

Received & Inspected

JUN 10 2013

FCC Mail Room

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June 3, 2013

License Renewal Processing Team
Video Div., U.S. FCC
445 12th Street SW Room 2-A665
Washington, DC 20554

[Informal opposition to Denali Media pleading to DENY public comments of Walter Gregg re KATH/KTVA](#)

- **Re KATH-LD; Facility: 188833; Application: BALDTL-20130125AAL;**
- &**
- **Re KTVA TV; Facility: 49632; Application: BALCDT-20130125ABD.**

Dear Reader:

Denali Media has filed a pleading [*Opposition to Informal Objections*, May 14, 2013] to deny two Informal Objections submitted by Walter Gregg on February 22, 2013 and received by the Commission on February 26, 2013. This seems at least slightly unusual, since informal filings are at the heart of the FCC's goal of encouraging viewer involvement in broadcasting matters:

"We at the FCC want to you to become involved, if you have any concerns about a local station -- including its general operation, programming, or other matters -- by making your opinion known to the licensee and, if necessary, by advising us of those concerns so that we can take appropriate action." [Note 1]

This additional timely-filed Informal Objection responds to certain inaccuracies in Denali Media's pleading, and restates the purpose of the original Informal Objections by Walter Gregg. Additionally, this Informal Objection includes evidence of the potentially inadequate public notice.

Denali Media's pleading responding to informal objections from a viewer was disrespectful, dismissive and rude. If this is an indication of how GCI -- the parent company -- intends to treat viewer concerns, it is not a good sign of a good faith effort to be responsive to the needs and problems of its local community of license, which is a fundamental duty of licensees. The FCC states:

"In exchange for obtaining a valuable license to operate a broadcast station using the public airwaves, each radio and television licensee is required by law to operate its station in the 'public interest, convenience, and necessity' [Note 2]

The pleading alleges that the heart of my objections is the potential loss of existing on-air NBC and CBS programming. This is not accurate. Perhaps

the most significant issue I raised is procedural: Was public notice adequate? I also expressed concerns about competitiveness and accessibility, both of which are well within the authority of the FCC to consider, and conspicuously absent in Denali Media's response to my letter. Whether there is sufficient merit in any of my concerns to be addressed in the FCC decision on the license transfer is for the Commission, not Denali Media, to decide.

To the best of my knowledge, the FCC doesn't need to respond to an informal objection in any way. Viewers are allowed to submit informal objections (or letters in favor) as part of the process.[Note 3] That doesn't make them parties.[Note 4] It is not even required that comments be served on the parties,[Note 5] though I did send courtesy copies, by certified mail, to the applicants. I am not a lawyer, but it seems to me that it must be unusual for informal submissions to be approved or denied, because they're not motions in the legal sense. They're merely public opinions that the FCC may consider. I should think in some cases there could be hundreds of letters from viewers. I don't believe the Commission should make a habit of approving or denying either informal objections or letters of support. It is the license application that should be approved or denied, not the public input. This, of course, assumes that the Commission actually does want public input. If public opinions must be marked as approved or denied, it will be a substantial disincentive for members of the public to participate in the process.

I should also note in response that Denali Media alleges that one of my informal objections (re KATH) is not part of the FCC docket. That must be a factual error on their part. I sent my comments on KATH and KTVA to the FCC in separate express mail packages. Attached as Exhibits A and B are the U.S. Post Office proofs of delivery to the FCC of those comments with signature confirmation.

Public Notice

Denali Media dismisses my concern about public notice by claiming that the FCC does not require notifying viewers that they have a right to comment; does not require giving a deadline for commenting; and does not require including contact information other than the transmitter location. It is difficult to square this bland pronouncement with the Commission's own statement that applicants for license assignment are

"...required to publish a series of notices in the closest local newspaper, containing information similar to that noted above regarding renewal applications...."[Note 6]

The information referenced states that applications must provide

"...the filing date for the renewal application, the date by which formal petitions against it must be filed, and the location of the station's public inspection file that contains the application."[Note 7]

The notices in the local newspapers only provided the filing date. They omitted the deadline for filing formal petitions against it and made no

mention of the station's public inspection file. (The KTVA notice did link to Station Profiles at <https://stations.fcc.gov>, through which one may search for KTVA and locate the application, but that is not the same thing as the public inspection file at the studio.) The published notices are attached as Exhibits C and D.

