

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

COMMENTS OF AT&T AND DIRECTV

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AT&T Services, Inc., on behalf of its subsidiaries and affiliates, including DIRECTV, LLC (collectively “AT&T”) hereby submits these comments in response to the Notice of Proposed Rulemaking adopted by the Commission in these dockets on June 11, 2015.¹ In the NPRM, the Commission proposes to adopt rules to permit channel sharing between full power and Class A television stations outside the context of the incentive auction.² AT&T generally agrees with the Commission’s observations that authorizing channel sharing outside the context of the incentive auction is in the public interest because it will encourage auction participation by giving prospective channel sharing bidders the knowledge that they can pursue future channel sharing agreements (“CSAs”) when their auction-related agreements expire. In addition, such CSAs will reduce broadcaster operating costs, and promote spectral efficiency.³ As explained in more detail below, AT&T recommends, however, that channel sharing be limited to channel sharing-eligible auction winners, and that certain safeguards be included in the channel sharing

¹ 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, *First Order on Reconsideration and Notice of Proposed Rulemaking*, (June 11, 2015)(the “NPRM”).

² Id. at ¶ 30.

³ See, Id. at ¶31.

rules (i) to ensure that channel sharing does not create any additional carriage obligations for distributors; (ii) to ensure that broadcasters entering into CSAs allow sufficient notice to satellite, cable and other providers of subscription TV services who carry their signals to avoid service disruptions; (iii) to require that CSAs have a minimum term of 3 years, and; (iv) to ensure that any costs of implementing a CSA not reimbursable from the TV Broadcaster Relocation Fund are borne by the parties to the CSA (who are the financial beneficiaries of the arrangement).

Congress authorized the incentive auction as an innovative and efficient way to reallocate spectrum for commercial mobile broadband use.⁴ To provide incentives for broadcasters to relinquish broadcast spectrum, Congress authorized the Commission to allow broadcasters to relinquish spectrum usage rights outright, to relinquish UHF spectrum rights in return for an assignment in the VHF band, or to relinquish usage rights in order to share a television channel with another licensee.⁵ In its June 11 Order, the Commission clarified that a broadcaster who wishes to be eligible to exercise the channel sharing option may either submit an executed CSA with its auction application, or indicate in its auction application “its present intent to find a channel sharing partner after the auction.”⁶ The Commission also granted EOBC’s request to allow parties to CSAs to limit the term of such an agreement, in order to provide further incentive to broadcasters to relinquish spectrum to assure the incentive auction’s success.⁷

The prospect of CSAs with term limits, however, raised the question of what would happen to the parties to a CSA at the end of the term. EOBC had argued that at the end of the term, if the parties did not wish to extend the arrangement, the “host” or sharer station should be

⁴ See Spectrum Act at § 6403.

⁵ Id. at § 6403(a)(2).

⁶ 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, *First Order on Reconsideration and Notice of Proposed Rulemaking*, (June 11, 2015) at ¶¶ 13-15.

⁷ Id. at ¶¶ 19-20.

allowed to either find another sharing partner, or notify the Commission that it is no longer a shared station, and the sharee station would have the option to either find another sharing partner or relinquish its license.⁸ The Commission accordingly proposes in the NPRM to authorize “second generation” CSAs, that would allow parties to existing CSAs to extend those agreements at termination, or to find new CSA partners.⁹

I. To Increase Broadcaster Participation in the Incentive Auction, Only Broadcasters Who Relinquished Spectrum and Were Eligible to Exercise the Channel Sharing Relinquishment Option in the Incentive Auction Should Be Eligible to Enter Into CSAs Outside the Context of the Incentive Auction.

The primary justification cited by the Commission is proposing to authorize CSA’s outside the incentive auction context is to “encourage auction participation by giving prospective channel sharing bidders the knowledge that they can pursue future CSAs when their auction-related agreements expire.”¹⁰ Accordingly, the new final rules define a “channel sharee station” as “a broadcast television station for which a winning channel sharing bid . . . [or] a winning relinquishment bid . . . was submitted where the station licensee executes and implements a post-auction channel sharing arrangement.”¹¹ In order to increase the likelihood of a successful incentive auction, AT&T believes that eligibility to enter into second generation CSAs should remain limited to those broadcasters who relinquished spectrum in the incentive auction and were eligible to be channel sharing bidders.

