

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

In the Matter of)	
)	
Expanding the Economic and Innovation)	GN Docket No. 12-268
Opportunities of Spectrum Through Incentive)	
Auctions)	

ORDER DENYING STAY MOTION

Adopted: March 3, 2016

Released: March 3, 2016

By the Chief, Media Bureau:

I. INTRODUCTION

1. On February 29, 2016, The Videohouse Inc. (“Videohouse”), licensee of Class A television station WOSC-CD, Pittsburgh, Pennsylvania, filed a request to stay the start of the broadcast television spectrum incentive auction pending resolution of its Petition for Review of the *2016 Reconsideration Order* and related Orders.¹ For the reasons discussed below, we deny the Stay Motion.

II. BACKGROUND

2. In the *Incentive Auction R&O*, the Commission established the framework for the broadcast television spectrum incentive auction.² Among other things, the Commission concluded that the Spectrum Act³ mandates all reasonable efforts to preserve in the repacking process the coverage area and population served of only full power and Class A television facilities (1) licensed as of February 22, 2012; or (2) for which an application for a license to cover was on file as of February 22, 2012.⁴ The Commission did not interpret the Spectrum Act, however, as precluding it from exercising discretion to

¹ Emergency Motion for Stay filed by The Videohouse Inc., GN Docket No. 12-268 (filed Feb. 29, 2016) (Stay Motion). On February 12, 2016, Videohouse, along with Fifth Street Enterprises, LLC (“Fifth Street”) and WMTM, LLC (“WMTM”) (collectively, “Petitioners”), filed a Petition for Review of the *2016 Reconsideration Order* and related Orders with the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”). See Petition for Review, *The Videohouse, Inc. et al. v. FCC*, No. 16-1060 (D.C. Cir. filed Feb. 12, 2016); Brief for Petitioners, *The Videohouse, Inc. et al. v. FCC*, No. 16-1060 (D.C. Cir. filed Feb. 25, 2016) (“Petitioners Brief”). See also *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Order on Reconsideration, FCC 16-12 (Feb. 12, 2016) (“*2016 Reconsideration Order*”). Two of the three Petitioners, Fifth Street and WMTM, have not filed a stay request with the Commission.

² *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567 (2014) (*Incentive Auction R&O*), *aff’d*, *Nat’l Assoc. of Broadcasters, et al. v. FCC*, 789 F.3d 165 (D.C. Cir. 2015).

³ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402 (codified at 47 U.S.C. § 309(j)(8)(G)), 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012) (Spectrum Act).

⁴ February 22, 2012 is the enactment date of the Spectrum Act. See 47 U.S.C. § 1452(b)(2); *Incentive Auction R&O*, 29 FCC Rcd at 6652-54, paras. 185-89. Through the repacking process, the Commission will reorganize the television bands to make spectrum available to carry out a forward auction of new, flexible-use licenses suitable for providing mobile broadband services.

protect additional broadcast television facilities beyond the statutory floor.⁵ The Commission has granted or denied discretionary protection to a handful of categories of facilities, after a careful balancing of numerous factors to achieve the goals of the Spectrum Act and other statutory and Commission goals.⁶ In the *2015 Reconsideration Order*, the Commission extended discretionary protection to Class A stations that had an application for a Class A construction permit on file or granted as of February 22, 2012, the date of enactment of the Spectrum Act.⁷ Videohouse and the licensees of three other Class A stations that did not seek to obtain Class A status until after February 22, 2012 sought reconsideration of the *2015 Reconsideration Order*.⁸ In the *2016 Reconsideration Order*, the Commission rejected their claims on both procedural and substantive grounds.⁹

3. The filing window for applications to participate in the reverse auction commenced on December 8, 2015 and ended on January 12, 2016.¹⁰ The Commission has announced that bidding in the reverse auction will commence on March 29, 2016.¹¹

III. DISCUSSION

4. In determining whether to stay the effectiveness of one of its Orders, the Commission applies the traditional four-factor test employed by the D.C. Circuit.¹² To qualify for the extraordinary remedy of a stay, a movant must show that: (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm absent the grant of preliminary relief; (3) other interested parties will not be harmed if the stay is granted; and (4) the public interest would favor grant of the stay. For the reasons described below, we conclude that Videohouse has failed to meet the test for this extraordinary equitable relief.

