

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In re Petition of	)	
	)	
Entravision Holdings, LLC for Modification	)	MB Docket No. 17-306
of the Television Market for Station WJAL,	)	CSR-8944-A
Silver Spring, Maryland	)	
	)	
Attn: Chief, Media Bureau	)	

**PETITION TO CHANGE *EX PARTE* STATUS**

Entravision Holdings, LLC (“Entravision”) hereby petitions the Commission to change the *ex parte* status of the above-captioned proceeding<sup>1</sup> from restricted to permit-but-disclose pursuant to Note 2 to § 1.1208 of the agency’s rules.<sup>2</sup> The positions taken by Comcast and NCTA in the instant proceeding have expanded the matters at issue beyond the “rights and responsibilities of specific parties” to “issues of broadly applicable policy.”<sup>3</sup> More specifically, Comcast’s Opposition to WJAL’s Market Modification Petition attempts to torpedo Entravision’s request to return certain cable communities to the television market now served by WJAL by making arguments that apply broadly to the universe of stations that have changed their community of license by virtue of a channel sharing arrangement (“CSA”) entered into following the voluntary auction of television broadcast spectrum (the “Incentive Auction”).<sup>4</sup>

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<sup>1</sup> *Entravision Holdings, LLC for Modification of the Television Market for Station WJAL, Silver Spring, Maryland*, Petition for Special Relief, MB Docket No. 17-306, CSR-8944-A (2017) (“Market Modification Petition”).

<sup>2</sup> 47 C.F.R. § 1.208 Note 2; *see also* 47 C.F.R. § 1.1200(a).

<sup>3</sup> *Id.*

<sup>4</sup> Comcast Cable Communications, LLC, Opposition to Petition for Special Relief, MB Docket No. 17-306, CSR-8944-A (Dec. 4, 2017) (“Comcast Opposition”). Indeed, Comcast’s and NCTA’s arguments extend even more broadly to channel sharing arrangements generally, and the underpinnings of the must-carry regime.



Consistent with Comcast’s attempt to expand the scope of the instant proceeding, in late-filed “Comments,” the industry’s trade association, NCTA, weighed in, warning of the instant proceeding’s wide impact.<sup>5</sup> As Comcast and NCTA have “raise[d] issues involving interpretation of the Commission’s rules and decisions . . . that have application broader than to just [the] parties,” the public interest warrants changing the *ex parte* status to permit-but-disclose.<sup>6</sup>

Though Entravision seeking to reverse a prior removal of WJAL from Comcast’s market represents a clear-cut market modification request, Comcast and NCTA use it as a vehicle to attempt to revisit policy decisions previously settled by the Commission, including in the 2012 *Channel Sharing Order*<sup>7</sup> and the *Incentive Auction Order*.<sup>8</sup> In establishing rules governing the Incentive Auction, the Commission expressly sought to encourage broadcaster participation by allowing potential bidders to seek potential channel-sharing partners within their DMA,

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<sup>5</sup> NCTA – the Internet & Television Association, Comments, MB Docket No. 17-306, CSR-8944-A (Dec. 14, 2017) (“NCTA Comments”).

<sup>6</sup> *Change in Ex Parte Status of the State of Tennessee’s Education Network of America’s, and Integrated Systems and Internet Solution, Inc.’s Requests for Review of the Decision of the Universal Service Administrative Company with Regard to the State of Tennessee’s Request for Discounts Pursuant to Section 254 of the Communications Act*, Public Notice, 14 FCC Rcd 7707 (1999).

<sup>7</sup> *See Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Report and Order, 27 FCC Rcd 4616 (2012) “As mandated by the Spectrum Act, a broadcast station that relinquishes spectrum usage rights in the reverse auction required by section 6403(a)(1) in order to channel share is entitled to the same cable and satellite carriage rights at its shared location as it would have at that same location if it were not channel sharing.” *Id.* ¶ 26. Further, in the context of arrangements involving a channel sharing licensee that moves to a new community of license, the Commission stated that the licensee “will have the same carriage rights at that new location as it would at that same location if it were not sharing a channel.” *Id.*, ¶ 31 n.106.

