
**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 16-1060

THE VIDEOHOUSE, INC.; FIFTH STREET ENTERPRISES, LLC;
WMTM, LLC,

Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION and
UNITED STATES OF AMERICA,

Respondents.

MOTION FOR LEAVE TO PARTICIPATE AS *AMICUS CURIAE*

The LPTV Spectrum Rights Coalition (“SRC” or “Movant”), by and through its undersigned counsel, hereby moves for leave to participate in this action as *amicus curiae* through the filing of an Amicus Brief, a copy of which is being tendered simultaneously with this Motion.

Background of Movant. SRC is a non-profit trade association for low-power and Class A TV stations. Its members represent over 1000 of such stations.

Interest of Proposed Amicus. SRC has participated before the Federal Communications Commission (“FCC” or the “Commission”) in the creation of the rules governing the upcoming broadcast spectrum incentive auction, including filing comments and participating in many *ex parte* meetings with FCC personnel. SRC’s members include many Class A-eligible stations similarly situated to the Petitioners in this case. SRC has permission from the Petitioners to file this brief, and the FCC has indicated that it has no objection to SRC’s filing of this brief.

For the foregoing reasons, SRC respectfully requests leave to participate in this action as *amicus curiae* with leave to file the attached brief.

March 3, 2016

Respectfully submitted,

/s/

Shelley Sadowsky, Esq.
Court of Appeals Bar No. 46279
Special Counsel for Amicus Curiae
LPTV Spectrum Rights Coalition

CERTIFICATE OF SERVICE

I, Shelley Sadowsky, hereby certify that on this 3rd day of March, 2015, I caused a copy of the foregoing “Motion for Leave to Participate as Amicus Curiae” to be served on counsel of record in the captioned proceeding through the Court’s CM/ECF system.

/s/ Shelley Sadowsky

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 16-1060

THE VIDEOHOUSE, INC.; FIFTH STREET ENTERPRISES, LLC;
WMTM, LLC,

Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION and
UNITED STATES OF AMERICA,

Respondents.

On Petition for Review of Orders
of the Federal Communications Commission

**BRIEF OF LPTV SPECTRUM RIGHTS COALITION AS *AMICUS CURIAE*
IN SUPPORT OF THE VIDEOHOUSE, INC., FIFTH STREET
ENTERPRISES, LLC, AND WMTM, LLC'S PETITION
UNDER 28 U.S.C. § 2342(1)**

Shelley Sadowsky, Esq.
Shelley Sadowsky, LLC
Court of Appeals Bar No. 46279
5938 Dorchester Way
Rockville, MD 20852
Tel. 202-997-9392
*Special Counsel for Amicus Curiae
LPTV Spectrum Rights Coalition*

March 3, 2016

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), the *amicus curiae* hereby certifies as follows:

A. Parties and *Amici*.

The petitioners appearing before this Court are The Videohouse, Inc.; Fifth Street Enterprises, LLC; and WMTM, LLC. The FCC and the United States are the only respondents in this Court. The *amicus* filing here is the LPTV Spectrum Rights Coalition.

B. Rulings under Review.

The rulings under review are:

- Report and Order, *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, 29 FCC Rcd 6567 (rel. June 2, 2014), 79 Fed. Reg. 48442 (Aug. 15, 2014);
- Second Order on Reconsideration, *In the Matter of Expanding the Economic and Innovation Opportunities Spectrum Through Incentive Auctions*, GN Docket No. 12-268 (rel. June 19, 2015), 80 Fed. Reg. 46824 (Aug. 6, 2015);
- Order on Reconsideration, *In the Matter of Expanding the Economic and Innovation Opportunities Spectrum Through Incentive Auctions*, GN Docket No. 12-268 (rel. Feb. 12, 2016);

- All related final orders and rules issued by the FCC in the proceeding captioned *In the Matter of Expanding the Economic and Innovative Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268

C. Related Cases.

This case is related to *In re The Videohouse, Inc.*, No. 15-1486, and *In re The Videohouse, Inc.*, No. 16-1051.

In *Nat'l Ass'n of Broadcasters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015), this Court addressed a petition for review challenging other aspects of one of the FCC orders at issue in this case. While the Court's opinion describes the general structure of the incentive spectrum auction challenged in this case, that case did not involve the specific issues and subsequent FCC orders and proceedings at issue here.

There are additional cases before this Court challenging the Second Order on Reconsideration, but these cases do not appear to be related to this matter. See *Mako Commc'ns, LLC v. FCC*, No. 15-1264; *Beach TV Prop., Inc. v. FCC*, et al, No. 15-1280; *Free Access & Broad. Tel., et al v. FCC, et al*, No. 15-1346.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 29(c), *amicus curiae* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution to fund the preparation or submission of this brief. No person other than *amicus curiae* or its counsel made a monetary contribution to its preparation or submission.

The LPTV Spectrum Rights Coalition (SRC) is a coalition of the licensees of many Low Power and Class A television stations. Petitioners The Videohouse, Inc. and WMTM, L.L.C., have in the past participated in and provided financial support for SRC's activities, and one or both may continue to do so in the future.

TABLE OF CONTENTS

| | Page |
|---------------------------------------------------------------------------------------------------|------|
| CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES..... | i |
| CORPORATE DISCLOSURE STATEMENT..... | iii |
| TABLE OF CONTENTS..... | iv |
| TABLE OF AUTHORITIES..... | v |
| GLOSSARY..... | xii |
| STATEMENT OF IDENTITY, INTEREST IN CASE, AND SOURCE OF AUTHORITY TO FILE OF AMICUS CURIAE..... | 1 |
| BACKGROUND..... | 1 |
| SUMMARY OF ARGUMENT..... | 3 |
| ARGUMENT..... | 4 |
| “Voluntary” Relinquishment..... | 6 |
| Denial of STA Applications..... | 10 |
| CONCLUSION..... | 12 |
| STATEMENT PURSUANT TO D.C. CIRCUIT RULE ECF-3..... | 14 |
| CERTIFICATE OF COMPLIANCE..... | 15 |
| CERTIFICATE OF SERVICE..... | 16 |