The Commission's own statement to the public on what is in fact required in a public notice must be taken as actual policy, notwithstanding Denali Media's views. Additionally, the Commission itself has expressly stated that members of the public filing an

... informal objection or positive comment should identify (1) the station's call sign, city and state, (2) the station's facility ID number, and (3) the license ... application file number.[Note 8]

While that doesn't establish that a valid public notice must include this information, it certainly establishes that it should. At the time I drafted my letters, the FCC's online database (CDBS) wasn't even turning up any results for KATH whether by call sign or city. I was puzzled, to say the least. It wasn't until I found the FCC's public notice about the transaction that I found the facility number. A search on the facility number worked. Today, a search on KATH turns up the station right away. I don't know what changed, and it doesn't matter. The point is, the public notice in the newspapers met neither the letter nor the spirit of the law. Public notice isn't notice at all if it doesn't alert a viewer or reader that they may have an interest to defend.

Denali Media's footnote 15 directs the Commission to the FCC's guidance to the public on how to comment on rule making proceedings, primarily.[Note 9] They completely ignore the Commission's specific instructions to the public on how to comment on broadcast licensing matters. [Note 10] Those, of course, are the instructions I relied on.

The Media Bureau, U.S. FCC, 'The Public and Broadcasting' (July 2008)[Note 10] specifically directs the public that they should direct questions on how to comment on broadcast matters to the appropriate Broadcast Information Specialist, by post, telephone, email, or fax. The attempts I made to take advantage of this included an email,[Note 11] attempted phone calls that only reached voice mail, and a fax.[Note 12] The FCC never responded. It's hard to say why this approach to getting information failed. In this instance, requests to get information on how to comment were not readily available to the public, certainly not if you followed the FCC's publicized procedure to get that information.

If we go by the FCC website, it appears that outside of formal pleadings, I am the only member of the general public in the entire state of Alaska to have commented on this matter.[Note 13] That doesn't seem credible. There are 780,000 people in the state. Anchorage, where KTVA is located, had 291,826 residents in 2010, according to census numbers. Juneau, where KATH is located, had 31,275. If my public comments were truly the only ones received, that would seem to be pretty good evidence that public notice was not adequate. On the other hand, it is clear that the FCC website is incomplete, because only one of my two comments is listed as of June 2, 2013. It's also reported that state Senator Dennis Egan has written the FCC about the matter,[Note 14] but this too is unmentioned on the website.

Still, I have to go by the website, which does not log any public comment other than one of mine.

Given the apparent insufficiency of public notice and the apparent breakdown of the FCC's own system for assisting the public to provide input, it is not at all unreasonable to request that the Commission consider requiring another period of public notice that *does* include the information needed for a member of the public to submit a comment. Requiring another period of public notice before reaching a decision seems to me a minor burden. Whether such an extension is truly warranted is, of course, for the Commission to decide. I merely submit the observation for your consideration.

Public Interest

Is GCI, the parent company of Denali, already operating contrary to the public interest? Denali Media did not even respond to my concerns about competition or GCI's lack of commitment to accessibility. As stated in my first letter, GCI basic cable, as a practical matter, is incompatible with directly connected digital cable-ready sets because of the lack of compatible channel line up. But the arrangement without the convertor box is essential for people with dementia. Antietam Cable of Maryland shows that it is perfectly possible to provide basic cable that is fully compatible with digital cable-ready sets with a logical, understandable channel map.[Note 15] GCI chooses not to do this. That is not a good sign of a company truly interested in serving the *public's* interest, convenience, and necessity.

