

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Parts 73 and 74 of the)	MB Docket No. 03-185
Commission’s Rules to Establish Rules for)	
Digital Low Power Television and)	
Television Translator Stations)	
)	
Expanding the Economic and Innovation)	GN Docket No. 12-268
Opportunities of Spectrum through Incentive)	
Auctions)	

To: The Commission

MOTION TO REOPEN THE RECORD
IN THE THIRD NOTICE OF PROPOSED RULEMAKING

Free Access & Broadcast Telemedia, LLC (“FAB”), by counsel, hereby respectfully requests that the Commission reopen the record in the *Third Notice of Proposed Rulemaking* (“*Third NPRM*”)¹ and allow interested parties to comment after the Commission discloses for the record: 1) the assumptions and related auction models projecting impacts on Low Power Television (“LPTV”) stations underlying the so-called Greenhill 1 Report released in October 2014,² and 2) the analysis the Commission receives from the Government Accountability Office

¹ Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations, MB Docket No. 03-185, *Third Notice of Proposed Rulemaking*, 29 FCC Rcd 12536 (2014) (“*Third NPRM*”). In an *Order*, DA 14-1727, released December 1, 2014, the Commission specified deadlines of January 12, 2015 for filing Comments and January 26, 2015 for filing Reply Comments.

² *Incentive Auction Opportunities for Broadcasters: Prepared by the Federal Communications Commission by Greenhill* (the “Greenhill 1 Report”), released October 1, 2014 and available at <http://apps.fcc.gov/ecfs/document/view?id=60001012317>.

(“GAO”) regarding the anticipated effects of the incentive auction on LPTV, as requested by leading Members of Congress.³

In support of this Motion, the following is submitted:

I. FCC Recognition of LPTV’s Vital Service To Viewers

The FCC established LPTV stations to reach underserved communities, recognizing that such stations can positively affect the Commission’s goals of localism and diversity. According to the FCC’s website:

The Low Power Television Service (LPTV)...was primarily intended to provide Opportunities for locally-oriented television service in small communities, both rural and individual within larger urban areas. LPTV presents a less expensive and very flexible way of delivering programming to the interests of viewers in small localized Areas, providing a means for local self-expression. In addition, LPTV has created abundant opportunities for new entry into television broadcasting and has permitted fuller use of the broadcast spectrum.⁴

The Commission has repeatedly underscored the importance of LPTV stations to their local communities and in the context of the digital television transition, has taken steps to ensure the ongoing viability of LPTV service.⁵ LPTV and TV translator stations provide service where there are no other viable television outlets and are essential sources of diversity in television programming and ownership.⁶ Prior to the recent auction rulemaking process, the Commission routinely highlighted over many years the ingrained value of LPTV stations as providers of

³ See letter to the GAO dated October 1, 2014 from Representatives Anna Eshoo (CA) and Joe Barton (TX) to Gene L. Dorado, Comptroller General of the United States (“Barton/Eshoo Letter”). Attachment A.

⁴ <https://www.fcc.gov/encyclopedia/low-power-television-lptv>

⁵ See e.g., Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Sixth Report and Order, 12 FCC Rcd 14588 ¶141-47 (1997).

⁶ Third NPRM, ¶ 1.

diverse programming options, ownership opportunities for minorities and women and as a lifeline where LPTV stations provide the only means for obtaining free over-the-air television.

II. The Third NPRM: The Existential Threat To LPTV

On October 10, 2014, the Commission released its *Third Notice of Proposed Rulemaking* seeking comment on measures to facilitate the final conversion of LPTV and TV translator stations to digital service and ways to mitigate the potential impact of the incentive auction and the spectrum “repacking” process on such stations. The Commission discussed a series of possible future measures intended to “alleviate” the negative consequences to LPTV and TV translator stations as a result of the auction and channel repacking. *Third NPRM*, ¶ 3.

The stakes in this proceeding are very high for LPTV stations -- literally, a matter of life and death. The Commission remarkably and specifically acknowledged, without fashioning any present regulatory safeguards, the uncontested fact that “a significant number [of LPTV stations] may be displaced as a result of the auction or repacking process and required to find a new channel from the smaller number of channels that will remain in the reorganized spectrum or discontinue operations.” *Third NPRM*, ¶ 2. It merely solicited comment 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,” asking commenters to describe in detail “any perceived benefits and disadvantages of the measures advocated.” *Third NPRM*, ¶ 59.