TABLE OF AUTHORITIES

| | Page |
|--------------------------------------------------------------------------------------------------------------------------|------|
| Cases | |
| <i>FCC v. Fox Television Stations, Inc.</i> , 556 U.S. 502 (2009)..... | 3 |
| Statutes | |
| 47 U.S.C. § 309(j)(8)(G)(i) | 2 |
| 47 U.S.C. § 312(g) | 3,10 |
| 47 U.S.C. § 1401(6) | 3 |
| 47 U.S.C. § 1452(b)(2)..... | 4 |
| <i>Middle Class Tax Relief and Job Creation Act of 2012</i> , Pub. L. No. 112-96, Title VI, 125 Stat. 156 (2012)..... | 2 |
| Regulations | |
| 47 C.F.R. § 73.3526 | 5 |
| 47 C.F.R. § 73.6001 | 5, 6 |
| Administrative Decisions | |
| <i>Abacus Television</i> , 28 FCC Rcd 14519 (2013)..... | 7 |
| <i>Abundant Life Broad., Inc.</i> , 28 FCC Rcd 13927 (2013)..... | 7 |
| <i>Aerco Broad. Corp.</i> , 29 FCC Rcd 9683 (2014)..... | 9 |

| | |
|------------------------------------------------------------------------------------|---|
| <i>Barrington Toledo,</i> 28 FCC Rcd 15482 (2013)..... | 9 |
| <i>Billy Ray Locklear Evangelical Ass’n,</i> 28 FCC Rcd 16846 (2013)..... | 7 |
| <i>Bruno Goodworth Network, Inc.,</i> 28 FCC Rcd 10230 (2013)..... | 7 |
| <i>Byrne Acquisition Grp., LLC,</i> 28 FCC Rcd 11813 (2013)..... | 7 |
| <i>Campbellsville Univ.,</i> 28 FCC Rcd 16842 (2013)..... | 7 |
| <i>Carmen Cabrera,</i> 28 FCC Rcd 8954 (2013)..... | 7 |
| <i>Cent. Ohio Ass’n of Christian Broadcasters,</i> 28 FCC Rcd 16838 (2013)..... | 7 |
| <i>Centex Television Ltd. P’ship,</i> 29 FCC Rcd 8361 (2014)..... | 7 |
| <i>Christian Broad. of Yakima,</i> DA 16-123 (rel. Feb. 4, 2016)..... | 8 |
| <i>Christian Media Assocs. Int’l, Inc.,</i> 29 FCC Rcd 13379 (2014)..... | 7 |
| <i>Cmt’y. Broad. Grp., Inc.,</i> 29 FCC Rcd 10568 (2014)..... | 7 |
| <i>Cmt’y. Television of S. Cal.,</i> 26 FCC Rcd 1107 (2011)..... | 9 |
| <i>Convergence Entm’t and Commc’ns, LLC,</i> 28 FCC Rcd 3014 (2013)..... | 9 |

| | |
|---------------------------------------------------------------------------------------------------------------------------------------|----|
| <i>Dilip Viswanath,</i> 29 FCC Rcd 11372 (2014)..... | 8 |
| <i>D.T.V., LLC,</i> 29 FCC Rcd 9675 (2014)..... | 7 |
| <i>Elliott B. Block,</i> 28 FCC Rcd 7437 (2013)..... | 7 |
| <i>Entravision Holdings, LLC,</i> 29 FCC Rcd 11387 (2014)..... | 8 |
| <i>Ernesto Bustos,</i> 29 FCC Rcd 1898 (2014)..... | 8 |
| <i>Establishment of a Class A Television Serv.,</i> 16 FCC Rcd 8244 (2001)..... | 5 |
| <i>Eternal Family Network,</i> 29 FCC Rcd 1238 (2014)..... | 7 |
| <i>Evansville Low Power P’ship,</i> 28 FCC Rcd 13168 (2013)..... | 18 |
| <i>Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions,</i> 29 FCC Rcd 6567 (2014)..... | 4 |
| <i>First Media Radio, LLC,</i> 28 FCC Rcd 13734 (2013)..... | 8 |
| <i>George V. Young d/b/a Cent. States Commc’ns,</i> 29 FCC Rcd 13929 (2014)..... | 7 |
| <i>Glen Iris Baptist School,</i> 29 FCC Rcd 3219 (2014)..... | 8 |
| <i>Great Plains Television Network, LLC,</i> 29 FCC Rcd 10559 (2014)..... | 7 |

| | |
|-----------------------------------------------------------------------------|---|
| <i>Guenter Marksteiner,</i> 28 FCC Rcd 13737 (2013)..... | 8 |
| <i>Harpole Telecom Inc.,</i> 28 FCC Rcd 13935 (2013)..... | 8 |
| <i>Highland Park Broad., LP,</i> 28 FCC Rcd 15630 (2013)..... | 8 |
| <i>Kaleidoscope Found., Inc.,</i> 29 FCC Rcd 8072 (2014)..... | 7 |
| <i>Kelley Enters. of Muskegon, Inc.,</i> 29 FCC Rcd 4086 (2014)..... | 8 |
| <i>Kevin O’Kane,</i> 28 FCC Rcd 7480 (2013)..... | 7 |
| <i>Killeen Christian Broad. Corp.,</i> 29 FCC Rcd 11379 (2014)..... | 8 |
| <i>KM LPTV of Chicago-13, LLC,</i> 29 FCC Rcd 1771 (2014)..... | 7 |
| <i>KM LPTV of Milwaukee, LLC,</i> 29 FCC Rcd 1767 (2014)..... | 7 |
| <i>La. Christian Broad., Inc.,</i> 25 FCC Rcd 1163 (2010)..... | 9 |
| <i>Liberty Commc’ns, Inc.,</i> 29 FCC Rcd 4077 (2014)..... | 7 |
| <i>Mid-South Broad.,</i> 28 FCC Rcd 13142 (2013)..... | 7 |
| <i>New Age Media of Tenn. License, LLC,</i> 28 FCC Rcd 13932 (2013)..... | 7 |

| | |
|---------------------------------------------------------------------------------------------|---|
| <i>Pacifica Telestations, LLC,</i> 2015 WL 9461457, DA 15-1490 (rel. Dec. 23, 2015)..... | 9 |
| <i>Paging Assocs., Inc.,</i> 28 FCC Rcd 6196 (2013)..... | 7 |
| <i>Pentecostal Revival Ass’n, Inc.,</i> 28 FCC Rcd 13743 (2013)..... | 8 |
| <i>Price Media Corp.,</i> 28 FCC Rcd 10932 (2013)..... | 8 |
| <i>Ramar Commc’ns, Inc.,</i> 30 FCC Rcd 2837 (2015)..... | 7 |
| <i>Rebecca L. White,</i> 28 FCC Rcd 13939 (2013)..... | 8 |
| <i>Resort Television USA, LLC,</i> 29 FCC Rcd 5040 (2014)..... | 7 |
| <i>Rocky Mountain Broad. Co.,</i> 25 FCC Rcd 5210 (2010)..... | 9 |
| <i>San-Lee Cmty. Broad., Inc.,</i> 28 FCC Rcd 13740 (2013)..... | 8 |
| <i>Specialty Broad. Corp.,</i> 28 FCC Rcd 8941 (2013)..... | 7 |
| <i>Studio 51 Multi Media Prods., Ltd.,</i> 29 FCC Rcd 11798 (2014)..... | 7 |
| <i>Sunshine Broad. Co., Inc.,</i> 28 FCC Rcd 8881 (2013)..... | 7 |
| <i>Sunshine State Television Network, Inc.,</i> 29 FCC Rcd 10574 (2014)..... | 8 |