In the NPRM, however, the Commission proposes to allow channel sharing among broadcasters generally, whether or not the broadcasters participate in the auction, basing the proposed rules on various provisions of Title III, rather than the Spectrum Act.¹² Although the

⁸ Id.

⁹ NPRM at ¶ 30.

¹⁰ Id.

¹¹ Id. at App. A, p.27.

¹² Id at ¶ 32.

definition of “channel sharee” in the final rules is limited to channel sharing-eligible bidders who relinquished spectrum in the auction, the NPRM proposes that any TV broadcaster could enter into a sharing agreement outside the auction context so long as it was “operating on its own, non-shared channel immediately prior to entering into a channel sharing agreement.”¹³ The Commission should not, at this time, expand the scope of channel sharing beyond those broadcasters who placed winning bids to relinquish spectrum in the incentive auction, who were eligible to exercise the channel sharing bid option, and who executed and implemented first generation channel sharing agreements.

As the Commission has noted, channel sharing may allow broadcasters to realize substantial cost savings and provide additional net income.¹⁴ Limiting secondary CSAs to broadcasters who were eligible to place channel sharing bids (and who relinquished spectrum) in the incentive auction will thus provide further incentive to broadcasters to participate in the auction. By contrast, if the Commission were to allow broadcasters who did not relinquish spectrum in the incentive auction to later enter into CSAs, this would defeat Congress’ purpose of reallocating relinquished broadcast spectrum to commercial mobile use.

If the Commission decides, notwithstanding the potential to reduce broadcaster participation in the auction, to allow CSAs among broadcasters who were *not* winning, channel-sharing eligible bidders in the auction, it should make clear in any such rule that any spectrum cleared through the use of such a CSA could not be transferred, but would be relinquished to the FCC, and would no longer be eligible for broadcast use other than in order to relocate any TV broadcaster assigned to the 600 MHz band after the completion of the auction. Any other result would contravene two of Congress’ purposes in the Spectrum act: (i) to reallocate cleared

¹³ Id. at 44.

¹⁴ NPRM at ¶ 31.

broadcast spectrum for commercial mobile broadband use and; (ii) “that channel sharing not be used as a means to artificially increase the number of stations that MVPDs are required to carry.”¹⁵ While AT&T agrees that allowing channel sharing-eligible auction participants to enter into second generation CSAs would increase the likelihood of a successful auction, expanding eligibility to broadcasters who did not participate would be contrary to the public interest. The Commission should clarify that only winning, channel sharing-eligible bidders in the incentive auction are eligible to enter into CSAs outside the auction context.

II. Rules Authorizing Broadcasters to Enter into Channel Sharing Agreements After the Completion of the Incentive Auction Should Include Provisions to Reduce Cost and Service Disruption.

A. Channel Sharing Agreements Should Have a Minimum Term of Three Years.

While AT&T generally supports permitting second generation CSAs for winning, channel sharing-eligible bidders, there is some risk that such a rule could lead to channel sharing parties frequently changing partners. As the Commission noted, broadcasters might enter into short term agreements, or terminate CSAs early. Accordingly, the Commission sought comment on whether a minimum term for CSAs should be established.¹⁶ A rash of new, second generation CSAs could result in complications for the relocation fund, raise implementation risks that would threaten service disruption, and impose costs on third parties such as cable, satellite and IPTV providers. Although allowing first generation CSAs to have a definite term makes sense, it also makes sense to have a minimum term length to avoid such disruption and unnecessary costs. AT&T agrees with the Commission that three years would be reasonable.

B. Channel Sharing Must Not Be Used As a Means to Increase Carriage Rights.

AT&T strongly supports the Commission’s determination to follow Congress’ directive

¹⁵ NPRM at ¶44.

¹⁶ Id. at ¶48.

