

No. 07-3391

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

JUL 24 2007

LEONARD GREEN, Clerk

ALLIANCE FOR COMMUNITY MEDIA,)
)
Petitioner,)
)
STATE OF HAWAII, et al.,)
)
Intervenors,)
)
v.)
)
FEDERAL COMMUNICATIONS)
COMMISSION; UNITED STATES OF)
AMERICA,)
)
Respondents,)
)
AD HOC TELECOM MANUFACTURER)
COALITION, et al.,)
)
Intervenors.)

ORDER

Before: MARTIN and ROGERS, Circuit Judges; HOOD, District Judge.*

The petitioners in this case and twelve other consolidated cases seek review of the March 21, 2007, order of the Federal Communications Commission ("FCC") which adopts rules governing the award of cable franchises. Five of the petitioners move for a stay of the March 21 order pending review. The FCC and several intervening respondents oppose the motion for a stay. The petitioners have requested a ruling on the motion for a stay prior to July 20, 2007.

*The Honorable Denise Page Hood, United States District Judge for the Eastern District of Michigan, sitting by designation.

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Although Fed. R. App. P. 18(a)(1) provides that a petitioner seeking a stay of an agency decision pending review ordinarily must seek a stay from the agency, the petitioners did not request a stay from the FCC. They assert that to do so would have been futile. We do not agree. The FCC should have the opportunity to consider in the first instance the balance of the merits of the petitions for review with the harms that may result if the motion for a stay is granted or denied and the public interest.

The motion for a stay of the March 21 order pending review is **DENIED**. The petitioners may renew their motion for a stay, if appropriate, after a ruling on a stay by the FCC.

ENTERED BY ORDER OF THE COURT


Clerk