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BROADCAST GROUP

July 10, 2017

VIA ECFS

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: MB Docket No. 16-306; GN Docket No. 12-268
Notice of Ex Parte Communication

Dear Madam Secretary,

The undersigned and Paul Cicelski of Lerman Senter PLLC, met with Erin McGrath, Legal Advisor to Commissioner O’Rielly on July 6th, 2017, and met with Alison Nemeth, Media Advisor to Chairman Pai on July 7th, 2017. In each meeting, we expressed concerns that the review and approval process for “reasonable” reimbursable repack expenses will commence on July 12th, yet there remains significant disagreement regarding the reimbursement eligibility of transmitter “headroom,” which exposes many station groups to millions of dollars in financial risk.

With respect to television stations remaining on air after the incentive auction, the FCC is tasked with reimbursing “...costs that are reasonable to provide facilities comparable to those that a broadcaster...had prior to the auction...”¹ “Headroom” is reserved excess transmission capacity that many broadcasters commonly build into their facility design, to ensure performance reliability and longevity and the ability to maximize in the future. This is a common practice, and broadcasters have been investing considerable amounts of money into transmitter headroom for decades. Thus, headroom should be considered an essential and reimbursable element of a “comparable” facility for stations that have already invested in headroom for their current transmitters. But in its updated FAQ issued on June 30th, 2017, the FCC has informally signaled to broadcasters that it will not reimburse all headroom requests for comparable facilities. We are concerned that the FCC may be taking this approach to artificially reduce the cost of the repack, and specifically to not exceed the \$1.75 billion TV Broadcaster Relocation Fund (the “Fund”).

¹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6822 (2014), *aff’d*, *Nat’l Assoc. of Broadcasters, et al v. FCC*, 789 F.3d 165 (D.C. Cir. 2015).

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There remains much speculation that the Fund will be insufficient to reimburse broadcasters for all of their reasonable costs for comparable facilities. Assuming that is true, the FCC should not let this influence its judgment as to what is rightfully reimbursable or not. Rather, the FCC should honor its commitment to allow broadcasters to rebuild their facilities consistent with current practice (i.e., “comparable”), including the headroom they believe in their seasoned engineering judgment best supports their broadcast operations. By apparently making a pre-determination that certain reasonable headroom costs may not be reimbursable, the FCC will foreclose the possibility of future reimbursement of these costs in the event the Fund is supplemented in the future. Instead, the FCC should approve as reimbursable all “...costs that are reasonable to provide facilities comparable to those that a broadcaster...had prior to the auction...” without regard to the potential limitations of the Fund, and then work with broadcasters and Congress to supplement any Fund shortfalls in the future.

We believe this approach is consistent with the FCC’s goals, professed since the Chairmanship of Julius Genachowski and echoed by his successors and other Commissioners, that the broadcast television industry should emerge from the incentive auction stronger than ever. The current FCC approach to headroom reimbursement risks leaving stations with facilities inferior to what they have today, which is not fair to broadcasters or the viewers they serve.

Sincerely,

_____/s/____

Rebecca Hanson
SVP, Strategy and Policy
Sinclair Broadcast Group, Inc.

CC: Alison Nemeth
Erin McGrath