

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

In re Petition of)	
)	
Entravision Holdings, LLC)	CSR-8944-A
)	
For Modification of the Television Market)	
For Station WJAL(TV), Silver Spring, Maryland)	

TO: The Secretary
Attn: Chief, Media Bureau

COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION

This proceeding is about a broadcast station’s attempt to misuse the spectrum incentive auction process to obtain a windfall by leaving a more rural community of license and relocating to a more urban area in order to increase its cable carriage. The broadcaster, Entravision Holdings, LLC (“Entravision”), which has already “sold” the spectrum used by WJAL(TV) during the auction process, now seeks to use the must-carry and channel-sharing rules to significantly expand its cable carriage. Entravision’s petition should be denied for the legal and factual circumstances detailed in Comcast’s filing.¹

Entravision received \$25.5 million dollars to terminate its over-the-air transmission of WJAL(TV) to viewers in Hagerstown, Maryland.² Entravision has now moved away from serving its Hagerstown over-the-air viewers who reside in a more rural area and relocated WJAL(TV) (as a channel-sharing operation) more than 60 miles away to media-saturated

¹ See Petition of Entravision Holdings, LLC for Modification of the Television Market for Station WJAL(TV), Silver Spring, MD, CSR-8944-A (Nov. 7, 2017) (“Petition”).

² FCC, Public Notice, *Incentive Auction Closing and Channel Reassignment Public Notice*, 32 FCC Rcd 2786, at Appendix A p.7 (2017).

Washington, D.C.³ As Comcast points out, if the Commission were to grant Entravision's request for must-carry rights on its D.C.-area cable system, "it would unjustifiably encourage broadcasters to manipulate the Commission's authorization of [channel sharing agreements ("CSAs")] under the Incentive Auction by vacating their broadcast allocations (after having received millions in auction revenues) in order to expand must-carry rights, through a CSA, far beyond those associated with its original spectrum allocation."⁴

Indeed, encouraging broadcasters that abandon service to over-the-air viewers in outlying areas of a designated market area ("DMA") to seek greater must-carry rights on cable systems located in the DMA's core would turn the rationale for must-carry on its head. As the Supreme Court found in narrowly upholding the must-carry provisions of the Cable Consumer Protection and Competition Act of 1992, Congress enacted those provisions to further the government's interest at that time in preserving the availability of broadcast service to *noncable* viewers from a multiplicity of diverse voices.⁵ Regardless of whether that rationale continues to support must-carry's intrusions on the First Amendment rights of cable operators and programmers today, it

³ According to the Commission's LMS database, two full power TV stations are licensed to Hagerstown, MD, WDVM-TV and WWPB. By contrast, eight full power TV stations are licensed to Washington, D.C. WJAL(TV) changed its community of license to Silver Spring, Maryland, located adjacent to Washington, D.C. The Incentive Auction Order requires a channel-sharing station to remain within the same DMA, but allows the station to move from its original community of license if it is unable to satisfy the community of license signal requirement from its host transmitter site and if it moves to a community with the same or higher allotment priority, or the next highest priority if no community meets the same or higher priority. See *In re Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report & Order, 29 FCC Rcd 6567 ¶ 374-77 (2014) ("IA Report & Order").

⁴ Comcast Opposition at 3-4.

⁵ As explained in the decision,

Although cable and other technologies have ushered in alternatives to broadcast television, nearly 40 percent of American households still rely on broadcast stations as their exclusive source of television programming. And as we said in *Capital Cities Cable, Inc. v. Crisp*, "protecting noncable households from loss of regular television broadcasting service due to competition from cable systems" is an important federal interest.

Turner Broad. Sys., Inc., v. F.C.C., 512 U.S. 622, 663 (1994) (quoting *Capital Cities Cable, Inc. v. Crisp*).

hardly supports encouraging broadcasters to pursue larger *cable* audiences via must-carry by leaving their over-the-air audience in less populated areas served by fewer broadcast channels to urban areas served by many. It is one thing to allow channel sharing arrangements in connection with the incentive auction, it is quite another to allow these arrangements to be used individually and collectively in a manner that increases must-carry burdens.⁶

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.⁷ 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.

In short, the instant Petition is but one example of how must-carry rights in this post-auction environment are being used in ways that are increasingly unmoored from any legitimate governmental interests. Must-carry generally is on increasingly shaky ground given the seismic changes in the cable and broadcasting industries since Congress adopted the 1992 Cable Act.

⁶ See *IA Report & Order* ¶709, n.1985 (“Moreover, in light of our decision to allow channel sharing stations to relocate only within their current DMAs, any new carriage obligations resulting from channel sharing will be limited.”).

⁷ See, e.g., *WTBY-TV, Amendment to a Modification of a Licensed Facility for DTV Application*, File No. 0000027613 (Sept. 21, 2017) (FCC grant of modification application moving WTBY-TV’s community of license from Poughkeepsie, NY over 100 miles to Edison, NJ); *KBEH, Amendment to a Modification of a Licensed Facility for DTV Application*, File No. 0000024589 (June 21, 2017) (FCC grant of modification application for channel sharing and moving KBEH’s community of license from Oxnard, CA, over 90 miles to Garden Grove, CA). Indeed, as one trade publication has observed, the instant petition is “a situation at the FCC worth watching as we could see similar requests down the line.” *Auction Aftermath: Comcast Fights Entravision on Must-Carry Expansion*, *Cablefax Daily*, Dec. 12, 2017. NCTA previously objected to some of these efforts through which multi-million-dollar auction winners were trying to sell their special auction-related must-carry channel sharing rights to other stations – in some cases, even before operating the shared channel at the new “host” location. See NCTA Comments, MB Dkt. No. 17-121 (filed June 2, 2017) (opposing KBEH(TV) assignment application).

The serious First Amendment issues that would be raised by mandating carriage under the circumstances here and in other similar channel-sharing arrangements is another compelling reason to interpret the market modification factors strictly and to deny Entravision's request.

CONCLUSION

For all these reasons, the Commission should deny Entravision's Petition for Special Relief to modify WJAL(TV)'s market.

Respectfully submitted,

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December 14, 2017

CERTIFICATE OF SERVICE

I, Sarah Speaks, do hereby certify on this 14th day of December 2017, that a true and correct copy of the foregoing "Comments of NCTA – The Internet & Television Association" has been sent via U.S. mail, postage prepaid to the following:

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