
From: Solomon, David
Sent: Friday, January 02, 2009 12:28 PM
To: 'monica.desai@fcc.gov'; 'michelle.carey@fcc.gov'; 'rick.chessen@fcc.gov'; 'rudy.brioche@fcc.gov'; 'rosemary.harold@fcc.gov'; 'amy.blankenship@fcc.gov'; 'Richard Sippel'; 'Arthur.Steinberg@fcc.gov'; 'Kathleen Wallman'; 'dfrederick@khhte.com'; 'jblake@cov.com'; 'glevy@cov.com'; 'Arthur H. Harding'; 'Gary Carney'; 'Henk Brands'; 'Jay Cohen'; 'Micah M. Caldwell'; 'sbonderoff@paulweiss.com'; 'Seth Davidson'; 'Arthur J. Steinhauer'; 'Bruce Beckner'; 'Cody Harrison'; 'Mark Denbo'; 'Rebecca Jacobs'; 'David Mills'; 'J. Christopher Redding'; 'Jason Rademacher'; 'Tollin, Andrew'; 'david.toscano@dpw.com'; 'James L. Casserly'; 'Jonathon Friedman'; 'Megan Anne Stull'; 'Michael Hammer'; 'Michael Hurwitz'; 'Michael P. Carroll'; 'Elizabeth Mumaw'; 'Gary Schonman'; 'Kris Monteith'; 'mary.gosse@fcc.gov'; 'matthew.berry@fcc.gov'
Cc: 'Zachem, Kathy'
Subject: RE: WealthTV v. Comcast et al.

[Copying Matthew Berry per below.](#)

David H. Solomon
Wilkinson Barker Knauer, LLP
2300 N Street, N.W., Suite 700
Washington, DC 20037-1128
202-783-4141 (phone)
202-383-3369 (direct)
301-467-5813 (cell)
202-783-5851 (fax)
dsolomon@wbklaw.com
www.wbklaw.com

From: Solomon, David
Sent: Friday, January 02, 2009 11:10 AM
To: monica.desai@fcc.gov; 'michelle.carey@fcc.gov'; 'rick.chessen@fcc.gov'; 'rudy.brioche@fcc.gov'; 'rosemary.harold@fcc.gov'; 'amy.blankenship@fcc.gov'; 'Richard Sippel'; 'Arthur.Steinberg@fcc.gov'; 'Kathleen Wallman'; 'dfrederick@khhte.com'; 'jblake@cov.com'; 'glevy@cov.com'; 'Arthur H. Harding'; 'Gary Carney'; 'Henk Brands'; 'Jay Cohen'; 'Micah M. Caldwell'; 'sbonderoff@paulweiss.com'; 'Seth Davidson'; 'Arthur J. Steinhauer'; 'Bruce Beckner'; 'Cody Harrison'; 'Mark Denbo'; 'Rebecca Jacobs'; 'David Mills'; 'J. Christopher Redding'; 'Jason Rademacher'; 'Tollin, Andrew'; 'David Toscano'; 'James L. Casserly'; 'Jonathon Friedman'; 'Megan Anne Stull'; 'Michael Hammer'; 'Michael Hurwitz'; 'Michael P. Carroll'; 'Elizabeth Mumaw'; 'Gary Schonman'; 'Kris Monteith'; 'mary.gosse@fcc.gov'
Cc: Zachem, Kathy
Subject: RE: WealthTV v. Comcast et al.

Dear Ms. Desai:

All the cable defendants in this case strongly oppose the December 31, 2008 email request by WealthTV and MASN that the Media Bureau immediately issue an order providing for the parties to supplement the record in MB Docket No. 08-214. Consistent with the informal nature of Ms. Wallman's communication, in addition to copying the other parties and the ALJs as Ms. Wallman did, we are also copying the cable defendants' response on the legal advisors to the Chairman and

Commissioners, so that they may provide prompt direction or guidance to the Bureau as to how to proceed consistent with the views of the majority of the Commission.