| | |
|---------------------------------------------------------------------------|---|
| <i>Triple J Cmty. Broad. LLC,</i> 30 FCC Rcd 10628 (2015)..... | 8 |
| <i>TTI, Inc.,</i> 28 FCC Rcd 7444 (2013)..... | 7 |
| <i>Unity Broad., Inc.,</i> 28 FCC Rcd 10060 (2013)..... | 8 |
| <i>Unity Broad., Inc.,</i> 28 FCC Rcd 10084 (2013)..... | 7 |
| <i>Unity Broad., Inc.,</i> 28 FCC Rcd 12645 (2013)..... | 8 |
| <i>V.I. Pub. Television Sys.,</i> 25 FCC Rcd 1158 (2010)..... | 9 |
| <i>Victory Commc'ns, Inc.,</i> 28 FCC Rcd 10056 (2013)..... | 8 |
| <i>Video Voice, Inc.,</i> 30 FCC Rcd 10623 (2015)..... | 8 |
| <i>Waters & Brock Commc'ns, Inc.,</i> 28 FCC Rcd 10064 (2013)..... | 8 |
| <i>Woods Commc'ns Corp.,</i> 25 FCC Rcd 5215 (2010)..... | 9 |
| <i>Word of Life Ministries, Inc.,</i> 28 FCC Rcd 11819 (2013)..... | 8 |
| <i>Word of Life Ministries, Inc.,</i> 28 FCC Rcd 16319 (2013)..... | 7 |
| <i>ZGS Broad. of Orlando, Inc.,</i> 28 FCC Rcd 10234 (2013)..... | 7 |

ZGS Broad. of Orlando, Inc.,

28 FCC Rcd 10238 (2013).....7

GLOSSARY

| | |
|-----|-----------------------------------|
| FCC | Federal Communications Commission |
| SRC | LPTV Spectrum Rights Coalition |
| STA | Special Temporary Authority |
| STV | Southern TV Corporation |

**STATEMENT OF IDENTITY, INTEREST IN CASE, AND SOURCE OF
AUTHORITY TO FILE OF *AMICUS CURIAE***

LPTV Spectrum Rights Coalition (“SRC”), is a coalition of the licensees of Low Power Television stations, including many Class A stations. SRC is registered in the District of Columbia. SRC has participated before the Federal Communications Commission’s (“FCC” or the “Commission”) in the creation of the rules governing the upcoming broadcast spectrum incentive auction, including filing comments and participating in many *ex parte* meetings with FCC personnel.

SRC has been authorized to state that the Petitioners have consented to the filing of this brief, and the FCC has indicated that it has no objection to the filing of this brief. *See* Fed. R. App. P. 29(a); D.C. Cir. Rule 29(b).

BACKGROUND

The Videohouse, Inc. *et al.* (the “Petitioners”) seek to have this Court overturn the FCC’s Order denying them participation in, and protection of their spectrum after, the Incentive Auction. SRC is filing this brief to call the Court’s attention to a pattern of behavior by the FCC attempting to disqualify as many Class A stations as possible from the impending spectrum auction by excessive regulatory enforcement and offers for relief from severe financial penalties if they agree to relinquish their Class A status, thereby forfeiting their opportunity to participate in the Incentive Auction or to have their spectrum protected if they do

not sell their stations' spectrum in the auction. The FCC's treatment of Petitioners fits the pattern of targeting Class A and Class A-eligible stations to reduce the number of stations that the FCC must accommodate by buying or protecting their spectrum.

More detailed background on this case can be found in the briefs of the Petitioners and the FCC. To summarize briefly, on February 22, 2012, Congress adopted the Spectrum Act¹, which authorizes the FCC to conduct an incentive auction to "encourage" television broadcasters "to relinquish some or all of [their] licensed spectrum usage rights" for the purpose of reallocating broadcast television spectrum for other uses (such as mobile broadband service). 47 U.S.C. § 309(j)(8)(G)(i). Under the Spectrum Act, the incentive auction will consist of three steps: a reverse auction to incentivize broadcasters to relinquish their spectrum; a "repacking" of remaining television licenses into the remaining spectrum; and a forward auction whereby the newly cleared spectrum is sold to companies using it for wireless devices.

The Spectrum Act provides that during the repacking process "the Commission shall make all reasonable efforts to preserve, as of February 22, 2012,

¹ *Middle Class Tax Relief and Job Creation Act of 2012*, Pub. L. No. 112-96, Title VI, 125 Stat. 156 (2012) (the "Spectrum Act").

the coverage area and population served of each broadcast television licensee,”² defined as “the licensee of ... (A) a full-power television station or (B) a low-power television station that has been accorded primary status as a Class A television licensee” under the Commission’s rules. 47 U.S.C. § 1401(6). As noted by the Petitioners, the Commission retroactively declared February 22, 2012 as the deadline for Class A licensing but then chose to extend protection for the coverage to some additional stations but not others.

SUMMARY OF ARGUMENT

As planning for the Incentive Auction has progressed, the FCC has made a concerted effort to clear the ranks of Class A stations in order to reduce the amount it will be required to pay for “repurposed” spectrum and to ease the logistical issues present in the post-Incentive Auction repacking. It has focused its enforcement efforts on Class A stations, far above and beyond those efforts against full power stations (which cannot be “downgraded” and thus disqualified from the Incentive Auction) in furtherance of that goal.

SRC wishes to call the Court’s attention to the FCC’s systematic attempts to eliminate Class A stations from the Incentive Auction and post-auction protection – a pattern of behavior that SRC believes is relevant to the claims of the Petitioners.

² 47 U.S.C. § 1452(b)(2).

ARGUMENT

Congress mandated in its creation of the Incentive Auction that the FCC respect dual priorities: repurposing of spectrum for wireless use and protecting the rights of broadcasters.³ However, in its rush to fulfill the former duty, the FCC has been too willing to ignore the latter. Indeed, the FCC admitted in its own explanation for declining to provide protection for all LPTV and Class A-eligible (but not Class-A licensed) stations that “[p]rotecting such stations [would] encumber additional spectrum” and would produce “significant detrimental impact on repacking flexibility.”⁴ In other words, the FCC knew that it would have difficulty making the Incentive Auction and subsequent repacking work, so it thinned the ranks of otherwise auction-eligible Class A stations where it could in order to make its job easier.

