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May 22, 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)(2), this letter is submitted to notify you that on May 21, 2015, David Mallof, Principal of Free Access & Broadcast Telemedia, LLC ("FAB"), and undersigned counsel met with FCC's Incentive Auction Task Force ("IATF") members Gary Epstein, Chair of the IATF, Howard J. Symons, Vice Chair of the IATF, James W. Wiley, III, Legal Advisor to the IATF, William T. Lake, Chief of the Media Bureau, Barbara Kreisman, Chief of the Video Division, and Thomas Reed, Director of the Office of Communications Business Opportunities. Topics discussed are set forth on the attached agenda which was distributed at the meeting in draft form, including FAB's requests that the Commission:

- Release data specifically describing the impacts the incentive auction and repacking process will have on low power television ("LPTV") stations, which the Commission indicated in its January 8, 2015, *Order* denying FAB's "Motion to Toll the Comment and Reply Comment



Deadlines in the Third Notice of Proposed Rulemaking” would be considered at a later date.¹ Such data is necessary in order to offer meaningful proposals on how to mitigate the harm to LPTV licensees, as requested by the Commission in the Third Notice of Proposed Rulemaking.²

- Provide a benefit-cost analysis of inclusion versus exclusion of LPTV in the incentive auction.³
- Respond to FAB’s repeated requests that the Commission meet with the Small Business Administration regarding the impact on LPTV small businesses, and provide its response in the record to FAB’s Joint letter to FCC Chairman Tom Wheeler and Chief Counsel for Advocacy at the United States Small Business Administration, Dr. Winslow Sargeant, dated December 15, 2014.⁴

¹ See *Order*, DA 15-31, released January 8, 2015, para. 7, available at: https://apps.fcc.gov/edocs_public/attachmatch/DA-15-31A1.pdf. See also FAB’s *Motion to Toll*, dated December 22, 2014 submitted in three parts, available at: <http://apps.fcc.gov/ecfs/document/view?id=60001010739>, <http://apps.fcc.gov/ecfs/document/view?id=60001010740>, and <http://apps.fcc.gov/ecfs/document/view?id=60001010741>.

² The Commission requested comments on “additional measures we should consider in order to mitigate the impact of the incentive auction on LPTV and TV translator stations and to help preserve the important services they provide.” Third Notice of Proposed Rulemaking, FCC 14-151, released October 10, 2014 (“*Third NPRM*”), para. 59, available at <http://apps.fcc.gov/ecfs/document/view?id=60000976623>.

³ See FAB’s Petition for Reconsideration of the *First R&O*, dated September 15, 2014, which was required to be filed before the release of the first “Greenhill Report.” The underlying assumptions and outputs of the FCC analyses that gave rise to the precise turnkey marketing business case representations in that Greenhill Report remain central to the Commission arriving at thoughtful and transparent policy considerations needed to mitigate negative impacts on LPTV. Such considerations are essential for reconsideration and the promulgation of any policy alternatives and conclusions required for the *Third NPRM* and to conform to the FCC’s obligations under the Regulatory Flexibility Act (“RFA”). FAB cautioned in the meeting that adopting measures in the *Third NPRM* without release of the scope of the impacts on LPTV of clearing 126 MHz and selling 100 MHz in open market at highly specific price points for full-power and Class A stations in 210 market areas will undermine the rulemaking as well as the Final Regulatory Flexibility Analysis.

⁴ See FAB’s letter available at: <http://apps.fcc.gov/ecfs/document/view?id=60001009742>. FAB’s meeting Agenda (attached) included an intent to discuss its Motion to include the December 15, 2014 letter into the Petition for Reconsideration record. FAB respectfully seeks clarification that



- Correct the record to indicate that parties did comment on the Initial Regulatory Flexibility Analysis (“IRFA”) of the *First NPRM*⁵ and that the appeal timeline on the *First R&O*⁶ under the Regulatory Flexibility Act is different and separate from the timing on appeal of decisions on the pending petitions for reconsideration.

Points made in the presentation are more fully set forth in FAB’s submissions filed in Dockets 12-268 and 03-185.

Respectfully submitted,

/s/

Melodie A. Virtue
Counsel to Free Access & Broadcast Telemedia, LLC

cc: Gary Epstein (via email to Gary.Epstein@fcc.gov)
Howard J. Symons (via email to Howard.Symons@fcc.gov)
William T. Lake (via email to William.Lake@fcc.gov)
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Thomas Reed (via e-mail to Thomas.Reed@fcc.gov)
James W. Wiley, III (via email to James.Wiley@fcc.gov)
Daniel Margolis, FCC OCBO (via email to Daniel.Margolis@fcc.gov)
Claudia Rodgers, Acting Chief Counsel for Advocacy, United States Small Business Administration (via email to: Claudia.Rodgers@sba.gov)

Enclosure – Agenda

the Motion has been accepted. The FAB Motion is available at:
<http://apps.fcc.gov/ecfs/document/view?id=60001009741>.

⁵ Notice of Proposed Rulemaking, 27 FCC Rcd 12357, 12539-40 (2012).

⁶ Report and Order, 29 FCC Rcd 6567 (2014).

Agenda 5/21/15

Seek to cover RFA and R&O Reconsideration issues before meeting Commissioners' offices

1. RFA – on a separate track from 1st R&O reconsideration and any appeal
 - a. Letter to Chm. Wheeler and Dr. Sargeant from December 15, 2014
 - i. Status of meetings or discussions with SBA as requested be held.
 - ii. Request a written reply to SBA entered into the 12-268 and 03-185 records.
 - iii. Also request status of FAB's Motion to enter the letter into our Petition for Reconsideration (includes **Item b** below).
 - iv. 5+ months total elapsed time on this issue.
 - b. Multiple requests to release into the record the "Greenhill 1" assumptions and impacts on LPTV clearing run by the FCC staff or consultants.
 - i. October 1 release implies analysis was well in hand before Petition for Reconsideration window closed Sept 14th.
 - ii. Note it was also impossible to comply w/ the 3rd NPRM para 59 for "benefit-disadvantage" without a send of the scope and sweep of clearing and stranded stations by DMA
 - iii. Denial of our Motion to Toll was damaging to the 3rd NPRM process.
 - iv. Recite dates/occasions this info was respectfully requested
 1. December 15, 2014 Joint letter included a request for this analysis (plus inclusion into the Petition for Reconsideration)
 2. Dec 22, 2014 Motion to Toll again requested this info for 03-185
 3. Repeated as a topic in the Initial OCBO meeting January requests.
 4. Actual Bill Lake meeting early Feb. 10th
 5. OCBO meeting March 27 after 2 follow-up meetings were not set
 6. 3 other OCBO requests for the requested meetings during April/May
 7. Almost 5 months total elapsed time on this issue
 8. Thank you for seeing us today (a bit late we respectfully think).
2. FAB Petition for Reconsideration –
 - a. We understand Mr. Lake said LPTV-related petitions are largely recommended to be denied and are now up with the Commissioners
 - b. Any questions of us before we seek meetings with the Commissioners?
 - i. overview only if asked our three requests –
 1. Auction eligibility – plus inclusion of the letter to the Chairman and SBA into the record
 2. Repack reassurances
 3. Remainder spectrum (plus a nationwide 6MHz too coming up)
3. How can FAB help the process?
4. Thank you for taking the meeting.