

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Application of KM LPTV of Chicago-13, L.L.C.)
for a Displacement Application for Class A)
Television Station WOCK-CD, Chicago, IL)

File No. BDISDTA-20131114BTV
Facility ID No. 350927

Accepted Files

To: Office of the Secretary
Attn: The Commission

FEB 16 2016

Federal Communications Commission
Office of the Secretary

NOTIFICATION

KM LPTV of Chicago-13, L.L.C. ("KM"), by its attorneys, hereby submits the instant notification relative to the pending September 22, 2015 Application for Review. In support, KM submits the following.

Background

Pursuant to an August 24, 2015 Letter signed by the Chief, Video Division, Meida Bureau, the above-referenced application of KM seeking displacement was dismissed (the "Video Division Action"). On September 22, 2015, KM filed a timely Application for Review of the Video Division Action.¹ That pleading is currently pending.²

Argument

The instant submission is intended to remind the Commission that until the Video Division Action becomes final, KM has certain rights. Specifically, should KM's position ultimately be affirmed, the Commission should not take any action which would preclude KM's right to obtain a grant of its pending application to utilize Channel 41. Specifically, the auctioning off of Channel 41 in the upcoming incentive auction would be inconsistent with KM's rights. *See* The Administrative Procedure Act, 5 U.S.C. §§ 703, 704 (1970).

¹ A copy of the pending Application for Review is attached.

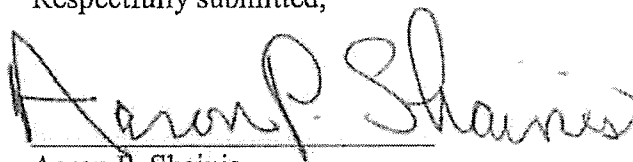
² In that pleading, KM has articulated those reasons the Video Division Action was incorrect and improper.

STAMP & RETURN

It should be noted that KM's application was filed on November 14, 2013. The Video Division Action is dated August 24, 2015. Thus, the Media Bureau took twenty-one (21) months to reach a determination on the KM application. The Commission cannot drag its feet in reaching a decision now and then make the argument, in the event KM ultimately prevails, that no relief is available. Such an outcome would be unconscionable. This would be especially egregious in light of the fact that the Commission is the responsible party initiating the incentive auction.³ *See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, 29 FCC Rcd. 6567 (2014) (remainder of citation deleted).

In view of the foregoing, KM requests that the Commission govern itself accordingly, so that it does not take any action which would be inconsistent with KM's statutory rights. *See* 5 U.S.C. §§ 551-59, 701-06 (1994 & Supp II 1996). In this regard, Section 706 of the APA expressly authorizes judges to "hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion...[or] without observance of procedures required by law." *Id.* at § 706.

Respectfully submitted,



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February 16, 2016

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³ KM is not urging that the incentive auction be postponed or delayed, only that Channel 41 not be included in the auction until the Video Division Action has become final.