Congress did not give the FCC a mandate, or even the authority, to act in a discriminatory manner to help achieve the statutory goals or to exercise its enforcement power in an arbitrary and capricious manner;⁵ but that is exactly what it has done with its selective enforcement against Class A stations in order to remove them from auction eligibility.

³ 47 U.S.C. § 1452(b)(2).

⁴ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, 29 FCC Rcd 6567, 6671 (¶ 234) (2014).

⁵ *See, e.g., FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009).

As this Court already knows from the previous briefs in this case, Class A stations are Low Power TV stations which commit to follow certain rules normally reserved for full power stations in exchange for some of the rights normally reserved for full power stations. These rules include requirements related to the broadcast of locally produced programming and minimum hours of operation⁶ and maintenance of a public inspection file.⁷ Class A stations which fail to meet the Class A criteria are subject to a “downgrade” in status to standard low-power TV.⁸ The right afforded to Class A stations which is most relevant here is the right to participate in, and be protected from loss of spectrum rights following, the Incentive Auction. 47 U.S.C. § 309(j)(8)(G)(i).

Because Class A stations are eligible to participate in the Incentive Auction and be protected in the repacking, while other Low Power stations are not, the FCC has an incentive to ramp-up enforcement against Class A stations and thereby reduce their number (whether by downgrading existing Class A stations to standard Low Power TV status or limiting the number eligible for auction participation in the first place). Each Class A station found to be non-compliant with the Class A requirements and therefore downgraded to standard Low Power TV status

⁶ 47 C.F.R. § 73.6001.

⁷ 47 C.F.R. § 73.3526.

⁸ *In Re Establishment of a Class A Television Serv.*, 16 FCC Rcd 8244, 8257 (¶ 35) (2001) (“Class A Creation Order”).

represents potentially millions of dollars in Incentive Auction payout savings and untold man-hours of complication in the spectrum repacking process.

This purging of Class A status could have been done in a number of ways, but SRC respectfully submits to the Court that the FCC used two primary methods:

- 1) levying large fines for minor infractions, but also offering financially-troubled Class A licensees forgiveness from the fine in exchange for voluntarily relinquishing their Class A status; and
- 2) forcing Class A stations into non-compliance through the systematic denial of certain applications related to the operation of their facilities.

“Voluntary” Relinquishment

Under 47 C.F.R. 73.6001, Class A stations may voluntarily relinquish their Class A status. Given the responsibilities of a Class A licensee, and the responsibility of all broadcast station licensees of the FCC to self-monitor and report non-compliance with FCC Rules, it is understandable why some Class A licensees might choose to give up and walk away from Class A status. But this rule was abused by the FCC in the lead-up to the Incentive Auction through its enforcement process. The tactic involved imposing, or at least threatening, a large monetary forfeiture for violations of the FCC’s rules which were often relatively minor. For financially disadvantaged Class A licensees, most of which are small business enterprises, these fines were unpayable. The FCC offered an escape: the

Forfeiture Order, or Notice of Apparent Liability, would contain some variation of the following:

“In the event that the Licensee wishes to revert [Station] to low power television status, the Licensee need only notify the Commission of this election and request a change in status for the station. Should the Licensee elect to revert [Station] to low power status, the Licensee would no longer be apparently liable for the forfeiture amount described herein.”⁹

⁹ See, e.g., *Cmty. Broad. Grp., Inc.*, 29 FCC Rcd 10568, 10571 (¶ 12) (2014); *Billy Ray Locklear Evangelical Ass’n*, 28 FCC Rcd 16846, 16849 (¶ 12) (2013); *Abacus Television*, 28 FCC Rcd 14519 (¶ 11) (2013); *Great Plains Television Network, LLC*, 29 FCC Rcd 10559, 10561 (¶ 13) (2014); *Cent. Ohio Ass’n of Christian Broadcasters*, 28 FCC Rcd 16838, 16840 (¶ 11) (2013); *Liberty Commc’ns, Inc.*, 29 FCC Rcd 4077, 4079 (¶ 10) (2014); *Mid-South Broad.*, 28 FCC Rcd 13142, 13144 (¶ 9) (2013); *New Age Media of Tenn. License, LLC*, 28 FCC Rcd 13932, 13933-34 (¶ 9) (2013); *Kaleidoscope Found., Inc.*, 29 FCC Rcd 8072, 8073 (¶ 9) (2014); *Resort Television USA, LLC*, 29 FCC Rcd 5040, 5041 (¶ 9) (2014); *Evansville Low Power P’ship*, 28 FCC Rcd 13168, 13170 (¶ 9) (2013); *Paging Assocs., Inc.*, 28 FCC Rcd 6196, 6198 (¶ 11) (2013); *Carmen Cabrera*, 28 FCC Rcd 8954, 8956 (¶ 9) (2013); *Specialty Broad. Corp.*, 28 FCC Rcd 8941, 8943 (¶ 9) (2013); *TTI, Inc.*, 28 FCC Rcd 7444, 7446 (¶ 9) (2013); *Elliott B. Block*, 28 FCC Rcd 7437, 7439 (¶ 12) (2013); *Kevin O’Kane*, 28 FCC Rcd 7480, 7482 (¶ 11) (2013); *Sunshine Broad. Co., Inc.*, 28 FCC Rcd 8881, 8883 (¶ 9) (2013); *ZGS Broad. of Orlando, Inc.*, 28 FCC Rcd 10238, 10240 (¶ 10) (2013); *Ramar Commc’ns, Inc.*, 30 FCC Rcd 2837, 2839 (¶ 9) (2015); *Studio 51 Multi Media Prods., Ltd.*, 29 FCC Rcd 11798 (¶ 12) (2014); *George V. Young d/b/a Cent. States Commc’ns*, 29 FCC Rcd 13929, 13931 (¶ 7) (2014); *Christian Media Assocs. Int’l, Inc.*, 29 FCC Rcd 13379, 13381 (¶ 9) (2014); *Abundant Life Broad., Inc.*, 28 FCC Rcd 13927, 13930 (¶ 11) (2013); *KM LPTV of Chicago-13, LLC*, 29 FCC Rcd 1771, 1774 (¶ 12) (2014); *KM LPTV of Milwaukee, LLC*, 29 FCC Rcd 1767, 1770 (¶ 12) (2014); *D.T.V., LLC*, 29 FCC Rcd 9675, 9677 (¶ 11) (2014); *Byrne Acquisition Grp., LLC*, 28 FCC Rcd 11813, 11815 (¶ 12) (2013); *Bruno Goodworth Network, Inc.*, 28 FCC Rcd 10230, 10233 (¶ 14) (2013); *Word of Life Ministries, Inc.*, 28 FCC Rcd 16319, 16322 (¶ 17) (2013); *Ernesto Bustos*, 29 FCC Rcd 1898, 1903 (¶ 21) (2014); *Eternal Family Network*, 29 FCC Rcd 1238, 1240 (¶ 10) (2014); *Centex Television Ltd. P’ship*, 29 FCC Rcd 8361, 8363 (¶ 9) (2014); *ZGS Broad. of Orlando, Inc.*, 28 FCC Rcd 10234, 10236 (¶ 10) (2013); *Unity*

Particularly in light of the FCC's ability to downgrade a Class A station,¹⁰ even after a forfeiture had been paid, some licensees decided that they had no realistic choice but to accept the downgrade.