Denali media has also suggested that to the degree my concerns relate to cross ownership they should be raised in a general rulemaking proceeding rather than a specific licensing proceeding. If there is sufficient merit in the concerns to warrant that, nothing precludes the Commission from initiating such a proceeding on its own motion. However, it is not actually required to do so. The U.S. Supreme Court has upheld the authority of executive agencies to impose new rules in non-rulemaking proceedings, when agencies determine that they are justified. But broad new rulemaking is hardly required to impose conditions on license assignments. The Commission has already done that in previous license assignment matters.[Note 16]

Perhaps I can end on a note of agreement. In the pleading to DENY my public comments, Denali Media stated

"Assignees have no plans to end KTVA or KATH-LD's affiliations with CBS or NBC."

It might have alleviated some concerns if they actually said so so in their news release and other public statements, but to date, they have not. Additionally, they do not mention the CBS 11 news or the KTUU 2 news, which from a viewer's perspective are certainly part of those affiliations. Nevertheless, the statement seems to assure the Commission that network level programming will continue. The question that must be asked is this: If Denali Media is willing to tell the Commission that the network affiliations will continue, why are my 'demands' (their word, not mine) to

provide "detailed programming plans" or "[a]ssurances that existing network programming will continue" extreme and unreasonable?

Do they or do they not represent to the Commission and to the public that they will undertake and commit to continuing the network level programming? The public has an interest in the answer to that question. So does the Commission. No one could be expected to provide a lifetime guarantee, but something more concrete than a snide comment in a petition to DENY is surely required before they are entrusted with the public's airwaves. Once again, they do not sound like a company that intends to be responsive to the needs and concerns of the local community. They sound like a monopoly in the making -- like someone who thinks they will own the airwaves rather than holding them in trust for the public's benefit. Perhaps that is not surprising. They are the only significant cable company in the state, passing 90% of the state's households with 64% penetration.[17] They also have a 70% share of the consumer broadband market, thereby capturing most of those who obtain video via broadband.[18] Where a company already has such massive control of the means of communications, anything that may further increase their control and decrease competition needs to be looked at carefully.

That really is my bottom line. If the transfers are approved, Denali Media should be legally required to operate in the public interest first and to their shareholder's interest second. Despite the abolition of cross-ownership rules, there is a very real conflict of interest. As a public company, GCI is legally required to serve its shareholder's interests first unless the Commission requires otherwise as a condition of the license, even if these are merely the conditions that apply to any licensee. But in the Comcast-NBCU Order,[Note 16] the Commission went much farther, adopting agreements between Comcast/NBC and affiliates and other networks to prevent abuses. Whether to approve the transfer or attach similar special conditions is of course for the Commission to decide.

While not required to do so, I certify that a copy of this letter has been mailed to the applicant stations KTVA, 1007 West 32nd Avenue, Anchorage, 99503 and KATH-LD, 1107 West 8th Street Suite 2, 99801; and to the proposed assignee, Denali Media, c/o Kurt Wimmer and Eve Pogoriler, Covington & Burling LLP; 1201 Pennsylvania Avenue NW, Washington, DC 20004. (It is at least worthy of note that the purported public notice for the transfer of KTVA does not even include a mailing address for service of comments, formal or otherwise.)

Finally, I certify that the statements made in this informal comment to the FCC are true to the best of my knowledge and belief.

Thank you.

