

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

In the Matter of)	
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Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions)	GN Docket No. 12-268
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Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context)	MB Docket No. 15-137
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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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**COMMENTS OF
EXPANDING OPPORTUNITIES FOR BROADCASTERS COALITION**

The Expanding Opportunities for Broadcasters Coalition (the “Coalition”)¹ respectfully submits these comments in response to the Commission’s *Notice of Proposed Rulemaking* (“*NPRM*”) regarding channel sharing by Full Power and Class A television stations outside of the incentive auction.² Our Coalition commends the agency for its efforts, thus far, to provide flexibility to broadcasters who are interested in the channel sharing option, which will, in turn,

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 or have financial interests in more than 85 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 individual members of the Coalition may not agree with all positions taken in these comments. 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 Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context*, First Order on Reconsideration and Notice of Proposed Rulemaking, FCC 15-67 (rel. June 12, 2015) (“*Channel Sharing Recon. Order*”).

allow the FCC to achieve greater spectrum clearing while, at the same time, preserving over-the-air viewership. The Commission’s proposal to expand the benefits of channel sharing beyond the incentive auction itself is a natural and sensible extension of the rules that will lead to greater participation in the auction and the preservation of broadcast television service. Although we encourage the agency to expeditiously move forward to permit channel sharing outside of the incentive auction context, we believe the public interest would be better served if the FCC: (i) adopts, prior to the deadline to register for the reverse auction, its proposal to permit LPTV and TV translator stations to channel share with full power and Class A stations; and (ii) extends to sharing arrangements not covered by the *First Order on Reconsideration* (the “*Reconsideration Order*”) the same approach to community of license changes that the FCC adopted for auction-related channel sharing arrangements.

I. THE COMMISSION SHOULD PERMIT CHANNEL SHARING OUTSIDE OF THE INCENTIVE AUCTION CONTEXT.

The proposal in the *NPRM* to “permit channel sharing by and between full power and Class A television stations outside the context of the incentive auction”³ is not only a natural extension of the rules adopted in the *Reconsideration Order*, but an important component thereof. In the *Reconsideration Order*, the Commission agreed to allow “broadcasters to choose the length of their channel sharing agreements,” recognizing that “providing such flexibility is appropriate to meet broadcasters’ individualized programming and economic needs.”⁴ By permitting channel sharing arrangements to be less than permanent, the FCC has both simplified the act of negotiating a sharing agreement and opened the door to sharing agreements that would not have been economically feasible under the original rules. As a result, channel sharing will be more desirable for a number of broadcasters. For such term-limited agreements to be practical,

³ *Channel Sharing Recon. Order* ¶ 30.

⁴ *Id.* ¶ 20.

however, broadcasters must know that they will at least have the option to enter into another channel sharing arrangement upon the expiration of the initial term—whether with the same sharing partner or another.⁵

In the *NPRM*, the Commission properly concludes that it has the legal authority to adopt channel sharing rules outside of the incentive auction context.⁶ First, defining the technical parameters on which a broadcast licensee may operate is at the core of the FCC’s responsibilities under Title III of the Communications Act of 1934, as amended.⁷ Moreover, because the agency’s proposals will encourage participation in the incentive auction through channel sharing, “it [i]s entirely permissible for the Commission to take into account the Spectrum Act’s overarching objective of repurposing broadcast spectrum.”⁸

Additionally, the Commission is correct to conclude that “the Communications Act provides stations that elect to channel share outside the aegis of the Spectrum Act the same satellite and cable carriage rights on their new shared channels that the stations would have at the shared location if they were not channel sharing.”⁹ As we previously explained:

Broadcasters’ must carry rights originate not from the Spectrum Act, but rather from the Cable Act, which requires that “each cable operator shall carry . . . the signals of local commercial television stations” and “qualified noncommercial educational television stations.”¹⁰

Nothing about entering into a channel sharing arrangement changes a broadcaster’s status as a Commission licensee, with all of the attendant rights and responsibilities. Just as a broadcaster sharing a channel must comply with all of the Commission’s rules for stations in the same class

⁵ Our Coalition supports the Commission’s suggestion to balance the potential disruption of term-limited agreements by establishing a minimum term of three years for agreements entered into outside of the auction. *See id.* ¶ 48.

⁶ *Id.* ¶ 34.

⁷ *See Rainbow Broad. Co. v. F.C.C.*, 949 F.2d 405, 412 (D.C. Cir. 1991).

⁸ *Cf. Nat’l Ass’n of Broad. v. FCC*, 789 F.3d 165, 178 (D.C. Cir. 2015).

⁹ *Channel Sharing Recon. Order* ¶ 33.

¹⁰ Reply Comments of Expanding Opportunities for Broadcasters Coalition, *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 3 (filed Nov. 20, 2014).

of licensees, so too should it be entitled to the same benefits, including mandatory carriage. The language of Sections 614, 615 and 338 of the Act do not support a contrary conclusion.

With regard to what stations should be entitled to mandatory carriage, the Coalition supports the Commission’s proposal to limit such rights to full power or Class A television stations that either: (i) “possessed carriage rights . . . through an auction-related channel sharing agreement”; or (ii) “were operating on their own non-shared channel immediately prior to entering into a channel sharing agreement”.¹¹ This approach properly promotes the benefits of channel sharing while addressing any concerns regarding the burdens to multichannel video programming distributors (“MVPDs”).