A. Videohouse Is Unlikely to Prevail on the Merits

5. Videohouse has failed to demonstrate that it is likely to succeed on the merits. Videohouse first contends that it meets this standard because the D.C. Circuit granted its motion for expedited consideration of its Petition for Review.¹³ The D.C. Circuit Handbook of Practice and Internal Procedures provides that a motion for expedition must demonstrate, among other things, that the decision

⁵ *Incentive Auction R&O*, 29 FCC Rcd at 6654-55, para. 191. The Commission also has explained that reverse auction participation is limited to the licensees of full power and Class A television stations that will be protected in the repacking process. *See id.* at 6719, para. 357.

⁶ *See id.* at 6655-77, paras. 192-245.

⁷ *See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Second Order on Reconsideration, 30 FCC Rcd 6746, 6774-75, para. 62 (2015) (“*2015 Reconsideration Order*”).

⁸ The Videohouse, Inc. (Videohouse), Abacus Television (Abacus), WMTM, LLC (WMTM), KMYA, LLC (KMYA) Petition for Reconsideration, GN Docket No. 12-268 (filed Sept. 2, 2015) (“*Videohouse Petition*”).

⁹ *See 2016 Reconsideration Order* at paras. 7-19.

¹⁰ *Incentive Auction Task Force Releases Revised Baseline Data and Prices for Reverse Auction; Announces Revised Filing Window Dates*, AU Docket No. 15-252 et al., Public Notice, 30 FCC Rcd 12559 (IATF, 2015).

¹¹ *Broadcast Incentive Auction Scheduled to Begin on March 29, 2016*, AU Docket No. 14-252 et al., FCC 15-78, Public Notice, 30 FCC Rcd 8975 (2015). On March 29, reverse auction applicants must commit to an initial bid option.

¹² *See Washington Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977) (*Holiday Tours*); *Virginia Petroleum Jobbers Ass’n v. Federal Power Comm’n*, 259 F.2d 921, 925 (D.C. Cir. 1958) (*VA Petroleum Jobbers*).

¹³ *See Stay Motion* at 3. On February 17, 2016, the Petitioners filed a motion for expedited consideration of their Petition for Review. *See The Videohouse, Inc. et al., Emergency Motion for Expedited Consideration and for an Expedited Briefing Schedule, In re The Videohouse, Inc.*, Docket No. 16-1060 (D.C. Cir. filed Feb. 17, 2016) (“*Motion for Expedition*”).

under review is subject to “substantial challenge.”¹⁴ But “substantial challenge” is a different standard than likelihood to prevail on the merits. And, more critically, the D.C. Circuit denied the relief requested in Petitioners’ motion. The Petitioners requested that the briefing end on March 7, 2016, but the Court ordered that briefing would end almost four weeks later, on April 1, 2016.¹⁵ Moreover, the Petitioners requested that argument be scheduled as soon as practicable so that a decision could be issued before the March 29th start date for the auction, but the Court specifically denied this request.¹⁶

6. Videohouse next argues that it is likely to succeed on its claim that the Commission arbitrarily imposed a “retroactive deadline” of February 22, 2012 for when a station had to file a Form 302-CA in order to be eligible to participate in the auction.¹⁷ As explained in the *2016 Reconsideration Order*, however, the Commission reasonably limited discretionary repacking protection and auction eligibility to stations that filed a Form 302-CA application before February 22, 2012 because that is the date established by Congress for determining which stations are entitled to repacking protection.¹⁸ A station that “filed a Form 302-CA application before February 22, 2012, demonstrated that it sought to avail itself of Class A status as of that date, and thus warranted protection and auction eligibility under the statutory scheme.”¹⁹ Conversely, Videohouse did not request Class A status or demonstrate that it was providing Class A service before February 22, 2012.²⁰ Rather, Videohouse waited to file a Form 302-CA application seeking Class A status until January 2013, after passage of the Spectrum Act “created the potential for Class A status to yield substantial financial rewards through auction participation—over ten years after the CBPA made [it] eligible for such status.”²¹ The Commission’s reliance on these facts was neither arbitrary nor impermissibly retroactive.²²

7. Moreover, Videohouse’s claim that it relied on staff advice to delay filing the Form 302-CA is unavailing.²³ Entities that rely on informal staff advice do so at their own risk.²⁴ Here, the alleged informal staff advice directly conflicted with the *2000 Class A R&O*, in which the Commission required a

¹⁴ See D.C. Circuit Handbook of Practice and Internal Procedures at 33.

¹⁵ See *In re The Videohouse, Inc.*, Order, Docket No. 16-1060 (D.C. Cir. Feb. 23, 2016), at 1 (“Order Denying Motion for Expedition”); Motion for Expedition at 4.

