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

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| In the Matter of | ) | |
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| Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations | ) | MB Docket No. 03-185 |
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| Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions | ) | GN Docket No. 12-268 |
| | ) | |
| Amendment of Part 15 of the Commission's Rules to Eliminate the Analog Tuner Requirement | ) | ET Docket No. 14-175 |

**COMMENTS OF THE**
**EXPANDING OPPORTUNITIES FOR BROADCASTERS COALITION**

The Expanding Opportunities for Broadcasters Coalition (the "Coalition")[1] respectfully submits these comments in response to the Commission's *Third Notice of Proposed Rulemaking* in the above-referenced proceedings.[2] The FCC repeatedly and effusively has touted the benefits of channel sharing, recognizing that allowing broadcasters to share 6 MHz of spectrum is critical to expanding the number of television stations that will consider participating in the auction—and thereby maximizing the amount of spectrum available to reallocate for mobile broadband

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[1] Pursuant to the Public Notice issued on December 18, 2012 (DA 12-2040), these comments represent the views of a coalition of broadcasters who own more than 80 auction-eligible stations and who desire to remain anonymous at this time. Together, the Coalition members own both full power and Class A television stations in a number of markets, including stations in several of the ten largest DMAs. The Coalition's name and mailing address are provided in accordance with Section 1.419 of the Commission's rules. *See* 47 C.F.R. § 1.419(d).

[2] *See In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Amendment of Part 15 of the Commission's Rules to Eliminate the Analog Tuner Requirement*, Third Notice of Proposed Rulemaking, 29 FCC Rcd. 6567 (2014) ("*Digital LPTV Third NPRM*").

use. By extending the channel sharing option to LPTV and TV translator stations, the Commission will expand the number of stations of all kind—full power, Class A, LPTV, and TV translator—that may be able to take advantage of this opportunity, thereby increasing the amount of spectrum available for reallocation while strengthening those broadcast stations that continue to serve the public. As described in further detail below, however, to achieve the full benefits of such arrangements, the agency must also adopt the sensible modifications to the channel sharing procedures that the Coalition proposed in its *Petition for Reconsideration*, such as permitting parties to enter into agreements after the auction and providing broadcasters with flexibility to change their channel sharing partners.[3]

## I. THE COMMISSION SHOULD PERMIT CHANNEL SHARING BETWEEN FULL POWER OR CLASS A TELEVISION STATIONS AND LPTV AND TV TRANSLATOR STATIONS.

In the *Digital LPTV Third NPRM*, the Commission asks whether LPTV and TV translator stations should be permitted to channel share with full power and Class A stations.[4] Such an extension of channel sharing will achieve two important purposes: (1) it will expand the number of potential channel sharing partners for full power and Class A stations that relinquish their spectrum in the auction; and (2) it will strengthen low power broadcasting by providing a source of revenue to LPTV and TV translator stations that act as sharer stations, while expanding opportunities for displaced LPTV and TV translator stations to continue broadcasting. Accordingly, the FCC should view channel sharing between full power or Class A television

[3] *See* Expanding Opportunities for Broadcasters Coalition, *Petition for Reconsideration*, GN Docket No. 12-268 (filed Sept. 12, 2014) ("*EOBC Petition for Recon*").

[4] *Digital LPTV Third NPRM* ¶ 28.

stations and LPTV or TV translator stations as an important part of its plans for a successful incentive auction.[5]

### A. Extending Channel Sharing to LPTV and TV Translator Stations Will Increase Broadcaster Participation In the Reverse Auction.

The Commission should not overlook the beneficial effect that permitting sharing between a full power or Class A station and a LPTV or TV translator station could have on broadcaster participation in the reverse auction. In the *Digital LPTV Third NPRM*, the agency prematurely describes such arrangements as "unlikely"[6] when, in fact, there are several scenarios in which it might make sense for a full power or Class A station to relinquish its spectrum to share with an LPTV or TV translator station—particularly under the revised channel sharing procedures proposed by the Coalition.[7] First, because LPTV and TV translator stations operate at lower power levels than full power stations, they will be easier to repack than their full power brethren. As a result, even in markets where the FCC must pay full power stations to relinquish their spectrum, some LPTV stations—even those operating in the UHF band—may not be displaced. If the agency provides broadcasters with the flexibility to enter into channel sharing agreements (CSAs) after the auction, these surviving LPTV and TV translator stations could make attractive channel sharing partners for full power stations that desire to continue operating a broadcast station. This, in turn, will make it more likely that those full power stations will relinquish their spectrum in the reverse auction.