To facilitate the submission of informed and meaningful comments, the Commission should have shared with interested parties the analysis it possesses on the stranding of LPTV stations. However, to date, the Commission has not afforded interested parties the opportunity to review and critique the so-called inputs in the Greenhill 1 Report, *i.e.*, assumptions and variables

the FCC used in assessing the auction’s impact on licensed broadcast television stations. FAB and other LPTV stakeholders need access to the data and analyses the Commission surely has in hand as factual matters. This is the data that enabled the Commission to synopsise and outline specific projections that led to publishing the summary report prepared for the FCC by its outside investment banker consultants (Greenhill & Co.) to promote the incentive auction nationwide. The underlying assumptions and outputs of the FCC analyses that gave rise to the business case summarized in that Greenhill Report remain central to the Commission arriving at thoughtful and transparent policy considerations needed to mitigate the conceded negative impacts on LPTV.

III. The FCC’s Commitment to Consider LPTV Impacts at a “Future Time”

The Greenhill 1 Report summarizes the expected auction dynamics of clearing 21 TV channels (126 MHz), including LPTV stations, in every one of 210 markets, but only references the expected sums to be paid to an unspecified number of auction-eligible (i.e., non-LPTV) stations to achieve that target clearing objective. The results summarized in the Greenhill 1 Report thus implicitly, if not explicitly, reflect a sweep of possible impacts on LPTV. The report was released to the public to kick off investment banking roadshows across the country two weeks **after** the deadline for petitions for reconsideration regarding the *First Report and Order*.⁷

In its December 2014 *Motion to Toll the Comment and Reply Comment Deadlines in the Third Notice of Proposed Rulemaking*, filed before the beginning of the comment cycle, FAB asked for the release of information on LPTV auction impacts. The Commission made a commitment in its January 8, 2015, *Order* denying that Motion to consider impacts to LPTV at “a future date.”⁸ And yet in its *Second Order on Reconsideration* (“*Second Order*”), released on

⁸ See *Order*, DA 15-31, released January 8, 2015, ¶7.

June 19, 2015, the FCC thereafter claimed that it does not have *any* data regarding impact of the clearing and repacking processes on LPTV stations. This statement is not credible in light of the admission by the Vice-Chair of the FCC’s incentive auction task force (IATF)⁹ that the Commission had of course conducted an analysis of LPTV:

“We did look at LPTV, the impact on low-power TV stations, as we were planning the auction, but as Mike [Gravino, Director, LPTV Spectrum Rights Coalition] indicated, our starting point is obviously the statute, what Congress told us to do and the limitations Congress imposed on us, and so we are acting pursuant to those statutory directives.”

If LPTV data were not actually included in the analysis used to generate the Greenhill 1 Report, LPTV licensees would have to have been treated as if they were non-existent. Surely, that was not the intent of Congress in the Spectrum Act. The Act expressly provides that the rights of low-power television must not be altered in the auction process: “Nothing in this subsection [authorizing the incentive auction] shall be construed to alter the spectrum usage rights of low-power television stations.” 47 U.S.C.¶ 1452(b)(5). Moreover, in order to clear 126 MHz of spectrum at very specific prices by designated market area (“DMA”), the Commission necessarily had to make assumptions about LPTV and the outputs of stations remaining on the air by DMA -- assumptions that were capable of generating \$37 billion in reverse auction purchases and \$45 billion in forward sales resulting in a loss of 60% of the U.S. broadcasting spectrum.

To make accurate and reliable projections about the nationwide clearing of 126 MHz of spectrum and to generate precise and highly differentiated reverse auction purchase prices, the

⁹ It is not known whether a transcript from this interview of Howard Symons on NPR’s *The Koyo Nambdi Show* is now available. For the audio record from WAMU 88.5 Radio on August 12, 2015, go to <https://thekojonnamdishow.org/audio/#/shows/2015-08-11/tt-fcc-spectrum-auction/89449/@00:00> at minutemark 13:30 (last visited November 11, 2015).

Commission certainly must have assessed the impact upon LPTV. All FAB requests by this motion is the opportunity for the public to review, comment and critique those key “impacts” and “outputs,” which is the minimum process applicable under the Administrative Procedure Act to on-the-record administrative rulemakings.

IV. The Forthcoming GAO Report On LPTV Impacts

Representatives Barton and Eshoo have requested that the GAO evaluate the “impact” of the incentive auction on LPTV and TV translator stations, including (a) the projected number of LPTV and TV translator stations that are likely to lose their channels as a result of the auction and the repacking without the availability of replacement channels, (b) the number of viewers who will lose broadcast access to an LPTV station and (c) the projected costs of relocation for LPTV stations that receive a replacement channel.¹⁰ *See* Attachment A. This is information the Commission should make publicly available before finalizing “life and death” decisions about the fate of LPTV stations.

The Barton/Eshoo letter underscores the importance of disclosing this information at the earliest possible time. The letter is dated the same day the Commission released the Greenhill 1 Report to the public. The Commission could have released 13 months ago as much of the LPTV impact data requested by Congress for clearing 126 MHz (and likely also for clearing 84 MHz instead) that was already in hand on the very same day that Representatives Eshoo and Barton wrote to the GAO.