Very truly yours,



Walter Gregg

Notes

1. The Media Bureau, U.S. Fed. Communications Comm'n, [The Public and Broadcasting 6 \(Jul. 2008\)](#) (fcc.gov/guides/public-and-broadcasting-july-2008).
2. *Id.*
3. *Id.* at 11.
4. [Definitions in Ex Parte Communications](#) 47 C.F.R. §1.1202(d) (May 30, 2013), stating that viewers submitting comments are not parties and are not made parties by mere service of copies. (w-gregg.juneau.ak.us/2013/47rCFR1.1202 redirecting to ecf.gov).
5. [Exempt Ex Parte Communications](#), 47 C.F.R. §1.1204(a)(8) (May 30, 2013), stating that viewers submitting comments are exempt from ex parte communications prohibitions (w-gregg.juneau.ak.us/2013/47CFR1.1204 redirecting to ecf.gov).
6. The Media Bureau, *supra*, at 12.
7. The Media Bureau, *supra*, at 11.
8. Federal Communications Comm'n, [Public Participation in the License Renewal Process](#) 3 (Oct. 2003) (transition.fcc.gov/localism/renew_process_handout.pdf), stating that the commenting public should include the station's call sign, city, state, facility ID number, and license application file number.
9. Federal Communications Comm'n's, [How to Comment](#) (undated) (fcc.gov/guides/how-comment), directed primarily at rulemaking proceedings.
10. The Media Bureau, U.S. Fed. Communications Comm'n, [The Public and Broadcasting](#) (Jul. 2008), directed at how to comment in licensing proceedings (fcc.gov/guides/public-and-broadcasting-july-2008).
11. EMail from Walter Gregg to tvinfo@fcc.gov, Feb. 1, 2013 requesting information on the public comment process. No reply was ever received.
12. Fax from Walter Gregg to the FCC tvinfo section at 1-202-418-2827 on Feb. 11, 2013 inquiring about the same matter and requesting a response. None was ever received.
13. As of June 2, 2013, the [FCC's KTVA page](#) at transition.fcc.gov/fcc-bin/tvq?facid=49632 shows only one comment (mine) from the general public under correspondence or assignment/transfer details. The [FCC's KATH page](#) at transition.fcc.gov/fcc-bin/tvq?facid=188833 shows no comments at all from the general public under correspondence or assignment/transfer details.
14. Stigall, [AK Broadcasters to FCC](#), Juneau Empire, Mar. 31, 2013 at juneauempire.com/state/2013-03-31/ak-broadcasters-fcc-more-talk, citing "a letter to the FCC from Juneau's Sen. Dennis Egan."
15. Antietam Cable Television, [New Channel Lineup](#), (no date in current version, previously Dec. 2007) (http://antietamCable.com/support/digital_conversion/new_channel_lineup.html).
16. Applications of Comcast Corp., General Electric Co. and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses, 26 FCC Rcd 4238 (2011) (hereinafter the Comcast-NBCU Order).
17. GCI, [About GCI](#) (Ver. Jun. 3, 2013) (gci.com/about).

18. GCI, [Denali Media Holdings Purchases Anchorage CBS Affiliate and Southeast Alaska NBC Affiliates \[Press Release\]](#), Nov. 9, 2012, at gci.com/denali-media-holdings-press-release, retrieved Jun. 3, 2013.

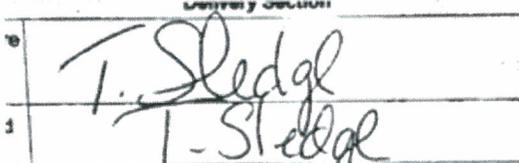
Exhibit A (50% size)



Date: 02/27/2013

WALTER GREGG:

The following is in response to your 02/26/2013 request for delivery information on your Express Mail(R) item number EI62 4360 146U S. The delivery record shows that this item was delivered on 02/26/2013 at 07:57 AM in WASHINGTON, DC 20554 to T SLEDGE. The scanned image of the recipient information is provided below.

Signature of Recipient: The image shows a scanned signature of T. Sledge on a delivery record form. The signature is written in black ink on a white background with horizontal lines. The name "T. Sledge" is clearly legible.

Address of Recipient: The image shows a scanned address of the recipient on a delivery record form. The address "FCC 20554" is written in black ink on a white background with horizontal lines.

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service

[EI62 4360 146US proof of delivery](#); showing delivery on 2/26/2013 at 7:57 AM in Washington DC 20554 to T SLEDGE, with scanned signature (w-gregg.juneau.ak.us/2013/ei624360146us.png).

