



Consovoy McCarthy Park PLLC

3033 Wilson Boulevard
Suite 700
Arlington, VA 22201
703.243.9423
www.consovoymccarthy.com

January 7, 2016

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

Dear Ms. Dortch:

On January 6, 2016, The Videohouse, Inc. (“Videohouse”), Fifth Street Enterprises, LLC (“Fifth Street”), and WMTM, LLC (“WMTM”), represented by Ron Bruno of Videohouse, Lawrence Rogow of WMTM, and the undersigned of Consovoy McCarthy Park PLLC met separately with (1) Matthew Berry of the Office of Commissioner Ajit Pai; (2) Jessica Almond of the Office of Chairman Wheeler; (3) Robin Colwell of the Office of Commissioner O’Rielly; and (4) Jennifer Thompson of the Office of Commissioner Rosenworcel regarding the Petition for Reconsideration of The Videohouse, Inc., Abacus Television, WMTM, LLC, and KMYA, LLC, GN Docket No. 12-268 (“Reconsideration Petition”), filed with the Federal Communications Commission (“FCC”) on September 2, 2015.

During those meetings, Videohouse, Fifth Street, and WMTM encouraged the FCC to grant that petition, which seeks reconsideration of the Commission’s *Second Order on Reconsideration*.¹ Videohouse, Fifth Street, and WMTM explained that the FCC has taken positions in denying Videohouse, Fifth Street, and WMTM’s recent motion to stay that undermine (if not negate) its asserted rationales in the *Second*

¹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context*, Second Order On Reconsideration, 30 FCC Rcd 6746 (2015).

Order on Reconsideration for denying Petitioners the ability to participate in the upcoming reverse auction and protection in the repacking process.²

In addition, Videohouse, Fifth Street, and WMTM explained that to the extent that the FCC has premised grants of discretionary protection to other licenses upon certifications by those licensees of their Class A eligibility, Petitioners have certified their eligibility continuously since they first became Class A-eligible. Each filed a timely certification of eligibility shortly after the passage of the Community Broadcasters Protection Act that was approved by the FCC.³ And each has certified its continuing eligibility on a quarterly basis since then.

Videohouse, Fifth Street, and WMTM further explained that if the FCC were to grant the Reconsideration Petition, Petitioners would be the only Class A licensees entitled to relief. In support of this point, Videohouse, Fifth Street, and WMTM emphasized that Petitioners are the only four similarly situated stations that timely filed a Form 2100, Schedule 381 and a Petition for Eligible Entity Status. Because Petitioners are the only licensees entitled to relief, a grant of the Reconsideration Petition would not disrupt auction proceedings.

As they have in the past, Videohouse, Fifth Street, and WMTM urged the FCC to resolve the Reconsideration Petition promptly.⁴ Indeed, the FCC must do so, given the D.C. Circuit's admonition that the FCC must rule in time "to allow petitioners to seek judicial review with an opportunity for meaningful relief before the incentive auction commences on March 29, 2016."⁵ Videohouse, Fifth Street, and WMTM emphasized that a prompt grant of the Reconsideration Petition would obviate the need for judicial review and its attendant costs and risks.

For the foregoing reasons, as well as those Petitioners set out previously, the Commission promptly should grant the Reconsideration Petition.

² See Letter from Thomas R. McCarthy, Counsel for Petitioners, to Marlene Dortch, FCC, Dec. 23, 2015, available at <http://apps.fcc.gov/ecfs/comment/view?id=60001362297>.

³ Public Notice, *Certificates of Eligibility for Class A Television Station Status*, DA 00-1224 (June 2, 2000) (formally acknowledging that Petitioners had "timely filed" "statements of eligibility, certifying full compliance with the [applicable] statutory programming and operational standards" and "deem[ing]" them "eligible to file an application for Class A station status").

⁴ See Letter from Ronald J. Bruno, Benjamin Perez, Lawrence Rogow, and Larry E. Morton to Marlene Dortch, FCC, Nov. 20, 2015, at 2-3, available at <http://apps.fcc.gov/ecfs/comment/view?id=60001362297>.

⁵ Order, *In re The Videohouse, Inc.*, No. 15-1486 (D.C. Cir. Dec. 30, 2015).

Respectfully submitted,

/s/ Thomas R. McCarthy
Thomas R. McCarthy
William S. Consovoy
J. Michael Connolly
CONSOVOY MCCARTHY PARK PLLC
3033 Wilson Boulevard, Suite 700
Arlington, VA 22201
Tel: (703) 243-9423

*Counsel for The Videohouse, Inc.,
Fifth Street Enterprises, LLC, and
WMTM, LLC*

January 7, 2016

cc:
Jonathan Sallett
Jacob Lewis
James Carr
William Lake
Matthew Berry
Jessica Almond
Robin Colwell
Jennifer Thompson