¹⁰ Since the issuance of the letter to the GAO, members of the Commission’s staff have acknowledged on several occasions their awareness of the letter. *No impact analysis has been released.*

V. Members of Congress Continue To be Concerned About the FCC’s Continuing Failure To Disclose LPTV Impacts

In a letter dated October 22, 2015, four members of the House Energy & Commerce Committee asked Chairman Wheeler for a detailed status report on how the LPTV incentive auction will impact translator stations.¹¹ They expressed concern that “following the FCC’s broadcast incentive auction there may not be sufficient spectrum to accommodate LPTV stations and translators, potentially forcing them to cease operations.” The Commission was asked to provide by November 18, 2015:

1. A detailed status of the Commission’s open rulemaking on considering additional means to mitigate the potential impact of the incentive auction and the repacking process on LPTV and TV translator stations to help preserve the important services they provide (Docket No. 03-185 and No. 12-268), specifically addressing whether this rulemaking will be completed well before auction.
2. The provision of whatever analyses and studies that have been conducted by FCC staff and consultants on the impacts on possible stranding or effective extinguishment of LPTV stations in an auction that clears 126 MHz in the reverse stage and sells 100 MHz in the tandem forward event nationwide in all markets that the FCC staff and the Commission investment banking agents have been marketing. These forecasted LPTV clearing effects should be provided by TV market.
3. The release of any alternate scenarios already in-hand that provide ranges of impacts upon LPTV for clearing down to 84 MHz and up also up to 132 MHz of

¹¹ Representatives Renee Ellmers (NC), Gus M. Bilirakis (FL), Kevin Cramer (ND) and Billy Long (MO). Attachment B.

spectrum, as have appeared in various FCC public statements as possible auction goals and outcomes.

VI. The Need for Immediate Action To Prevent Judicial Remand

The FCC to date has not released what it has modeled over many months (and millions of dollars in staff and consulting time) regarding the sweep of potential impacts of the incentive auction on LPTV stations. On this basis alone, FAB believes a federal appellate court is likely to reverse and remand the Commission's decisions in this proceeding under the Administrative Procedure Act. 5 U.S.C. § 706(2)(a). Also, in FAB's view, the Commission has violated the Regulatory Flexibility Act of 1980 by failing to thoroughly analyze the potential adverse economic impacts on low-power television stations as small entities, and by failing to demonstrate that the Commission "has taken" steps to "minimize the significant economic impact" of its incentive auction rules on low-power television stations. 5 U.S.C. §§ 604(a), 605(b). Furthermore, unless prompt disclosure on modeled impacts in hand is released,¹² the Commission has exceeded the scope of its lawful authority by failing to consider relevant factors, including the significant costs of its actions on LPTV stations.¹³

Once the key information outlined above is released, the Commission should reopen comments in the *Third NPRM*. If a Report and Order were to be adopted without giving interested parties the opportunity to review that crucial data, the integrity and completeness of

¹² See *Free Access & Broadcast Telemedia, LLC, et al. v. FCC*, No. 15-1346 (D.C. Cir.).

¹³ See *Michigan v. EPA*, 135 5. Ct. 2706 (2015) (EPA acted unreasonably when it deemed cost irrelevant to the decision to regulate power plants).

the rulemaking, along with and the statutorily-required Initial Regulatory Flexibility Analysis and Final Regulatory Flexibility Analysis, will by definition be compromised.¹⁴

It is nearly impossible for FAB and other interested parties to conduct the analysis requested by the Commission to delineate a benefits and disadvantages (a.k.a. benefit-costs) in a timely fashion before a *Third Report and Order* is issued without:

- access to the underlying assumptions that flowed into and formed the basis of the resulting quantified and precise Greenhill 1 Report representations, which are still actively being marketed by the FCC to auction-eligible broadcasters for the 210 U.S. DMAs;
- access to the GAO's independent analysis of LPTV impacts for the extensively modeled scenarios clearing both 126 MHz and alternately 84 MHz;
- release of the projected expected impacts on LPTV that will enable interested parties to offer meaningful proposals on how the Commission can and should mitigate the harmful impact of the auction on LPTV licensees;¹⁵ and
- affording a fair opportunity for interested parties to analyze the requested disclosures above and the GAO results.

In light of the foregoing, FAB again requests that the Commission place into the public record at the earliest possible time the assumptions and related auction models projecting impacts underlying the Greenhill 1 Report. It is now almost 11 months *after the deadline* for

¹⁴ In a December 15, 2014 letter to FCC Chairman Hon. Tom Wheeler and Hon. Dr. Winslow Sargeant, Chief Counsel for Advocacy at SBA, FAB asked that the FCC supplement the record and correct the inaccurate finding in the *First Report & Order* in Docket No. 12-268 that no parties raised any issues related to the Initial Regulatory Flexibility Analysis in the Notice of Proposed Rulemaking. See Attachment C.