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[5] As the Commission repeatedly has recognized, the incentive auction actually consists of two auctions that, while interdependent, are separate. *See, e.g.*, FCC, *Incentive Auction – LEARN – Auction Design*, http://wireless.fcc.gov/incentiveauctions/learn-program/auction-design.html (last visited Dec. 21, 2014) ("The incentive auction itself will actually be comprised of two separate but interdependent auctions -- a reverse auction, which will determine the price at which broadcasters will voluntarily relinquish their spectrum usage rights, and a forward auction, which will determine the price companies are willing to pay for flexible use wireless licenses.").

[6] *See id.*

[7] *See EOBC Petition for Recon.*

Additionally, there are more than 1,300 LPTV and TV translator stations operating in the VHF band.[8] Allowing full power and Class A stations to channel share with these stations could be critical to the FCC's efforts to free up spectrum in the UHF band. In its *Auction Comment Public Notice*, the Commission has proposed to pay only a fraction of the full relinquishment price to stations willing to exchange their UHF channel for a VHF channel.[9] Although we believe that many full power and Class A stations may be unwilling to relinquish their UHF channels for such a heavily discounted price, those stations may be more inclined to relinquish their UHF spectrum to share with an existing VHF LPTV or TV translator station. Extending channel sharing to LPTV and TV translator stations will provide auction-eligible broadcasters with a greater range of relinquishment options, which the agency has recognized, will help "achieve the goals of the auction."[10] As described below, however, because the FCC has proposed to subject a full power or Class A station sharing with a LPTV or TV translator station to the power level and interference protection rules associated with the LPTV or TV translator host station,[11] this option only will be attractive to full power and Class A stations if they can find a new partner if the LPTV or TV translator relinquishes its license or is displaced.

### B. Extending Channel Sharing to LPTV and TV Translator Stations Will Strengthen The Low Power Television Service.

Moreover, permitting post-auction channel sharing between a full power or Class A station and a LPTV or TV translator station will help mitigate the detrimental effects that the auction could have for the low power television service. First, in the situation described above,

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8 *See Broadcast Station Totals As of September 30, 2014* (rel. Oct. 16, 2014).

9 *See Comment Sought on Competitive Bidding for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002*, Public Notice, AU Docket No. 14-252, GN Docket No. 12-268, FCC 14-191 ¶ 99 (rel. Dec. 17, 2014).

10 *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Report and Order, 27 FCC Rcd. 4616 ¶¶ 379-83 (2012).

11 *Digital LPTV Third NPRM* ¶ 28.

where a LPTV or TV translator station will serve as the "host" or "sharer" station, that station presumably would be compensated for sharing a portion of its spectrum, thus providing an important source of revenue for the LPTV or TV translator station. Second, expanding channel sharing to LPTV and TV translator stations will make it easier for displaced stations to find a place to broadcast after the auction. Although displaced LPTV and TV translator stations may be able to lease capacity on a full power or Class A station that does not relinquish its spectrum, the displaced station would be operating under the license of the full power of Class A station. This will serve as a barrier to such arrangements, as many full power and Class A licensees will be reluctant to accept responsibility for the programming of former LPTV or TV translator stations—particularly if the stations broadcast predominantly in another language or lack the financial stability of a full power station. Thus, the ability for an LPTV or TV translator station to retain its license could be critical to that station's ability to continue broadcasting after the auction. Accordingly, extending channel sharing to LPTV and TV translator stations will further the FCC's diversity interest by preserving a number of programming voices that may otherwise lack an outlet to broadcast over the nation's broadcast airwaves.

