

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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
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**REPLY COMMENTS OF THE PUBLIC BROADCASTING SERVICE,
ASSOCIATION OF PUBLIC TELEVISION STATIONS, AND
CORPORATION FOR PUBLIC BROADCASTING**

The Public Broadcasting Service (“PBS”),¹ Association of Public Television Stations (“APTS”),² and Corporation for Public Broadcasting (“CPB”)³ (collectively, “PTV”) supports efforts to maximize the options for television stations to continue serving their communities over-the-air after the incentive auction and repacking process have concluded. Accordingly, PTV agrees with other commenters that the Commission’s channel sharing rules should provide

¹ PBS, with its over 350 member stations, offers all Americans the opportunity to explore new ideas and new worlds through television and online content. Each month, PBS reaches nearly 109 million people through television and over 28 million people online, inviting them to experience the worlds of science, history, nature, and public affairs; to hear diverse viewpoints; and to take front row seats to world-class drama and performances.

² APTS is a non-profit organization whose membership comprises the licensees of nearly all of the nation’s 364 CPB-qualified noncommercial educational television stations. The APTS mission is to support the continued growth and development of a strong and financially sound noncommercial television service for the American public.

³ CPB is a private, non-profit corporation created and authorized by the Public Broadcasting Act of 1967 to facilitate and promote a national system of public telecommunications. Pursuant to its authority, CPB has provided millions of dollars in grant monies for support and development of public broadcasting stations and programming.

stations with as much flexibility as possible, regardless of whether a particular channel sharing agreement is entered into in connection with the incentive auction or at a later time.⁴

As explained in PTV's prior comments, channel sharing is not a panacea. Sharing a channel may dramatically limit HD and multicast capabilities, potentially impinge coverage areas, and restrict the option of deploying new services of vital importance to local communities.⁵ Nonetheless, PTV agrees that operating on a shared channel may in some circumstances be one means of preventing the emergence of unserved areas lacking any public television service. As other commenters have explained,⁶ many of the proposals in the channel sharing NPRM released on June 12, 2015,⁷ could help make channel sharing a more feasible option in some cases. But there are additional steps the Commission can and should take to provide potential channel sharing partners the flexibility and clarity they need with respect to their rights and obligations.

In these reply comments, PTV focuses on three key points. First, the Commission should affirm its tentative conclusion that licensees sharing a channel will retain the full must-carry

⁴ See, e.g., Comments of Venture Technologies Group, LLC, GN Docket No. 12-268 & MB Docket No. 15-137, at 1 (filed Aug. 10, 2015) (encouraging "the adoption of flexible rules for post-auction channel sharing agreements"); Comments of the National Association of Broadcasters, GN Docket No. 12-268 & MB Docket No. 15-137, at 2 (filed August 13, 2015) (urging the Commission "to provide broadcasters with maximum flexibility in structuring the terms of channel sharing arrangements") ("NAB Comments").

⁵ See Comments of the Association of Public Television Stations, National Public Radio, the Public Broadcasting Service and the Corporation for Public Broadcasting, ET Docket No. 10-235, at 10 (filed March 18, 2011).

⁶ See Comments of Expanding Opportunities For Broadcasters Coalition, GN Docket No. 12-268 & MB Docket No. 15-137, at 2, 5-6 (filed August 12, 2015) ("EOBC Comments"); NAB Comments at 2-3.

⁷ *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, GN Docket No. 12-268, MB Docket No. 15-137, FCC 15-69 (June 12, 2015) ("*First Recon Order & NPRM*").

rights to which they would be entitled if they were not channel sharing. Second, the Commission should clarify that the Commission will not penalize an innocent party that would not be in violation of the Commission's rules but for another's breach of a channel sharing agreement, regardless of whether the agreement is entered into in connection with the incentive auction. Finally, the Commission should provide parties entering into channel sharing agreements outside the context of the incentive auction with a full three-year construction period to implement their sharing arrangements.

I. The Commission Should Protect All Channel Sharing Participants' Carriage Rights.

PTV agrees with the other commenters in this proceeding that the Commission should affirm its tentative conclusion that the Communications Act provides channel sharing stations "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."⁸ This approach is essential for public television stations to fulfill their mission of universal service. As the Commission properly concluded in the *First Recon Order & NPRM*, if a reserved-channel licensee enters into a channel sharing arrangement, that licensee's portion of the shared channel will remain reserved for NCE service, even if the original licensee ceases its own operations.⁹ This means that a new NCE licensee could begin operating on the reserved portion of a shared channel years after the repacking concludes. Ensuring that such NCE licensees are able to effectively serve their communities requires that the Commission establish clear rules confirming the rights of channel sharing partners, including their carriage rights, whether the sharing arrangements are entered into in the period immediately around the incentive auction or in future years.