¹⁵ FAB also filed a Freedom of Information Act request on August 20, 2015 (FCC FOIA Control No. 2015-729 and FOIA Online number FCC-2015-000729). This request in part is under appeal and in part is still in process.

Attachment A: Letter from Reps. Eshoo and Barton to the GAO), dated October 1, 2014
Attachment B: FAB Letter to FCC Chairman Wheeler and SBA Chief Counsel for
Advocacy, dated December 15, 2014
Attachment C: Letter to FCC Chairman Wheeler from Reps. Ellmers, Bilirakis, Cramer
and Long, dated October 22, 2015

GSB:7280951.3

ATTACHMENT A

Congress of the United States

Washington, DC 20515

Attachment A

October 1, 2014

The Honorable Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Dodaro,

The Middle Class Tax Relief and Job Creation Act of 2012 became law in February 2012. This law directs the Federal Communications Commission (FCC) to conduct an incentive auction allowing a broadcaster to voluntarily relinquish some or all of their spectrum usage rights in return for compensation (better known as the “reverse auction”).¹ The law also requires the FCC to hold a “forward auction” allowing wireless carriers to bid on the available cleared spectrum.² Only full-power broadcasters and low-power broadcasters with a Class A license are able to participate in the reverse auction.

In May 2014, the FCC adopted an Incentive Auction Report and Order addressing important issues related to the incentive auction.³ The FCC also announced that the agency is planning to initiate a future Low-Power Television station (LPTV) and TV Translator station proceeding to consider measures that help alleviate the impact of LPTV and TV Translators during the incentive auction.

While we are thankful for the ongoing efforts of the FCC, we ask the Government Accountability Office (GAO) to study the impacts of the incentive auction on LPTV stations and TV Translator stations, as well as their viewers. Consistent with the FCC’s Report and Order, we ask that the GAO evaluate the impact of the incentive auction for each of the two potential scenarios for repurposing broadcast spectrum: (a) 84 megahertz and (b) 126 megahertz. Within each of the two categories, please provide the following information:

1. The total number of LPTV stations that provide original programming or broadcast local news and information, especially those serving racial and ethnic minority communities;
2. The total number of TV translator stations that rebroadcast local news and information programming of a full-power TV broadcast station;
3. A projection of the number of LPTV stations and TV translator stations listed under (1) and (2) that may lose either their current input or output channel as a result of the forward auction;

¹ Middle Class Tax Relief and Job Creation Act of 2012, 26 U.S.C. §6403 (2012).

² *Id.*

³ Federal Communications Commission. (2014). FCC adopts rules for first ever incentive auction: will make available additional airwaves, increase competition for mobile broadband [Press Release]. Retrieved from https://apps.fcc.gov/edocs_public/attachmatch/DOC-327100A1.pdf

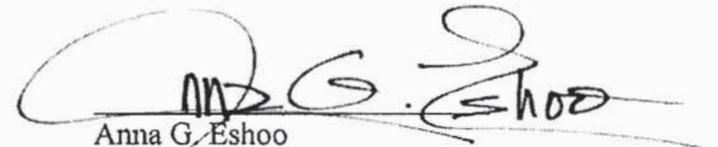
4. A projection of the number of such LPTV stations and TV translator stations that will subsequently be able to locate and operate on replacement channels after the auction, together with an aggregate estimate of the costs of relocation, including new equipment, legal and engineering services, and facility construction;
5. A projection of the number of such LPTV stations and TV translator stations that will be unable to locate to or operate on replacement channels after the auction;
6. A projection of the number of viewers that will lose over-the-air access to at least one such local LPTV station that provide local news and information, especially to underserved communities of interest;
7. A projection of the number of viewers that will lose over-the-air access via such TV translator stations to at least one of the signals of the regional affiliates of the major commercial or noncommercial educational television broadcast networks; and
8. Recommendations to the FCC and Congress on ways to remedy adverse impacts of the auction on LPTV stations and TV translator stations, and, most importantly, their viewers.

Thank you for your timely attention to this request. If you have any questions, please contact Emmanuel Guillory (Rep. Joe Barton) at 202-225-2002 or David Grossman (Rep. Anna Eshoo) at 202-225-8104.

