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March 27, 2015

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, D.C. 20554

*Re: Expanding the Economic and Innovation Opportunities of Spectrum Through
Incentive Auctions, GN Docket No. 12-268*

*Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital
Low Power Television and Television Translator Stations, MB Docket No. 03-185*

Notice of *ex parte* presentation

Dear Ms. Dortch:

In accordance with FCC Rule 1.1206(b)(1), this letter is submitted to notify you that on March 25, 2015, David J. Mallof, Principal of Free Access & Broadcast Telemedia, LLC ("FAB"), and undersigned counsel met with Thomas Reed, Director of the Office of Communications Business Opportunities ("OCBO") and Daniel Margolis from OCBO. We discussed the following points:

1. FAB's outstanding request, first raised in a December 15, 2014 letter,¹ made jointly to The Honorable FCC Chairman Tom Wheeler and The Honorable Dr. Winslow Sargeant, the Chief Counsel for Advocacy of the Small Business Administration ("SBA"), that the FCC supplement the record and correct the inaccurate finding in the *1st Report & Order* in Docket 12-268 that no parties raised any issues related to the Initial Regulatory

¹ A copy of that letter is available at <http://apps.fcc.gov/ecfs/document/view?id=60001009742>.



Flexibility Analysis in the Notice of Proposed Rulemaking. This request was also raised in a February 12, 2015 *Ex Parte* meeting between FAB and OCBO.²

2. FAB's unresolved request, raised in earlier 2014 filings, as part of a Motion dated December 22, 2014,³ and again during the February 12, 2015 *Ex Parte* meeting, that the FCC release data and analysis outputs underlying and giving rise to the 1st Greenhill Report, dated October 1, 2014, that pertain to the magnitude of displacement impact(s) on LPTV stations. FAB reiterated the importance of releasing this information now, not at some later date as hinted in the Order denying FAB's motion.⁴ The invitation in the 3rd *NPRM*⁵ asks commenters to provide a "benefit-disadvantage" analysis in their presentations to mitigate negative and harmful possible impacts on LPTV. Interested commenters cannot provide this required showing without the release of the official FCC analysis that served as a lynchpin for forecasting potential spectrum clearing and concomitant financial outcomes.
3. FAB's new request for OCBO to schedule a meeting with Chairman Wheeler and/or members of the Incentive Auctions Task Force in order to resolve FAB's twin requests to correct the FCC's findings in the 1st *Report & Order* and release the requested information, assumptions, and analysis outputs that gave rise to the 1st Greenhill Report.

² See *Notice of Ex Parte Presentation*, filed on February 12, 2015 (available at <http://apps.fcc.gov/ecfs/document/view?id=60001029229> with attachment at <http://apps.fcc.gov/ecfs/document/view?id=60001029230>).

³ See Letter dated December 22, 2014 (available at <http://apps.fcc.gov/ecfs/document/view?id=60001010740> with attachment at <http://apps.fcc.gov/ecfs/document/view?id=60001010741>).

⁴ See Order, DA 15-31, released January 8, 2015, at Paragraph 7 ("Moreover, to the extent that Free Access seeks access to any data demonstrating the impact of the incentive auction on LPTV stations, the issue of such impact, which has been raised in the docket of the incentive auction proceeding, will be considered at a future date"), available at https://apps.fcc.gov/edocs_public/attachmatch/DA-15-31A1.pdf. FAB notes that the FCC has the data, outputs, and assumptions, however only considers releasing them at a future date. FAB contends that this disrupts and obscures the public rulemaking process and statutorily-required consideration of policy alternatives to mitigate negative impacts on small businesses, as mandated by the Regulatory Flexibility Act ("RFA"). The OCBO, which is charged with RFA oversight within the FCC, has direct liaison stewardship with the Office of Advocacy Counsel and is therefore in the best position to request this information be released.

⁵ Third Notice of Proposed Rulemaking, FCC 14-151 (released October 10, 2014) at Paragraph 59.



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All the points made in the presentation are more fully set forth in FAB's recent submissions filed in Dockets 12-268 and 03-185.

Respectfully submitted,

/s/

Colin Black Andrews

Counsel to Free Access & Broadcast Telemedia, LLC

cc: Thomas Reed, OCBO Director (via e-mail to Thomas.Reed@fcc.gov)
Daniel Margolis, OCBO (via email to Daniel.Margolis@fcc.gov)
U.S. Senate Committee on Small Business and Entrepreneurship (via email to info@sbcsenate.gov)
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