

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

In the Matter of)	
)	
Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions)	GN Docket No. 12-268
)	
Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context)	MB Docket No. 15-137
)	

To: The Commission

Comments

Western Pacific Broadcast, LLC (“WPB”), by counsel, hereby respectfully submits these comments in response to the Commission’s *First Order on Reconsideration and Notice of Proposed Rulemaking*, FCC 15-67, released June 12, 2015 (“*Channel Sharing NPRM*”).¹ WPB supports the Commission’s proposal to allow television stations outside of the context of the incentive auction to enter channel sharing arrangements and have the Communications Act, not the Spectrum Act, determine their carriage rights. WPB opposes the Commission’s alternative proposal to deny carriage rights for stations that want to share channels if they did not possess carriage rights on November 30, 2010.

WPB is the licensee of WMDE, Dover, Delaware, and WACP, Atlantic City, New Jersey. WMDE commenced operations on October 1, 2014. WACP commenced operations in June 2012. Both stations have been successful in executing and operating pursuant to their must-carry rights on the majority of the cable and satellite systems throughout their respective DMAs.

¹ 30 FCC Rcd. 6668; 80 Fed. Reg. 40957 (July 14, 2015).

As both stations were purchased through auction from the FCC after November 30, 2010, neither station possessed a construction permit as of November 30, 2010. As with any new TV station licensed since November 30, 2010, WPB would be particularly harmed by expanding the Spectrum Act's limited scope beyond the context of the special requirements for the incentive auction.

In the *Channel Sharing NPRM*, the Commission raised the question about using November 30, 2010, as a cutoff date for stations to be eligible to retain their carriage rights if they enter into channel sharing arrangements *outside* the context of the incentive auction. The reason for raising the question arises from language in the Spectrum Act, Section 1452(a)(4), which provided that stations that possessed carriage rights on November 30, 2010, will continue to have carriage rights if they relinquish their spectrum and channel share with another station as a means to participate in the spectrum auction.² In other words, stations that did not have carriage rights on November 30, 2010, will not be able to participate as a channel sharee in the incentive auction if they want to protect their ability to be carried on cable and satellite after the auction on the sharer's channel.³ As the title of Section 1452 of the Spectrum Act directs, however, the protection of carriage rights for stations that existed on November 30, 2010, applies to the "Special Requirements for Incentive Auction of Broadcast TV Spectrum."

The Commission does not need to limit carriage rights for channel sharing stations *outside* the incentive auction context. The November 30, 2010, cutoff date applied solely to

² Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §6403, 126 Stat. 156 (2012); 47 U.S.C. § 1452 ("Spectrum Act").

³ The November 30, 2010, date referenced in Section 1452(a)(4) itself was tied to the date the Commission initiated the channel sharing proceeding in ET Docket No. 10-235 nearly five years ago, before the Spectrum Act was adopted. See *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Notice of Proposed Rulemaking, ET Docket No. 10-235, 25 FCC Rcd. 16498 (2010).

stations in the incentive auction. Rather, it should be sufficient that a television station has been authorized and is entitled to satellite and cable carriage under longstanding provisions of the Communications Act⁴ prior to the date it commences channel sharing.

Reliance on Communications Act provisions to determine carriage rights does not artificially increase the number of stations Multi-Channel Video Programming Distributors (“MVPDs) are obligated to carry as MVPDs would be required to carry non-channel sharing stations in any event. MVPDs cannot legitimately complain about having to carry additional stations in the future. After all, MVPDs will have fewer broadcast stations to carry since some number of stations will fully relinquish their spectrum in the auction without channel sharing. After the auction, the size of the TV band will shrink significantly, thereby decreasing the number of new TV stations that can be created in the future. To the extent that some new licensees can be added into existing 6 MHz channels, diversity and the public interest will be served.

The TV industry has been subjected to a freeze on new allotments in major markets for decades. But for that freeze, new stations would be entitled to carriage in due course under the Communications Act. Those new stations will provide a diversity of voices and should not be severely restricted in reaching their audiences by the lack of must carry as would occur if the Commission were to limit carriage rights to those stations that existed on November 30, 2010.

The public interest would be further served by allowing stations authorized after November 30, 2010, to enter channel sharing agreements without fearing loss of carriage rights because that would increase the universe of stations that could share a TV channel, thereby

⁴ 47 U.S.C. §§ 338, 534, and 535. Those sections of the Communications Act set forth local television carriage obligations by satellite carriers and cable operators.

advancing efficient use of the spectrum. Such action would also encourage pre-auction channel sharing because more potential partners for sharees would be available after the terms of their pre-auction channel sharing agreements expire. Stations that are reluctant to enter channel sharing agreements prior to the auction may be incented to proceed with a pre-auction channel sharing arrangement if they know they will have greater choices for potential sharing partners in the future, particularly if their pre-auction channel sharing arrangement proves to be unworkable. Thus, if a station is operating on its own non-shared channel immediately prior to entering a channel sharing agreement, or possessed carriage rights through an auction-related channel sharing agreement, WPB urges the Commission to allow all of those stations to channel share outside the auction context without losing or otherwise restricting eligibility to retain carriage rights.

Respectfully submitted,

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