## II. THE COMMISSION MUST ADOPT THE COALITION'S REASONABLE PROPOSALS TO MODIFY CHANNEL SHARING PROCEDURES TO MAKE SHARING WITH LPTV AND TV TRANSLATOR STATIONS VIABLE.

The channel sharing procedures adopted by the Commission in the *Incentive Auction Report and Order*, if left unchanged, will prevent the agency from recognizing the potential of channel sharing agreements between full power and Class A television stations and LPTV or TV translator stations. Under those procedures, a broadcaster interested in channel sharing must enter into and disclose its CSA *before* the incentive auction begins. Moreover, the *Incentive Auction R&O* envisions CSAs as permanent arrangements between participating parties, with no opportunity to find a new partner if the business arrangement no longer is desirable for one or

more of the parties or, in the case of a LPTV or TV translator station, if the host station is displaced. This narrow conception of CSAs will stifle CSAs between a full power and Class A station, on one hand, and a LPTV or TV Translator station, on the other. Fortunately, the Coalition's modest recommendations to modify the channel sharing procedures would address these problems and allow CSAs between a full power or Class A station and a LPTV or TV translator station to flourish.[12]

### A. Broadcasters Should Be Permitted to Enter Into Sharing Agreements After the Auction.

As we previously have explained, requiring broadcasters to enter into CSAs before the auction threatens to limit the desirability and usefulness of the channel sharing option.[13] For the auction to attract maximum participation from broadcasters, interested broadcasters must be able to approach the auction with as much flexibility as possible. Requiring broadcasters not only to commit to a single channel sharing partner, but then to negotiate the full details of a written agreement with that partner, all before the auction begins, would unnecessarily restrict broadcasters' flexibility.

This is particularly true in the case of sharing agreements between a full power or Class A station and a LPTV or TV translator station. It would not make sense for broadcasters to enter into these agreements before the auction. Until the auction is complete and the Commission has completed its repacking optimization, it will be impossible to determine which LPTV and TV translator stations still will have a channel on which to operate once the repack is complete. It is unthinkable, then, that a full power or Class A station would commit to relinquish its spectrum and channel share with a LPTV or TV translator station that may be involuntarily displaced as a

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[12] *See EOBC Petition for Recon.*

[13] *Id.* at 6-7.

result of repacking. Even in the reverse scenario, where the full power or Class A station is the host, it likely would not make sense for a LPTV or TV translator station to undertake the efforts of evaluating potential sharing partners and executing a CSA until the LPTV or TV translator station knows whether or not it will retain a channel of its own.

Permitting broadcasters to identify sharing partners and negotiate CSAs after the auction will alleviate these concerns. One of the primary benefits of allowing post-auction CSAs is that they will allow broadcasters to make more informed decisions about channel sharing once the auction is complete.[14] Although a full power or Class A station would be accepting some risk to surrender its spectrum without having a channel sharing partner in place, the FCC can minimize this risk by providing broad flexibility for broadcasters to enter into post-auction CSAs, including with surviving LPTV or TV translator stations. As the Coalition has proposed, broadcasters that relinquish their spectrum in the auction should, consistent with Section 312(g) of the Communications Act, have a year from the date that they relinquish their spectrum in the auction to recommence transmissions through a CSA.[15] This will provide ample time to evaluate potential sharing parties, including LPTV and TV translator stations, and to negotiate and execute a CSA.

### B. <u>The Commission Should Provide Flexibility for Broadcasters to Determine the Length of Sharing Agreements.</u>

Another issue that is critical to the success of sharing agreements between a full power or Class A station and a LPTV or TV translator station is the ability to change sharing partners at some future time. In the case of any sharing agreement, this is necessary to fulfill the FCC's commitment to provide stations with "flexibility" to "allow a variety of different types of

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[14] *Id*, at 8.

[15] *Id.* at 9-10.

spectrum sharing to meet the individualized programming and economic needs of the parties involved."[16] LPTV and TV translator stations introduce an additional concern, given their secondary status. Even if the parties have entered into a long-term agreement to share the LPTV or TV translator station's spectrum, the host station could be displaced at any time.[17] Although a full power or Class A station would need to understand this possibility when entering into a CSA with a LPTV or TV translator station, full power and Class A stations will be more likely to accept the risk if they would have an opportunity to find a new sharing partner at some later time.

