



Comcast Corporation  
2001 Pennsylvania Ave., NW  
Suite 500  
Washington, DC 20006  
202.379.7100 Tel  
202.466.7718 Fax  
www.comcast.com

January 22, 2009

**VIA E-MAIL**

Honorable Michael J. Copps, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-B115  
Washington, DC 20554

Re: MB Docket No. 08-214

Dear Chairman Copps:

Congratulations on your appointment as interim Chairman. We look forward to working constructively with you in your new capacity.

We recognize that you will need to focus much of your attention on the broadcast DTV transition, either to maximize the success of the transition on February 17 or to reorganize the work of the agency and other stakeholders toward a different transition date, as Congress may determine. We understand the urgency of the issues surrounding the DTV transition and respect your priorities in that regard.

As you consider other issues pending at the Commission that also require immediate attention, we urge your review of a matter involving six separate program carriage complaints – including three against Comcast – that were designated for hearing before an Administrative Law Judge (“ALJ”) last October. Prompt action is required to ensure that these cases proceed expeditiously to final decisions in a manner that respects the due process rights of all the parties. The other defendants in these cases – Time Warner, Cox, and Bright House – have authorized us to state that they join in this letter.

The Office of Administrative Law Judges has handled its initial charge capably and professionally, holding pre-hearing conferences, clarifying ambiguities in the Media Bureau’s Hearing Designation Order (“HDO”), establishing dates for the completion of discovery and the commencement of the hearings, and otherwise pressing the three complainants and four defendants to work cooperatively to prepare the cases for trial on an expedited basis, consistent with an orderly discovery and trial and mindful of due process. The schedule that the ALJ established – after hearing the concerns of all of the parties – was endorsed by the Enforcement Bureau, which advised the ALJ that such a schedule was “consistent with what the Commission and the Media Bureau wanted.” The parties were proceeding diligently with the discovery process under an expedited schedule that would have resulted in timely hearings and decisions in these six complex cases – far more quickly than ALJs have historically decided even a single fairly simple case.

Nonetheless, at the urging of the complainants, the Media Bureau – on Christmas Eve and New Year’s Eve – issued unprecedented and unlawful orders that purported to terminate the ALJ processes. The four defendants filed an emergency application for review and an emergency motion for stay, both challenging the Bureau’s order and asking the Commission to restore the orderly ALJ process so that the cases could be resolved expeditiously in a legally sustainable manner. The complainants have opposed those requests, making it clear that they are indifferent to the due process concerns that two ALJs have articulated, and thereby causing the hearing process to grind to a halt.

The Media Bureau and the complainants ignore the very premise of the Media Bureau’s original *HDO* – that the numerous unresolved factual and related credibility issues should be resolved by an independent fact-finder in trial-type hearings. As the ALJ noted, “as an examination of the *HDO* will reveal, each factual situation appears to be unique and intricate” and “the credibility of several witnesses will be at issue due to their differing recollections and expert witnesses’ statements are also involved.” Nothing has changed since issuance of the *HDO* that would justify premature Media Bureau action on paper records instead of ALJ hearings that would, in the ALJ’s words, “develop a full and complete record and afford the parties their due process rights....” If the Media Bureau proceeds to decisions without hearings, the result will be the same as what the ALJ predicted if he tried to finish the hearings within 60 days – “the distinct possibility of a remand for additional evidentiary hearings resulting, ultimately, in an unnecessary and undue delay in the final resolution of this complicated proceeding.”

The Chief ALJ recently issued an order that underscores the complexity of the cases and the irregularity of the Media Bureau’s interference in the adjudicative process, and suspends the ALJ process until the Commission rectifies the anomalous situation that results from the Media Bureau’s actions. As the ALJ has indicated, there is now “a unique state of confusion on jurisdiction” that only the Commission can rectify. Even one of the complainants – the NFL – has acknowledged the need for a “prompt ruling” by the Commission on this conflict.

The urgency of the need for clarification grew even more acute with the Media Bureau’s subsequent release – on the eve of Inauguration/Martin Luther King, Jr. Day Weekend – of an order that plainly states the Bureau’s intention to resolve these hearing cases without any of the procedures (meaningful document production, depositions, live testimony and cross-examination, post-trial briefing) that the *HDO* necessarily contemplated and that the ALJs have found to be essential to due process. The Media Bureau’s order requires the parties to expend significant resources responding to numerous Media Bureau documentary requests and questions by January 28 (six business days), with briefs to follow shortly thereafter. These filings by the seven parties will be sizable. The Media Bureau itself would then need to devote substantial time and effort to reviewing the responses – including evidentiary submissions – and attempting to draft decisions within the very short timeframes it established for itself in its order. All of this will be rendered moot once the cases are properly returned to the ALJ for continuation of the hearings.