<sup>8</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, ¶ 374 (2014) (“*Incentive Auction Order*”). Per the Order, a channel sharee station’s new community of license must meet the same allotment priorities as the station’s current community. *Id.*



including arrangements that would result in changes to stations' communities of license.<sup>9</sup> As the Commission explained, "a prohibition on changes in communities of license would severely constrain a broadcaster's ability to find a channel sharing partner, thereby undermining the goals of the reverse auction."<sup>10</sup> By contrast, "[a]llowing a community of license change likely will help facilitate channel sharing arrangements, thus facilitating broadcaster auction participation."<sup>11</sup> The agency concluded that this approach was consistent with the Spectrum Act and Communications Act, and declared that "the public interest benefits that will stem from maximizing broadcasters' participation in the reverse auction through channel sharing outweighs the detriment of potential service losses."<sup>12</sup>

Significantly, the Commission specifically stated that a channel sharing "broadcaster may seek to add communities to its market which it can now reach from its new location, and, conversely, a cable system may seek to exclude communities from the broadcaster's market that the station no longer serves as a result of its move."<sup>13</sup> The agency dismissed arguments made by multichannel video programming distributors ("MVPDs") that "allowing community of license changes will cause capacity problems and increased carriage costs."<sup>14</sup> Instead, the Commission concluded, "allowing certain community of license changes, while precluding DMA changes, strikes an appropriate balance between enabling broadcasters to take advantage of the

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<sup>9</sup> *Id.*

<sup>10</sup> *Channel Sharing Outside the Incentive Auction Context Report and Order*, 32 FCC Rcd 2637, ¶ 44 n.136 (2017).

<sup>11</sup> *Incentive Auction Order*, ¶ 375.

<sup>12</sup> *Id.*, ¶¶ 375-76.

<sup>13</sup> *Id.*, ¶ 709.

<sup>14</sup> *Id.*, ¶ 377.



opportunity to channel share and limiting the impact of channel sharing on MVPDs.”<sup>15</sup> The Commission made clear that its policy would be to enable a relocated station to assert carriage rights concomitant with its new service area, and that the market modification process, as required, would be the appropriate procedural vehicle.<sup>16</sup> Thus, the governing test for market modification must be applied in the context of the Commission’s specific guidance with respect to post-auction CSAs.

Entravision relied on these clear policy declarations in weighing the costs and benefits of participation in the reverse auction. Ultimately, Entravision station WJAL executed a pre-auction CSA with WUSA, submitted an application to participate in the reverse auction, accepted a bid to surrender its valuable spectrum rights and, per the terms of the CSA, moved its transmission facilities and community of license within the Washington, DC DMA from Hagerstown, Maryland to Silver Spring, Maryland. Then, to account for the viewership within its new contour, Entravision submitted the Market Modification Petition. With respect to WJAL, Entravision engaged in precisely the decision-making the Commission fostered—opting to participate in the incentive auction process, relinquish its spectrum, and channel share with another station within the same DMA. It is wholly inappropriate for Comcast to suggest, therefore, in the context of this proceeding, that the Commission send a message that “such marketplace behavior will not be condoned.”<sup>17</sup> To be clear, the FCC not only sanctioned the kinds of actions taken by Entravision, but also openly encouraged them on the way to making

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*, ¶ 709 (“[A] full power commercial station that relocates within its DMA may gain carriage on some cable systems, but lose carriage on others, as a result of market modification requests.”).