“that channel sharing not be used as a means to artificially increase the number of stations that MVPDs are required to carry.”¹⁷ Accordingly, a CSA, whether a first generation CSA, or a post-auction CSA, may not be used to create any carriage rights that did not exist prior to the CSA.¹⁸ In particular, the portions of the proposed rules that suggest that an MVPD may “become obligated to carry [a channel sharee] station due to a channel sharing relocation” should not be included in any channel sharing rules adopted by the Commission.¹⁹ In addition, consistent with the requirements for first generation CSAs, parties to post-auction CSAs should be limited to sharing with broadcasters in the same DMA.

C. Channel Sharing Broadcasters Should Give MVPDs at Least 90 Days’ Advance Notice Before the Initiation of Shared Operations.

To further reduce the chances of service disruptions and to reduce costs, we agree that notice should be provided to any potentially impacted MVPD’s prior to the implementation of any CSA that would result in the relocation of any station.²⁰ We also agree with the Commission’s proposal regarding the content of such notices. AT&T believes, however, that such notices should be provided at least 90 days prior to the initiation of operations under the CSA, not 30 days, as proposed. For example, DIRECTV receives transmissions at close to 200 remote locations, typically about a 5 hour drive from one another, but has only a limited number of field engineers. If a station changes transmitter locations, physical changes to the receiving site would be required, requiring field engineers to travel to the receiver. A substantial percentage of these transmissions are received over the air, and to the extent that the implementation of a CSA relocation requires new antennas, tower crews would be required, a

¹⁷ Id. at ¶44.

¹⁸ Id.

¹⁹ See, e.g., Id. at App. C, proposed rule §73.3800(f)(iii) at p.35.

²⁰ Id. at ¶60. AT&T and Direct TV recommend that the notice should be provided not only to MVPDs who are or may be obligated to carry the station, but should be required to be provided to all MVPDs that carry, or could carry, the station.

step that may take weeks to arrange. Given the logistical challenges that would arise from the implementation of CSAs, 30 days' notice is simply inadequate. In addition, the Commission should make clear that, during this 90 day period, the parties to the CSA have the obligation to coordinate the implementation of the CSA with each MVPD that it seeks to carry its transmissions.

D. Implementation Costs Not Reimbursed from Auction Proceeds Should Be Borne by the Channel Sharing Broadcasters.

Lastly, in assessing the costs of implementation, the Commission should apply the same principles that guided its rules for first generation CSAs. For first generation CSAs both stations and MVPDs may be reimbursed for their reasonable costs from the relocation fund created from forward auction revenues. While we do not agree with the Commission's assumption that second generation CSAs are "unrelated to the auction"—but for the auction, the channel sharers would not have entered into first generation CSAs and would therefore not be in the market for a second generation CSA—we agree that, as a practical matter, it is unlikely that any funds will be available (or should be available) to cover the implementation costs of a second generation CSA.

We disagree, however, with the Commission's proposal to allocate the costs associated with the implementation of second generation CSAs in the same manner as television station channel moves.²¹ As the Commission highlights, the channel sharing envisioned in the Spectrum Act provides a number of benefits. First and foremost, it facilitates the clearance of spectrum for commercial mobile service. The costs of this spectrum clearing, as well as the relocation/implementation costs associated with the initial CSA, are borne by the winning bidders in the forward auction. The second major benefit from a CSA is to the parties to the

²¹ Id. at ¶ 59.

CSA, who also reduce their operating costs and may increase the net revenues from their continued broadcasting operations (in addition to being paid to relinquish spectrum). Second generation CSAs would allow the parties to continue or even enhance these financial benefits. Any costs associated with a relocation occasioned by a second generation CSA presumably would be considered by the parties to the CSA as part of the decision to enter into such an agreement. MVPDs, on the other hand, receive no additional revenue or cost savings from CSAs. It thus would be unfair and inefficient to require them to absorb the costs imposed on them by the parties to the CSA, who benefit financially from the arrangement. As the direct beneficiaries of the second generation CSA, the parties are best positioned and incentivized to avoid, reduce, or otherwise manage the technical costs of implementing the CSA. Therefore, it is both fair and efficient for the Commission to require that CSA parties reimburse MVPDs for those costs.

Respectfully Submitted,

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