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ROSEMARY C. HAROLD

August 13, 2015

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Room TW-B204
Washington, DC 20554

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

Dear Ms. Dortch:

This notification concerning a meeting with FCC staff in the above-referenced docket is submitted pursuant to Section 1.1206 and the Media Bureau's guidances concerning this docket, *see, e.g., Limited Modification to Ex Parte Requirements*, 29 FCC Rcd 2002 (MB 2014). The undersigned counsel, representing the Corporation for Public Broadcasting, the Association of Public Television Stations, and the Public Broadcasting Service, met with the following members of the FCC's Incentive Auction Task Force: Chair Gary Epstein; Vice Chair Howard Symons; Margaret Wiener, Chief of the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division; and Dorann Bunkin, Associate Division Chief of the Media Bureau's Video Division. Also attending on behalf of several noncommercial and commercial broadcast clients were Jonathan Cohen, Wilkinson Barker Knauer, LLP; Margaret Miller, Gray Miller Persh LLP; Lawrence Miller, Schwartz, Woods & Miller; John Wyss, Wiley Rein LLP; and Jerianne Timmerman, National Association of Broadcasters. As reflected in the attachment, the practitioners raised multiple questions concerning the prohibited communications rule, particularly as it could affect noncommercial broadcasters' routine business and financial operations.

Respectfully submitted,

/s/ Rosemary C. Harold
Rosemary C. Harold

Marlene H. Dortch

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cc: Gary Epstein
Howard Symons
Margaret Wiener
Dorann Bunkin
Jonathan Cohen
Margaret Miller
Lawrence Miller
John Wyss
Jerianne Timmerman

The Reverse Auction’s “Prohibited Communications” Rule

Questions from the Public Television Community

NOTE: We understand that wrongful intent is not a necessary factor in evaluating a possible rule violation. To be clear, however, all of the questions below are premised on good-faith efforts to comply with the prohibited communications rule while also attending to a station’s legitimate operational needs, particularly ongoing and *normal* financial operations.

- Does the rule prohibit a station from announcing publicly, during the quiet period, that it decided not to participate in the auction?
- Does the rule prohibit a station from publicly communicating, during the quiet period, that it plans to continue in the broadcasting business post-auction?
- Does the rule limit a public station’s ability to engage in *public* fundraising during the quiet period – including on-air pledge drives, online communications, and talking to existing donors through emails, paper mailings, and in-person events – as long as the fundraising messages do not *explicitly* mention bids or bidding strategies?
 - Does it matter if the fundraising goal is regular short-term operational support – as opposed to a longer-term capital project, which might be construed as signaling the station’s intention to remain in broadcasting?
 - Can the station mention in fundraising efforts that it does not plan to exit the broadcasting business?
- What about efforts to recruit “sustaining” members, who are donors that give a small monthly donation in perpetuity – would continuing those efforts through the quiet period constitute signaling?
- Should public stations that post their multi-year strategic plans on their websites take those plans off the website for the duration of the quiet period – on the theory that the long-range plans signal the station’s non-participation in the auction?
- Can public stations say during the quiet period that they expect “public broadcasting service will continue” as long as the stations don’t specifically identify themselves as the source of that service?
- For public stations licensed to state or local government entities subject to state FOIA or open meetings/open records requirements, what information is the station or its government licensee prohibited from releasing during the quiet period concerning the station’s auction participation?

- If the public TV licensee's board – or the board to which it reports – is subject to open-meetings obligations, may the board discuss the auction in such meetings during the quiet period? What if the board is limited in its ability to go into executive session?
- If the public station must report to the state legislature or Governor during the quiet period, how should it handle reports concerning its auction participation – especially during state budget season?
- Would a public TV station that has already had a request for appropriations introduced on its behalf in its state legislature be allowed to pursue passage of that bill during the upcoming quiet period? Does it matter whether the legislative effort started before the quiet period begins or only afterward?
- What about station contact with Members of Congress in support of FY 2016 or FY 2017 federal funding or on other issues – can stations continue to engage with their congressional delegations during the quiet period? Don't they have a First Amendment right to?
 - [Note: CPB receives a two-year advance appropriation, so stations are currently supporting its funding request for FY 2018 and will do so next year in support of its request for FY 2019.]
- Are stations barred during the quiet period from signing multi-year contracts on the theory that this might be signaling something about their auction participation? Does the answer turn on whether the entity on the other side is a Covered TV Licensee or wireless bidder?
- Can long-term contracts contain an early-termination clause that specifically references the auction? Would such a clause be permissible if it didn't reference the auction but instead simply referenced some time period beyond the projected end of the auction?
- Are stations with newsrooms prohibited from reporting during the quiet period on any particular station's auction participation?