

Received & Inspected  
 FEB 04 2008  
 FCC Mail Room

Office of General Counsel  
 Attention: *Ex parte* complaints  
 Federal Communications Commission  
 445 12th Street, S.W.,  
 Washington, D.C. 20554

Dear Sirs,

In accordance with the provisions of §1.1214 of the Commission's Rules I am advising you of an apparent violation of the *ex parte* rules. The filing in question involves Docket 04-186, a proceeding to which I am a party, having first filed in this proceeding on September 2, 2004 (ECFS address: [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6516482949](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516482949).)

On November 15, 2007 Jonathan Blake, Esq. of Covington & Burling LLP filed an *ex parte* notice in Docket 04-186, "TV Whitespace", on behalf of Association for Maximum Service Television, Inc ("MSTV"). The ECFS address of this notification is: [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6519812014](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519812014). The notice concerned a meeting that took place on November 13, 2007 and appears to be in violation of :

§1.1206(b)(1) that requires that *ex parte* filings be made "no later than the next business day after the presentation" and

§1.1206(b)(2) that states "More than a one or two sentence description of the views and arguments is generally required." This is further explained in the October 11, 2000 Public Notice which states,

The summaries must describe the substance of the new data or arguments and not merely list the subjects discussed. Generally, more than a one or two sentence description is required. Where there is ambiguity about whether data or arguments are already in the public record, the spirit of our rules would counsel parties to briefly summarize the matters discussed at the meeting. (Emphasis added.)

This filing is clearly only "a listing of the subjects discussed". In describing the meeting the filing states,

"Specifically(*sic*), we discussed OFT's field testing plans, concerns about the lack of geographical diversity in the sites where apparently the tests will take place, the possibility of broadcast industry support for further testing after this next initial round of testing and alternative uses for the so-called white spaces."

0

It does not reference any earlier filing. What did they say about "OET's field testing plans"? What were their "concerns about the lack of geographical diversity in the sites where apparently the tests will take place"? The world wonders.

While the filing was only one day late, this is *by no means* an isolated first time violation of these two rules. In my October 13, 2006 letter to FCC General Counsel Sam Feder I reported apparent rule violations involving the 16 following earlier MSTV filings:

[http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6518510021](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518510021)  
[http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6518510012](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518510012)  
[http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6518335029](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518335029)  
[http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6518188391](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518188391)  
[http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6516283268](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516283268)  
[http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6516282342](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516282342)  
[http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6518510022](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518510022)  
[http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6518510015](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518510015)  
[http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6518462117](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518462117)  
[http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6518359759](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518359759)  
[http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6518357430](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518357430)  
[http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6518112428](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518112428)  
[http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6518007956](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518007956)  
[http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6518007951](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518007951)  
 \*[http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6517082137](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6517082137)  
 \*[http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6516883681](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6516883681)

All of the above filings (except those marked with \*) appear to violate §1.1206(b)(1) and all appear to violate 47 CFR 1.1206(b)(2). These filings show that the instant complaint is not an isolated one. While for various reasons of standing and timeliness OGC has indicated to me that it doesn't want to investigate the compliance of these earlier filings, the instant letter is both timely and in a proceeding that I am party to.

In general there is very high compliance with *ex parte* requirements in FCC rulemakings by most parties appearing before the Commission. But for some reason MSTV has been an exception to this pattern of high compliance. Since MSTV is a well funded organization staffed by FCC veterans and represented by prominent law firms this pattern of repeated apparent violations is puzzling. In view of MSTV's repeated "short cuts" with *ex parte* rules I request that you consider sanctions pursuant to §1.1216 for this repeated misconduct.

Sincerely,



Michael J. Marcus, Sc.D., F-IEEE  
 Director