Sincerely,



Joe Barton
Chairman Emeritus
House Committee on Energy and Commerce



Anna G. Eshoo
Ranking Member
Subcommittee on Communications
& Technology

ATTACHMENT B

Attachment B



G A R V E Y S C H U B E R T B A R E R
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December 15, 2014

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

The Honorable Dr. Winslow Sargeant
Chief Counsel for Advocacy
U.S. Small Business Administration
409 3rd St, S.W.
Washington, DC 20416

Re: In the Matter of Expanding the Economic and Innovation Opportunities of
Spectrum through Incentive Auctions, Docket No. 12-268

Gentlemen:

Free Access & Broadcast Telemedia LLC (“FAB”), by counsel, hereby respectfully requests that the Chairman instruct the FCC’s Incentive Auctions Task Force (“Task Force”) to transmit a written correction to the Chief Counsel for Advocacy’s office regarding the Final Regulatory Flexibility Analysis (“FRFA”) in the recent FCC Spectrum Incentive Auction *Report and Order* in FCC Docket 12-268.¹ The *Report and Order* contains incorrect statements within the FRFA which the SBA is now evaluating under its statutory oversight authority under the Regulatory Flexibility Act. In Appendix B of the *Report and Order*, the FCC found that:

No commenters directly responded to the IRFA. However, a number of commenters raised concerns about the impact on small businesses of various auction design issues. We have nonetheless addressed these concerns in the FRFA.²

¹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 (2014) (“*Report and Order*”).

² *Id.* at 6949 (¶13).



The first sentence in the above quote is inaccurate because several submissions were made for the record and meetings were held involving either or both FAB and the LPTV Spectrum Rights Coalition (“Coalition”) with FCC staff directly involving the topic of the Initial Regulatory Flexibility Analysis (“IRFA”). Meetings were held with all of the Commissioners’ offices, members of the Task Force, the Media Bureau Chief, Video Division managers, Wireless Bureau managers, and three attorneys from the FCC Office of General Counsel. All ten of those submissions and meetings were documented with *ex parte* filings on the record before the *ex parte* window closed on May 8, 2014.³

Regarding the second sentence in the quote above, FAB and other commenters requested that FCC findings and analyses supposedly conducted in order to size quantitatively the financial scope of displacement and relocation cost impacts on thousands of bona fide licensees in the

³ Written Ex Parte Comments of FAB, filed May 5, 2014 at <http://apps.fcc.gov/ecfs/document/view?id=7521107089>; Notices of Ex Parte Presentation filed on behalf of FAB dated May 7, 2014 at <http://apps.fcc.gov/ecfs/document/view?id=7521116921>; May 8, 2014 at <http://apps.fcc.gov/ecfs/document/view?id=7521118037>; and May 9, 2014 at <http://apps.fcc.gov/ecfs/document/view?id=7521120243>. For links to additional documents in the record regarding requests for benefit-cost analysis, see FAB Petition for Reconsideration dated September 15, 2014 at <http://apps.fcc.gov/ecfs/document/view?id=7522677333>; Reply by FAB to Objections to FAB’s Petition for Reconsideration dated November 24, 2014 at <http://apps.fcc.gov/ecfs/document/view?id=60000988557>; Petition for Reconsideration by the LPTV Spectrum Rights Coalition dated September 15, 2014 (costs and auction benefit-costs) at <http://apps.fcc.gov/ecfs/document/view?id=7522654599>; written Ex Parte Comments of the LPTV Spectrum Rights Coalition filed on November 17, 2014 (compendium) at <http://apps.fcc.gov/ecfs/document/view?id=60000985326>; November 12, 2014 at <http://apps.fcc.gov/ecfs/document/view?id=60000982517>; October 30, 2014 at <http://apps.fcc.gov/ecfs/document/view?id=60000977233>; August 29, 2014 (on cost and auction benefit-cost in the IRFA at <http://apps.fcc.gov/ecfs/document/view?id=7521825878>; April 21, 2014 as a transcript from the 2014 LPTV NAB Show Info-Session with FCC Media Bureau Chief William T. Lake, April 7, 2014 at <http://apps.fcc.gov/ecfs/document/view?id=7521098954> and the session presentation at <http://apps.fcc.gov/ecfs/document/view?id=7521098955> ; LPTV Spectrum Rights Coalition—Spectrum Auction Task Force Presentation on March 18, 2014, filed in Docket 12- 268 on March 21, 2014, points 4 and 5 at pp. 4-6 at <http://apps.fcc.gov/ecfs/document/view?id=7521094687>; and August 27, 2013 regarding costs and auction eligibility (summary) at <http://apps.fcc.gov/ecfs/document/view?id=7520940050> and (full presentation) at <http://apps.fcc.gov/ecfs/document/view?id=7520940051>. See also written Reply Comments of Mike Gravino, filed March 12, 2013 on p. 2 regarding auction eligibility at <http://apps.fcc.gov/ecfs/document/view?id=7022130171>; Reply Comments of Civic Media Advisors, filed May 20, 2013, on p. 8 regarding auction costs and benefit-cost at <http://apps.fcc.gov/ecfs/document/view?id=7022414957>.



