



May 8, 2014

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268, Office of Engineering and Technology Releases and Seeks Comment on Updated OET-69 Software, ET Docket No. 13-26, Notice of *Ex Parte* Communication

Dear Ms. Dortch:

On May 6 and May 7, 2014, Rick Kaplan, Victor Tawil, Bruce Franca and Patrick McFadden of the National Association of Broadcasters ("NAB"), and Miguel Estrada of Gibson, Dunn & Crutcher LLP, counsel to NAB, had a series of meetings with Courtney Reinhard, Senior Legal Advisor and Chief of Staff for Commissioner O'Rielly, Erin McGrath, Legal Advisor to Commissioner O'Rielly, Clint Odom, Policy Director for Commissioner Jessica Rosenworcel, Matthew Berry, Chief of Staff for Commissioner Ajit Pai, Jonathan Sallet, Acting General Counsel, Jacob Lewis, Associate General Counsel and Chief of the Litigation Division, Office of General Counsel, and Maureen Flood, William Scher, and Marilyn Sonn of the Office of General Counsel. On May 8, 2014, Rick Kaplan also had a follow-up telephone conversation with Mr. Lewis. During these meetings, NAB discussed its positions, set forth in filings in the above-referenced dockets, that the use of *TVStudy*, rather than OET-69, to measure broadcasters' coverage areas and populations served in the incentive auction would be contrary to unambiguous Congressional intent expressed in the plain language of the Spectrum Act. NAB noted that the Spectrum Act requires the Commission to preserve both the coverage area *and* population served of *each* broadcast television licensee.¹ For that reason, as well as the myriad procedural deficiencies in OET's release of various versions of *TVStudy*, use of *TVStudy* would be legally unsustainable.

¹ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156, § 6403(b)(2) (Feb. 22, 2012) (codified at 47 U.S.C. § 1452(b)(2))

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Patrick McFadden", with a long horizontal flourish extending to the right.

Patrick McFadden

Vice President, Strategic Planning

National Association of Broadcasters

cc: Courtney Reinhard
Erin McGrath
Clint Odom
Matthew Berry
Jonathan Sallet
Jacob Lewis
Maureen Flood
William Scher
Marilyn Sonn