As proposed in the *EOBC Petition for Recon*, these "second generation CSAs" would be subject to the same rights and restrictions as agreements entered into within a year of the incentive auction. Because the sharee stations "voluntarily relinquishe[d] spectrum usage rights" under the Spectrum Act "in order to share a television channel," those stations would continue to be entitled to whatever carriage rights they had on November 30, 2010, but from their new shared location.[18] Additionally, as with any channel sharing stations, these "transient" stations should be permitted to "propose licensed community changes if they cannot satisfy signal coverage requirements from their new transmitter sites, provided that the new communities meet the same allotment priorities as the current ones and are located in the same Designated Market Areas."[19] As the Commission observed in the *Incentive Auction R&O*, "any concerns about capacity problems arising from new carriage obligations occurring as a result of channel sharing could be more than offset by license relinquishment bidders going off air and vacating their

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[16] *Expanding the Economic and Innovation Opportunities for Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd. 6567 ¶ 15 (2014) ("*Incentive Auction R&O*").

[17] *Digital LPTV Third NPRM* ¶ 28 (proposing "that the full power or Class A station would be subject to the power level and interference protection rules associated with the channel of the LPTV or TV translator station").

[18] *See* Spectrum Act § 6403(a)(4).

[19] *Incentive Auction R&O* ¶ 27.

space on the satellite transponders or cable systems."[20] This rationale applies equally to original CSAs and later generation CSAs.

The Coalition's proposal to permit sharing agreements that are (or at least could be) temporary in nature would have the added benefit of reducing the potential for a host, or sharer, station to use its primary right to the broadcast facility to exert undue influence or control over the sharee station. Under the rules that the Commission adopted in the *Incentive Auction R&O*, host stations would have significant leverage over their sharing partners, who would have nowhere to turn if the agreement was terminated. Allowing second generation CSA's would help balance the channel sharing relationship by creating a secondary market for host stations, even after the auction is complete. Thus, if the operation of a CSA does not transpire as the parties originally envisioned, the parties could terminate the agreement without forcing the sharing station(s) off-the-air. In fact, by extending channel sharing to LPTV and TV translator stations, the FCC would increase the likelihood that a "transient" broadcaster would have one or more viable options for remaining a broadcaster even if its original CSA expires or is terminated. Additionally, a station that relinquishes its spectrum usage rights without a permanent sharing agreement in place has accepted, in exchange for a share of the proceeds from the auction, the risk that it may not be able to continue broadcasting. Broadcasters will account for that possibility when determining the price at which they are willing to relinquish their spectrum usage rights. As such, there is no reason why the Coalition's proposal would uniquely increase the influence of control of a host station.

[20] *Id.* ¶ 377; *see also id.* ¶ 709 n.1985 (recognizing that "with some stations returning spectrum rights and going off the air entirely, the net effect of the auction and repacking should be an overall reduction in the number of stations MVPDs must carry").

## III. CONCLUSION

Extending channel sharing agreements to LPTV and TV translator stations would create another win-win scenario in the incentive auction. The Commission properly has recognized that channel sharing is critical to the success of the incentive auction by increasing the number of options that broadcasters have to relinquish their spectrum. Extending CSAs to LPTV and TV translator stations would build upon this rationale and increase the likelihood that auction-eligible stations looking to participate in the auction can find a participation option that satisfies their business objectives. Additionally, this proposal would help mitigate the detrimental effects that the auction could have on the low power television service by infusing much-needed capital into stations that are not displaced while providing more ways for existing LPTV and TV translator stations to remain on the air. As long as the FCC addresses the limitations of its existing channel sharing proposals—which would be magnified in the case of agreements involving LPTV and TV translator stations—extending these agreements will help ensure that the agency achieves its goal of using market-based methods to reallocate the maximum amount of spectrum.

Respectfully submitted,

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January 9, 2015