Low Power Television (“LPTV”) broadcast industry be disclosed in the record.⁴ Regarding the assertion in the third sentence quoted above, no impact analysis was disclosed anywhere within the IRFA, the FRFA, or within the body of the *Report and Order*. The Commission needs to correct the record regarding these errant statements cited above when it writes to the Chief Counsel for Advocacy.

Finally, no analysis was provided in support of the FCC’s assertion in the initial NPRM’s IRFA that it would serve no useful purpose to the goals of the auction for the FCC to include LPTV broadcast licensees in the auction, even though the FCC explicitly stated it *has* the authority to do so. In the IRFA, the Commission observed:

The proposal to limit reverse auction participation to only full power and Class A stations and to not permit participation by low power television

⁴ Numerous written Comments, Replies, and Notices of Ex Parte Meetings were filed by parties seeking FCC financial impact analysis and policy alternatives on the looming costs of relocation facing LPTV broadcast licensees, displacement, and possible extinguishment of their license rights in this proceeding. *See* note 3, *supra*. In addition, as of December 11, 2014, there are at least 10 additional Ex Parte submissions from the Coalition which affirm that licensed stakeholders repeatedly sought a quantified impact analysis by the FCC on separate displacement and relocation cost impacts on LPTV broadcast licensees, akin to an Unfunded Mandates Regulatory Act analysis not ever sized by the Congressional Budget Office, including (but not limited to) the Transcript of the NAB Show-Info Session with Media Bureau Chief William Lake and the Coalition’s companion presentation cited above. Additional Coalition submissions are dated April 24, 2014 (handout presented to Chairman Wheeler) at <http://apps.fcc.gov/ecfs/document/view?id=7521099405>; March 21, 2014 (talking points on IRFA and industry cost impacts) at <http://apps.fcc.gov/ecfs/document/view?id=7521094687>; February 6, 2014 (talking points seeking an LPTV industry impact analysis) at <http://apps.fcc.gov/ecfs/document/view?id=7521071384>; January 16, 2014 (letter to Chairman Wheeler on relocation costs impacts, cost of delays/uncertainty, and seeking auction eligibility) at <http://apps.fcc.gov/ecfs/document/view?id=7521066173>; November 26, 2013 (meeting with Cm. O’Rielly) at <http://apps.fcc.gov/ecfs/document/view?id=7520959630>; November 8, 2013 (meeting and e-mail with Chairman Wheeler) at <http://apps.fcc.gov/ecfs/document/view?id=7520957172>; August 27, 2013 (summary) at <http://apps.fcc.gov/ecfs/document/view?id=7520940050> and (presentation) at <http://apps.fcc.gov/ecfs/document/view?id=7520940051>; July 30, 2013 (letter to then Acting Chairwoman Clyburn seeking a fact finding on impacts/costs) at <http://apps.fcc.gov/ecfs/document/view?id=7520934408>; July 3, 2013 (presentation to Commissioner Rosenworcel’s office) at <http://apps.fcc.gov/ecfs/document/view?id=7520926932> and (cover letter) at <http://apps.fcc.gov/ecfs/document/view?id=7520927779>; and others too numerous to continue to footnote here from the FCC Docket 12-268 website, last visited as of December 11, 2014. FAB can provide additional examples from the docket upon request.



stations will have a greater impact on small entities since all low power television stations are small entities. Alternatively, the Commission could allow low power television stations to participate in the reverse auction but this would have no practical use since low power television stations do not have to be protected in repacking and clearing them from their channels in the reverse auction would be unnecessary. The Commission believes the additional burden on low power stations is outweighed by the need to implement Spectrum Act provisions, to recover a sufficient amount of spectrum in the reverse auction and to complete the successful repacking full power and Class A stations.⁵

As a policy alternative, inclusion of LPTV in the auction should have continued to have been considered and reported out transparently in the FRFA, not ignored as though the Commission never initially concluded it had the authority to include LPTV in the auction in the IRFA.

The Commission should also provide its supporting analysis now for the statement to the Chief Counsel for Advocacy when the Commission corrects the record regarding the errant statements cited above. FAB respectfully requests that the Commission serve FAB with a copy of the clarifications sent to the SBA.

Although the Commission has been asked repeatedly for over 18 months in myriad meetings and submissions if any economic analysis has been conducted to support any of the findings in the *Report and Order* regarding total LPTV broadcast television licensee cost impacts or benefit-cost of LPTV broadcast licensee auction participation, the Task Force staff finally admitted last month to the LPTV Spectrum Rights Coalition, apparently in a large group meeting with the Task Force, that no such quantitative studies, either on impacts thrust upon LPTV broadcasters or on the benefit-cost of auction participation, have ever been done. This admission to the LPTV Spectrum Rights Coalition was made in a group setting on October 22, 2014, as noted in its *ex parte* filing of October 30, 2014 (at ¶5). This admission occurred *after* the window closed for filing for review with the Court of Appeals or to submit Petitions for Reconsideration to the FCC regarding analysis omissions in the *Report and Order*.

