

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
AUG 18 2014
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UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
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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.

14-1154

PETITION FOR REVIEW

Pursuant to 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342(1) and 2344, and Federal Rule of Appellate Procedure 15(a), the National Association of Broadcasters (“NAB”) hereby petitions this Court for review of the final order of the Federal Communications Commission (“Commission”) captioned *Expanding the Economic and Innovative Opportunities of Spectrum Through Incentive Auctions*, Report and Order, GN Dkt. No. 12-268 (rel. June 2, 2014) (“Order”). This Order was published in the Federal Register on August 15, 2014. See 79 Fed. Reg. 48,442 (Aug. 15, 2014). A copy of the Order is attached as Exhibit A to this petition for review.

Venue lies in this Court pursuant to 28 U.S.C. § 2343.

NAB is a nonprofit trade association that advocates before Congress, the Commission and other agencies, and federal courts on behalf of its members, which include thousands of local radio and television stations and broadcast networks. NAB's members are aggrieved and otherwise injured by the Order, and NAB participated in the proceedings below. *See* 28 U.S.C. § 2344.

In the Order, the Commission addressed various aspects of its impending incentive auction of broadcast television spectrum pursuant to Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, § 6403, 126 Stat. 156, 225-30 (the "Spectrum Act"). Under the Spectrum Act, the auction is designed so that broadcast television licensees, including NAB's members, may voluntarily relinquish their spectrum usage rights in exchange for compensation. *See* 47 U.S.C. § 1452(a). The Commission would then reorganize the remaining broadcast spectrum and auction blocks of cleared spectrum to wireless providers, subject to the statutory command that it protect broadcasters that do not relinquish their spectrum usage rights by "mak[ing] 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." *Id.* § 1452(b)(2). Among other objectionable provisions, however, the Order adopts a new methodology, *TVStudy*, for calculating broadcasters'

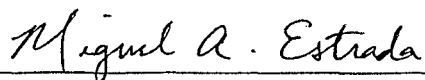
broadcasters' coverage areas and populations served and fails to take reasonable steps to preserve broadcasters' coverage areas. *See* 79 Fed. Reg. at 48,451. Under this new methodology, many broadcast television licensees, including NAB's members, will lose coverage area and population served during the auction's repacking and reassignment process, or be forced to participate in the auction (and relinquish broadcast spectrum rights).

NAB seeks review of the Order on the grounds that it: (1) violates the Spectrum Act; (2) is arbitrary, capricious, and an abuse of discretion under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2); (3) was adopted in violation of the APA's notice requirements, *see id.* § 553(b)-(c); and (4) is otherwise contrary to law.

Accordingly, NAB respectfully requests that this Court hold unlawful, vacate, enjoin, and set aside the Commission's adoption of *TVStudy* in the Order and grant such additional relief as may be necessary and appropriate.

Dated: August 18, 2014

Respectfully submitted,



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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and this Court's Rule 26.1, Petitioner National Association of Broadcasters ("NAB") states as follows:

NAB is a nonprofit, incorporated association of radio and television stations. It has no parent company, and has not issued any shares or debt securities to the public; thus no publicly-held company owns ten percent or more of its stock. As a continuing association of numerous organizations operated for the purpose of promoting the interests of its membership, the coalition is a trade association for purposes of D.C. Circuit Rule 26.1.

Dated: August 18, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 18th date of August, 2014, I caused an original and four copies of the foregoing Petition for Review and Corporate Disclosure Statement to be filed with the Clerk of the Court for the U.S. Court of Appeals for the D.C. Circuit via hand delivery. I further certify that I caused copies of the foregoing Petition for Review and Corporate Disclosure Statement to be served via hand delivery upon the following parties:

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The Honorable Eric Holder
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