Since full-power TV stations cannot be 'downgraded' to a lower, non-Incentive Auction-eligible status, we would expect to see fewer FCC enforcement actions against full-power stations if the weeding out of stations in advance of the Incentive Auction were the motivation for the substantial crackdown on Class A

Broad., Inc., 28 FCC Rcd 10084, 10086 (¶ 12) (2013); *Waters & Brock Commc'ns, Inc.*, 28 FCC Rcd 10064, 10066 (¶ 12) (2013); *Unity Broad., Inc.*, 28 FCC Rcd 10060, 10062 (¶ 12) (2013); *Word of Life Ministries, Inc.*, 28 FCC Rcd 11819, 11821 (¶ 10) (2013); *Victory Commc'ns, Inc.*, 28 FCC Rcd 10056, 10058 (¶ 12) (2013); *Price Media Corp.*, 28 FCC Rcd 10932, 10934 (¶ 10) (2013); *Rebecca L. White*, 28 FCC Rcd 13939, 13941 (¶ 12) (2013); *Highland Park Broad., LP*, 28 FCC Rcd 15630, 15632 (¶ 11) (2013); *Harpole Telecom Inc.*, 28 FCC Rcd 13935, 13937 (¶ 10) (2013); *Dilip Viswanath*, 29 FCC Rcd 11372 (¶ 10) (2014); *Glen Iris Baptist School*, 29 FCC Rcd 3219, 3221 (¶ 10) (2014); *Unity Broad., Inc.*, 28 FCC Rcd 12645, 12647 (¶ 12) (2013); *Guenter Marksteiner*, 28 FCC Rcd 13737, 13739 (¶ 9) (2013); *First Media Radio, LLC*, 28 FCC Rcd 13734, 13736 (¶ 9) (2013); *Pentecostal Revival Ass'n, Inc.*, 28 FCC Rcd 13743, 13745 (¶ 9) (2013); *San-Lee Cmty. Broad., Inc.*, 28 FCC Rcd 13740, 13742 (¶ 9) (2013); *Entravision Holdings, LLC*, 29 FCC Rcd 11387, 11389 (¶ 11) (2014); *Video Voice, Inc.*, 30 FCC Rcd 10623, 10625 (¶ 12) (2015); *Triple J Cmty. Broad. LLC*, 30 FCC Rcd 10628, 10630 (¶ 12) (2015); *Christian Broad. of Yakima*, DA 16-123 (¶ 12) (rel. Feb. 4, 2016); *Campbellsville Univ.*, 28 FCC Rcd 16842, 16844 (¶ 11) (2013); *Killeen Christian Broad. Corp.*, 29 FCC Rcd 11379, 11381 (¶ 10) (2014); *Sunshine State Television Network, Inc.*, 29 FCC Rcd 10574, 10576 (¶ 13) (2014); *Kelley Enters. of Muskegon, Inc.*, 29 FCC Rcd 4086, 4088 (¶ 11) (2014).

¹⁰ Class A Creation Order at ¶ 35. In fact, the Commission did engage in such reclassification. See, e.g., *Convergence Entm't and Commc'ns, LLC*, 28 FCC Rcd 3014 (2013).

stations. While it is impossible to determine exact numbers without access to the FCC's records, a sampling of the relatively small number of enforcement actions against full-power TV stations for similar violations during the same period is illustrative of selective enforcement by the FCC. There were approximately 500 Class A stations and approximately 1,800 full-power TV stations licensed at the time of the Incentive Auction's initial planning.¹¹ During the intervening five years, SRC was able to find the above-cited 58 instances where Class A stations received letters from the Commission threatening financial sanctions for mostly paperwork violations, compared with only 12 instances of similar enforcement against full-power stations.¹² In other words, despite their being nearly four times as many full-power TV stations as Class A stations, more than four times as many Class A stations were subject to forfeitures for violations of FCC rules during the pre-auction time period.

¹¹ "Broadcast Station Totals" list from December 31, 2011, released January 6, 2012. (available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-311837A1.pdf)

¹² See *Pacifica Telestations, LLC*, 2015 WL 9461457, DA 15-1490 (rel. Dec. 23, 2015); *Aerco Broad. Corp.*, 29 FCC Rcd 9683 (2014); *Barrington Toledo*, 28 FCC Rcd 15482 (2013); *Cnty. Television of S. Cal.*, 26 FCC Rcd 1107 (2011); *Woods Commc'ns Corp.*, 25 FCC Rcd 5215 (2010); *Rocky Mountain Broad. Co.*, 25 FCC Rcd 5210 (2010); *La. Christian Broad., Inc.*, 25 FCC Rcd 1163 (2010); *V.I. Pub. Television Sys.*, 25 FCC Rcd 1158 (2010).

Denial of STA Applications

Another way of making it difficult or impossible for Class A stations to serve their community and to survive economically is to deny them the authority they may need to operate at variance from their licensed parameters through grants of Special Temporary Authority (“STA”).

STAs are normally granted as a matter of course when the engineering work involved does not have cause problems with other stations. But if the FCC refuses to grant the STA, a station may be forced to cease operation, or, if already temporarily silent, remain off-the-air, even to the point of risking automatic expiration of its license under 47 U.S.C. § 312(g), which states that broadcast licenses which are silent for a full year are cancelled absent a waiver from the Commission.