II. THE COMMISSION SHOULD ADOPT ADDITIONAL RULES TO INCREASE THE DESIRABILITY OF CHANNEL SHARING.

Although the FCC’s actions to date make channel sharing a more attractive option for broadcasters, there are two additional steps that the Commission can take to facilitate broadcaster utilization of the channel sharing option. First, the agency should clarify that sharing between full power or Class A stations and LPTV or TV translator stations is permitted. Second, the FCC should apply the same flexibility to choose a new community of license to all sharees, regardless of whether the sharing agreement at issue was entered into at the time of the incentive auction. How the agency resolves these two issues could influence the auction strategy for a number of broadcasters whose participation is critical to maximizing spectrum reallocation in top markets. Accordingly, the Commission should adopt these two additional rules with sufficient time for broadcasters to process them in advance of the deadline to register for the reverse auction.

¹¹ *Channel Sharing Recon. Order* ¶ 44.

A. The Commission Should Permit Sharing Between Full Power or Class A Stations and LPTV or TV Translator Stations.

In the *NPRM*, the Commission seeks comment on the limited issue of whether it should permit channel sharing between full power and Class A television stations outside the auction context.¹² As the Commission recognized in the *Incentive Auction Report and Order*, permitting sharing arrangements between stations with different classes of licenses will “encourage channel sharing.”¹³ Although this observation pertained only to sharing between full power and Class A stations, the same rationale applies to sharing involving LPTV and TV translator stations.

The FCC raised the issue of sharing between a full power or Class A station, on one hand, and an LPTV or TV translator station, on the other, in the *Digital LPTV Third NPRM*.¹⁴

As we explained in response:

[B]ecause 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.¹⁵

This is more than just a theoretical possibility. The Coalition is aware of several instances where the prospect of sharing with an LPTV station—either immediately after the auction or upon the

¹² *Id.* ¶ 57.

¹³ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd. 6567 ¶ 705 (2014) (“*Incentive Auction R&O*”).

¹⁴ *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).

¹⁵ Comments of Expanding Opportunities for Broadcasters Coalition, *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*, MB Docket No. 03-185, GN Docket No. 12-268, ET Docket No. 14-175 3 (filed Jan. 9, 2015).

expiration of an auction-related sharing arrangement—could entice a full power station to agree to relinquish its spectrum. There is no compelling policy rationale for the Commission not to facilitate channel sharing in this manner.

B. The Commission Should Utilize the Same Process for Changing a Sharee Station’s Community of License for All Channel Sharing Arrangements.

In the *NPRM*, the Commission proposes to impose additional restrictions on the ability of a sharee station to change its community of license to facilitate a channel sharing agreement outside of the auction context.¹⁶ The agency should not adopt this proposal. As the FCC recognized in the *Incentive Auction Report and Order*, requiring sharee stations to continue to serve their original community of license could severely constrain sharing options for some stations.¹⁷ Accordingly, in the context of auction-related channel sharing agreements, the Commission adopted rules providing broadcasters with flexibility to change their community of license to facilitate a channel sharing agreement provided that: (i) the community of license change will not result in a change to the station’s designated market area (“DMA”); (ii) the station cannot satisfy its community of license signal coverage requirement from the shared site; and (iii) the new community specified by the licensee meets the same, or a higher, allotment priority as its current community.¹⁸ This approach, the FCC reasoned, “will help facilitate channel sharing arrangements, thus facilitating broadcaster auction participation.”¹⁹

The same rationale applies to sharing arrangements outside of the auction context. Nevertheless, the agency has proposed a different approach for sharees entering into channel sharing arrangements outside of the auction, including stations that relinquished their spectrum in the auction and whose initial channel sharing agreement has expired. This is a mistake and

¹⁶ *NPRM* ¶ 53.

¹⁷ *Incentive Auction R&O* ¶ 375.

¹⁸ *Id.* ¶ 376.

¹⁹ *Id.* ¶ 376.

would have the Commission impose the very constraints that it sought to avoid in the auction context, “preclud[ing] sharee stations from changing their community of license” and “limit[ing] these stations to CSAs with a sharer from whose transmitter site the sharee will continue to meet the community of license signal requirement over its current community of license.”²⁰

There is no statutory barrier to extending the same rules to community of license changes by a sharee station both inside and outside of the auction context. As the Commission recognized in the *Incentive Auction Report and Order*, “[n]either the Spectrum Act nor the Communications Act requires [the agency] to restrict community of license changes in the channel sharing context.”²¹

Moreover, it is in the public interest to provide additional flexibility to sharee stations. Despite the potentially broad nature of the post-auction channel sharing regime, the overwhelming majority of stations that will have an economic incentive to enter into a channel sharing agreement after the auction are stations that relinquished their spectrum in the auction and are looking to enter into “second generation” channel sharing agreements. These stations must account for the availability of potential sharers when deciding whether to channel share in the first place. Thus, just as additional flexibility for auction-related sharing agreements will help facilitate channel sharing arrangements and auction participation, so too will extending that flexibility to post-auction channel sharing arrangements. The rationale for a more restrictive approach—that it would advance the FCC’s “interest in ensuring the provision of service to local communities, avoid viewer disruption, and avoid any potential impact on MVPDs”—is overstated.²² By limiting community of license changes to those that would not result in a change to the station’s DMA, the loss of service, viewer disruption, and impact on MVPDs all

²⁰ *NPRM* ¶ 53.

²¹ *Incentive Auction R&O* ¶ 375.

²² See *NPRM* ¶ 53.

