

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Dayton Access Television, Inc., et al.,)	
Petitioners,)	
)	
v.)	No. 07-4467 (consolidated
)	with No. 08-3023)
Federal Communications Commission)	
and United States of America,)	
Respondents.)	

UNOPPOSED MOTION TO HOLD IN ABEYANCE

The Federal Communications Commission respectfully moves to hold this case in abeyance. Counsel for the Commission has discussed this motion with counsel for petitioners Dayton Access Television and Montgomery County. Both petitioners have authorized us to represent that they do not oppose this motion.

Petitioners seek review of the Commission’s second order in its video franchising proceeding: *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, 22 FCC Rcd 19633 (2007) (“*Second Order*”). In that order, the Commission extended to incumbent cable operators several of the rules that it had previously adopted for new entrants in the first order in this proceeding. Those rules, which are based on the FCC’s interpretation of certain provisions of the Communications Act, are designed to preclude local franchising authorities from imposing unreasonable demands on

new cable franchise applicants or incumbent cable operators with respect to franchise fees, support for public, educational, and governmental channels, or the regulation of non-cable services. *See Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, 22 FCC Rcd 5101 (2007) (“*First Order*”).

This Court is reviewing challenges to the *First Order* in a separate case, *Alliance for Community Media v. FCC*, No. 07-3391 (and consolidated cases). Oral argument in that case was held on February 6, 2008. Because that case presents some issues that are similar (if not identical) to petitioners’ claims in this case, it would be most prudent for the Court to defer review of the *Second Order* until it has completed review of the *First Order*.

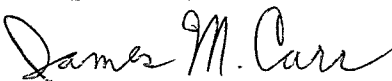
There is also another good reason for the Court to hold this case in abeyance. Several parties have petitioned the Commission for reconsideration of the *Second Order*. Those reconsideration petitions raise some of the same issues that Dayton Access Television and Montgomery County are likely to raise in this case.

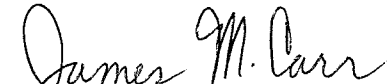
When petitions for judicial review of an FCC order and petitions for agency reconsideration of the same order have been filed by different parties but present overlapping issues, courts typically “hold the appeal in abeyance pending the Commission’s further proceedings, keeping the record open for supplementation to

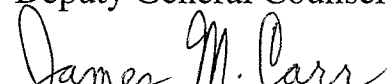
reflect those proceedings.” *Wrather-Alvarez Broadcasting, Inc. v. FCC*, 248 F.2d 646, 649 (D.C. Cir. 1957). In the interest of judicial economy and efficiency, this Court should follow that approach here.

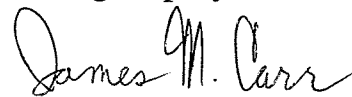
For all of these reasons, the Court should grant the Commission’s unopposed motion to hold this case in abeyance.

Respectfully submitted,


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March 19, 2008

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v.

Federal Communications Commission and USA, Respondents.

Certificate Of Service

I, Sharon D. Freeman, hereby certify that the foregoing "Unopposed Motion to Hold In Abeyance" was served this 19th day of March, 2008, by mailing true copies thereof, postage prepaid to the following persons at the addresses listed below:

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