

VIA ECFS

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Re: Notice of *Ex Parte* Communication
In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum
Through Incentive Auctions, GN Docket No. 12-268 Broadcast Incentive Auction
Comment Public Notice Auction 1000, 1001 and 1002, AU Docket No. 14-252

Dear Ms. Dortch:

On May 27, 2015, Ronald Bruno, President of The Videohouse, Inc., licensee of television station WOSC-CA, Pittsburgh, PA;¹ Paul Koplín, Member of Local Media Television Holdings, LLC, the parent company of WMTM, LLC, licensee of television station WIIV-CD, Washington D.C.; Joan Stewart of Wiley Rein, LLP, Ari Meltzer, and Kathleen Kirby (representing Latina Broadcasters of Daytona Beach, LLC, licensee of television station WDVB-CD, Daytona Beach, FL) of Wiley Rein, LLP; and Mace Rosenstein of Covington & Burling, LLC (the “Class A Parties”) met with Bill Lake, Barbara Kreisman, Joyce Bernstein, Michelle Carey and Dorann Bunkin of the Media Bureau. William Tolpegin, CEO of OTA Broadcasting, LLC, and Patricia Chuh of Wilkinson Barker Knauer, LLP were also in attendance.

The Class A Parties addressed certain pending petitions for reconsideration of and related pleadings² concerning the *Incentive Auction Report & Order*³ and the Commission’s decision in that *Order* to exercise its discretion under the Spectrum Act to protect for purposes of auction participation or post-auction repacking a *single* previously out-of-core Class A station - a facility that was eligible for Class A status but not licensed as a Class A station as of February 22, 2012. The parties urged the Bureau not to arbitrarily distinguish among the limited and finite set of previously out-of-core Class A television licensees that had not perfected their Class A status as

¹ Ronald Bruno and principals of WMTM, LLC also have an ownership interest in Fifth Street Enterprises, LLC, which has an application pending to acquire WPTG-CD, Pittsburgh, PA and WBOA-CD, Kittanning, PA. These two stations are similarly situated to the stations licensed to the Class A parties. These stations are currently licensed to Abacus Television.

² See, e.g., Petition for Reconsideration of the Videohouse, Inc., filed September 15, 2014; Petition for Reconsideration of Abacus Television, filed September 15, 2014. Latina Broadcasters of Daytona Beach, LLC and Asiavision (the previous licensee of WIIV-CD) filed Oppositions to the Petitions for Reconsideration solely for the purpose of noting that all similarly situated Class A stations should be afforded the same relief as that requested by the parties requesting reconsideration. See Opposition of Asiavision, Inc. (Nov. 9, 2014); Opposition of Latina Broadcasters of Daytona Beach, LLC (Nov. 12, 2014).

³ *Expanding the Economic and Innovation Opportunities for Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd. 6567 ¶ 451 (2014) (“*Order*”).

of February 22, 2012, but to extend the same protection to Class A licensees that, for all intents and purposes, are similarly situated to the single station that was protected.⁴

While Congress through the Spectrum Act⁵ mandated that the FCC protect all full power and Class A stations that were licensed as of February 22, 2012, the statute does not preclude the Commission from protecting additional facilities. Indeed, in its *Order*, the Commission expressly recognized that it has discretion to protect additional stations and exercised this discretion to protect KHTV-CD, Los Angeles, CA. It declined to extend protection to other Class A eligible stations on the basis that “requiring protection of approximately 100 stations” would “encumber additional spectrum.”⁶

The Class A Parties challenged the *Order’s* assertion that extending protection to similarly situated Class A stations would hinder its ability to reclaim spectrum or otherwise involve a large universe of stations. Based on the group’s research, the fixed set of stations to which protection should appropriately be extended numbers somewhere between 10 and 15. The Class A Parties maintained that these stations could and should be protected under one of several exceptions to the February 22, 2012 deadline already recognized by the Commission.

In the Community Broadcasters Protection Act of 1999 (CBPA), Congress directed the FCC to issue Class A licenses to low power television (LPTV) stations that complied with certain requirements. Because LPTV stations operating on channels 52 through 69 (the out-of-core channels) were required to relocate to an in-core channel as part of the full-power digital television transition, these stations could not perfect their Class A status until they identified an in-core channel and built a new facility. In its order implementing the CBPA, the Commission recognized that some stations would face significant impediments to moving in-core, and stated that it would “impose no time limit on the filing of a Class A application by LPTV licenses operating on a channel outside the core.” Ultimately, the FCC set December 31, 2011 as the deadline for these stations to relinquish their out-of-core channels, and December 31, 2012 as the date by which they must commence operations in-core.

Retroactively adopting February 22, 2012 as the firm date by which only out-of-core Class-A eligible stations must have filed their Class A applications in order to be auction-eligible or receive protection in post-auction repacking cannot be squared with these deadlines for Class A-eligible stations to transition to in-core channels or with the Commission’s decision as it pertains to KHTV-CD. The Class A Parties urged the Bureau to extend similar protection to the limited number of out-of-core, Class A stations that timely relinquished their out-of-core channels by December 31, 2011 and commenced in-core operations by December 31, 2012. Alternatively, the Bureau could extend protection to Class A-eligible stations that had a

⁴ See, e.g., Petition for Reconsideration of the Videohouse, Inc., filed September 15, 2014; Petition for Reconsideration of Abacus Television, filed September 15, 2014; Opposition of Asiavision, Inc. filed Nov. 9, 2014. See also, Melody Music, Inc. v. FCC, 345 F.2d 730 (D.C. Cir. 1965) (remanding denial of renewal application where the renewal application of another applicant engaging in similar behavior had been granted). See also Arnold L. Chase, 6 FCC Rcd 7387, 7412 (1991) (citing Melody Music for the proposition that “similar factual situations must be treated similarly under FCC’s rules”); Applications of American Broadcasting Cos., 7 F.C.C. 2d 245, 260 (1966) (Commission “must apply [the] same principles to all licensees”).

⁵ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 §§ 6401 et seq., 125 Stat. 156 (2012) (“Spectrum Act”).

⁶ Incentive Auction R&O at ¶234.

construction permit issued before April 5, 2013 whose facilities are built and licensed by the pre-auction deadline (May 29, 2015), as it has done with respect to modifications of full power and Class A stations. As clearly explained in the Petitions for Reconsideration and related pleadings, to do otherwise would treat similarly situated stations in a disparate and inconsistent manner.

Respectfully submitted,

LOCAL MEDIA TELEVISION HOLDINGS, LLC

_____/s/_____
Paul Koplín
Member

THE VIDEOHOUSE, INC.

_____/s/_____
Ronald Bruno
President

OTA BROADCASTING, LLC

_____/s/_____
Patricia Chuh
Its Counsel

LATINA BROADCASTERS OF
DAYTONA BEACH, LLC

_____/s/_____
Kathleen Kirby
Its Counsel

cc: Bill Lake
Barbara Kriesman
Joyce Bernstein
Michelle Carey
Dorann Bunkin