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Joseph E. Young,
Senior Vice President, General Counsel & Secretary

January 29, 2014

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

Recently, the National Association of Broadcasters (NAB) posted on its Website a paper prepared by Navigant Economics, [1] a firm of economists-for-hire regularly used by NAB.[2] The paper responds to policy arguments contrary to the interests of NAB's members that are based, in part, on the notion that broadcasters enjoy the use of "free" spectrum.

According to Navigant, around 90% of all full-power broadcast television stations have been the subject of a transaction in which its owner sold the station's non-license assets and transferred the license to the buyer. Navigant calculates that the average price paid in those transactions was more than $40 million per station, or roughly $50 billion in total for all 1,230 stations that changed hands. Given the magnitude of these numbers, says Navigant, it can hardly be said that the buyer obtained spectrum "for free."

NAB asserts that the Navigant paper destroys the arguments of industry critics who complain about broadcasters being given "free spectrum,"[3] but it can make that claim only by distorting those arguments. What critics actually focus on is the fact that broadcast station owners do not pay anything for their spectrum licenses to the Federal Government on behalf of U.S. citizens, who own the airwaves. The Navigant paper does not refute that point because it cannot; instead, it sets up a straw man that it can easily knock down: it converts the critic's complaint that licensees pay nothing to the Federal Government into a complaint that station owners have never paid anyone for spectrum.

In other words, the charge against broadcasters that NAB paid Navigant to demolish is not the one actually levied by industry critics, and the fact that a station buyer pays millions to a station seller as consideration for a license transfer is completely non-responsive to what the critics do allege.

For instance, those seeking retransmission consent reform sometimes focus on the fact that broadcasters generate significant profits from the use of spectrum owned by the public and licensed to them by the Federal Government without cost. They argue that it is unfair and bad public policy to allow them to also collect retrans fees from MVPD subscribers, who constitute a large majority of the owners of that spectrum—especially when it appears that little of that money is spent on producing

[1] J. Eisenach, *The Equities and Economics of Property Interests in TV Spectrum Licenses*, Navigant Economics, LLC (Jan. 2014), *available at* http://www.nab.org/documents/newsRoom/pdfs/011614 Navigant_ spectrum_study.pdf.

[2] See the undersigned's letter, dated December 9, 2013, to Marlene H. Dortch filed in Docket 10-71.

[3] *See* D. Halonen, *No Free Spectrum for TV Broadcasters*, TVNewsCheck (Jan. 21, 2014), http://www.tvnewscheck.com/article/73433/study-no-free-spectrum-for-tv-broadcasters.

better local news or more locally originated public affairs programs and that popular sports and other programming is being moved from broadcast to cable channels.

The Navigant study is not just irrelevant to that argument—it actually reveals that things are even worse than we thought. Although the Navigant report does not attempt to allocate station purchase prices between the license and non-license assets, it suggests that the license value can be significant,[4] and there are other estimates that the license accounts for more than 50% of a station's value.[5] Applying a 50% factor to the Navigant data shows that sellers have received for their licenses $20 million on average and $25 billion in total for all of the sales examined by Navigant. In other words, besides collecting billions in straight-to-the-bottom-line retrans fees on top of the billions in operating profits they enjoy while they own their stations, broadcasters who sell pocket billions more for spectrum they do not own and have no right to transfer without the consent of the public's steward, the FCC. Taxpayers, who actually own the spectrum, get nothing.

As we explain in the attached letter we have sent to certain members of Congress, we think this arrangement is fundamentally unfair and contrary to the public interest, especially at a time marked by record federal budget deficits and sequestration. We urge the Commission to ensure that the public shares in the premiums paid for license transfers, working with Congress if it believes that additional legislation is necessary or desirable.

Thank you for your consideration.

