

November 16, 2005



Chairman Kevin J. Martin
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Application for Assignment of License
KPXF(TV), Porterville, California
File No. BALCT - 20020730ABO

Application for Assignment of License
KPXJ(TV), Minden, LA
File No. BALCT20031008ACZ

Dear Mr. Chairman and Commissioners:

The purpose of this letter is to notify the Commission membership of problems which may arise because of the Commission's unreasonable delay in acting on the substantial and material issues raised in two long-pending applications, and the associated staff inquiry arising therefrom. The outcome of these proceedings could have a dramatic effect on the future of digital television.

The central dispute at issue has been pending before the Commission for well over two years. While the question is important, the material facts are straightforward. Because the failure to resolve this matter will create uncertainty about the valuation of digital TV spectrum, as well as preclude the possible future transfer of properties licensed to Paxson Communications, and interfere with creditors' rights in connection with various pending and contemplated transactions involving Paxson, there is a compelling need for the Commission to take immediate action.

In both proceedings, timely petitions to deny were filed in which the petitioners disputed the legality of contract provisions binding assignees to 50 year contracts requiring them to carry 5 hours per day of programming provided by a third party. The contracts also require that the assignees cede control over 10 percent of their station's digital bitstream for the same 50 year period.

In a *Staff Decision* on February 7, 2003, the Bureau Chief found that the petition to deny in the Porterville, CA docket raised important issues as to whether Paxson was in violation of several aspects of the network affiliation rules. He then took action which the Petitioner, Kimberly Mayhew, believes was improper, namely bifurcating the assignment of the license from the investigation of the network affiliation rules. The Bureau Chief conditioned the assignment "upon compliance with any further order of the Commission requiring amendment or deletion of the Station Agreement." *Staff Decision*, p. 4.¹

¹In an unpublished March 10, 2003 letter, the Bureau Chief initiated an inquiry, requiring the applicants to provide certain information. The parties responded in a timely fashion.

Petitioner Mayhew submitted her *Application for Review* to the full Commission on March 10, 2003. She contends the decision was incorrect as a matter of law and an abuse of discretion., and asked that the Commission reverse and vacate the assignment. The last pleadings in this matter were filed on April 15, 2003, more than two years ago.

The Minden, LA proceeding raises similar issues. Petitioner Common Cause filed its *Application for Review* with the full Commission on April 14, 2004. The last pleadings in that matter were filed on June 21, 2004.

Over two and a half years have passed since the staff acknowledged that these circumstances raise serious issues. Even so, the Commission has yet to address the undisputed facts which have been presented. Accordingly, I must now call upon the Commission to:

complete the staff inquiry

complete action on the Applications for Review

and

issue an order invalidating contractual provisions which violate the network affiliation rules.

Failure to act promptly may force the petitioners to seek appropriate legal remedies. In that regard, please be aware that the unconscionable delay in action on the investigation and the *Applications for Review* constitutes agency action wrongfully withheld within the meaning of 5 USC §706(1).

Respectfully submitted,

Andrew Jay Schwartzman
Counsel to Petitioners Kimberly Mayhew
and Common Cause

cc. Sam Feder, Acting General Counsel
Donna Gregg, Acting Chief, Media Bureau
Roy J. Stewart, Senior Deputy Chief, Media Bureau
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Clay C. Pendarvis, Associate Chief, Video Division