⁸ *Id.* ¶ 33; see EOBC Comments at 3-4; NAB Comments at 3.

⁹ See *First Recon Order & NPRM*, ¶ 25.

As the Commission notes, and contrary to arguments by the National Cable & Telecommunications Association (“NCTA”),¹⁰ the plain language of the relevant Communications Act provisions provides carriage rights to qualified licensees of television broadcast stations, with no distinction based on whether a licensee uses a full 6 MHz of spectrum or shares spectrum with another licensee.¹¹ For instance, the Act grants cable-carriage rights to “any qualified local noncommercial educational television station requesting carriage.”¹² A “qualified local noncommercial educational television” is unambiguously defined as any “television broadcast station” that (1) “is licensed by the Commission” as a noncommercial educational (“NCE”) station,¹³ (2) is owned by a municipality, public agency, nonprofit, or other qualifying entity,¹⁴ (3) either is eligible for a CPB community service grant or, for stations owned by municipalities, “transmits predominantly noncommercial programs for educational purposes,”¹⁵ (4) “is licensed to a principal community whose reference point ... is within 50 miles of the principal headend of the cable system,”¹⁶ and (5) whose Grade B contour¹⁷ encompasses the cable system’s principal headend.¹⁸ None of these criteria is affected by

¹⁰ See NCTA Comments at 5-6; .

¹¹ *First Recon Order & NPRM*, ¶ 38.

¹² 47 U.S.C. § 535(b)(1).

¹³ *Id.* § 535(l)(1)(A)(i).

¹⁴ *Id.* § 535(l)(1)(A)(i), (B).

¹⁵ *Id.* § 535(l)(1)(A)(ii), (B).

¹⁶ *Id.* § 535(l)(2)(A).

¹⁷ Digital television stations use the noise-limited service contour in lieu of the Grade B contour for must-carry purposes. See, e.g., *KAZN-TV Licensee, LLC*, Mem. Op. & Order, MB Docket No. 15-82, DA 15-860, at ¶ 4 n.10 (MB Policy Div. July 27, 2015) (“[T]he Commission has treated a digital station’s noise-limited contour as the functional equivalent of an analog station’s Grade B contour.”).

¹⁸ 47 U.S.C. § 535(l)(2)(B).

whether the station shares its channel with another, separately licensed station.¹⁹ Accordingly, any licensed station meeting these criteria is entitled to carriage in its own right, regardless of whether its sharing partner(s) qualify for must-carry rights.

Nor should the Commission add to the statutory criteria for carriage by requiring new NCE entrants to have operated on independent facilities in order to establish carriage rights before entering into a sharing arrangement.²⁰ Such a requirement risks foreclosing new entrants from ever establishing fully effective service in their communities. In some markets, there may be no channels available for a new entrant to begin service on a separate channel, and in any case the Commission should not require NCE stations to incur the costs of building unnecessary facilities for the sole purpose of establishing carriage rights. At a minimum, the Commission should ensure full carriage rights for any new-entrant sharee seeking to operate on an existing reserved channel or restoring NCE service to a community that has lost all reserved-channel NCE service.²¹

The fact that multichannel video programming distributors (“MVPDs”) may incur costs (such as the need to devote more capacity to must-carry stations) if a new carriage-qualified entrant launches as a sharee is no reason to deny the new entrant the carriage rights to which it is entitled under the Communications Act. MVPDs have never been protected against the costs

¹⁹ See *First Recon Order & NPRM*, ¶ 49 (clarifying that each station sharing a channel retains an entirely separate license).

²⁰ See *id.*, ¶ 44.

²¹ See *Incentive Auction R&O*, 29 FCC Rcd at 6725 (“To the extent that any loss in service results from the reverse auction, we will consider appropriate actions to address such losses, such as by inviting applications to serve areas that have lost service.”); *Second Recon Order*, ¶ 154 (“[I]f the last NCE station in a given community goes off the air as a result of the incentive auction ... interested parties could file petitions for rulemaking to propose the allotment of new reserved channels to replace the lost service ... or the Commission could do so on its own motion.”).

they may incur if a new station that qualifies for must-carry launches in a market (or moves communities of license).²² The fact that a new entrant launches on a shared channel does not affect the new licensee’s statutory rights or subject the MVPD to any greater burden than if the licensee built an entirely new station.

II. The Commission Should Affirm That It Will Not Penalize a Sharing Station for Its Partner’s Violation of a Channel Sharing Agreement.