¹⁶ See Order Denying Motion for Expedition at 2 (“ORDERED, that the motion for expedited consideration be denied to the extent that petitioners seek resolution of their petition for review before March 29, 2016.”); Motion for Expedition at 4.

¹⁷ See Stay Motion at 4.

¹⁸ See *2016 Reconsideration Order* at para. 12 (citing 47 U.S.C. § 1452(b)(2)); *Incentive Auction R&O*, 29 FCC Rcd at 6652-53, para. 186 (“The statutory mandate to make all reasonable efforts to ‘preserve’ coverage area and population ‘served’ as of a date certain (February 22, 2012) clearly reflects a Congressional intent to protect or maintain facilities operating on this date.”).

¹⁹ *2016 Reconsideration Order* at para. 12. See also *2015 Reconsideration Order*, 30 FCC Rcd at 6774-75, para. 62.

²⁰ See *2016 Reconsideration Order* at para. 12.

²¹ *2016 Reconsideration Order* at para. 12. See also *2015 Reconsideration Order*, 30 FCC Rcd at 6774-75, para. 62.

²² See *Association of Accredited Cosmetology Schools v. Alexander*, 979 F.2d 859, 865 (D.C. Cir.1992) (when an agency considers an entity’s past conduct “in determining future eligibility for . . . participation” in a federal program, such an eligibility requirement “does not operate retroactively”); see also *Bell Atl. Tel. Cos. v. FCC*, 79 F.3d 1195, 1207 (D.C. Cir. 1996) (regulations are not “retroactive” if “they contemplate only the use of past information for subsequent decisionmaking”) (internal quotation marks omitted).

²³ See Stay Motion at 4.

²⁴ See *Deleted Station WPHR(FM), Ashtabula, Ohio*, Memorandum Opinion and Order, 11 FCC Rcd 8513, 8515 (1996).

Class A application to be filed “simultaneously” with an application for an in-core construction permit.²⁵ In any event, Videohouse failed to file a Form 302-CA application along with the application for an in-core LPTV construction permit that it filed for and obtained in 2009,²⁶ before it claims that this alleged informal staff advice began.²⁷

8. Videohouse’s third argument is that it is similarly situated to KHTV, a formerly out-of-core Class A-eligible LPTV station that filed for and received a Class A license after February 22, 2012 and that received discretionary protection.²⁸ But the Commission has fully explained why Videohouse is unlike KHTV.²⁹ In addition, Videohouse’s claim that the Commission improperly dismissed its 2014 Petition for Reconsideration of the *Incentive Auction R&O* as “insufficiently detailed” while protecting other stations that did not seek reconsideration plainly lacks merit.³⁰ The Commission dismissed Videohouse’s 2014 Petition because Videohouse relied on facts and arguments not previously presented to the Commission and made no attempt to demonstrate compliance with the requirements for such filings.³¹ Moreover, the Commission fully explained why its action to protect other stations that did not file for reconsideration was procedurally proper.³² Likewise, the Commission explained in the *2016 Reconsideration Order* that it did not “abandon” its previous statement that approximately 100 stations would be eligible for protection if it protected out-of-core Class A-eligible LPTV stations that obtain Class A licenses after February 22, 2012.³³

9. Finally, Videohouse claims that “if the Court determines that [Latina] is likely to prevail on its stay motion,” then Videohouse has met its burden because it is similarly situated to Latina.³⁴ The court has not yet ruled on Latina’s motion, however, and we denied Latina’s stay request filed with the

²⁵ *Establishment of a Class A Television Service*, MM Docket No. 00-10, Report and Order, 15 FCC Rcd 6355, 6396-97, para. 103 (2000) (“When a qualified LPTV station outside the core seeking Class A status locates an in-core channel, we will require the station to file a Class A application simultaneously with its application for modification of license to move to the in-core channel.”) (“*2000 Class A R&O*”).

²⁶ See *2016 Reconsideration Order* at n.44.

²⁷ See Letter from Thomas R. McCarthy, Counsel, The Videohouse Inc., et al. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, at p. 2 (Jan. 25, 2016) (alleged staff advice began “some time in 2011”).

²⁸ See Stay Motion at 4-5.

²⁹ See *2015 Reconsideration Order*, 30 FCC Rcd at 6673-74, para. 60. See also *2016 Reconsideration Order* at paras. 8, 11, 14.

³⁰ See Stay Motion at 5.