In a recent Petition for Reconsideration of an FCC decision that resulted in a Class A license being forfeited because the station was unable to resume operation after the FCC refused to act on the station’s request for STA,¹³ the petitioner

¹³ Petition filed February 12, 2016, seeking reconsideration of *Southern TV Corporation*, FCC 16-2, released Jan. 13, 2016.

compiled a list of Class A stations' STA requests that remained pending for a period of years instead of the more customary period of days:¹⁴

- KORK-CD (BESTA-20130826AIO) – Pending as of 02/11/2016
- KKEI-CD (BESTA-20130826AIP) – Pending as of 02/11/2016
- KOXI-CD (BESTA-20130826AIQ) – Pending as of 02/11/2016
- KOXO-CD (BESTA-20130826AIN) – Pending as of 02/11/2016
- WFOL-LP (BSTA-20150206AAZ) – Pending as of 02/11/2016
- WFPA-CD (BLSTA-20140912AAZ) – Pending as of 02/11/2016
- WMNO-CD (BELSTA-20140912AAU) – Pending as of 02/11/2016
- KVDF-CD (BESTA-20140813ACB) – Pending as of 02/11/2016
- WPFN-CD (BSTA-20140623ACL) – Pending as of 02/11/2016
- W33BY-D (BESTA-20140225ABE) – Pending as of 02/11/2016
- WFPS-CD (BLSTA-20131230AAJ) – Pending as of 02/11/2016
- WYSJ-CA (BESTA-20131211BHR) – Pending as of 02/11/2016
- WDES-CD (BSTA-20131204AQI) – Pending as of 02/11/2016
- WWME-CD (BESTA-20131024ACM) – Pending as of 02/11/2016
- WBFL-CD (BSTA-20130917AFK) – Pending as of 02/11/2016
- KYNM-CD (BSTA-20130613ABH) – Pending as of 02/11/2016
- W16AX-D (BSTA-20130412ABK) – Pending as of 02/11/2016
- WDES-CD (BESTA-20130322ABP) – Pending as of 02/11/2016
- KADO-CD (BESTA-20130301ABC) – Pending as of 02/11/2016
- WWCI-CD (BESTA-20121210ADM) – Pending as of 02/11/2016
- KRAH-CD (BESTA-20121130AGE) – Pending as of 02/11/2016
- KSKT-CD (BESTA-20121128AVM) – Pending as of 02/11/2016
- KXFX-CD (BESTA-20121121ABC) – Pending as of 02/11/2016
- W47EI-D (BESTA-20121120ALT) – Pending as of 02/11/2016
- WJMY-CD (BESTA-20121119AGD) – Pending as of 02/11/2016
- WLPH-CD (BSTA-20150707ADL) – Pending as of 02/12/2016
- W40CN-D (BSTA-20150528AHF) – Pending as of 02/12/2016
- WLPH-CD (BSTA-20150225ACM) – Pending as of 02/12/2016

The petitioner noted that only two Class A STAs were granted in 2015:

¹⁴ The file number of each STA request indicates the date on which it was filed, written as year-month-day. Thus BESTA-20130826AIO was filed with the FCC on August 26, 2012 and remained pending two and one-half years later.

- W09DB-D (BSTA-20150428AAB)
- WARZ-CD (BSTA-20150407ABM)

While the Commission denied the existence of a policy of not granting STAs to Class A stations in its denial of the Application for Review, the facts appear to support the opposite conclusion. Indeed, the Commission's failure to timely address so many Class A stations' STA requests is further evidence of the FCC's campaign against Class A stations.

CONCLUSION

At the end of 2011, just months before Congress passed the Spectrum Act and set in motion the plans for the Incentive Auction, there were nearly 500 licensed Class A stations.¹⁵ At the end of 2015, four years later, there were fewer than 400.¹⁶ In other words, more than 17% of Class A stations were downgraded or had their licenses cancelled, each representing potentially millions in Incentive Auction payout savings and substantial hours of spectrum repacking work.

It is difficult to escape the conclusion that this reduction in the number of Class A stations demonstrates the success of a systematic effort by the FCC to preemptively clear TV spectrum in advance of the Incentive Auction in order to save money and ease post-auction repacking. Congress made clear in the

¹⁵ "Broadcast Station Totals" list from December 31, 2011, issued January 6, 2012.

¹⁶ "Broadcast Station Totals" list from September 30, 2015, issued October 9, 2015 (available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-335798A1.pdf).

ADDENDUM

TABLE OF CONTENTS

Except for the following, all applicable statutes are contained in the Brief for Petitioners.

47 U.S.C. § 309(j)(8)(G)(i)Add. 1

47 U.S.C. § 312(g)Add. 2

47 C.F.R. § 73.3526Add. 3

47 C.F.R. § 73.6001Add. 19

47 C.F.R. § 309(j)(8)(G)(i)

(j) Use of competitive bidding

...

(8) Treatment of revenues

...

(G) Incentive auctions

(i) In general

Notwithstanding subparagraph (A) and except as provided in subparagraph (B), the Commission may encourage a licensee to relinquish voluntarily some or all of its licensed spectrum usage rights in order to permit the assignment of new initial licenses subject to flexible-use service rules by sharing with such licensee a portion, based on the value of the relinquished rights as determined in the reverse auction required by clause (ii)(I), of the proceeds (including deposits and upfront payments from successful bidders) from the use of a competitive bidding system under this subsection.

47 U.S.C. § 312(g)**(g) Limitation on silent station authorizations**

If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness. Any broadcast license revoked or terminated in Alaska in a proceeding related to broadcasting via translator, microwave, or other alternative signal delivery is reinstated.

47 C.F.R. § 73.3526

(a) Responsibility to maintain a file. The following shall maintain for public inspection a file containing the material set forth in this section.

(1) Applicants for a construction permit for a new station in the commercial broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(2) and (e)(10) of this section. A separate file shall be maintained for each station for which an application is pending. If the application is granted, paragraph (a)(2) of this section shall apply.

(2) Every permittee or licensee of an AM, FM, TV or Class A TV station in the commercial broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10) and paragraph (e)(13) of this section. In addition, every permittee or licensee of a commercial TV or Class A TV station shall maintain for public inspection a file containing material, relating to that station, described in paragraphs (e)(11) and (e)(15) of this section, and every permittee or licensee of a commercial AM or FM station shall maintain for public inspection a file containing the material, relating to that station, described in paragraphs (e)(12) and (e)(14) of this section. A separate file shall be maintained for each station for which an authorization is outstanding, and the file shall be maintained so long as an authorization to operate the station is outstanding.

(b) Location of the file. The public inspection file shall be located as follows:

(1) For radio licensees, a hard copy of the public inspection file shall be maintained at the main studio of the station. For television licensees, letters and emails from the public, as required by paragraph (e)(9) of this section, shall be maintained at the main studio of the station. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.

(2) A television station licensee or applicant shall place the contents required by paragraph (e) of this section of its public inspection file on the Commission's Web site, with the exception of letters and emails from the public as required by paragraph (e)(9) of this section, which shall be retained at the station in the manner discussed in paragraph (b)(1) of this section; and the political file as required by paragraph (e)(6) of this section, as discussed in paragraph (b)(3) of this section. A station must provide a link to the public inspection file hosted on the Commission's Web site from the home page of its own Web site, if the station has a Web site, and provide contact information on its Web site for a station representative that can assist any person with disabilities with issues related to the content of the public files. A station also is required to include in the online public file the station's main studio address and telephone number, and the email address of the station's designated contact for questions about the public file. To the extent

this section refers to the local public inspection file, it refers to the public file of an individual station, which is either maintained at the station or on the Commission's Web site, depending upon where the documents are required to be maintained under the Commission's rules.