As PTV noted in response to the *Comment PN*, the Commission has prompted serious concerns with its statements that “parties to a channel sharing agreement bear the consequences of any defects in the agreements or the failure of either party to perform” and that the Commission “is not a guarantor or an enforcer of channel sharing agreements.”²³ Read literally, this statement suggests the Commission could seek to enforce its rules against an entirely innocent party whose violation of the Commission’s regulations results solely from another’s breach of the channel sharing agreement. PTV encourages the Commission to clarify that such a literal reading, which would discourage stations from entering into channel sharing arrangements, was not intended.

For instance, the Commission requires that “each channel sharing licensee retain spectrum usage rights adequate to ensure access to enough shared channel capacity to allow it to

²² *First Recon Order & NPRM*, ¶ 58 (“[O]ur current rules do not require reimbursement of MVPD costs in connection with channel changes or other changes that modify carriage obligations outside the auction context.”).

²³ Comments of the Public Broadcasting Service, Association of Public Television Stations, and Corporation for Public Broadcasting, AU Docket No. 14-252 & GN Docket No. 12-268, at 9-10 (filed Feb. 20, 2015) (quoting *Comment Sought on Competitive Bidding Procedures 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, ¶ 75 (Dec. 17, 2014) (“*Comment PN*”)).

provide at least one Standard Definition ('SD') program stream at all times."²⁴ If one channel sharing party were to begin operating in a way that prevented its partner from maintaining the required SD program stream, the Commission should not penalize the injured licensee but instead should protect the injured licensee's rights, as set forth in the Commission's rules, just as the Commission would step in to prevent harmful interference to a standalone licensee. None of these actions requires the Commission to become "a guarantor or an enforcer of channel sharing agreements" as a whole. However, parties considering channel sharing arrangements need assurance that, just as each channel sharing licensee retains "its independent obligation to comply with all pertinent statutory requirements and [Commission] rules,"²⁵ each licensee also retains its right to seek the protections afforded by those rules, including those protections necessary for stations to avoid being penalized for a partner's failure to abide by obligations required by the Commission to be codified in a channel sharing agreement. The Commission should also confirm that, if the licensees have allocated certain responsibilities (such as tower maintenance) in a compliant channel sharing agreement, the Commission will respect that allocation and will not seek to hold one licensee responsible for its partner's failure to carry out its responsibilities.

In the *Procedures PN*, the Commission stated that these issues were "outside the scope" of the *Comment PN*.²⁶ It is squarely within the scope of this proceeding, however. The *First Recon Order & NPRM* proposes to "adopt channel sharing operating rules similar to those

²⁴ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, R&O, 29 FCC Rcd 6567, 6851 (2014) ("*Incentive Auction Report and Order*").

²⁵ *Id.* at 6853.

²⁶ *Broadcast Incentive Auction Scheduled to Begin on March 29, 2016*, Public Notice, AU Docket No. 14-252 *et al.*, FCC 15-78, ¶ 50 n.190 (Aug. 11, 2015) ("*Procedures PN*").

adopted for full power and Class A television stations in the [*Incentive Auction Report and Order*], under which sharing agreements “must include provisions governing certain key aspects of [the sharing stations’] operations.”²⁷ But to craft such provisions — including any associated remedies — effectively, the parties must know whether they can depend on the Commission both to respect the parties’ allocation of operational duties in the Commission’s conduct of enforcement activities and to protect a station injured by its partner’s violation of the channel sharing rules.

III. Channel Sharing Stations Should Have a Full Three-Year Construction Period.

Finally, the Commission should provide channel sharing partners with a full three-year construction period to implement new sharing agreements.²⁸ There is no evidence in the record demonstrating that a shorter deadline is necessary, and as the Commission notes, outside the auction context there is no exigency for completing implementation of channel sharing agreements. Most such arrangements can and likely will be implemented in much less than three years. But as PTV has noted, NCE stations face particular challenges in terms of funding (which is tied to private donations and, often, government appropriations cycles). Consequently, it is appropriate to give NCE stations as much flexibility as possible by allowing channel sharing stations the standard three-year construction period under the rules to implement their sharing deals.²⁹

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²⁷ *First Recon Order & NPRM*, ¶ 55.

²⁸ *See id.*, ¶ 52.

²⁹ *See, e.g.,* Widelity, Inc., *Response to the Federal Communications Commission for the Broadcaster Transition Study Solicitation - FCC13R0003*, at 33–34 (Dec. 30, 2013) (noting unique challenges for noncommercial stations).

The three steps PTV recommends herein would provide potential channel sharing partners the flexibility and clarity they need with respect to their rights and obligations under the channel sharing agreement and the Commission's rules. Consequently, these steps would increase the likelihood that channel sharing arrangements, in at least some circumstances, could provide a viable means for broadcast stations to continue serving their communities after the incentive auction and repacking is complete.

Respectfully submitted,

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