³¹ See *2015 Reconsideration Order*, 30 FCC Rcd at 6772-73, para. 59 (citing 47 C.F.R. § 1.429(b)(1)-(3) (a petition for reconsideration which relies on facts or arguments which have not previously been presented to the Commission will be granted only under certain circumstances)).

³² See *2016 Reconsideration Order* at paras. 18-19.

³³ Stay Motion at 5. See *2016 Reconsideration Order* at para. 17. The Commission explained that this “statement does not bear on the decisional issue presented by the [Videohouse] Petition.” *Id.* at para. 16. Rather, the Videohouse Petition presented the decisional issue of whether it was reasonable not to protect Petitioners’ four stations. As explained in the *2016 Reconsideration Order*, “the equities do not weigh in favor of granting such protection, regardless of how many stations fell into the relevant category.” *Id.* at para. 16.

³⁴ Stay Motion at 6. On February 26, 2016, Latina Broadcasters of Daytona Beach, LLC (“Latina”) filed a motion for stay with the D.C. Circuit. See Latina Broadcasters of Daytona Beach, LLC, Emergency Motion for Stay Pending Appeal, *In re Latina Broadcasters of Daytona Beach, LLC*, Docket Nos. 16-1065, 16-1069 (D.C. Cir. filed Feb. 26, 2016).

Commission after concluding that it is not likely to succeed on the merits.³⁵ In any event, the four-factor test for the extraordinary remedy of a stay requires a showing by the movant, not a third party.³⁶

B. Videohouse Will Not Suffer Irreparable Injury

10. Videohouse also has failed to show that it will suffer irreparable injury absent a grant of the Stay Petition.³⁷ If Videohouse were to prevail on the merits of its claims, appropriate relief would be available at a later date.³⁸ Moreover, inability to participate in the reverse auction does not mean that Videohouse will have to cease operation as a Class A station. While Videohouse claims that “stations without repackaging [sic] protection may be stripped of their licenses without any compensation or other relief,”³⁹ the likelihood of displacement depends on factors such as broadcaster participation levels in the reverse auction, the amount of spectrum that the auction clears, the individual channel reassignments made to repacked broadcasters, and whether auction closing conditions are satisfied.⁴⁰ In the event WOSC-CD is displaced, it will be able to file a displacement application during the first opportunity to do so during the post-auction transition, thereby maximizing its chances of securing a replacement channel.⁴¹ The Commission also has other tools available to facilitate finding a channel for WOSC-CD after the auction in the event it is displaced.⁴²

11. While Videohouse claims that irreparable injury is demonstrated by the D.C. Circuit’s grant of its request for expedited consideration of its Petition for Review, the Court in fact denied the

³⁵ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Order Denying Stay Motion, DA 16-206 (MB, Feb. 25, 2016).

³⁶ See *Holiday Tours*, 559 F.2d at 843.

³⁷ Several general principles govern the irreparable injury inquiry. First, “the injury must be both certain and great; it must be actual and not theoretical.” *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). A movant must also “substantiate the claim that the irreparable injury is ‘likely’ to occur. . . . Bare allegations of what is likely to occur are of no value since the court must decide whether the harm will in fact occur.” *Id.* Further, it is “well settled that economic loss does not, in and of itself, constitute irreparable harm.” *Id.* The only exceptions to this rule are when (1) the economic loss threatens the “very existence of the movant’s business,” *id.*, and (2) such loss is great, certain, and imminent. *Cardinal Health, Inc. v. Holder*, 846 F. Supp. 2d 203, 211 (D.D.C. 2012).

³⁸ See *FCC v. Radiofone, Inc.*, 516 U.S. 1301, 116 S.Ct. 283 (1995) (Justice Stevens vacating a stay of an auction, stating that “allowing the national auction to go forward will not defeat the power of the Court of Appeals to grant appropriate relief in the event that respondent overcomes the presumption of validity that supports the FCC regulations and prevails on the merits”); *VA Petroleum Jobbers*, 259 F.2d at 925 (“The possibility that adequate . . . relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.”).

³⁹ Stay Motion at 6.

⁴⁰ See *Power Mobility Coal. v. Leavitt*, 404 F.Supp.2d 190, 205 (D.D.C. 2005) (a “predict[ion]” that is “at best, remote and speculative” does not merit a finding of irreparable harm).

⁴¹ See *2016 Reconsideration Order* at para. 22.

