

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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| In the Matter of  | ) |                      |
|   | ) |                      |
| Implementation of Section 103 of the<br>STELA Reauthorization Act of 2014 | ) | MB Docket No. 15-216 |
|   | ) |                      |
|   | ) |                      |
| Totality of the Circumstances Test  | ) |                      |
|   | ) |                      |

**MOTION FOR EXTENSION OF TIME**

The National Association of Broadcasters, ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association and NBC Television Affiliates (collectively, the Broadcast Associations<sup>1</sup>) hereby request that the Commission grant an extension of the deadlines for the submission of comments and reply comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>2</sup> Comments are currently due on December 1, 2015, and reply comments on December 31, 2015. The Broadcast Associations respectfully request an extension of these deadlines until February 1, 2015 and March 2, 2015, so that television broadcasters need not

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<sup>1</sup> The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts. The ABC Television Affiliates Association is a non-profit trade association whose members consist of local television broadcast stations throughout the country that are each affiliated with the ABC television network. The CBS Television Network Affiliates Association represents almost two-hundred independently-owned and operated television stations that are affiliated with the CBS Television Network. The FBC Television Affiliates Association is a non-profit trade association whose members consist of local television broadcast stations located throughout the country that are affiliated with the Fox television network. The NBC Television Affiliates is an association of broadcast television stations that are affiliated with the NBC television Network. Members of the NBC Television Affiliates operate approximately 225 stations.

<sup>2</sup> Notice of Proposed Rulemaking, MB Docket No. 15-216, FCC 15-109 (Sept. 2, 2015) (Notice).

sacrifice meaningful participation in this important retransmission consent proceeding as they focus on the myriad complicated issues associated with determining whether and how to participate in, and submitting applications for, the upcoming spectrum incentive auction. Beyond ensuring the submission of more complete information in the retransmission consent rulemaking, the requested extension would materially assist broadcasters in their auction preparation and in meeting the FCC's strict deadline for auction participation.

In the STELA Reauthorization Act of 2014, Congress directed the Commission to initiate – but notably set no date for conclusion of – a proceeding to review its totality of circumstances test for determining whether broadcast stations and multichannel video programming distributors are negotiating retransmission consent in good faith.<sup>3</sup> Television broadcasters regard rules affecting the negotiation of retransmission consent as among the FCC's most significant. The Broadcast Associations and our members want to respond fully and completely to the numerous detailed questions in the Notice; to do so effectively, the Associations need time to gather information from our members, including broadcasters both large and small and those in markets of differing sizes. The Associations and our members, however, will be unable to participate fully in this retransmission consent proceeding and provide a comprehensive record to the Commission under the current comment deadlines, given the FCC's recently set, overlapping deadlines for the approaching spectrum incentive auction.

On October 16, 2015, the FCC released opening bid prices for the reverse auction and announced that the window for TV broadcasters to submit applications to participate in the

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<sup>3</sup> See *id.* at ¶ 1.

auction will open on December 1 and close on December 18, 2015.<sup>4</sup> For the incentive auction to succeed, it is vital that TV broadcasters now focus on the reverse auction and the unique opportunities it presents.<sup>5</sup> The Broadcast Associations recognize that the December 18 deadline is final and that it should not (and will not) be extended, and that only those broadcasters filing a complete application by that date will be eligible to participate in the auction.<sup>6</sup>

During the short time period before the December deadline, TV broadcasters – who are “new to [FCC] auction processes” generally and “to the reverse auction process” specifically<sup>7</sup> – must evaluate their possible bid options and the prices attached to them and determine whether and how they wish to participate.<sup>8</sup> But broadcasters also must do much more, especially if they are interested in channel sharing. Given the operation of the FCC’s anti-collusion rules, broadcasters must execute all channel sharing agreements prior to December 18 and disclose those agreements on their applications to participate in the reverse auction.<sup>9</sup> Many broadcasters may be interested in pursuing this option, and a number of broadcasters may need to negotiate and execute multiple channel sharing agreements with different

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<sup>4</sup> *Incentive Auction Task Force and Wireless Telecommunications Bureau Release Opening Bid Prices for Reverse Auction*, Public Notice, AU Docket No. 14-252, GN Docket No. 12-268, WT Docket No. 12-269, DA 15-1191 (Oct. 16, 2015) (Bid Prices PN).

