

## Hypotheticals for Ex Parte Contacts and Estoppel

### I. Hypothetical 1

#### A Cable Television Re-regulation Act

1. Section 1: The Chairman of the Federal Communications Commission may issue licenses that authorize persons to provide cable television services within a defined service area.
2. Section 2: No person may provide cable television services except in accordance with a license issued by the Chairman of the Federal Communications Commission.
1. Section 3: Cable television providers shall file the rates that they charge for cable television service with the Federal Communications Commission.
4. Section 4: If, after opportunity for a hearing on the record, the Chairman of the Federal Communications Commission determines that the rates that a cable television provider has charged in the past are unreasonable, the Chairman may revoke the license of the cable television provider.

B. Mid-Georgia Cable Television, in Macon, Ga., a licensed cable television provider, files its rates with the F.C.C. and indicates that it charges \$40 per month for basic cable service (no premium channels).

C. The F.C.C. holds a formal hearing to review Mid-Georgia's rates and Mid-Georgia submits data regarding its capital and operating expenses, subscriber base, and a variety of other factors to justify its \$40 per month rate.

D. Outside of the hearing process, a representative of STV Corporation, a satellite tv company that is expanding into the Macon area, contacts the FCC and informs the FCC that Mid-Georgia has overstated its operating expenses. (In other words, it cost Mid-Georgia less to provide cable television service than Mid-Georgia told the FCC that it cost.)

E. Based solely on the evidence submitted by Mid-Georgia, the FCC finds that Mid-Georgia's \$40 per month rate was unreasonable, and the FCC revokes Mid-Georgia's license.

F. After the decision, counsel for Mid-Georgia learns about the contact between STV Corp. and the FCC. Did the contact between STV and the FCC violate the APA?

## II. Hypothetical 2

- A. The Federal Emergency Management Agency (FEMA) is authorized to provide a variety of different types of disaster relief, including temporary housing.
- B. After a recent hurricane devastated the coastal city of Springfield, Susan Smith, a resident of Springfield, went to the emergency center that FEMA established in Springfield to apply for temporary housing.
- C. Edward Wilson, a FEMA employee who interviewed Smith, told her that she was not eligible for temporary housing because she was a part-time resident of Springfield. Wilson did not remember that FEMA had revised a policy manual regarding emergency benefits in the last year to provide that part-time residents could qualify for temporary housing if they were employed in the disaster area and they did not maintain another residence within 120 miles of the disaster area.
- D. Two months after her meeting with Wilson, Smith learned, from a friend, that FEMA would provide temporary housing to part-time residents of Springfield in the situations described in the policy manual. Unfortunately, FEMA's regulations require that all requests for temporary housing must be submitted within 30 days after a declaration of an area as a disaster area, so it is too late for Smith to apply for temporary housing.
- E. If Smith applies for temporary housing and is denied on the basis that her application is not timely, what defense might she raise? With what success?