BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions	)	GN Docket No. 12-268
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To: The Commission

EX PARTE COMMENTS

KJLA, LLC ("KJLA"), by its attorneys, hereby submits these Ex Parte Comments in Response to the Commission's Notice of Proposed Rulemaking in the above-referenced proceeding.[1] KJLA is the licensee of Station KJLA(TV), Ventura, California and seeks, by these Ex Parte Comments to bring a matter of concern, in connection with the Commission's development for rules for incentive auctions, to the Commission's attention. In support thereof, KJLA says as follows.

KJLA is supportive of the Commission's efforts to undertake an incentive auction process in which broadcast spectrum is returned and repurposed for use by operators engaged in wireless telephony. To that end, KJLA has joined with the Los Angeles Unified School District, the licensee of Noncommercial Educational Television Station KLCS(TV), Los Angeles, California ("KLCS"), in proposing to the Commission that the two licensees engage in a pilot project to demonstrate the technical and legal arrangements necessary to implement a successful

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[1] *See Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd 12357 (2012) ("NPRM").

channel sharing operation. The Commission, recognizing the benefits that should accrue from such a pilot project, has recently granted KJLA and KLCS Special Temporary Authority and Channel Sharing Experimental Authorization to engage in such a pilot project. *Letter to Los Angeles Unified School District*, DA 14-129, released February 4, 2014. KJLA is excited by the pilot project and is anxious to learn the results and report them to the Commission.

As KJLA has commenced its efforts, one matter, of substantial importance to KJLA and the incentive auction process, has quickly come to its attention, which KJLA wishes to bring to the Commission's attention. While it is an issue specific to KJLA, it is one that could have an impact on parties seeking a channel sharing arrangement in the incentive auction process and must be addressed by the Commission in connection with the rules that are developed.

The issue arises from the differing communities of license of KJLA and KLCS. While KLCS is licensed to Los Angeles, the principal community within the Los Angeles DMA, KJLA is not licensed to the community of Los Angeles. KJLA's community of license is Ventura, California. Ventura is at the extreme northwest part of the Los Angeles DMA and lies approximately 60 miles from Los Angeles itself.

Owing to the distance, there exists a question of whether KJLA could enter into a sharing agreement with another station and continue to comply with the community of license coverage requirement contained in Section 73.625 of the Commission's Rules. KLCS has determined that, without a modification of tis facilities, the use of its facilities, on a permanent basis, would not enable KJLA to comply with its community of license coverage requirement for Ventura. Likewise, other stations in the DMA that might be interested in channel sharing may not be able to meet the coverage requirement of Ventura and KJLA might not be able to meet the coverage requirement as it applies to other communities.

The coverage issue arising from the KJLA/KLCS channel sharing pilot has given KJLA reason to review the NPRM and prepare these Ex Parte Comments. As a result, KJLA finds reason to oppose the Commission's proposal to forbid channel sharing bids that could require changes in a station's community of license and urge the Commission to consider a different result.[2] The Commission suggests that this restriction is necessary to prevent potential Section 307(b) issues from complicating the Commission's consideration of channel sharing bids. KJLA submits that the Commission's adherence to such a Section 307(b) analysis is at odds with the realities of broadcasting in today's world and could be detrimental to a successful incentive auction process.

The concept of an incentive auction is a process that encourages broadcasters to abandon service to their communities altogether, without any consideration of Section 307(b) and its impact on communities.[3] With that purpose in mind, the Commission inquired in the NPRM as to "whether a given broadcaster going off the air would create areas without any commercial or noncommercial broadcast television service."[4] The Commission goes on to ask whether '[a]dding an additional technical constraint would increase the complexity of the repacking process, possibly requiring additional time and resources and limiting the efficiency of the outcome."[5] Faced with the extraordinary circumstances of the auction and the daunting task of repacking the spectrum, KJLA urges the Commission to ignore its former focus on communities and, instead, focus on the process of achieving a new and efficient television service, utilizing existing transmission facilities that will optimize overall service through a process of "facilitating

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2 *See* NPRM at pp. 12386-12387.

3 *See* 47 USC 309(j)(8)(G). *See also* NPRM at p. 12368.