The admission damages the integrity and sustainability of the FCC's rulemaking process and its concomitant obligation to report accurately to the SBA's Chief Counsel for Advocacy, who has oversight of the Docket 12-268 rulemaking pursuant to the Regulatory Flexibility Act. In no instance does the *Report and Order's* FRFA offer any economic sizing on the financial impact quantified in dollars on any type of small business. Nor is there any reference quantifying jobs that will be affected. The body of the *Report and Order*, likewise, is devoid on both counts.

⁵ *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd. 12357, 12539 (2012) ("NPRM"), at ¶ 71.



A search of the entire *Report and Order* yields no economic impact analysis on any broadcast licensee stakeholders, and especially on thousands of low power broadcast television and translator licensees, other than a few references to unrelated Comments the FCC received in connection with wireless medical telemetry service (WMTS) impacts. The rest of the *Report and Order* provides no quantified financial impacts on the benefit-cost estimated to the U.S. Government and to the U.S. Economy from pursuing any alternative approaches for LPTV broadcast licensees, including but not limited to auction participation. Yet the FCC's promotional analysis entitled *Incentive Auction Opportunities for Broadcasters: Prepared by the Federal Communications Commission by Greenhill* (the "Pitch Book")⁶ was released on October 1, 2014, just 15 days after the Petition for Reconsideration period window had closed during the then 1,000-day long rulemaking. The Pitch Book signals a likely crushing of thousands of bona fide LPTV broadcast licensees – and their livelihoods.⁷

The FCC has not yet placed the Pitch Book formally into the docket for the SBA to review. The Pitch Book and related displacement impact analysis which the Task Force surely already has in hand need to be disclosed. The Pitch Book quantifies in dollar terms what auction-eligible broadcasters are likely to be offered as compensation for relinquishing spectrum.⁸ The likely adverse impacts on LPTV broadcasters that are byproducts of the precisely quantified scenario being promoted to other auction-eligible broadcast television licensees, however, are completely absent. The Commission should disclose modeled impacts on small broadcast television licensee businesses to the Chief Counsel for Advocacy. An analysis of the impacts to LPTV broadcast licensees, should the auction proceed as the FCC's own sponsored marketing materials project, needs to be provided for the record.

Thus, as the record now stands, FAB believes neither the FRFA nor the *Report and Order* itself will withstand judicial review. This is because chosen regulatory alternatives must follow quantified impacts. No impacts were quantified, and no empirical policy alternatives were weighed and considered in the balance.

⁶ Available at <http://wireless.fcc.gov/incentiveauctions/learn-program/docs/ia-opportunities-book.pdf> (last visited December 11, 2014).

⁷ See FAB's Reply to Objections to Petition for Reconsideration, filed November 24, 2014, at p. 4.

⁸ Indeed, "opening prices for most [auction-eligible] stations will be higher than the high-end compensation estimates developed by FCC staff and included in the information materials prepared by the Greenhill investment banking firm." Statement of Chairman Tom Wheeler, *In the Matter of Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001, and 1002* (GN Docket No. 12-268, AU Docket 14-256), released December 11, 2014.



G A R V E Y S C H U B E R T B A R E R

The Honorable Tom Wheeler
The Honorable Dr. Winslow Sargeant
December 15, 2014
Page 6

FAB understands that the FCC is on track to spend \$19 million in this fiscal year alone for incentive auction economic analysis and modeling. Unfortunately, it appears the Commission will not use that budget to determine the size of the cost impacts on LPTV broadcast licensee displacements and relocations. Nor, as the FCC has admitted, will it be able to release a sizing of the benefit-cost of including LPTV broadcast television licensees in the auction as specifically represented by the FCC in the IRFA as a possible policy alternative. Rather, it seems the preferred policy alternative simply is to remove mention of LPTV broadcast licensee auction participation in the FRFA as if it were never stated in the IRFA.

Consequently, FAB urges the Chief Counsel for Advocacy to seek the assistance from the SBA's staff economists and second them to the FCC to participate in producing an overdue, straightforward impact analyses for the Commission, the public, and Congress to weigh, and for the SBA to then also use in its ongoing review of the FRFA. Further, as FAB requested in its Reply to Objections to its Petition for Reconsideration to the *Report and Order*, the Commission should enter into the record of the proceeding all transmittals sent to the SBA.

