

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Expanding the Economic and Innovation) GN Docket No. 12-268
Opportunities of Spectrum Through Incentive)
Auctions)

To: The Commission

**REPLY OF THE VIDEOHOUSE, INC.
IN SUPPORT OF PETITION FOR RECONSIDERATION**

The Videohouse, Inc. (“Videohouse”), licensee of Digital Class A Station WOSC-CD, Channel 26, Pittsburgh, Pennsylvania (Facility ID No. 66636) (“WOSC”), respectfully submits this Reply in support of its Petition for Reconsideration¹ of the Commission’s Report and Order in the captioned proceeding² and in response to a letter submission by the LPTV Spectrum Rights Coalition (“SRC”); a supplement to petition for reconsideration filed by Abacus Television (“Abacus”); and “oppositions” filed by Asiavision, Inc. (“Asiavision”) and Latina Broadcasters of Daytona Beach, LLC (“Latina Broadcasters”).

As Videohouse demonstrated in its Petition, both the Spectrum Act and the Community Broadcasters Protection Act of 1999 mandate that the Commission exercise its discretion to protect WOSC, a legacy out-of-core Class A-eligible station that obtained an in-core channel but was not able to file for a digital Class A license until after February 22, 2012.

¹ Petition for Reconsideration of The Videohouse, Inc. (Sept. 15, 2014) (“VideoHouse Petition”).

² *Report and Order*, “Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions,” FCC 14-50 (rel. June 2, 2014), at pars. 232-235 (the “Order”).

Videohouse therefore has asked the Commission to reconsider and reverse its decision, embodied in Section III.B(3)(d)(ii) of the captioned order, as it pertains to WOSC.

SRC and Abacus both question the Commission's stated justification for refusing to protect a legacy out-of-core Class A-eligible station, such as WOSC, that obtained an in-core channel but did not obtain a digital Class A license until after February 22, 2012. In particular, they have raised questions regarding the factual basis for the Commission's assertion that protecting stations such as WOSC "would requir[e] protection of approximately 100 stations."³ SRC and Abacus contend, based in each case on consultation with Commission staff, that the universe of "approximately 100" affected Class A-eligible stations described in the Order -- which purportedly is the basis for the Commission's refusal to protect stations such as WOSC -- is unsupported by an actual census derived from the Commission's databases or by any other empirical evidence.⁴ According to Abacus, Commission records actually indicate the existence of, at most, "only twelve to fifteen" such stations. Abacus further states that only "only three [of those twelve to fifteen stations] filed a petition for reconsideration of their exclusion from auction protection."⁵ Videohouse's extensive analysis supports Abacus's assertions regarding the actual number of affected Class A-eligible stations.

These new facts raise a serious question whether protection of former out-of-core Class A stations that were not licensed on in-core digital channels until after February 22, 2012

³ See Order at par. 234.

⁴ See Letter to the Marlene H. Dortch from Mike Gravino, Director, LPTV Spectrum Rights Coalition (Nov. 12, 2014), at 1-2 (the "SRC Letter"); Supplement to Petition for Reconsideration of Abacus Television (Nov. 12, 2014), at 9-10 (the "Abacus Supplement").

⁵ Abacus Supplement at 10. The SRC Letter (at 2) also asserts that WOSC is included in the Commission's incentive auction interference studies and repacking simulations, which is at odds with the Commission's failure to exercise its discretion to protect WOSC.

would have *any* impact -- much less, as the Order posits, a “significant detrimental impact on repacking flexibility.”⁶ At the very least they warrant the publication of the list of the stations on which the Commission claims its decision reflected in Section III.B(3)(d)(ii) of the Order is based so that parties can undertake their own analysis of the preclusive effect of such stations. And in any case they support the exercise of the Commission’s discretion to protect WOSC.⁷

Finally, we note that the purported “oppositions” to Videohouse’s Petition filed by Asiavision and Latina Broadcasters are not oppositions at all. To the contrary, they are no more -- and no less -- than untimely petitions for reconsideration. Without explaining their failure to seek reconsideration on the basis of their particular factual circumstances, both Asiavision and Latina Broadcasters now use their “oppositions” to the Videohouse Petition as a vehicle to demand equivalent relief for themselves.⁸ Without expressing a view on the merits of these parties’ particularized showings, Videohouse believes they should not be allowed to hold Videohouse hostage to their failure to seek timely relief.⁹

⁶ Order at par. 234.

⁷ Videohouse also supports Abacus’s view that the Commission’s categorical decision not to protect Class A station service areas that were proposed but not authorized by February 22, 2012, is not warranted under the Spectrum Act and would not have a detrimental effect on the Commission’s repacking flexibility. *See* Abacus Supplement at 10-13 (dynamic channel availability database can be updated to accommodate facilities authorized as of the pre-auction Licensing deadline).

⁸ While purporting to “oppose” Videohouse’s Petition, Latina Broadcasters expressly “supports and incorporates . . . by reference” Videohouse’s Petition. *Partial Opposition to Petitions for Reconsideration of Latina Broadcasters of Daytona Beach, LLC* (Nov. 12, 2014), at 4. For its part, Asiavision did not even purport to “incorporate by reference” Videohouse’s Petition. It simply copied it. *Compare* Opposition of Asiavision, Inc. (Nov. 9, 2014), at 2-9 to Videohouse Petition at 2-9.

⁹ We note for the record that Latina Broadcasters misstates certain facts regarding WOSC. *See* its “Partial Opposition” at 6, which incorrectly states that WOSC’s application for digital Class A designation was filed on April 1, 2014 -- when in fact that application was filed on January 15, 2013 (File No. BLDTL-20130115ADH) and granted on April 30, 2014. *See* Videohouse Petition at 6-7.

Videohouse worked diligently and in good faith over many years to construct and activate WOSC's Class A digital facilities. It did so in reliance on the provisions of the CBPA and the Commission's implementing orders regarding the digital transition of formerly out-of-core Class A stations.

Accordingly, for all the reasons stated herein and in its Petition, Videohouse requests that the Order be reconsidered and reversed to the extent requested herein and that the Commission exercise its discretion to protect WOSC in connection with the incentive auction process and related repacking of the television band.

Respectfully Submitted,

THE VIDEOHOUSE, INC.

By: 
Mace Rosenstein

COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, NW
Washington, D.C. 20004
202-662-6000

Its Attorneys

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