4 NPRM at pp. 12375-12376.

5 *Id.*

an efficient repacking of television stations would significantly outweigh disruptive effects to specific viewers…"[6]

KJLA asks the Commission to reach a conclusion that recognizes that television is a regional service and reliance on specific communities of license is no longer a useful mechanism of determining how television service is to be offered and viewed, especially in a media world where viewing is not over-the-air but on cable television, direct broadcast satellite and, now, on smartphones, computers, and tablets. KJLA believes that the Commission must no longer be wed to community of license concept on a permanent basis and that stations should either be assigned to specific DMAs or, as has been permitted in the radio service, that applicable communities of license can easily be changed in order to better serve the public, including through suitable channel sharing arrangements.

There is nothing particularly sacred about Section 307(b) or the Commission's community of license standards preventing the Commission from adopting channel sharing rules that attract the participation of licensees authorized to differing communities of license in a DMA. The Commission has previously modified its 307(b) analyses and community of license modification procedures to advance overarching public interest concerns.[7] KJLA recommends that the Commission rely on these decisions to sanction community of license changes in the requests for channel sharing arrangements, just as the Commission has advised that the public interest is the basis to depart from other traditional policies in the auction context. If a community of license is not a prohibition from a licensee returning its spectrum in a reverse

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6 NPRM at p. 12394.

7 *See, e.g., Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990); *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Communities of License in the Radio Broadcast Service*, 21 FCC Rcd 142112 (2006).

auction proceeding, why should that same licensee be locked into that community of license, without a mechanism to change the community of license within the area served by the station?

Allowing channel sharing bidders to change communities of license, within the DMA where their stations are already authorized, does not represent a departure from current Commission policy. The Commission has recognized that television service, by the dimensions of its service contours and how it addresses the needs and interests of an area and not just a locality, is an area-wide service and that focusing just on the community of license fails to reflect the reality that television stations serve an entire market and not any particular community. During the digital transition, the Commission, in a case involving the Los Angeles DMA, approved of the use of common transmitter sites and antenna farms in order to provide for a prompt and effective digital transition, especially where television transmission sites were limited, such as in Southern California. *See, KRCA License Corp.*, 15 FCC Rcd. 1794 (1999). If the Commission wishes to secure broadcaster participation in the incentive auction process, the Commission should not permit its application of Section 307(b) and the community of license rules, adopted in days when broadcast service could be identified to a particular community, to impede such participation.

KJLA, therefore, submits that the following changes must be given due consideration and adopted as part of the incentive auction procedures: treating a station as being primarily authorized to a DMA rather than any particular community based on the service that full-service television stations afford; allowing a station to change its community of license, in a minor change application, from one community of license in its DMA to another in the same DMA; waive the minimum coverage requirement in Section 73.625 of the Commission's Rules with respect to stations that relocate to antenna farms or multiple user transmitter sites within the

same DMA[8]; and allowing stations to achieve the required degree of community coverage by its over-the-signal through means other than the broadcast signal of their main transmitter, including LPTV stations, boosters, DTS service, or multicast service using the facilities of another station licensed to a community within the same DMA. KJLA supports the proposition that the incentive auction process is not the predicate for a wholesale shuffling of stations throughout the nation and that no station should be permitted to change its DMA, but so long as the presence of a station within a DMA is preserved, stations should have flexibility in where they locate their transmitter sites provided that they use existing antenna farms or multiple user sites and cover their communities of license by actual transmissions or alternative means. With the incentive auction process leading to some stations tendering back their spectrum, the FCC should enable those stations that remain and wish to risk their future as broadcasters to secure greater flexibility in where they locate their transmitter sites, so long as such sites are in the same DMA and, wherever possible, utilize already constructed and operating facilities. Such proceses will protect service within a DMA while encouraging stations to engage in channel sharing arrangements along with the necessary DMA-based MVPD carriage and permit broadcasters to devote more of their resources to programming than to physical facilities and the costs of operating them.

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[8] This relocation provision is of particular importance as it will allow parties to share sites and thereby reduce the costs that the FCC will have to incur to relocate stations. Further, with stations returning their spectrum to the Commission, there will be vacancies at transmitter sites and would it not be better for licensees, the FCC and the environment, if transmitter site usage is optimized rather than new towers constructed in order to meet community coverage requirements?

WHEREFORE, for the foregoing reasons, KJLA, LLC respectfully requests that the Commission adopt the policies and procedures set forth above.

Respectfully submitted,

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Dated: March 5, 2014