(3) A television station licensee or applicant shall place the contents required by paragraph (e)(6) of this section of its political inspection file on the Commission's Web site. Political inspection file material in existence 30 days after the effective date of this provision shall continue to be retained at the station in the manner discussed in paragraph (b)(1) of this section until the end of its retention period. Any station not in the top 50 DMAs, and any station not affiliated with one of the top four broadcast networks, regardless of the size of the market it serves, shall continue to retain the political file at the station in the manner discussed in paragraph (b)(1) of this section until July 1, 2014. For these stations, effective July 1, 2014, any new political file material shall be placed on the Commission's Web site, while the material in the political file as of July 1, 2014, if not placed on the Commission's Web site, shall continue to be retained at the station in the manner discussed in paragraph (b)(1) of this section until the end of its retention period. However, any station that is not required to place its political file on the Commission's Web site before July 1, 2014 may choose to do so, instead of

retaining the political file at the station in the manner discussed in paragraph (b)(1) of this section.

(4) The Commission will automatically link the following items to the electronic version of all licensee and applicant public inspection files, to the extent that the Commission has these items electronically: authorizations, applications, contour maps; ownership reports and related materials; portions of the Equal Employment Opportunity file held by the Commission; “The Public and Broadcasting”; Letters of Inquiry and other investigative information requests from the Commission, unless otherwise directed by the inquiry itself; Children’s television programming reports; and DTV transition education reports. In the event that the online public file does not reflect such required information, the licensee will be responsible for posting such material.

(c) Access to material in the file.

(1) The file shall be available for public inspection at any time during regular business hours. All or part of the file may be maintained in a computer database, as long as a computer terminal is made available, at the location of the file, to members of the public who wish to review the file. Material in the public inspection file shall be made available for printing or machine reproduction upon request made in person. The applicant, permittee, or licensee may specify the location for printing or reproduction, require the requesting party to pay the

reasonable cost thereof, and may require guarantee of payment in advance (e.g., by requiring a deposit, obtaining credit card information, or any other reasonable method). Requests for copies shall be fulfilled within a reasonable period of time, which generally should not exceed 7 days.

(2) The applicant, permittee, or licensee who maintains its main studio and public file outside its community of license shall:

(i) Make available to persons within its geographic service area, by mail upon telephone request, photocopies of documents in the file (see § 73.3526(c)(1)), excluding the political file (see § 73.3526(e)(6)), and the station shall pay postage;

(ii) Mail the most recent version of “The Public and Broadcasting” to any member of the public that requests a copy; and

(iii) Be prepared to assist members of the public in identifying the documents they may ask to be sent to them by mail, for example, by describing to the caller, if asked, the period covered by a particular report and the number of pages included in the report.

Note to paragraph (c)(2): For purposes of this section, geographic service area includes the area within the Grade B contour for TV, 1 mV/m contour for all FM station classes except .7 mV/m for Class B1 stations and .5 mV/m for Class B stations, and .5 mV/m contour for AM stations.

(d) Responsibility in case of assignment or transfer.

(1) In cases involving applications for consent to assignment of broadcast station construction permits or licenses, with respect to which public notice is required to be given under the provisions of § 73.3580 or § 73.3594, the file mentioned in paragraph (a) of this section shall be maintained by the assignor. If the assignment is consented to by the FCC and consummated, the assignee shall maintain the file commencing with the date on which notice of the consummation of the assignment is filed with the FCC. The assignee shall retain public file documents obtained from the assignor for the period required under these rules.

(2) In cases involving applications for consent to transfer of control of a permittee or licensee of a broadcast station, the file mentioned in paragraph (a) of this section shall be maintained by the permittee or licensee.

(e) Contents of the file. The material to be retained in the public inspection file is as follows:

(1) Authorization. A copy of the current FCC authorization to construct or operate the station, as well as any other documents necessary to reflect any modifications thereto or any conditions that the FCC has placed on the authorization. These materials shall be retained until replaced by a new authorization, at which time a copy of the new authorization and any related materials shall be placed in the file.

(2) Applications and related materials. A copy of any application tendered for filing with the FCC, together with all related material, and copies of Initial Decisions and Final Decisions in hearing cases pertaining thereto. If petitions to deny are filed against the application and have been served on the applicant, a statement that such a petition has been filed shall be maintained in the file together with the name and address of the party filing the petition. Applications shall be retained in the public inspection file until final action has been taken on the application, except that applications for a new construction permit granted pursuant to a waiver showing and applications for assignment or transfer of license granted pursuant to a waiver showing shall be retained for as long as the waiver is in effect. In addition, license renewal applications granted on a short-term basis shall be retained until final action has been taken on the license renewal application filed immediately following the shortened license term.

(3) Citizen agreements. A copy of every written citizen agreement. These agreements shall be retained for the term of the agreement, including any renewal or extension thereof.

Note to paragraph (e)(3): For purposes of this section, a citizen agreement is a written agreement between a broadcast applicant, permittee, or licensee, and one or more citizens or citizen groups, entered for primarily noncommercial purposes. This definition includes those agreements that deal with goals or proposed

practices directly or indirectly affecting station operations in the public interest, in areas such as--but not limited to--programming and employment. It excludes common commercial agreements such as advertising contracts; union, employment, and personal services contracts; network affiliation, syndication, program supply contracts, etc. However, the mere inclusion of commercial terms in a primarily noncommercial agreement--such as a provision for payment of fees for future services of the citizen-parties (see "Report and Order," Docket 19518, 57 FCC 2d 494 (1976))--would not cause the agreement to be considered commercial for purposes of this section.

(4) Contour maps. A copy of any service contour maps, submitted with any application tendered for filing with the FCC, together with any other information in the application showing service contours and/or main studio and transmitter location (State, county, city, street address, or other identifying information). These documents shall be retained for as long as they reflect current, accurate information regarding the station.

(5) Ownership reports and related materials. A copy of the most recent, complete ownership report filed with the FCC for the station, together with any statements filed with the FCC certifying that the current report is accurate, and together with all related material. These materials shall be retained until a new, complete ownership report is filed with the FCC, at which time a copy of the new

report and any related materials shall be placed in the file. The permittee or licensee must retain in the public file either a copy of the contracts listed in such reports in accordance with § 73.3615(a)(4)(i), or an up-to-date list of such contracts. Licensees or permittees who choose to retain a list of contracts must provide a copy of any contracts to requesting parties within 7 days.

(6) Political file. Such records as are required by § 73.1943 to be kept concerning broadcasts by candidates for public office. These records shall be retained for the period specified in § 73.1943 (2 years).

(7) Equal Employment Opportunity file. Such information as is required by § 73.2080 to be kept in the public inspection file. These materials shall be retained until final action has been taken on the station's next license renewal application.