Very truly yours,

Joseph E. Young

cc: Office of Chairman Wheeler
Office of Commissioner Clyburn
Office of Commissioner Rosenworcel
Office of Commissioner Pai
Office of Commissioner O'Reilly
William Lake

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[4] In footnote 35, the Navigant paper says that "[t]he proportion of a station's valuation accounted for the license depends on a variety of factors. In today's market, license values in many cases appear to exceed valuations based on cash flows and other financial metrics." In that regard, it has been estimated that the value of the spectrum used by the stations owned by some companies is worth from more than the market value of those companies. *See* M. Gottfried, *Heard on the Street: Splitting Air Could Pay for Broadcasters,* WSJ.com (Jun. 14, 2013), http://online.wsj.com/news/articles/SB10001424127887324423904578525512813003992 (*"Splitting Air").*

[5] *See* Communications Transfer Fee Act of 1987; Hearing on S. 1935 Before the Subcomm. On Communications of the Senate Comm. On Commerce, Science and Transportation, 100th Cong., 2d Sess. 59 (1987) (statement of Charles H. Kadlec). *See also* BIA/Kelsey, *Appraisal of the Intangible Assets of the Television Stations Owned by the New Jersey Public Broadcast Authority as of December 1, 2010* (Jan. 28, 2011) (ascribing to the licenses over 50% of the total value of certain non-commercial stations); *Splitting Air, supra* note 4 (assuming for hypothetical purposes that a broadcaster would receive half the proceeds from an FCC auction of excess spectrum).

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January 29, 2014

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, DC 20510

The Honorable John A. Boehner
Speaker of the House
United States House of Representatives
Washington, DC 20515

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Nancy Pelosi
Minority Leaser
United States House of Representatives
Washington, DC 20515

The Honorable Patty Murray
Chairwoman
Senate Budget Committee
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Senate Budget Committee
United States Senate
Washington, DC 20510

The Honorable Paul Ryan
Chairman
House Committee on the Budget
United States House of Representatives
Washington, DC 20515

The Honorable Chris Van Hollen
Ranking Member
House Committee on the Budget
United States House of Representatives
Washington, DC 20515

Ladies and Gentlemen:

We are writing to bring to your attention the potential availability of billions of dollars that could be used to reduce the deficit or fund proposals like an extension of unemployment benefits without raising taxes.

A study prepared by Navigant Economics for the National Association of Broadcasters (NAB) focuses on private transactions in which the owners of around 1,230 television stations sold the stations' non-license assets and transferred the stations' FCC licenses to the buyers for an average of more than $40 million per station, or roughly $50 billion in total for all the stations that changed hands. We believe that a significant portion of the sale proceeds represented the value to the buyer of the acquired stations' licenses, which the seller does not have the legal right to transfer without the FCC's consent.

As you know, the airwaves are the property of the American people and television station owners possess only a license to broadcast granted by the Federal Government for a limited original or renewal term. Commercial licensees are not required to pay an initial or ongoing fee for that spectrum, even though they make billions from its use and even though each license is territorially exclusive. Historically, Congress has believed that securing the availability of free over-the-air news, weather and public affairs programming justifies assisting and encouraging broadcasters by saving them the costs that would be incurred if they had to pay for licenses.

That rationale, however, does not apply when an owner sells the station to a private buyer. Based on the Navigant study, the seller, having banked years of operating profits from use of the free government license plus large and rapidly growing fees from the governmentally conferred retransmission consent right, reaps a windfall. It seems to us fair that taxpayers, who own the spectrum, should receive all or a significant part of the premium as a condition to the grant of the necessary FCC consent to the license transfer. The buyer should be indifferent as to whether payment for the license transfer is made to the seller or to the U.S. Treasury or is divided between the two.

Some experts estimate that the broadcast license represents at least half of a station's value in a sale. Using that factor, buyers in the sales examined by Navigant were paid at least $25 billion because of their FCC licenses. If the Federal Government collected just half of that amount, that would be enough to fund a large part of the cost of the proposed extension of unemployment benefits or the $28 billion increase in appropriations funding for fiscal year 2014 over the prior year.

We note that sales of television stations have exploded recently. BIA/Kelsey reports that in 2013 alone, ownership of almost 300 stations changed hands, and the expectation is that the pace of deals will continue or even accelerate. Using Navigant's estimate that buyers pay an average of $40 million for a station and the 50% factor for the share attributable to the license, last year's transactions generated almost $6 billion in consideration attributable to licenses. We think that all or the lion's share of that money rightfully belongs to the American public.

We respectfully submit that Congress should urge and direct the FCC, as the public's steward and agent, to use its authority over license grants, renewals and transfers to ensure that private parties do not appropriate solely to themselves the significant value generated by transfers of licenses of publicly-owned airwaves.

Very truly yours,

Joseph E. Young