

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

The Videohouse, Inc., <i>et al.</i> ,)	
Petitioners,)	
)	
v.)	No. 16-1060
)	
Federal Communications Commission)	
and United States of America,)	
Respondents.)	

**OPPOSITION OF RESPONDENTS TO PETITIONERS’
EMERGENCY MOTION FOR EXPEDITED CONSIDERATION
AND FOR AN EXPEDITED BRIEFING SCHEDULE**

In their motion for expedition, petitioners propose an extraordinarily accelerated schedule: completion of merits briefing by March 7, 2016, with a decision on the merits issued by the Court before March 29, 2016 (when the FCC’s broadcast incentive “reverse” auction is scheduled to begin). But petitioners have failed to justify their proposal.

The highly accelerated schedule proposed by petitioners will strain the resources of the Court as well as the parties. Normally, the timeframe for this Court’s expedited consideration of a petition for review is measured in months, not weeks. Petitioners, however, would compress the entire process of merits review—plenary merits briefing, oral argument, and the issuance of a merits decision—into less than six weeks. Judicial review at such a breakneck pace is not

likely to provide adequate time for the parties to present their arguments effectively or for the Court to make a considered decision on the merits.

Typically, the only time that the Court resolves the merits of a case so quickly is when it grants a motion for summary disposition. In that context, the “party seeking summary disposition bears the heavy burden of establishing that the merits of his case are so clear that expedited action is justified.” *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297 (D.C. Cir. 1987). Petitioners have not even tried to carry that burden here.

Moreover, contrary to petitioners’ assertion (Mot. 3), “expedited consideration of this case” under the schedule they propose is *not* “the only way to ensure meaningful judicial review.” While petitioners claim that they “will suffer irreparable injury if they are excluded from the reverse auction” (Mot. 18), the traditional vehicle for seeking relief in that situation is a stay pending judicial review. Petitioners have not requested such relief here.

For all of these reasons, the Court should deny petitioners' motion for expedited plenary consideration of this case under the accelerated schedule they propose.

Respectfully submitted,

William J. Baer
Assistant Attorney General

Jonathan B. Sallet
General Counsel

Robert B. Nicholson
Robert J. Wiggers
Attorneys

Jacob M. Lewis
Associate General Counsel

United States
Department of Justice
Washington, D.C. 20530

Richard K. Welch
Deputy Associate General Counsel

/s/James M. Carr

James M. Carr
Counsel

Federal Communications Commission
Washington, D.C. 20554
(202) 418-1740

February 19, 2016

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

The Videohouse, Inc., <i>et al.</i> ,)	
Petitioners,)	
)	
v.)	No. 16-1060
)	
Federal Communications Commission)	
and United States of America,)	
Respondents.)	

CERTIFICATE OF SERVICE

I, James M. Carr, hereby certify that on February 19, 2016, I electronically filed the foregoing Opposition of Respondents to Petitioners' Emergency Motion for Expedited Consideration and for an Expedited Briefing Schedule with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

Thomas R. McCarthy
William S. Consovoy
J. Michael Connolly
CONSOVOY MCCARTHY, PLLC
3033 Wilson Boulevard
Suite 700
Arlington, VA 22201
Counsel for: Petitioners

Kristen C. Limarzi
Robert B. Nicholson
Robert J. Wiggers
U.S. DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, NW
Washington, DC 20530
Counsel for: USA

/s/ James M. Carr