⁴² For example, the Commission has proposed to allow Class A stations to enter into channel sharing arrangements outside the auction context, which would open additional opportunities for WOSC-CD to find a new channel if displaced. See *Incentive Auction R&O*, 29 FCC Rcd at 6835, para. 657. See also *In the Matter of 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*, GN Docket No. 12-268, MB Docket No. 15-137, Notice of Proposed Rulemaking, 30 FCC Rcd 6668 (2015). If WOSC-CD is displaced and proposes a replacement channel of its own, it may be possible to increase WOSC-CD’s effective radiated power from its current level of 2 kilowatts, well below the maximum power level for Class A stations, to address any adjacent-channel interference issues.

relief requested by Videohouse.⁴³ Contrary to Videohouse’s claims, Commission counsel neither “encouraged” Videohouse to file for a stay nor suggested that Videohouse would suffer irreparable harm absent a stay in opposition to a Petition for Mandamus.⁴⁴ Rather, Commission counsel noted that Videohouse “remain[s] free” to file a stay request if the Commission did not act before a certain date.⁴⁵

C. The Requested Stay Will Result in Harm to Others and is Contrary to the Public Interest

12. Videohouse has failed to demonstrate that the requested stay will not harm third parties and will serve the public interest. As an initial matter, Videohouse’s request to stay the incentive auction pending judicial review would disserve the public interest.⁴⁶ As the Commission explained in the *Incentive Auction NPRM*, “[o]ur country faces a major challenge to ensure that the speed, capacity, and accessibility of our wireless networks keeps pace with these demands in the years ahead, so the networks can support the critical economic, public safety, health care, and other activities that increasingly rely on them. Meeting this challenge is essential to continuing U.S. leadership in technological innovation, growing our economy, and maintaining our global competitiveness.”⁴⁷ The Commission has accordingly devoted considerable time and resources since the enactment of the Spectrum Act to preparing for the reverse auction, as well as the forward auction to sell repurposed broadcast spectrum to new, flexible-use licensees for providing mobile broadband services—an unprecedented proceeding involving numerous complex and highly technical issues, representing the culmination of four years of work by the Commission and dozens of members of its staff, with significant ramifications for the nation’s economy and consumers.⁴⁸ The beginning of the auction is now only four weeks away. While Videohouse claims that the auction will be only “modestly delayed” because oral argument will “likely” occur in May,⁴⁹ this is cold comfort for consumers as well as eligible entities who have made extensive preparations for the auction based on the current schedule, including securing financing and deferring other business plans.⁵⁰ In addition, Videohouse understates the delay and disruption entailed by a stay. The Court will need time to reach a decision after oral argument in May. And a stay would extend the quiet period that is now in effect for both the reverse and forward auctions,⁵¹ which limits the types of discussions that would

⁴³ A motion for expedited consideration must demonstrate, among other things, that the delay will cause “irreparable injury.” See D.C. Circuit Handbook of Practice and Internal Procedures at 33. See also *supra* para. 5 (explaining that the Court denied the relief requested by Petitioners in their motion for expedited consideration).

⁴⁴ See Stay Motion at 6-7.

⁴⁵ Federal Communications Commission, Opposition to Emergency Petition for Writ of Mandamus, *In re Videohouse, Inc.*, Docket No. 15-1486, at 2, 13 (D.C. Cir. filed Dec. 28, 2015). See also Federal Communications Commission, Opposition to Petitioners’ Emergency Motion for Expedited Consideration and for an Expedited Briefing Schedule, *In re Videohouse, Inc.*, Docket No. 16-1060, at 2 (D.C. Cir. filed Feb. 19, 2016).

⁴⁶ See Stay Motion at 7-8.

⁴⁷ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Notice of Proposed Rulemaking, 27 FCC Rcd 12357, 12358, para. 1 (2012) (“*Incentive Auction NPRM*”).

⁴⁸ See generally *Nat’l Assoc. of Broadcasters, et al. v. FCC*, 789 F.3d 165 (D.C. Cir. 2015); *Incentive Auction R&O*, 29 FCC Rcd at 6573, para. 13.

⁴⁹ Stay Motion at 7.

⁵⁰ While Congress established 2022 as the deadline for conducting a broadcast television spectrum incentive auction, see Stay Motion at 7 (citing 47 U.S.C. § 1452(f)(3)), the Commission has reasonably determined that the increasing demand for spectrum-based services requires it to conduct the auction in advance of that date.

