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February 5, 2016

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VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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

Dear Ms. Dortch:

I write on behalf of Latina Broadcasters of Daytona Beach, LLC ("Latina"), licensee of Class A television station WDYB-CD (Fac ID No. 41375), Daytona Beach, Florida ("WDYB").

Pursuant to Section 1.2205(b) of the FCC's Rules, during the period that began on January 12, 2016 and that ends on the date that the FCC releases the results of the Incentive Auction, broadcasters are "prohibited from communicating directly or indirectly any incentive auction applicant's bids or bidding strategies to any other full power or Class A broadcast television licensee or to any forward auction applicant."

Typically, the *Noerr-Pennington* doctrine provides immunity to private parties from liability for statements made in the course of petitioning the government.[1] However, in informal conversations today, two Commission staff members advised the undersigned that there is no exception to the prohibition on auction-related communications for active rulemaking proceedings, and that Latina could be liable for violating the rule if, in the course of its advocacy, it communicates an incentive auction applicant's bids or bidding strategies. Based on this guidance and its own earlier reading of the anti-collusion rules, Latina has refrained from making certain arguments in this proceeding that it would have made prior to the beginning of the quiet period had the Commission not repeatedly included WDYB on its list of protected stations and defended such inclusion. This is yet another way that Latina

[1] *E. R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); *United Mine Workers of Am. v. Pennington*, 381 U.S. 657 (1965).

has been harmed by its reliance on the FCC's repeated statements that WDYB would be protected in the repack and eligible to participate in the incentive auction.

Respectfully Submitted,

Ari Meltzer