A precipitous rush to judgment by the Bureau on delegated authority in these cases (including the NFL case, which the Bureau just attempted to seize from the ALJ on December 31) would only further undercut the ability of the full Commission to decide them in a rational, fair and legally sustainable manner. The Bureau should not take any further action until the full Commission and the ALJ act on the pending motions before them to continue the hearing process. The Bureau's unprecedented and unlawful attempt to seize the cases from the ALJ notwithstanding his determination, based on his 32 years of experience, that due process prevented him from reaching a recommended decision in the case by December 9, cannot serve as a basis for further Bureau action in these cases.

Preserving the ability of the Commission to decide these cases would not only protect the due process rights of the parties but also would avoid the waste of resources of the Bureau and the parties. The parties have been actively preparing for testimony at the hearing by key fact witnesses with first-hand knowledge directly relevant to the issues designated for hearing as well as expert witnesses focused on the critical issues.

As the defendants have pointed out in their pending motions, under the procedures established by the Commission in its Second Report and Order regarding program carriage disputes, the Bureau is authorized to conduct limited discovery for the purpose of either determining that the complainant has not established a prima facie case or that there are no disputed issues of fact. However, once the Bureau decides that disputed issues of fact require more extensive discovery and referral to an ALJ for resolution, as is the case here, the Bureau has no further role or jurisdiction. Indeed, both ALJs who have been involved with these cases have concluded that the witness credibility issues in this proceeding can only be assessed through live testimony before an independent fact finder – a fundamental due process protection that cannot be provided in a paper proceeding conducted by the Bureau. Moreover, the defendants vigorously oppose any so-called “discovery” that is unilaterally dictated by the Bureau. Rather, if discovery is to be undertaken, the opposing parties must be allowed to serve requests on each other, and any confidential submissions must be preceded by an appropriate protective order acceptable to the parties.

The defendants wish to stress that they are fully committed to avoiding unnecessary administrative delay in the resolution of these proceedings, consistent with the requirements of due process. Consistent with the ruling of Judge Steinberg, the surest path to a prompt final decision is to continue with the expedited hearing already well underway, rather than to pursue a course that violates the directives established by the Commission in the Second Report and Order and tramples on fundamental due process protections, only to ultimately be remanded after months or years of needless litigation.

We are also copying the General Counsel and will enter this email into the record of the proceeding later today.

Sincerely,

David H. Solomon
Wilkinson Barker Knauer, LLP
2300 N Street, N.W., Suite 700
Washington, DC 20037-1128

202-783-4141 (phone)
202-383-3369 (direct)
301-467-5813 (cell)
202-783-5851 (fax)
dsolomon@wbklaw.com
www.wbklaw.com

From: Kathleen Wallman [mailto:wallmank@wallman.com]

Sent: Wednesday, December 31, 2008 4:50 PM

To: monica.desai@fcc.gov

Cc: dfrederick@khhte.com; jblake@cov.com; glevy@cov.com; Arthur H. Harding; Gary Carney; Henk Brands; Jay Cohen; Micah M. Caldwell; sbonderoff@paulweiss.com; Seth Davidson; Arthur J. Steinhauer; Bruce Beckner; Cody Harrison; Mark Denbo; 'Rebecca Jacobs'; David Mills; J. Christopher Redding; Jason Rademacher; Tollin, Andrew; Solomon, David; David Toscano; James L. Casserly; Jonathon Friedman; Megan Anne Stull; Michael Hammer; Michael Hurwitz; Michael P. Carroll; 'Elizabeth Mumaw'; 'Gary Schonman'; 'Kris Monteith'; Arthur.Steinberg@fcc.gov; mary.gosse@fcc.gov; 'Richard Sippel'

Subject: WealthTV v. Comcast et al.

Dear Chief Desai,

WealthTV has reviewed the Media Bureau's order dated December 24, 2008 and is prepared to supplement the record promptly with any materials needed by the Bureau to resolve the pending matters. WealthTV respectfully requests the Bureau's guidance in the form of an order specifying what materials are needed by January 5, 2009 in the interest of minimizing administrative delay.

The attorneys for MASN have authorized me to say that MASN joins in this request.

- Kathy Wallman