<sup>17</sup> Comcast Opposition at 4.



available 70 MHz of licensed low-band wireless spectrum and realizing \$7.3 billion in auction proceeds for deficit reduction.<sup>18</sup>

In essence, Comcast and NCTA are seeking to relitigate the Commission’s Incentive Auction rules years after they became final and months after the auction itself concluded. Comcast asserts that the Commission’s rules “might allow an Incentive Auction winner considerable discretion to enter into a CSA with another station operating at a very different signal contour” and seek a market modification.<sup>19</sup> It argues that CSA stations “present unique challenges and considerations,” and speculates that grant of WJAL’s Petition would “trigger CSA manipulation never envisioned by the Commission” and encourage so-called “periphery” stations to partner with so-called “core” stations.<sup>20</sup> Comcast then “urges the Commission to give a hard look at *market modification petitions like this one* that attempt to transform the Incentive Auction and CSAs into a vehicle for increasing the cable industry’s must-carry obligations.”<sup>21</sup>

Similarly, in its out-of-cycle Comments, NCTA warns of the potentially broad impact of this proceeding, stating:

“Unfortunately, this situation is hardly unique. NCTA is aware of other broadcast stations using the special auction-related channel sharing rights – which were meant to encourage stations to continue over-the-air broadcasting – as a means of increasing cable carriage by moving to more populated locations. NCTA expects that more stations will try to use such moves as the impetus for filing market modification petitions, particularly if the Commission were to grant the instant petition.”<sup>22</sup>

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<sup>18</sup> See Federal Communications Commission, *The Incentive Auction “By the Numbers,”* Fact Sheet (Apr. 13, 2017), available at <http://bit.ly/2s1gbnZ>.

<sup>19</sup> Comcast Opposition, at 4-5.

<sup>20</sup> Comcast Opposition, at 3-5.

<sup>21</sup> Comcast Opposition, at 5 (emphasis added).

<sup>22</sup> NCTA Comments, at 3.



NCTA claims that granting WJAL's market modification petition would raise "serious First Amendment issues . . . here and *in other similar channel-sharing arrangements*."<sup>23</sup>

To be clear, Entravision respectfully submits that the issues considered by the Commission in the instant proceeding should be limited to the facts and law before it – including the settled policies established in the orders cited above – pursuant to which WJAL is entitled to the market modification relief it seeks. Comcast's and NCTA's arguments should be considered out of order given both that the auction is long over and the Commission thoughtfully and thoroughly addressed the issue of must-carry rights attendant to post-auction channel sharing in the *Incentive Auction Order* and elsewhere.<sup>24</sup> Further, Comcast and NCTA's claim of broad applicability is flawed -- the repercussions of any action taken with respect to WJAL would be limited to those unusual cases where, in the context of the Incentive Auction, a channel sharing station changes its community of license within its DMA and must use the market modification process to perfect carriage rights from its new location. Moreover, the universe of stations entitled to such relief was limited by the agency's subsequent decision to preclude full power stations seeking to channel share as sharee stations *outside of the incentive auction* from changing their community of license absent an amendment to the DTV Table.<sup>25</sup>

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<sup>23</sup> *Id.*, at 4 (emphasis added).

<sup>24</sup> *Channel Sharing Outside the Incentive Auction Context Report and Order*, ¶ 44.

<sup>25</sup> *Id.*



Nonetheless, given that Comcast and NCTA have attempted to enlarge the focus of this routine market modification proceeding and cast it as a harbinger of doom for their industry, the proceeding is not appropriately restricted. Commission precedent holds that where pleadings “implicate broadly applicable policy issues,”<sup>26</sup> the public interest warrants changing a proceeding’s *ex parte* status to permit-but-disclose based on its “potential impact.”<sup>27</sup> Based on the foregoing, Entravision requests that Commission use its discretion to change the *ex parte* status of this proceeding to permit-but-disclose pursuant to Note 2 to § 1.1208 of its rules.

Respectfully submitted,

**Entravision Holdings, LLC**

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February 6, 2018

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<sup>26</sup> *Modification of Ex Parte Status of Pending Petitions for Waiver of Hearing Aid Compatibility Requirements*, Public Notice, 22 FCC Rcd 535, at 3 (2007).

<sup>27</sup> *See supra* n.6.



## CERTIFICATE OF SERVICE

I, Robin Walker, hereby certify that on this 6th day of February, 2018, I caused a true and correct copy of the foregoing to be served by first-class mail on:

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