

May 2, 2008



Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

RE:: MB Docket No. 07-42
Notice of Oral *Ex Parte* Presentation

Dear Ms. Dortch:

On April 30, 2008, on behalf of NAMAC, *et al.*, Harold Feld of the Media Access Project met with Christina Pauze, Legal Advisor, Media to Commissioner McDowell, with regard to the above-referenced proceeding. Mr. Feld made the following points:

1. WealthTV has a complaint pending before the Bureau for over 120 days. It is clear that the process is not working and that internal reforms are necessary. Although NAMAC, *et al.*, believe that sufficient notice was given in the *NPRM* to provide adequate notice for substantial changes in the rules, the Commission has authority to impose certain internal procedural reforms (such as a voluntary “shot clock”) and clarify other matters (such as the burden of proof needed to establish a *prima facie* case) through an immediate policy statement. It can also seek seek further comment on specific proposed changes.
2. For reasons explained in their reply comments, NAMAC, *et al.*, support elimination of the *prima facie* case requirement that the use of *post hoc* sanctions to discourage frivolous cases. If the Commission elects to retain the *prima facie* screen, the Commission must clarify what applicants must prove to meet this burden, and have rules of discovery that will permit complainants to produce documents that are under the control of the cable operator. Further, once complainants have met their burden to show a *prima facie* case, the burden should shift to the cable operator. Finally, complainants should be permitted to introduce evidence that shows a pattern of discriminatory conduct as part of the *prima facie* case.
3. The Commission should have procedures to address complaints about retaliation, including means to take evidence under procedures that protect the identity of complainants and other parties presenting relevant evidence.

In accordance with Section 1.1206(b) of the Commission's Rules this letter is being filed with your office.

Respectfully submitted,

/s/

Harold Feld
Senior Vice President

cc: Christina Pauze