⁵¹ For the reverse auction, the quiet period prohibits broadcasters “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.” 47 C.F.R. § 1.2205(b). A quiet period also pertains to the forward auction. 47 C.F.R. § 1.2105(c)(1). These quiet periods continue until either the results of the auction are announced

(continued...)

otherwise take place between and among broadcasters and prospective forward auction bidders.⁵² Moreover, delaying the auction until all reviews and appeals are final would not be justified by rule or precedent and would be inconsistent with Congress's goals in enacting the Spectrum Act.⁵³

13. Videohouse claims that the Commission's "actions . . . necessitated this motion," alleging that the Commission "engineer[ed] resolution of [this] matter . . . 'to avoid judicial review.'"⁵⁴ In fact, any blame for the delay in bringing this matter to the court lies squarely with Videohouse. Videohouse failed to advocate for protection of its station until after adoption of the June 2014 *Incentive Auction R&O*.⁵⁵ After the Commission rejected Videohouse's Petition for Reconsideration of the *Incentive Auction R&O*, Videohouse chose to again seek reconsideration by the Commission in September 2015, in full knowledge that the incentive auction was scheduled to begin on March 29, 2016.⁵⁶

14. Last, Videohouse claims that excluding it from the auction will undercut Congress's and the Commission's goals for the auction.⁵⁷ This claim is a rehash of Videohouse's argument that it is likely to succeed on the merits. The Commission has determined that Videohouse is not eligible for protection in the repacking process or to participate in the reverse auction. Protecting Videohouse would unnecessarily encumber additional broadcast television spectrum, thereby increasing the number of constraints on the repacking process and limiting the Commission's flexibility to repurpose spectrum for flexible use.⁵⁸

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to the authority contained in Sections 1, 4(i), 4(j), 5, 301, 303, and 309 of the Communications Act of 1934, as amended, and Sections 6402 and 6403

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(for the reverse auction quiet period) or the deadline has past for making post-auction down payments on winning bids (for the forward auction quiet period).

⁵² See *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction*, Public Notice, 30 FCC Rcd 10794, 10798, n.17 (2015) ("Communications with covered parties remain safest before or after the quiet period, when no violation of the Commission's rule can occur.").

⁵³ See *Genesis Communications I, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 4214, 4215, para. 3 (2014) ("[T]here is no rule or case support for the claim that auction or post-auction procedures must be delayed until all reviews and appeals are final."). See also 47 U.S.C. § 309(j)(3)(A) (directing the Commission to design auctions in order to, *inter alia*, promote "the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays").

⁵⁴ Stay Motion at 7 (quoting *Am. Tel. & Tel. Co. v. FCC*, 978 F.2d 727, 733 (D.C. Cir. 1992)).

⁵⁵ See *2015 Reconsideration Order*, 30 FCC Rcd at 6672-73, para. 59 (explaining that the Commission raised the question of which broadcast television facilities to protect in the repacking process in the *Incentive Auction NPRM*, but none of the Petitioners presented facts or arguments as to why its station should be protected until after the Commission adopted the *Incentive Auction R&O*, although all of the facts and arguments they presented existed beforehand). See also *2016 Reconsideration Order* at para. 8.

⁵⁶ See *2016 Reconsideration Order* at para. 8 (explaining that Videohouse's Petition for Reconsideration of the *2015 Reconsideration Order* was repetitious). The Commission announced the March 29, 2016 commencement date on August 11, 2015. See *Broadcast Incentive Auction Scheduled to Begin on March 29, 2016; Procedures for Competitive Bidding in Auction No. 1000, Including Initial Clearing Target Determination, Qualifying to Bid, and Bidding in Auctions 1001 (Reverse) and 1002 (Forward)*, AU Docket No. 14-252 et al., FCC 15-78, Public Notice, 30 FCC Rcd 8975 (released Aug. 11, 2015).

⁵⁷ Stay Motion at 7-8.

⁵⁸ See *Incentive Auction R&O*, 29 FCC Rcd at 6655, para. 193. See also *id.* at 6719, para. 357 ("[I]t would be meaningless for us to recognize for relinquishment broader rights than those which we would protect in the repacking process. Unprotected usage rights will not affect our repacking flexibility or our ability to repurpose spectrum and thus will have no value in the reverse auction.").

of Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, 47 U.S.C. §§ 151, 154(i)-(j), 155, 301, 303, 309, 1452, and the authority delegated pursuant to Sections 0.61 and 0.283 of the Commission's rules, 47 C.F.R. §§ 0.61, 0.283, this Order Denying Stay Motion in GN Docket No. 12-268 IS ADOPTED.

16. IT IS FURTHER ORDERED that the Emergency Motion for Stay filed by The Videohouse, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief