

No. 14-1154 (consolidated with Nos. 14-1179 and 14-1218)

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

NATIONAL ASSOCIATION OF BROADCASTERS, *et al.*,

Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION and
UNITED STATES OF AMERICA,

Respondents.

CTIA—THE WIRELESS ASSOCIATION, *et al.*,

Intervenors for Respondents.

On Petitions For Review Of Final Rules Of The
United States Federal Communications Commission

**ADDENDA TO THE JOINT OPENING BRIEF FOR PETITIONERS
NATIONAL ASSOCIATION OF BROADCASTERS AND
SINCLAIR BROADCASTING GROUP, INC.**

Rick Kaplan
Jerianne Timmerman
Patrick McFadden
NATIONAL ASSOCIATION OF
BROADCASTERS
1771 N Street, N.W.
Washington, D.C. 20036
Telephone: (202) 429-5430

Miguel A. Estrada
Counsel of Record
Scott P. Martin
Lucas C. Townsend
Ashley S. Boizelle
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Ave., N.W.
Washington, D.C. 20036
Telephone: (202) 955-8500
MEstrada@gibsondunn.com

Counsel for Petitioner National Association of Broadcasters

[continued on inside cover]

John K. Hane

Counsel of Record

Jeetander T. Dulani

Cynthia Cook Robertson

PILLSBURY WINTHROP SHAW

PITTMAN LLP

2300 N. Street, N.W.

Washington, D.C. 20037

Telephone: (202) 663-8116

john.hane@pillsburylaw.com

Counsel for Petitioner Sinclair Broadcast Group, Inc.

TABLE OF CONTENTS

	<u>Page</u>
Statutory Addendum	
5 U.S.C. § 706.....	Add. 1
47 U.S.C. § 309(j).....	Add. 2
47 U.S.C. § 316.....	Add. 19
47 U.S.C. § 1451.....	Add. 20
47 U.S.C. § 1452 (excerpts).....	Add. 22
Exhibits Addendum	
Exhibit A: Declaration of Perry Sook in Support of Emergency Motion by the National Association of Broadcasters for Expedited Consideration of Petition for Review and an Expedited Briefing Schedule (Aug. 25, 2014)	Add. 27
Exhibit B: Declaration of Raycom Media, Inc. in Support of Emergency Motion by the National Association of Broadcasters for Expedited Consideration of Petition for Review and an Expedited Briefing Schedule (Aug. 22, 2014).....	Add. 32
Exhibit C: Declaration of Mark A. Aitkin (Nov. 7, 2014)	Add. 37

Statutory Addendum

5 U.S.C. § 706

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (B) contrary to constitutional right, power, privilege, or immunity;
 - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - (D) without observance of procedure required by law;
 - (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
 - (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

47 U.S.C. § 309**§ 309. Application for license**

* * *

(j) Use of competitive bidding**(1) General authority**

If, consistent with the obligations described in paragraph (6)(E), mutually exclusive applications are accepted for any initial license or construction permit, then, except as provided in paragraph (2), the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding that meets the requirements of this subsection.

(2) Exemptions

The competitive bidding authority granted by this subsection shall not apply to licenses or construction permits issued by the Commission—

(A) for public safety radio services, including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations, that—

(i) are used to protect the safety of life, health, or property; and

(ii) are not made commercially available to the public;

(B) for initial licenses or construction permits for digital television service given to existing terrestrial broadcast licensees to replace their analog television service licenses; or

(C) for stations described in section 397(6) of this title.

(3) Design of systems of competitive bidding

For each class of licenses or permits that the Commission grants through the use of a competitive bidding system, the Commission shall, by regulation, establish a competitive bidding methodology. The Commission shall seek to design and test multiple alternative methodologies under appropriate circumstances. The Commission shall, directly or by contract, provide for the design and conduct (for purposes of testing) of competitive bidding using a contingent combinatorial bidding system that permits prospective bidders to bid on combinations or groups of licenses in a single bid and to enter multiple alternative bids within a single bidding round. In identifying classes of licenses and permits to be issued by competitive bidding, in specifying eligibility and other characteristics of

such licenses and permits, and in designing the methodologies for use under this subsection, the Commission shall include safeguards to protect the public interest in the use of the spectrum and shall seek to promote the purposes specified in section 151 of this title and the following objectives:

(A) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays;

(B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women;

(C) recovery for the public of a portion of the value of the public spectrum resource made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource;

(D) efficient and intensive use of the electromagnetic spectrum;

(E) ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed—

(i) before issuance of bidding rules, to permit notice and comment on proposed auction procedures; and

(ii) after issuance of bidding rules, to ensure that interested parties have a sufficient time to develop business plans, assess market conditions, and evaluate the availability of equipment for the relevant services; and

(F) for any auction of eligible frequencies described in section 923(g)(2) of this title, the recovery of 110 percent of estimated relocation or sharing costs as provided to the Commission pursuant to section 923(g)(4) of this title.

(4) Contents of regulations

In prescribing regulations pursuant to paragraph (3), the Commission shall—

(A) consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods that promote the objectives described in paragraph (3)(B), and combinations of such schedules and methods;

(B) include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services;

(C) consistent with the public interest, convenience, and necessity, the purposes of this chapter, and the characteristics of the proposed service, prescribe area designations and bandwidth assignments that promote (i) an equitable distribution of licenses and services among geographic areas, (ii) economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, and (iii) investment in and rapid deployment of new technologies and services;

(D) ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures;

(E) require such transfer disclosures and antitrafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits; and

(F) prescribe methods by which a reasonable reserve price will be required, or a minimum bid will be established, to obtain any license or permit being assigned pursuant to the competitive bidding, unless the Commission determines that such a reserve price or minimum bid is not in the public interest.

(5) Bidder and licensee qualification

No person shall be permitted to participate in a system of competitive bidding pursuant to this subsection unless such bidder submits such information and assurances as the Commission may require to demonstrate that such bidder's application is acceptable for filing. No license shall be granted to an applicant selected pursuant to this subsection unless the Commission determines that the applicant is qualified pursuant to subsection (a) of this section and sections 308(b) and 310 of this title. Consistent with the objectives described in paragraph (3), the Commission shall, by regulation, prescribe expedited procedures consistent with the procedures authorized by subsection (i)(2) of this section for the resolution of any substantial and material issues of fact concerning qualifications.

(6) Rules of construction

Nothing in this subsection, or in the use of competitive bidding, shall—

(A) alter spectrum allocation criteria and procedures established by the other provisions of this chapter;

(B) limit or otherwise affect the requirements of subsection (h) of this section, section 301, 304, 307, 310, or 606 of this title, or any other provision of this chapter (other than subsections (d)(2) and (e) of this section);

(C) diminish the authority of the Commission under the other provisions of this chapter to regulate or reclaim spectrum licenses;

(D) be construed to convey any rights, including any expectation of renewal of a license, that differ from the rights that apply to other licenses within the same service that were not issued pursuant to this subsection;

(E) be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings;

(F) be construed to prohibit the Commission from issuing nationwide, regional, or local licenses or permits;

(G) be construed to prevent the Commission from awarding licenses to those persons who make significant contributions to the development of a new telecommunications service or technology; or

(H) be construed to relieve any applicant for a license or permit of the obligation to pay charges imposed pursuant to section 158 of this title.

(7) Consideration of revenues in public interest determinations

(A) Consideration prohibited

In making a decision pursuant to section 303(c) of this title to assign a band of frequencies to a use for which licenses or permits will be issued pursuant to this subsection, and in prescribing regulations pursuant to paragraph (4)(C) of this subsection, the Commission may not base a finding of public interest, convenience, and necessity on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.

(B) Consideration limited

In prescribing regulations pursuant to paragraph (4)(A) of this subsection, the Commission may not base a finding of public interest, convenience, and

necessity solely or predominantly on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.

(C) Consideration of demand for spectrum not affected

Nothing in this paragraph shall be construed to prevent the Commission from continuing to consider consumer demand for spectrum-based services.

(8) Treatment of revenues

(A) General rule

Except as provided in subparagraphs (B), (D), (E), (F), and (G), all proceeds from the use of a competitive bidding system under this subsection shall be deposited in the Treasury in accordance with chapter 33 of Title 31.

(B) Retention of revenues

Notwithstanding subparagraph (A), the salaries and expenses account of the Commission shall retain as an offsetting collection such sums as may be necessary from such proceeds for the costs of developing and implementing the program required by this subsection. Such offsetting collections shall be available for obligation subject to the terms and conditions of the receiving appropriations account, and shall be deposited in such accounts on a quarterly basis. Such offsetting collections are authorized to remain available until expended. No sums may be retained under this subparagraph during any fiscal year beginning after September 30, 1998, if the annual report of the Commission under section 154(k) of this title for the second preceding fiscal year fails to include in the itemized statement required by paragraph (3) of such section a statement of each expenditure made for purposes of conducting competitive bidding under this subsection during such second preceding fiscal year.

(C) Deposit and use of auction escrow accounts

Any deposits the Commission may require for the qualification of any person to bid in a system of competitive bidding pursuant to this subsection shall be deposited in an interest bearing account at a financial institution designated for purposes of this subsection by the Commission (after consultation with the Secretary of the Treasury). Within 45 days following the conclusion of the competitive bidding—

(i) the deposits of successful bidders shall be paid to the Treasury, except as otherwise provided in subparagraphs (D)(ii), (E)(ii), (F), and (G);

(ii) the deposits of unsuccessful bidders shall be returned to such bidders; and

(iii) the interest accrued to the account shall be deposited in the general fund of the Treasury, where such amount shall be dedicated for the sole purpose of deficit reduction.

(D) Proceeds from reallocated Federal spectrum

(i) In general

Except as provided in clause (ii), cash proceeds attributable to the auction of any eligible frequencies described in section 923(g)(2) of this title shall be deposited in the Spectrum Relocation Fund established under section 928 of this title, and shall be available in accordance with that section.

(ii) Certain other proceeds

Notwithstanding subparagraph (A) and except as provided in subparagraph (B), in the case of proceeds (including deposits and upfront payments from successful bidders) attributable to the auction of eligible frequencies described in paragraph (2) of section 923(g) of this title that are required to be auctioned by section 1451(b)(1)(B) of this title, such portion of such proceeds as is necessary to cover the relocation or sharing costs (as defined in paragraph (3) of such section 113(g)) of Federal entities relocated from such eligible frequencies shall be deposited in the Spectrum Relocation Fund. The remainder of such proceeds shall be deposited in the Public Safety Trust Fund established by section 1457(a)(1) of this title.

(E) Transfer of receipts

(i) Establishment of Fund

There is established in the Treasury of the United States a fund to be known as the Digital Television Transition and Public Safety Fund.

(ii) Proceeds for funds

Notwithstanding subparagraph (A), the proceeds (including deposits and upfront payments from successful bidders) from the use of a competitive bidding system under this subsection with respect to recovered analog spectrum shall be deposited in the Digital Television Transition and Public Safety Fund.

(iii) Transfer of amount to Treasury

On September 30, 2009, the Secretary shall transfer \$7,363,000,000 from the Digital Television Transition and Public Safety Fund to the general fund of the Treasury.

(iv) Recovered analog spectrum

For purposes of clause (i), the term “recovered analog spectrum” has the meaning provided in paragraph (15)(C)(vi).

(F) Certain proceeds designated for Public Safety Trust Fund

Notwithstanding subparagraph (A) and except as provided in subparagraphs (B) and (D)(ii), the proceeds (including deposits and upfront payments from successful bidders) from the use of a system of competitive bidding under this subsection pursuant to section 1451(b)(1)(B) of this title shall be deposited in the Public Safety Trust Fund established by section 1457(a)(1) of this title.

(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.

(ii) Limitations

The Commission may not enter into an agreement for a licensee to relinquish spectrum usage rights in exchange for a share of auction proceeds under clause (i) unless—

(I) the Commission conducts a reverse auction to determine the amount of compensation that licensees would accept in return for voluntarily relinquishing spectrum usage rights; and

(II) at least two competing licensees participate in the reverse auction.

(iii) Treatment of revenues

Notwithstanding subparagraph (A) and except as provided in subparagraph (B), the proceeds (including deposits and upfront payments from successful bidders) from any auction, prior to the end of fiscal year 2022, of spectrum usage rights made available under clause (i) that are not shared with licensees under such clause shall be deposited as follows:

(I) \$1,750,000,000 of the proceeds from the incentive auction of broadcast television spectrum required by section 1452 of this title shall be deposited in the TV Broadcaster Relocation Fund established by subsection (d)(1) of such section.

(II) All other proceeds shall be deposited—

(aa) prior to the end of fiscal year 2022, in the Public Safety Trust Fund established by section 1457(a)(1) of this title; and

(bb) after the end of fiscal year 2022, in the general fund of the Treasury, where such proceeds shall be dedicated for the sole purpose of deficit reduction.

(iv) Congressional notification

At least 3 months before any incentive auction conducted under this subparagraph, the Chairman of the Commission, in consultation with the Director of the Office of Management and Budget, shall notify the appropriate committees of Congress of the methodology for calculating the amounts that will be shared with licensees under clause (i).

(v) Definition

In this subparagraph, the term “appropriate committees of Congress” means—

(I) the Committee on Commerce, Science, and Transportation of the Senate;

(II) the Committee on Appropriations of the Senate;

(III) the Committee on Energy and Commerce of the House of Representatives; and

(IV) the Committee on Appropriations of the House of Representatives.

(9) Use of former Government spectrum

The Commission shall, not later than 5 years after August 10, 1993, issue licenses and permits pursuant to this subsection for the use of bands of frequencies that—

(A) in the aggregate span not less than 10 megahertz; and

(B) have been reassigned from Government use pursuant to part B of the National Telecommunications and Information Administration Organization Act [47 U.S.C.A. § 921 et. seq.].

(10) Authority contingent on availability of additional spectrum

(A) Initial conditions

The Commission's authority to issue licenses or permits under this subsection shall not take effect unless—

(i) the Secretary of Commerce has submitted to the Commission the report required by section 113(d)(1) of the National Telecommunications and Information Administration Organization Act [47 U.S.C.A. § 923(d)(1)];

(ii) such report recommends for immediate reallocation bands of frequencies that, in the aggregate, span not less than 50 megahertz;

(iii) such bands of frequencies meet the criteria required by section 113(a) of such Act [47 U.S.C.A. § 923(a)]; and

(iv) the Commission has completed the rulemaking required by section 332(c)(1)(D) of this title.

(B) Subsequent conditions

The Commission's authority to issue licenses or permits under this subsection on and after 2 years after August 10, 1993, shall cease to be effective if—

(i) the Secretary of Commerce has failed to submit the report required by section 113(a) of the National Telecommunications and Information Administration Organization Act [47 U.S.C.A. § 923(a)];

(ii) the President has failed to withdraw and limit assignments of frequencies as required by paragraphs (1) and (2) of section 114(a) of such Act [47 U.S.C.A. § 924(a)];

(iii) the Commission has failed to issue the regulations required by section 115(a) of such Act [47 U.S.C.A. § 925(a)];

(iv) the Commission has failed to complete and submit to Congress, not later than 18 months after August 10, 1993, a study of current and future spectrum needs of State and local government public safety agencies through the year 2010, and a specific plan to ensure that adequate frequencies are made available to public safety licensees; or

(v) the Commission has failed under section 332(c)(3) of this title to grant or deny within the time required by such section any petition that a State has filed within 90 days after August 10, 1993;

until such failure has been corrected.

(11) Termination

The authority of the Commission to grant a license or permit under this subsection shall expire September 30, 2022.

(12) Evaluation

Not later than September 30, 1997, the Commission shall conduct a public inquiry and submit to the Congress a report—

(A) containing a statement of the revenues obtained, and a projection of the future revenues, from the use of competitive bidding systems under this subsection;

(B) describing the methodologies established by the Commission pursuant to paragraphs (3) and (4);

(C) comparing the relative advantages and disadvantages of such methodologies in terms of attaining the objectives described in such paragraphs;

(D) evaluating whether and to what extent—

(i) competitive bidding significantly improved the efficiency and effectiveness of the process for granting radio spectrum licenses;

(ii) competitive bidding facilitated the introduction of new spectrum-based technologies and the entry of new companies into the telecommunications market;

(iii) competitive bidding methodologies have secured prompt delivery of service to rural areas and have adequately addressed the needs of rural spectrum users; and

(iv) small businesses, rural telephone companies, and businesses owned by members of minority groups and women were able to participate successfully in the competitive bidding process; and

(E) recommending any statutory changes that are needed to improve the competitive bidding process.

(13) Recovery of value of public spectrum in connection with pioneer preferences

(A) In general

Notwithstanding paragraph (6)(G), the Commission shall not award licenses pursuant to a preferential treatment accorded by the Commission to persons who make significant contributions to the development of a new telecommu-

nications service or technology, except in accordance with the requirements of this paragraph.

(B) Recovery of value

The Commission shall recover for the public a portion of the value of the public spectrum resource made available to such person by requiring such person, as a condition for receipt of the license, to agree to pay a sum determined by—

(i) identifying the winning bids for the licenses that the Commission determines are most reasonably comparable in terms of bandwidth, scope of service area, usage restrictions, and other technical characteristics to the license awarded to such person, and excluding licenses that the Commission determines are subject to bidding anomalies due to the award of preferential treatment;

(ii) dividing each such winning bid by the population of its service area (hereinafter referred to as the per capita bid amount);

(iii) computing the average of the per capita bid amounts for the licenses identified under clause (i);

(iv) reducing such average amount by 15 percent; and

(v) multiplying the amount determined under clause (iv) by the population of the service area of the license obtained by such person.

(C) Installments permitted

The Commission shall require such person to pay the sum required by subparagraph (B) in a lump sum or in guaranteed installment payments, with or without royalty payments, over a period of not more than 5 years.

(D) Rulemaking on pioneer preferences

Except with respect to pending applications described in clause (iv) of this subparagraph, the Commission shall prescribe regulations specifying the procedures and criteria by which the Commission will evaluate applications for preferential treatment in its licensing processes (by precluding the filing of mutually exclusive applications) for persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service. Such regulations shall—

(i) specify the procedures and criteria by which the significance of such contributions will be determined, after an opportunity for review and veri-

fication by experts in the radio sciences drawn from among persons who are not employees of the Commission or by any applicant for such preferential treatment;

(ii) include such other procedures as may be necessary to prevent unjust enrichment by ensuring that the value of any such contribution justifies any reduction in the amounts paid for comparable licenses under this subsection;

(iii) be prescribed not later than 6 months after December 8, 1994;

(iv) not apply to applications that have been accepted for filing on or before September 1, 1994; and

(v) cease to be effective on the date of the expiration of the Commission's authority under subparagraph (F).

(E) Implementation with respect to pending applications

In applying this paragraph to any broadband licenses in the personal communications service awarded pursuant to the preferential treatment accorded by the Federal Communications Commission in the Third Report and Order in General Docket 90-314 (FCC 93-550, released February 3, 1994)—

(i) the Commission shall not reconsider the award of preferences in such Third Report and Order, and the Commission shall not delay the grant of licenses based on such awards more than 15 days following December 8, 1994, and the award of such preferences and licenses shall not be subject to administrative or judicial review;

(ii) the Commission shall not alter the bandwidth or service areas designated for such licenses in such Third Report and Order;

(iii) except as provided in clause (v), the Commission shall use, as the most reasonably comparable licenses for purposes of subparagraph (B)(i), the broadband licenses in the personal communications service for blocks A and B for the 20 largest markets (ranked by population) in which no applicant has obtained preferential treatment;

(iv) for purposes of subparagraph (C), the Commission shall permit guaranteed installment payments over a period of 5 years, subject to—

(I) the payment only of interest on unpaid balances during the first 2 years, commencing not later than 30 days after the award of the license (including any preferential treatment used in making such award) is final and no longer subject to administrative or judicial review, except that no

such payment shall be required prior to the date of completion of the auction of the comparable licenses described in clause (iii); and

(II) payment of the unpaid balance and interest thereon after the end of such 2 years in accordance with the regulations prescribed by the Commission; and

(v) the Commission shall recover with respect to broadband licenses in the personal communications service an amount under this paragraph that is equal to not less than \$400,000,000, and if such amount is less than \$400,000,000, the Commission shall recover an amount equal to \$400,000,000 by allocating such amount among the holders of such licenses based on the population of the license areas held by each licensee.

The Commission shall not include in any amounts required to be collected under clause (v) the interest on unpaid balances required to be collected under clause (iv).

(F) Expiration

The authority of the Commission to provide preferential treatment in licensing procedures (by precluding the filing of mutually exclusive applications) to persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service shall expire on August 5, 1997.

(G) Effective date

This paragraph shall be effective on December 8, 1994, and apply to any licenses issued on or after August 1, 1994, by the Federal Communications Commission pursuant to any licensing procedure that provides preferential treatment (by precluding the filing of mutually exclusive applications) to persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service.

(14) Auction of recaptured broadcast television spectrum

(A) Limitations on terms of terrestrial television broadcast licenses

A full-power television broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond June 12, 2009.

(B) Spectrum reversion and resale

(i) The Commission shall—

(I) ensure that, as licenses for analog television service expire pursuant to subparagraph (A), each licensee shall cease using electromagnetic spectrum assigned to such service according to the Commission's direction; and

(II) reclaim and organize the electromagnetic spectrum in a manner consistent with the objectives described in paragraph (3) of this subsection.

(ii) Licensees for new services occupying spectrum reclaimed pursuant to clause (i) shall be assigned in accordance with this subsection.

(C) Certain limitations on qualified bidders prohibited

In prescribing any regulations relating to the qualification of bidders for spectrum reclaimed pursuant to subparagraph (B)(i), the Commission, for any license that may be used for any digital television service where the grade A contour of the station is projected to encompass the entirety of a city with a population in excess of 400,000 (as determined using the 1990 decennial census), shall not—

(i) preclude any party from being a qualified bidder for such spectrum on the basis of—

(I) the Commission's duopoly rule (47 C.F.R. 73.3555(b)); or

(II) the Commission's newspaper cross-ownership rule (47 C.F.R. 73.3555(d)); or

(ii) apply either such rule to preclude such a party that is a winning bidder in a competitive bidding for such spectrum from using such spectrum for digital television service.

(15) Commission to determine timing of auctions

(A) Commission authority

Subject to the provisions of this subsection (including paragraph (11)), but notwithstanding any other provision of law, the Commission shall determine the timing of and deadlines for the conduct of competitive bidding under this subsection, including the timing of and deadlines for qualifying for bidding; conducting auctions; collecting, depositing, and reporting revenues; and completing licensing processes and assigning licenses.

(B) Termination of portions of auctions 31 and 44

Except as provided in subparagraph (C), the Commission shall not commence or conduct auctions 31 and 44 on June 19, 2002, as specified in the public notices of March 19, 2002, and March 20, 2002 (DA 02-659 and DA 02-563).

(C) Exception

(i) Blocks excepted

Subparagraph (B) shall not apply to the auction of—

(I) the C-block of licenses on the bands of frequencies located at 710-716 megahertz, and 740-746 megahertz; or

(II) the D-block of licenses on the bands of frequencies located at 716-722 megahertz.

(ii) Eligible bidders

The entities that shall be eligible to bid in the auction of the C-block and D-block licenses described in clause (i) shall be those entities that were qualified entities, and that submitted applications to participate in auction 44, by May 8, 2002, as part of the original auction 44 short form filing deadline.

(iii) Auction deadlines for excepted blocks

Notwithstanding subparagraph (B), the auction of the C-block and D-block licenses described in clause (i) shall be commenced no earlier than August 19, 2002, and no later than September 19, 2002, and the proceeds of such auction shall be deposited in accordance with paragraph (8) not later than December 31, 2002.

(iv) Report

Within one year after June 19, 2002, the Commission shall submit a report to Congress—

(I) specifying when the Commission intends to reschedule auctions 31 and 44 (other than the blocks excepted by clause (i)); and

(II) describing the progress made by the Commission in the digital television transition and in the assignment and allocation of additional spectrum for advanced mobile communications services that warrants the scheduling of such auctions.

(v) Additional deadlines for recovered analog spectrum

Notwithstanding subparagraph (B), the Commission shall conduct the auction of the licenses for recovered analog spectrum by commencing the bidding not later than January 28, 2008, and shall deposit the proceeds of such auction in accordance with paragraph (8)(E)(ii) not later than June 30, 2008.

(vi) Recovered analog spectrum

For purposes of clause (v), the term “recovered analog spectrum” means the spectrum between channels 52 and 69, inclusive (between frequencies 698 and 806 megahertz, inclusive) reclaimed from analog television service broadcasting under paragraph (14), other than—

(I) the spectrum required by section 337 of this title to be made available for public safety services; and

(II) the spectrum auctioned prior to February 8, 2006.

(D) Return of payments

Within one month after June 19, 2002, the Commission shall return to the bidders for licenses in the A-block, B-block, and E-block of auction 44 the full amount of all upfront payments made by such bidders for such licenses.

(16) Special auction provisions for eligible frequencies

(A) Special regulations

The Commission shall revise the regulations prescribed under paragraph (4)(F) of this subsection to prescribe methods by which the total cash proceeds from any auction of eligible frequencies described in section 923(g)(2) of this title shall at least equal 110 percent of the total estimated relocation or sharing costs provided to the Commission pursuant to section 923(g)(4) of this title.

(B) Conclusion of auctions contingent on minimum proceeds

The Commission shall not conclude any auction of eligible frequencies described in section 923(g)(2) of this title if the total cash proceeds attributable to such spectrum are less than 110 percent of the total estimated relocation or sharing costs provided to the Commission pursuant to section 923(g)(4) of this title. If the Commission is unable to conclude an auction for the foregoing reason, the Commission shall cancel the auction, return within 45 days after the auction cancellation date any deposits from participating bidders held

in escrow, and absolve such bidders from any obligation to the United States to bid in any subsequent reacution of such spectrum.

(C) Authority to issue prior to deauthorization

In any auction conducted under the regulations required by subparagraph (A), the Commission may grant a license assigned for the use of eligible frequencies prior to the termination of an eligible Federal entity's authorization. However, the Commission shall condition such license by requiring that the licensee cannot cause harmful interference to such Federal entity until such entity's authorization has been terminated by the National Telecommunications and Information Administration.

(17) Certain conditions on auction participation prohibited

(A) In general

Notwithstanding any other provision of law, the Commission may not prevent a person from participating in a system of competitive bidding under this subsection if such person—

(i) complies with all the auction procedures and other requirements to protect the auction process established by the Commission; and

(ii) either—

(I) meets the technical, financial, character, and citizenship qualifications that the Commission may require under section 303(l)(1), 308(b), or 310 of this title to hold a license; or

(II) would meet such license qualifications by means approved by the Commission prior to the grant of the license.

(B) Clarification of authority

Nothing in subparagraph (A) affects any authority the Commission has to adopt and enforce rules of general applicability, including rules concerning spectrum aggregation that promote competition.

* * *

47 U.S.C. § 316

§ 316. Modification by Commission of station licenses or construction permits; burden of proof

(a)(1) Any station license or construction permit may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this chapter or of any treaty ratified by the United States will be more fully complied with. No such order of modification shall become final until the holder of the license or permit shall have been notified in writing of the proposed action and the grounds and reasons therefor, and shall be given reasonable opportunity, of at least thirty days, to protest such proposed order of modification; except that, where safety of life or property is involved, the Commission may by order provide, for a shorter period of notice.

(2) Any other licensee or permittee who believes its license or permit would be modified by the proposed action may also protest the proposed action before its effective date.

(3) A protest filed pursuant to this subsection shall be subject to the requirements of section 309 of this title for petitions to deny.

(b) In any case where a hearing is conducted pursuant to the provisions of this section, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission; except that, with respect to any issue that addresses the question of whether the proposed action would modify the license or permit of a person described in subsection (a)(2) of this section, such burdens shall be as determined by the Commission.

47 U.S.C. § 1451**§ 1451. Deadlines for auction of certain spectrum****(a) Clearing certain Federal spectrum****(1) In general**

The President shall—

(A) not later than 3 years after February 22, 2012, begin the process of withdrawing or modifying the assignment to a Federal Government station of the electromagnetic spectrum described in paragraph (2); and

(B) not later than 30 days after completing the withdrawal or modification, notify the Commission that the withdrawal or modification is complete.

(2) Spectrum described

The electromagnetic spectrum described in this paragraph is the 15 megahertz of spectrum between 1675 megahertz and 1710 megahertz identified under paragraph (3).

(3) Identification by Secretary of Commerce

Not later than 1 year after February 22, 2012, the Secretary of Commerce shall submit to the President a report identifying 15 megahertz of spectrum between 1675 megahertz and 1710 megahertz for reallocation from Federal use to non-Federal use.

(b) Reallocation and auction**(1) In general**

Notwithstanding paragraph (15)(A) of section 309(j) of this title, not later than 3 years after February 22, 2012, the Commission shall, except as provided in paragraph (4)—

(A) allocate the spectrum described in paragraph (2) for commercial use; and

(B) through a system of competitive bidding under such section, grant new initial licenses for the use of such spectrum, subject to flexible-use service rules.

(2) Spectrum described

The spectrum described in this paragraph is the following:

(A) The frequencies between 1915 megahertz and 1920 megahertz.

(B) The frequencies between 1995 megahertz and 2000 megahertz.

(C) The frequencies described in subsection (a)(2).

(D) The frequencies between 2155 megahertz and 2180 megahertz.

(E) Fifteen megahertz of contiguous spectrum to be identified by the Commission.

(3) Proceeds to cover 110 percent of Federal relocation or sharing costs

Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of section 309(j)(16)(B) of this title.

(4) Determination by Commission

If the Commission determines that the band of frequencies described in paragraph (2)(A) or the band of frequencies described in paragraph (2)(B) cannot be used without causing harmful interference to commercial mobile service licensees in the frequencies between 1930 megahertz and 1995 megahertz, the Commission may not—

(A) allocate such band for commercial use under paragraph (1)(A); or

(B) grant licenses under paragraph (1)(B) for the use of such band.

(c) Omitted

47 U.S.C. § 1452 (excerpts)**§ 1452. Special requirements for incentive auction of broadcast TV spectrum****(a) Reverse auction to identify incentive amount****(1) In general**

The Commission shall conduct a reverse auction to determine the amount of compensation that each broadcast television licensee would accept in return for voluntarily relinquishing some or all of its broadcast television spectrum usage rights in order to make spectrum available for assignment through a system of competitive bidding under subparagraph (G) of section 309(j)(8) of this title.

* * *

(b) Reorganization of broadcast TV spectrum**(1) In general**

For purposes of making available spectrum to carry out the forward auction under subsection (c)(1), the Commission—

(A) shall evaluate the broadcast television spectrum (including spectrum made available through the reverse auction under subsection (a)(1)); and

(B) may, subject to international coordination along the border with Mexico and Canada—

(i) make such reassignments of television channels as the Commission considers appropriate; and

(ii) reallocate such portions of such spectrum as the Commission determines are available for reallocation.

(2) Factors for consideration

In making any reassignments or reallocations under paragraph (1)(B), the Commission shall make all reasonable efforts to preserve, as of February 22, 2012, the coverage area and population served of each broadcast television licensee, as determined using the methodology described in OET Bulletin 69 of the Office of Engineering and Technology of the Commission.

(3) No involuntary relocation from UHF to VHF

In making any reassignments under paragraph (1)(B)(i), the Commission may not involuntarily reassign a broadcast television licensee—

(A) from an ultra high frequency television channel to a very high frequency television channel; or

(B) from a television channel between the frequencies from 174 megahertz to 216 megahertz to a television channel between the frequencies from 54 megahertz to 88 megahertz.

(4) Payment of relocation costs

(A) In general

Except as provided in subparagraph (B), from amounts made available under subsection (d)(2), the Commission shall reimburse costs reasonably incurred by—

(i) a broadcast television licensee that was reassigned under paragraph (1)(B)(i) from one ultra high frequency television channel to a different ultra high frequency television channel, from one very high frequency television channel to a different very high frequency television channel, or, in accordance with subsection (g)(1)(B), from a very high frequency television channel to an ultra high frequency television channel, in order for the licensee to relocate its television service from one channel to the other;

(ii) a multichannel video programming distributor in order to continue to carry the signal of a broadcast television licensee that—

(I) is described in clause (i);

(II) voluntarily relinquishes spectrum usage rights under subsection (a) with respect to an ultra high frequency television channel in return for receiving usage rights with respect to a very high frequency television channel; or

(III) voluntarily relinquishes spectrum usage rights under subsection (a) to share a television channel with another licensee; or

(iii) a channel 37 incumbent user, in order to relocate to other suitable spectrum, provided that all such users can be relocated and that the total relocation costs of such users do not exceed \$300,000,000. For the purpose of this section, the spectrum made available through relocation of channel 37 incumbent users shall be deemed as spectrum reclaimed through a reverse auction under subsection (a).

(B) Regulatory relief

In lieu of reimbursement for relocation costs under subparagraph (A), a broadcast television licensee may accept, and the Commission may grant as it considers appropriate, a waiver of the service rules of the Commission to permit the licensee, subject to interference protections, to make flexible use of the spectrum assigned to the licensee to provide services other than broadcast

television services. Such waiver shall only remain in effect while the licensee provides at least 1 broadcast television program stream on such spectrum at no charge to the public.

(C) Limitation

The Commission may not make reimbursements under subparagraph (A) for lost revenues.

(D) Deadline

The Commission shall make all reimbursements required by subparagraph (A) not later than the date that is 3 years after the completion of the forward auction under subsection (c)(1).

(5) Low-power television usage rights

Nothing in this subsection shall be construed to alter the spectrum usage rights of low-power television stations.

(c) Forward auction

(1) Auction required

The Commission shall conduct a forward auction in which—

(A) the Commission assigns licenses for the use of the spectrum that the Commission reallocates under subsection (b)(1)(B)(ii); and

(B) the amount of the proceeds that the Commission shares under clause (i) of section 309(j)(8)(G) of this title with each licensee whose bid the Commission accepts in the reverse auction under subsection (a)(1) is not less than the amount of such bid.

(2) Minimum proceeds

(A) In general

If the amount of the proceeds from the forward auction under paragraph (1) is not greater than the sum described in subparagraph (B), no licenses shall be assigned through such forward auction, no reassignments or reallocations under subsection (b)(1)(B) shall become effective, and the Commission may not revoke any spectrum usage rights by reason of a bid that the Commission accepts in the reverse auction under subsection (a)(1).

(B) Sum described

The sum described in this subparagraph is the sum of—

(i) the total amount of compensation that the Commission must pay successful bidders in the reverse auction under subsection (a)(1);

(ii) the costs of conducting such forward auction that the salaries and expenses account of the Commission is required to retain under section 309(j)(8)(B) of this title; and

(iii) the estimated costs for which the Commission is required to make reimbursements under subsection (b)(4)(A).

(C) Administrative costs

The amount of the proceeds from the forward auction under paragraph (1) that the salaries and expenses account of the Commission is required to retain under section 309(j)(8)(B) of this title shall be sufficient to cover the costs incurred by the Commission in conducting the reverse auction under subsection (a)(1), conducting the evaluation of the broadcast television spectrum under subparagraph (A) of subsection (b)(1), and making any reassignments or reallocations under subparagraph (B) of such subsection, in addition to the costs incurred by the Commission in conducting such forward auction.

(3) Factor for consideration

In conducting the forward auction under paragraph (1), the Commission shall consider assigning licenses that cover geographic areas of a variety of different sizes.

* * *

(f) Timing

(1) Contemporaneous auctions and reorganization permitted

The Commission may conduct the reverse auction under subsection (a)(1), any reassignments or reallocations under subsection (b)(1)(B), and the forward auction under subsection (c)(1) on a contemporaneous basis.

(2) Effectiveness of reassignments and reallocations

Notwithstanding paragraph (1), no reassignments or reallocations under subsection (b)(1)(B) shall become effective until the completion of the reverse auction under subsection (a)(1) and the forward auction under subsection (c)(1), and, to the extent practicable, all such reassignments and reallocations shall become effective simultaneously.

(3) Deadline

The Commission may not conduct the reverse auction under subsection (a)(1) or the forward auction under subsection (c)(1) after the end of fiscal year 2022.

(4) Limit on discretion regarding auction timing

Section 309(j)(15)(A) of this title shall not apply in the case of an auction conducted under this section.

* * *

(h) Protest right inapplicable

The right of a licensee to protest a proposed order of modification of its license under section 316 of this title shall not apply in the case of a modification made under this section.

* * *

Exhibits Addendum

Exhibit A

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

NATIONAL ASSOCIATION OF
BROADCASTERS,

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION and UNITED STATES OF
AMERICA,

Respondents.

No.

**DECLARATION OF PERRY SOOK IN SUPPORT OF
EMERGENCY MOTION BY THE NATIONAL ASSOCIATION OF
BROADCASTERS FOR EXPEDITED CONSIDERATION OF PETITION
FOR REVIEW AND AN EXPEDITED BRIEFING SCHEDULE**

1. I am the Chief Executive Officer, President and Chairman of the Board of Nexstar Broadcasting, Inc. The following is within my personal knowledge, and, if called and sworn as a witness, I could and would competently testify thereto.

2. Nexstar Broadcasting, Inc. (“Nexstar”) is a member of the National Association of Broadcasters. Nexstar currently holds broadcast television spectrum usage rights.

3. Nexstar has a substantial interest in obtaining an expedited decision by this Court regarding the validity of the new methodology adopted by the Federal Communications Commission (“FCC”) for determining coverage area and population served by its television stations in order to preserve those values in the repacking of broadcast spectrum pursuant to the FCC’s incentive auction.

4. As explained below, the FCC’s new methodology produces reduced values for Nexstar’s stations coverage area and population served. Those reductions will lead to decreased viewership and decreased revenue, and in once instance, will cause the station to become wholly unviable. Even if the auction results are subsequently vacated by this Court, Nexstar will be harmed in the interim. Because there are significant costs associated either with being repacked or with winding down a business in order to participate in the reverse auction, Nexstar will bear the burden of paying such costs twice—whether or not it chooses to participate in the reverse auction.

Reduced Coverage Area and Population Served

5. As compared with the version of OET Bulletin No. 69 that applied until the FCC order at issue in this case, the methodology adopted by the FCC in the order published at 79 Fed. Reg. 48,442 predicts reductions in coverage area and population served for one of Nexstar’s broadcast television stations, with losses of 1.1 percent of coverage area and 3.6 percent of population served; and for another,

will result in a 97.8 percent population loss – essentially, the loss of nearly its entire population served. Nexstar estimates that, following the channel reassignment and repacking process, those reductions will lead to fewer viewers.

6. Fewer viewers means less revenue for Nexstar. For a broadcaster like Nexstar, advertising is the principal source of revenue. And the primary determinant of advertising revenue is the number of viewers.

Auction Expenses

7. Nexstar estimates that it will spend approximately \$200,000-250,000 to prepare for the auction. Before the auction, for example, Nexstar plans to engage engineering consultants to conduct a complete, independent review of the auction and repacking impact on its television stations; work with an expert in spectrum valuation to determine Nexstar's strategy for participation or non-participation in the auction; and engage legal services as necessary. If the auction is initially held pursuant to the parameters set forth in the FCC's order, and that auction is vacated by this Court, Nexstar will have to bear those same auction expenses a second time. Such costs will include either the costs associated with winding down business in order to participate in the reverse auction or the cost of preparing for (and adapting to) any repacking.

Preparation for Auction

8. In order to either prepare to wind down its business to relinquish spectrum in the reverse auction or prepare for new competitive risks that will attend the incentive auction for those broadcasters that are repacked, Nexstar needs to know how much of its protected population and coverage area will remain and be protected well in advance of the auction.

9. As a result of the repacking process, some viewers may need to invest in new equipment or subscription services to continue receiving broadcast television signals. But the burden and expense of these investments may be too great for many low-income families that rely exclusively on over-the-air broadcast television. In order to determine which viewers are most at risk of having their broadcast television service disrupted by repacking, and to develop strategies to maintain service to these populations where possible, Nexstar needs advance notice of the protected population served and coverage area. Disruption of service to viewers will mean lower viewership for Nexstar, which (as explained above) means lower revenue. In addition, many viewers will likely blame Nexstar for the service disruption, damaging Nexstar's goodwill.

10. When Nexstar loses viewership and advertising revenue for its original broadcasts, it also is disadvantaged in negotiating retransmission consent

agreements with cable, satellite, and other telecommunications providers. As a result, Nexstar's revenue from retransmission fees will also decrease.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed this 25th day of August, 2014.


Perry A. Sook

Exhibit B

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

NATIONAL ASSOCIATION OF
BROADCASTERS,

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION and UNITED STATES OF
AMERICA,

Respondents.

No.

**DECLARATION OF RAYCOM MEDIA, INC. IN SUPPORT OF
EMERGENCY MOTION
BY THE NATIONAL ASSOCIATION OF BROADCASTERS
FOR EXPEDITED CONSIDERATION OF PETITION FOR REVIEW AND
AN EXPEDITED BRIEFING SCHEDULE**

1. I am the Chief Technology Officer of Raycom Media, Inc. (“Raycom”). My job responsibilities include the engineering, installation and support of transmission facilities for the Raycom stations. The following is within my personal knowledge, and, if called and sworn as a witness, I could and would competently testify thereto.

2. Raycom is a member of the National Association of Broadcasters.

Raycom currently holds broadcast television spectrum usage rights.

3. Raycom has a substantial interest in obtaining an expedited decision by this Court regarding the validity of the new methodology adopted by the Federal Communications Commission (“FCC”) for determining coverage area and population served in order to preserve those values in the repacking of broadcast spectrum pursuant to the FCC’s incentive auction.

4. As explained below, the FCC’s new methodology produces reduced values for Raycom’s coverage area and population served. Those reductions will lead to decreased viewership and decreased revenue. Even if the auction results were subsequently vacated by this Court, Raycom will be harmed in the interim. Because there are significant costs associated either with being repacked or with winding down a business in order to participate in the reverse auction, Raycom will bear the burden of paying such costs twice—whether or not it chooses to participate in the reverse auction.

Reduced Coverage Area and Population Served

5. As compared with the version of OET Bulletin No. 69 that applied until the FCC order at issue in this case, the methodology adopted by the FCC in the order published at 79 Fed. Reg. 48,442 predicts reductions in coverage area and population served for two of Raycom's broadcast television stations, with losses of up to 10.6 percent of coverage area and 4.7 percent of population served. Raycom estimates that, following the channel reassignment and repacking process, those reductions will lead to fewer viewers.

6. Fewer viewers means less revenue for Raycom. For a broadcaster like Raycom, advertising is the principal source of revenue. And the primary determinant of advertising revenue is the number of viewers.

Auction Expenses

7. Raycom estimates that it will spend \$500,000 to prepare for the auction. Before the auction, for example, Raycom plans to prepare coverage studies and interference scenarios. If the auction is initially held pursuant to the parameters set forth in the FCC's order, and that auction is vacated by this Court, Raycom will have to bear those same auction expenses a second time. Such costs will include either the costs associated with winding down business in order to

participate in the reverse auction or the cost of preparing for (and adapting to) any repacking.

Preparation for Auction

8. In order to either prepare to wind down its business to relinquish spectrum in the reverse auction or prepare for new competitive risks that will attend the incentive auction for those broadcasters that are repacked, Raycom needs to know how much of its protected population and coverage area will remain and be protected well in advance of the auction.

9. As a result of the repacking process, some viewers may need to invest in new equipment or subscription services to continue receiving broadcast television signals. But the burden and expense of these investments may be too great for many low-income families that rely exclusively on over-the-air broadcast television. In order to determine which viewers are most at risk of having their broadcast television service disrupted by repacking, and to develop strategies to maintain service to these populations where possible, Raycom needs advance notice of the protected population served and coverage area. Disruption of service to viewers will mean lower viewership for Raycom, which (as explained above)

means lower revenue. In addition, many viewers will likely blame Raycom for the service disruption, damaging Raycom's goodwill.

10. When Raycom loses viewership and advertising revenue for its original broadcasts, it also is disadvantaged in negotiating retransmission consent agreements with cable, satellite, and other telecommunications providers. As a result, Raycom's revenue from retransmission fees will also decrease.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed this 22nd day of August, 2014, in Montgomery, Alabama



Dave Folsom
Chief Technology Officer
Raycom Media, Inc.

Exhibit C

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

NATIONAL ASSOCIATION OF
BROADCASTERS, *et al.*,

Petitioners,

v.

FEDERAL COMMUNICATIONS
COMMISSION and UNITED STATES OF
AMERICA,

Respondents.

CTIA—THE WIRELESS ASSOCIATION,
et al.,

Intervenors for
Respondents.

No. 14-1154 (consolidated with
Nos. 14-1179 and 14-1218)

DECLARATION OF MARK A. AITKEN

I, Mark A. Aitken, hereby state as follows:

1. I am over the age of 18 years, and I make this declaration based on my personal knowledge of the matters stated herein.
2. I am the Vice President of Advanced Technology of Sinclair Broadcast Group, Inc. ("Sinclair"). I have been employed and engaged within the television broadcast industry for more than 40 years. I am a member in good standing and active in the Institute of Electrical and Electronics Engineers, the Society of Motion Picture & Television Engineers and the Association of Federal Communications Consulting Engineers.
3. During my professional career I have been responsible for the engineering, development, construction scheduling and deployment of hundreds of television stations globally. From 1975 to 1999, I was employed by COMARK/Thomson, then one of the world's largest suppliers to the global broadcast market. I held various positions including that of Director of RF (Radio Frequency) Engineering, responsible for all RF product development, manufacturing, assembly, and documentation and testing. As well, I served as the Director of Sales Engineering, responsible for definition of every aspect of transmission system development, costing, installation and commissioning. This encompassed microwave systems, transmitters, RF systems, transmission line systems, towers and antennae.

4. I have been an employee of Sinclair since 1999, responsible in my early employment for planning and development of digital television infrastructure during the company's transition to digital television. In my role as Vice President of Advanced Technology, I have been and continue to be responsible for long range preparation, including planning for new broadcast technologies, infrastructure, and transition of operations when building and commissioning operations of new broadcast facilities. In my position I have been the primary Sinclair executive overseeing the company's analysis of, and planning with respect to, the broadcast incentive auction described below.

5. Sinclair is one of the largest and most diversified television broadcasting companies in the United States, operating and providing programming and sales services to television stations in various cities across the country. After closing of pending transactions, Sinclair will own and operate, or provide services to, 162 television stations in 79 markets. Sinclair and its subsidiaries are the licensees and owners of 118 of these stations, and provide services for 44 additional stations. Sinclair's television group reaches approximately 37.5% of U.S. television households and includes FOX, ABC, MyTV, CW, CBS, NBC, Univision and Azteca affiliates.

6. The Federal Communications Commission (the “FCC”) has issued a Report and Order, GN Dkt. No. 12-268 (rel. June 2, 2014) (the “Order”), that details an incentive auction process by which broadcast spectrum usage rights will be purchased from television broadcasters (the “reverse auction”) and re-sold for wireless uses (the “forward auction”).
7. The incentive auction will result in “repacking” of possibly 1,000 or more television stations nationwide. Repacked stations will be required to change channels and therefore change their operating facilities. The Order provides all repacked stations with no more than 39 months to perform their transitions to their new frequencies after the FCC announces new channel assignments. After 39 months, all repacked stations must cease broadcasting on their pre-auction channels, regardless of whether the new facilities have been built and are operational, and regardless of whether the failure to complete construction was beyond the licensee’s control.
8. There are currently severe human and material resource shortages in the manufacturing and service industries necessary to plan and implement the changes to broadcast operations that the repacking process will require. The capacity of all essential suppliers to the television broadcast industry – transmitter, transmission line and antenna manufacturers, broadcast consulting engineers, tower crews capable of working on tall and complex

tower sites typical of many broadcast facilities, and others – has declined dramatically in the last five years, because of a near cessation of demand. First, the broadcast television supplier and service industries contracted greatly after the end of the transition to digital broadcasting in 2009. Then, in 2013, the FCC imposed a “freeze” on applications for new television facilities and modifications to existing facilities, which has resulted in a near complete cessation of work for these same suppliers.

9. As a result of the dramatically decreased demand, many suppliers (for example, Acrodyne, Axcera, Modulation Sciences, and Larcan) have gone bankrupt, closed down, or simply stopped making television broadcast equipment. Remaining suppliers have reduced staff, manufacturing capabilities, and facility resources. Sinclair recently purchased Dielectric to prevent it from closing its operations altogether, but Dielectric remains in business with a massively scaled down workforce. The industry’s capacity to make major changes to broadcast stations is the lowest it has been in decades. The FCC’s failure to lift the “freeze” on television applications for new facilities and modifications to allow broadcasters to better serve the public has created shortages which will be even more acute by the time repacking commences.

10. Depending on the amount of spectrum that is repurposed for wireless broadband in the incentive auction, as many as 1,000 or more television stations may be required to repack and change their facilities. While some changes may be relatively minor, the majority of others will be extremely complex and expansive. And all changes, major and minor, will require broadcasters to turn to the same small, dwindling pool of consultants, engineers, and manufacturers – which in turn must rely upon an increasingly limited pool of specialized raw material and component suppliers. This will create an unprecedented amount of simultaneous demand at a time when capacity to meet that demand is at an all-time low. The industry cannot easily make up for this resource gap because these jobs require very specific skills and experience.
11. Beyond inadequate supply, the massive simultaneous demand will also create substantial logistical problems. Stations and towers are spread across the 50 states. Each facility modification has a specific workflow, and problems with executing a single facility modification in one place (due to weather, permitting, crew issues, accidents, defects, errors resulting from inadequately trained or inexperienced workers, etc.) can have great “ripple” effects for other projects. For example, tower crews cannot be in two places at once, so if an antenna arrives late, is damaged or is otherwise deemed

defective, or if a needed permit has not been issued, the crew may be sidelined, and the next project may be delayed, impacting manufacturers, consultants and, of course, broadcasters. This will inevitably result in resource bottlenecks that will adversely impact affect the construction schedules of most, if not all, repacked stations. This reflects simply one of many 'supply line' related issues that will impact schedules.

12. Because of the inescapable challenges associated with simultaneously modifying or building hundreds of broadcast facilities during this unprecedented nationwide repacking effort, simple logic dictates that Sinclair will be unable to complete construction of new facilities for all of its repacked stations within the 39 months established by the Order. As a result, multiple Sinclair stations would be forced to cease broadcasting until construction of new facilities is complete.
13. Temporary facilities are unlikely to be a viable option for a station to avoid being forced off the air in most cases. In particular, the work involved in deploying such temporary facilities, utilizing the same dwindling engineering, manufacturing and labor forces, would only *increase* demand on the limited resources that are already in too-short supply. And even if equipment, towers, and personnel were available to deploy temporary facilities, in many or most cases there will be no available channels for

temporary operations. Even where temporary operations are possible, they will almost certainly provide severely limited coverage area. Operation with temporary facilities would also cause a loss of viewership and therefore revenue, because revenue is directly tied to viewership.

14. Also, many cable and satellite operators receive the signals of our stations for retransmission via our stations' over-the-air signals. If the temporary facilities do not reach those pick-up points – or if the station is not able to continue broadcasting at all – subscribers to those services will also lose our signals, also causing a loss of revenue. In some cases, it may be possible to arrange alternative delivery of our signals to cable and satellite operators, for example, by fiber, but that can be very costly (more than \$100,000 to install and often thousands of dollars per month in service fees for a single fiber connection to a single cable or satellite provider). In many cases, however, fiber or other delivery methods are not even viable options.
15. As a result, after the 39 month deadline, many Sinclair stations, perhaps dozens, would to be forced out of operation altogether, or to operate with greatly reduced coverage, for an indefinite period of time. This will impose significant operational and financial burdens on Sinclair. Stations will have severely limited revenue when they are not operating. Costs, however, will

continue to accrue. Ceasing to broadcast could also put television stations in violation of their programming agreements and retransmission agreements.

16. Sinclair is ready, willing, and able to participate in a valid incentive auction that complies with the plain language of the Spectrum Act.
17. Not all Sinclair stations will participate in the reverse auction. If the FCC conducts the auction without observing the two competing licensees limitation, Sinclair's non-participating stations will also be harmed by the invalid auction process. The amount of spectrum that the FCC can reclaim from broadcasters is directly tied to the number of stations it is able to pay to relinquish their spectrum usage rights through the reverse auction. If the FCC is permitted to purchase broadcast spectrum from stations in markets in which two competing bidders do not participate, it will be able to reclaim more spectrum in the reverse auction. The FCC's ability to recover this additional spectrum will result in more stations being subject to repacking. Each additional repacked Sinclair station will incur significant unreimbursed costs and each will face the risk of being required to cease operations after 39 months if replacement facilities have not been constructed.
18. Sinclair can easily determine the minimum number of its stations that would be repacked if the FCC reaches certain "clearing targets." For example, if the FCC clears 84MHz of spectrum, all stations that currently operate

between Channels 38 and 51 would be moved by necessity. Table 1 below identifies the number of stations that Sinclair owns (in bold), and notes in parenthesis a total which includes those it provides services for. The indicated station count would necessarily be repacked if certain amounts of broadcast spectrum are repurposed. Including the stations we provide services for, you will note that the numbers increase ~ 50% (those in parenthesis).

Table 1	
Spectrum Cleared	Sinclair Stations Repacked
144MHz	66 / (96)
126MHz	51 / (74)
96MHz	34 / (49)
84MHz	32 / (46)
60MHz	27 / (39)
42MHz	18 / (26)
30MHz	14 / (21)

19. Sinclair owns at least 27 stations in the portion of the television broadcast band that is most likely to be cleared and repacked in the auction (46 stations if those Sinclair provides services to are included). Based on various optimization “runs” the FCC has supplied to the industry, it is possible that the number of Sinclair channels impacted could be far greater than those

shown in the chart above. Any stations that relinquish their spectrum usage rights in the auction would not be repacked, but those that do not relinquish such rights are subject to involuntary repacking.

20. As explained above, the lack of television construction activity occasioned by the FCC's "freeze" has resulted in a near complete cessation of work for the needed support industries. The little activity that is occurring thus reflects a "buyer's market," as the support industries have little work. Yet even in this environment the costs of channel changes are significant. Based on recent channel changes, the cost to Sinclair for a relatively straightforward change of a single channel at a single station is estimated to be roughly \$3.4 million on average. In a period of excessively high demand, such as during incentive auction repacking, that cost would likely be at least 50% higher. Complex changes could cost far more. Although some of these costs may be reimbursable in whole or in part under the Spectrum Act, many of them are not reimbursable as defined by the FCC. Sinclair's current estimated "buyer's market" costs are summarized in Table 2 below.

Table 2	
Estimates for two-tube 60kW IOT Transmitter Channel change	
	SBG Estimate
Technical costs from Acrodyne Services Retuning transmitter/ Filter	\$650,000.00
Transmitter building electrical / Building modifications	\$35,000.00
New Ch-XX Antenna - Top mounted / with strengthened support pole	\$375,000.00
Replace transmission line with Digit 6" broadband line.	\$275,000.00
Low power transmitter - For transition period during rework and channel change	\$75,000.00
Side-mount antenna and line transmission line--- Transition antenna system	\$150,000.00
Tower Strengthening - Revised required tower modifications TIA G Spec for new Antenna	\$225,000.00
Tower work / Antenna installation	\$325,000.00
Technical contingency	\$210,000.00
FCC required Healthcare Notifications	\$4,000.00
FCC Applications Fees, Engineering Consultant Fees	\$40,000.00
FCC Attorney fees	\$40,000.00
Lost Income during transition in DMA	\$400,000.00
WXXX Channel Change First Round Advertising Costs	\$225,000.00
WXXX Second Round of Advertising Costs	\$225,000.00
SBG Engineering/ Project management	\$125,000.00
Total Estimated Ch-XX Relocation Costs	\$3,379,000.00

I declare under penalty of perjury under the laws of the United States of America (28 U.S.C. § 1746) that the foregoing is true and correct.

Executed on November 7, 2014

Mark A. Aitken

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of November, 2014, I electronically filed the foregoing Addenda to the Joint Brief for Petitioners National Association of Broadcasters and Sinclair Broadcasting Group, Inc. with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. I also hereby certify that I caused 5 copies to be hand delivered to the Clerk's Office pursuant to Circuit Rule 31(b).

Service was accomplished on the following parties via the Court's CM/ECF system:

Richard K. Welch
Jacob M. Lewis
C. Grey Pash, Jr.
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
richard.welch@fcc.gov
jacob.lewis@fcc.gov
grey.pash@fcc.gov
Counsel for FCC

Dominic F. Perella
Hogan Lovells US LLP
Columbia Square
555 13th Street, N.W.
Washington, D.C. 20004-1109
dominic.perella@hoganlovells.com
*Counsel for Competitive Carriers
Association*

Robert B. Nicholson
Robert J. Wiggers
U.S. Department of Justice
Antitrust Division, Room 3224
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001
robert.nicholson@usdoj.gov
robert.wiggers@usdoj.gov
Counsel for United States

Catherine E. Stetson
Elizabeth A. Bonner
Hogan Lovells US LLP
Columbia Square
555 13th Street, N.W.
Washington, D.C. 20004-1109
cate.stetson@hoganlovells.com
austin.bonner@hoganlovells.com
*Counsel for Consumer Electronics
Association*

Thomas G. Allen
John K. Hane, III
Clifford M. Harrington
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037-1122
thomas.allen@pillsburylaw.com
john.hane@pillsburylaw.com
clifford.harrington@pillsburylaw.com
*Counsel for Sinclair Broadcast Group,
Inc.*

Preston R. Padden
Expanding Opportunities for
Broadcasters Coalition
1301 Canyon Boulevard, #306
Boulder, CO 80302
ppadden@me.com
*Counsel for Expanding Opportunities
for Broadcasters Coalition*

Michael K. Kellogg
Scott H. Angstreich
Kellogg, Huber, Hansen, Todd, Evans &
Figel, PLLC
1615 M Street, N.W.
Sumner Square, Suite 400
Washington, D.C. 20036-3209
mkellogg@khhte.com
sangstreich@khhte.com
*Counsel for CTIA —The Wireless
Association*

/s/ Lucas C. Townsend
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 955-8500