<sup>5</sup> Indeed, the FCC has characterized the auction as providing “once in a lifetime financial opportunities to broadcasters.” News Release, *FCC Adopts Rules for First Ever Incentive Auction; Will Make Available Additional Airwaves, Increase Competition for Mobile Broadband*, at 1 (May 15, 2014).

<sup>6</sup> Bid Prices PN at 2.

<sup>7</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, ¶ 411 (2014) (Auction Order).

<sup>8</sup> This process involves weighing numerous factors, such as the value to an individual broadcaster of moving to a different part of the television band, the likelihood that a station’s participation will be needed, and consideration of the ancillary costs associated with going off the air (e.g., termination of leases or talent contracts).

<sup>9</sup> See 47 C.F.R. § 1.2205(b)(2)(iii).

licensees by the December deadline.<sup>10</sup> Parties to channel sharing agreements must address a wide array of issues, ranging from access to shared facilities to tax treatment of auction proceeds.<sup>11</sup> Broadcasters will need to expend significant time and effort to timely conclude these agreements.

In addition, the Commission recently provided further guidance to broadcasters about the anti-collusion rules' prohibitions on auction-related communications, which go into effect on December 18.<sup>12</sup> The Commission advised broadcasters that they “should educate employees and agents regarding compliance” with these rules.<sup>13</sup> Moreover, in order to communicate with third parties, such as legal counsel, consultants and lenders during the “quiet period” starting on December 18, the Commission has advised broadcasters to “take[] any steps necessary to prevent the third party” from communicating bids or bidding strategies to other broadcasters or forward auction applicants; these steps can include the signing of non-disclosure agreements and ensuring that third party advisors implement “firewalls and other compliance procedures.”<sup>14</sup> Broadcasters with multiple channel sharing agreements must take special precautions, such as establishing “separate teams informed of bids and bidding strategies for stations that are involved in a particular channel sharing agreement” but which “are not informed of the bids and bidding strategies for other” stations “involved in a

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<sup>10</sup> The FCC has made clear that a broadcast licensee with multiple station licenses must execute separate channel sharing agreements for each of its stations that will be channel sharing with a different, non-commonly owned, licensee. *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, Public Notice, AU Docket No. 14-252, GN Docket No. 12-268, WT Docket No. 12-269, DA 15-1129, at ¶ 18 (Oct. 6, 2015) (Anti-Collusion PN).

<sup>11</sup> See Letter from Andrew J. Keyso, Department of the Treasury, to Howard Symons, Federal Communications Commission (July 3, 2014) available at: <http://wireless.fcc.gov/incentiveauctions/learn-program/docs/irs-letter.pdf>.

<sup>12</sup> See Anti-Collusion PN.

<sup>13</sup> *Id.* at ¶ 49.

<sup>14</sup> *Id.* at ¶¶ 12-13.

different channel sharing agreement.”<sup>15</sup> Clearly, preparing for the December 18 imposition of the quiet period prohibition on communications will require significant broadcaster time and attention, particularly given broadcasters’ lack of experience with the anti-collusion rules.

The Commission has previously acknowledged the “novelty and complexity” of the incentive auction,<sup>16</sup> and that “[r]obust broadcaster participation is critical” to its “success.”<sup>17</sup> To ensure that television broadcasters have the time needed to evaluate their various bid options, conclude channel sharing agreements, prepare their applications and implement necessary education and compliance processes, the Commission should allow them to focus on auction-related issues until after the December 18 deadline.

We accordingly request that the FCC extend the time for submission of comments and reply comments in this proceeding until February 1, 2015 and March 2, 2015, respectively. Granting this request will help ensure a complete record in this significant retransmission consent proceeding and robust broadcaster participation in the reverse auction.

Respectfully submitted,

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<sup>15</sup> *Id.* at ¶ 20.

<sup>16</sup> Auction Order at ¶ 324. See also Statement of FCC Chairman Tom Wheeler before the Subcommittee on Communications and Technology, Committee on Energy and Commerce, U.S. House of Representatives (July 28, 2015) (“The Incentive Auction will be the most complex in Commission history.”).

<sup>17</sup> *Application Procedures for Broadcast Incentive Auction Scheduled to Begin on March 29, 2016*, Public Notice, AU Docket No. 14-252, GN Docket No. 12-268, WT Docket No. 12-269, DA 15-1183, at ¶ 12 (Oct. 15, 2015).

/s/ Emily Barr

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