(8) The public and broadcasting. At all times, a copy of the most recent version of the manual entitled "The Public and Broadcasting."

(9) Letters and e-mail from the public.

(i) All written comments and suggestions received from the public regarding operation of the station, unless the letter writer has requested that the letter not be made public or when the licensee feels that it should be excluded from public inspection because of the nature of its content, such as a defamatory or obscene letter. Letters and electronic mail messages shall be

retained for a period of three years from the date on which they are received by the licensee.

(ii) For purposes of this section, written comments and suggestions received from the public include electronic mail messages transmitted via the internet to station management or an e-mail address publicized by the station. Personal e-mail messages sent to station employees need not be retained. Licensees may retain e-mails either on paper or in a computer file. Licensees who choose to maintain a computer file of e-mails may make the file available to the public either by providing the public with access to a computer terminal at the location of the public file, or providing the public with a copy of such e-mails on computer diskette, upon request. In the case of identical communications, licensees and permittees may retain one sample copy of the letter or electronic mail message together with a list identifying other parties who sent identical communications.

(10) Material relating to FCC investigation or complaint. Material having a substantial bearing on a matter which is the subject of an FCC investigation or complaint to the FCC of which the applicant, permittee, or licensee has been advised. This material shall be retained until the applicant, permittee, or licensee is notified in writing that the material may be discarded.

(11) (i) TV issues/programs lists. For commercial TV and Class A broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October--December, April 10 for the quarter January--March, etc.) The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. The lists described in this paragraph shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

(ii) Records concerning commercial limits. For commercial TV and Class A TV broadcast stations, records sufficient to permit substantiation of the station's certification, in its license renewal application, of compliance with the commercial limits on children's programming established in 47 U.S.C. 303a and 47 CFR 73.670. The records for each calendar quarter must be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October--December, April 10 for the quarter January--March,

etc.). These records shall be retained until final action has been taken on the station's next license renewal application.

(iii) Children's television programming reports. For commercial TV broadcast stations, both analog and digital, on a quarterly basis, a completed Children's Television Programming Report ("Report"), on FCC Form 398, reflecting efforts made by the licensee during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children. The Report for each quarter is to be placed in the public inspection file by the tenth day of the succeeding calendar quarter. By this date, a copy of the Report for each quarter is also to be filed electronically with the FCC. The Report shall identify the licensee's educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children, and it shall explain how programs identified as Core Programming meet the definition set forth in § 73.671(c). The Report shall include the name of the individual at the station responsible for collecting comments on the station's compliance with the Children's Television Act, and it shall be separated from other materials in the public inspection file. The Report shall also identify the program guide publishers to which information regarding the licensee's educational and informational

programming was provided as required in § 73.673, as well as the station's license renewal date. These Reports shall be retained in the public inspection file until final action has been taken on the station's next license renewal application. Licensees shall publicize in an appropriate manner the existence and location of these Reports.

(iv) DTV Transition Education Reports. For full-power commercial TV broadcast stations, both analog and digital, on a quarterly basis, a completed Form 388, DTV Consumer Education Quarterly Activity Report. The Report for each quarter is to be placed in the public inspection file by the tenth day of the succeeding calendar quarter. By this date, a copy of the Report for each quarter must be filed electronically using the Commission's Consolidated DataBase System (CDBS). Stations electing to conform to the requirements of § 73.674(b) must also provide the form on the station's public Web site, if such exists. The Report shall be separated from other materials in the public inspection file. The first Report, covering the first quarter of 2008, must be filed no later than April 10, 2008. The Reports must continue to be included up to and including the quarter in which a station concludes its education campaign. These Reports shall be retained in the public inspection file for one year. Licensees and permittees shall publicize in an appropriate manner the existence and location of these Reports.

(12) Radio issues/programs lists. For commercial AM and FM broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October--December, April 10 for the quarter January--March, etc.). The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. The lists described in this paragraph shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

(13) Local public notice announcements. Each applicant for renewal of license shall, within 7 days of the last day of broadcast of the local public notice of filing announcements required pursuant to § 73.3580(h), place in the station's local public inspection file a statement certifying compliance with this requirement. The dates and times that the pre-filing and post-filing notices were broadcast and the text thereof shall be made part of the certifying statement. The certifying statement shall be retained in the public file for the period specified in § 73.3580 (for as long as the application to which it refers).

(14) Radio and television time brokerage agreements. For commercial radio and television stations, a copy of every agreement or contract involving time brokerage of the licensee's station or of another station by the licensee, whether the agreement involves stations in the same markets or in differing markets, with confidential or proprietary information redacted where appropriate. These records shall be retained as long as the contract or agreement is in force.

(15) Must-carry or retransmission consent election. Statements of a commercial television or Class A television station's election with respect to either must-carry or re-transmission consent, as defined in §§ 76.64 and 76.1608 of this chapter. These records shall be retained for the duration of the three year election period to which the statement applies.

(16) Radio and television joint sales agreements. For commercial radio and commercial television stations, a copy of agreement for the joint sale of advertising time involving the station, whether the agreement involves stations in the same markets or in differing markets, with confidential or proprietary information redacted where appropriate.

(17) Class A TV continuing eligibility. Documentation sufficient to demonstrate that the Class A television station is continuing to meet the eligibility requirements set forth at § 73.6001.

Note 1 to paragraph (e): For purposes of this section, action taken on an application tendered with the FCC becomes final when that action is no longer subject to reconsideration, review, or appeal either at the FCC or in the courts.

Note 2 to paragraph (e): For purposes of this section, the term “all related material” includes all exhibits, letters, and other documents tendered for filing with the FCC as part of an application, report, or other document, all amendments to the application, report, or other document, copies of all documents incorporated therein by reference and not already maintained in the public inspection file, and all correspondence between the FCC and the applicant pertaining to the application, report, or other document, which according to the provisions of §§ 0.451 through 0.461 of this part are open for public inspection at the offices of the FCC.

47 C.F.R. § 73.6001

(a) Qualified low power television licensees which, during the 90-day period ending November 28, 1999, operated their stations in a manner consistent with the programming and operational standards set forth in the Community Broadcasters Protection Act of 1999, may be accorded primary status as Class A television licensees.

(b) Class A television broadcast stations are required to:

(1) Broadcast a minimum of 18 hours per day; and

(2) Broadcast an average of at least three hours per week of locally produced programming each quarter.

(c) Licensed Class A television broadcast stations shall be accorded primary status as a television broadcaster as long as the station continues to meet the minimum operating requirements for Class A status.

(d) Licensees unable to continue to meet the minimum operating requirements for Class A television stations, or which elect to revert to low power television status, shall promptly notify the Commission, in writing, and request a change in status.