



GARVEY SCHUBERT BAREER
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

WASHINGTON D.C. OFFICE

fifth floor

flour mill building

1000 potomac street nw

washington, d.c. 20007-3501

TEL 202 965 7880 FAX 202 965 1729

anchorage, alaska

beijing, china

new york, new york

portland, oregon

seattle, washington

GSBLAW.COM

Please reply to MELODIE A. VIRTUE
mvirtue@gsblaw.com
TEL EXT 2527

May 29, 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 27, 2015, David Mallof, Principal of Free Access & Broadcast Telemedia, LLC ("FAB"), and undersigned counsel met with Robin Colwell, Chief of Staff and Senior Legal Advisor, Media and Erin McGrath, Legal Advisor, Wireless, Public Safety and International, both in the office of FCC Commissioner Michael O'Rielly. Topics discussed are set forth on the attached agenda which was distributed at the meeting, 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. 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" the impacts would be considered at a later date.¹ Such data remains necessary in order to offer meaningful proposals on how to

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*,



mitigate the harm to LPTV licensees, as requested by the Commission in the Third Notice of Proposed Rulemaking.² FAB indicated it likely will ask the Commission to reopen comments in the 3rd *NPRM* when the requested information is produced. Otherwise, FAB believes the integrity and completeness of the rulemaking and the statutorily required Regulatory Flexibility Analysis will be compromised if a Report and Order is issued without the opportunity to review the impact and comment on the data.

- Provide a benefit-cost analysis of inclusion of LPTV in the incentive auction.³
- Grant the other requests in FAB's Petition for Reconsideration in order to mitigate the existential peril to LPTV licensees and the potential for delay of successful repurposing of the TV spectrum for wireless use. All requests are well within the FCC's discretion to act on favorably.

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>. The Commission also directed commenters to “...describe in detail any perceived benefits and disadvantages of the measures advocated.” *Id.*

³ See FAB's attached 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 mentioned that in a meeting with the Incentive Auction Task Force on May 21, 2015, 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, reserving an added 6 MHz block for unlicensed services, 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.



- 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, the Honorable Tom Wheeler and Chief Counsel for Advocacy at the United States Small Business Administration, the Honorable Dr. Winslow Sargeant, dated December 15, 2014.⁴
- 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.
- Consider the property attributes of spectrum used by LPTV licensees whose spectrum will be taken and repurposed in the name of the public good that a court might find to be a taking without just compensation under the U.S. Constitution.

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: Robin Colwell (via email to Robin.Colwell@fcc.gov)
Erin McGrath (via email to Erin.McGrath@fcc.gov)
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)
Barbara Kreisman (via email to Barbara.Kreisman@fcc.gov)
Thomas Reed (via e-mail to Thomas.Reed@fcc.gov)
James W. Wiley, III (via email to James.Wiley@fcc.gov)

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 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).



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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)

Enclosures – Agenda

FAB Joint Letter, dated December 15, 2014

FAB Petition for Reconsideration, dated September 15, 2014