As the voice for small businesses such as LPTV broadcast licensees, the SBA should assist the FCC with assessing the impact of the regulatory burden the incentive auction will pose on such entities. Only by exercising that voice will the Commission be provided with the needed analysis to weigh alternatives to balance the voices of large, well-financed wireless companies.

Respectfully submitted,

Free Access & Broadcast Telemedia LLC

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cc: Hon. Marie Cantwell, Senate Committee on Small Business and Entrepreneurship
Hon. James E. Risch, Senate Committee on Small Business and Entrepreneurship
Hon. Sam Graves, House Committee on Small Business
Hon. Nydia Velázquez, House Committee on Small Business
Hon. Chris Collins, House Committee on Small Business
Hon. Janice Hahn, House Committee on Small Business
Hon. Mignon Clyburn, FCC Commissioner



G A R V E Y S C H U B E R T B A R E R

The Honorable Tom Wheeler
The Honorable Dr. Winslow Sargeant
December 15, 2014
Page 7

Hon. Michael O'Rielly, FCC Commissioner
Hon. Agit Pai, FCC Commissioner
Hon. Jessica Rosenworcel, FCC Commissioner
Ms. Jamie Belcore Saloom, Assistant Chief Advocacy Counsel, SBA
Mr. Jonathan Sallet, FCC General Counsel
Mr. Gary Epstein, FCC Auctions Task Force
Mr. William Lake, FCC Media Bureau Chief
Mr. William J. Scher, FCC Office of General Counsel
Mr. Mike Gravino, LPTV Spectrum Rights Coalition
With submission into the Docket 12-268 official record

ATTACHMENT C

Congress of the United States
House of Representatives
Washington, DC 20515-3302

October 22, 2015

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions, Docket No. 12-268, and

Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power TV and Translator Stations, Docket No. 03-185

Dear Mr. Chairman:

We write to applaud your efforts to achieve a successful Spectrum Incentive Auction. As supporters of the Middle Class Tax Relief and Job Creation Act ("Spectrum Act"), it is our view that a successful auction must make an effort to accommodate Low-Power Television ("LPTV") stations and translators so they may continue to serve their communities, whether urban, suburban, or rural.

As our colleagues Representatives Greg Walden and Joe Barton reminded you in a letter on August 4th, Congress and the FCC agree on the importance of community-based LPTV and translators. LPTV and translators provide the public with a diverse selection of programming and content representing many different cultures, denominations, and worldviews.

Following our July 28, 2015 oversight hearing, we are concerned that following the FCC's broadcast incentive auction there may not be sufficient spectrum to accommodate LPTV stations and translators, potentially forcing them to cease operation.

In order to retain as many of these valuable voices in our communities, it is essential that the FCC limit the incentive auction's impact on LPTV service as much as possible without harming the goals of the incentive auction or delaying its progress.

By November 18, 2015, I would like you to provide us with the following:

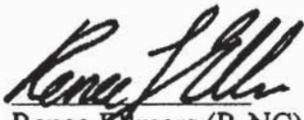
1. A detailed status of the Commission's open rulemaking on considering additional means to mitigate the potential impact of the incentive auction and the repacking process on

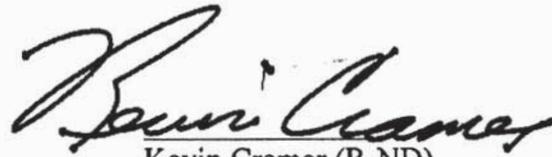
LPTV and TV translator stations to help preserve the important services they provide (Docket No. 03-185 and No. 12-268), specifically addressing whether this rulemaking will be completed well before auction.

2. In addition, we would also appreciate if you provided whatever analyses and studies that have been conducted by your staff and consultants on the impacts on possible stranding or effective extinguishment of LPTV stations in an auction that clears 126 MHz in the reverse stage and sells 100MHz in the tandem forward event nationwide in all markets, as your staff and investment banking agents have been marketing. Please provide these forecasted LPTV clearing effects by TV market.
3. Lastly, we would also like you to release any alternate scenarios already in-hand that provide ranges of impacts upon LPTV for clearing down to 84 MHz and up also up to 132 MHz of spectrum, as have appeared in various FCC public statements as possible auction goals and outcomes.

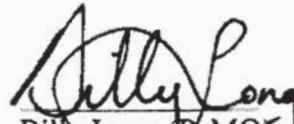
We look forward to your response.

Sincerely,


Renee Ellmers (R-NC)
Member of Congress


Kevin Cramer (R-ND)
Member of Congress


Gus M. Bilirakis (R-FL)
Member of Congress


Billy Long (R-MO)
Member of Congress

cc: Hon. Mignon Clyburn, FCC Commissioner
Hon. Michael O'Rielly, FCC Commissioner
Hon. Ajit Pai, FCC Commissioner
Hon. Jessica Rosenworcel, FCC Commissioner