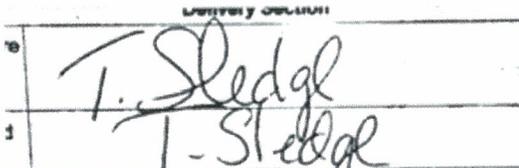
Exhibit B (50% size)

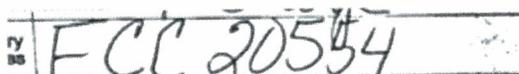


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Address of Recipient: The image shows a scanned address of the recipient on a delivery record form. The address is "FCC 20554" written in black ink on a white background. The form has a header "Delivery Record" and a table with two rows. The first row is labeled "Address" and the second row is labeled "City/State/Zip". The address "FCC 20554" is written in the first row, and "FCC 20554" is written in the second row.

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service

[EI62 4360 150US proof of delivery](http://w-gregg.juneau.ak.us/2013/ei624360150us.png); showing delivery on 2/26/2013 at 7:57 AM in Washington DC 20554 to T SLEDGE, with scanned signature (w-gregg.juneau.ak.us/2013/ei624360150us.png).

Exhibit C (150% size)

Notice [KATH-LD]

On January 25, 2013, an application was filed with the Federal Communication Commission that seeks its consent to assignment of the license for Low power TV station KATH-LD from Dan Etulain (North Star Television Network) to Denali Media Southeast, Corp. Following the assignment KATH-LD will serve Juneau and Douglas, Alaska with 0.1 kilowatts effective radiated power on Channel 35 from a transmitter located at 1107 W. 8th Street, Juneau, Alaska 99801.

Published February 6, 2013

#152338 200-002

[KATH Legal Notice](#), Juneau Empire (published Feb. 6, 2013)
(w-gregg.juneau.ak.us/2013/kath-notice.jpg).

Exhibit D (150% size)

Public Notice of KTVA Assignment Application

On January 25, 2013, an application was filed with the Federal Communications Commission to assign the licenses for television station KTVA, Anchorage, Alaska, which operates on RF Channel 28, from Affiliated Media, Inc. FCC Trust to Denali Media Anchorage, Corp.

The trustees of assignor, Affiliated Media, Inc. FCC Trust, are: Ronald A. Mayo, William Dean Singleton, and Howell E. Beigel, Jr.

Assignee, Denali Media Anchorage, Corp., and its sole shareholder Denali Media Holdings, Corp. are subsidiaries of GCI, Inc., which is wholly owned by General Communication, Inc. The officers, directors and 10% or greater voting shareholders of Assignee and its parent companies are: William C. Behnke; Bonnie Paskavan; Bruce L. Broquet; Ronald A. Duncan; Gregory Chapados; John Lowber; Lynda Tarbath; Stephen M. Brett; Jerry A. Edgerton; Scott M. Fisher; Stephen R. Mooney; James M. Schneider; William P. Glasglow; Mark W. Kroloff; Tina Pidgeon; Paul Landes; Gina Borland; Terry Nidiffer; Kathy Carr; Greg Pearce; Jimmy Sipes; Martin Cary; Gene Strid; Gary Haynes; Robert W. Ormberg; David Morris; Brad Spees; F.W. (Rick) Hitz, III; Mark Moderow; Maureen Moore; Kevin Sheridan; Dan Boyette; Krag Johnsen; Russ Doig; Jeffrey T. Roe; Lewis Schnaper; Peter J. Pounds; Jessica Graham; Marina Cottini; Jim Dunlap; Wendy Gonzalez; Jeth Harbinson; John Stanton; Theresa Gillespie; Gary Magness; Fisher Capital Partners, Ltd.; BlackRock, Inc.; GCI 401(k) Plan; Donne Fisher; William Fisher; Blake Fisher; Scott Fisher; Fisher Capital Corporation; Sue Fisher; Don Fisher; Bryan Fick and Fidelity Management Trust Company.

A copy of the application and related materials are available for public inspection online at <https://stations.fcc.gov/>.

Published: February 3, 6, 10, 13, 2013

[KTVA Legal Notice](#), Anchorage Daily News (published Feb. 3, 6, 10, 13, 2013) (w-gregg.juneau.ak.us/2013/ktva-notice.jpg).