

**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
)	

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

The Expanding Opportunities for Broadcasters Coalition (the “Coalition”)¹ respectfully submits these replies to comments filed 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 With this reply, the Coalition highlights two important principles that can be drawn from the record and that should guide the FCC in developing rules

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 and NPRM*”).

for post-auction channel sharing. *First*, it is critical that, after the auction, there exists a robust and flexible channel sharing mechanism for so-called “second generation sharees” (*i.e.*, stations that relinquished their spectrum in the auction to channel share). It is a simple proposition that the more risk-free the Commission can make channel sharing for broadcasters, the more stations will agree to relinquish their spectrum to channel share. *Second*, to the extent practicable, channel sharing rules for post-auction channel sharing agreements (“CSAs”) should mirror channel sharing rules for auction-related arrangements. With these guiding principles as a framework, we specifically reply regarding a number of issues and arguments raised in the record.

I. THE COMMISSION MUST ENSURE A ROBUST AND FLEXIBLE CHANNEL SHARING MECHANISM FOR SECOND GENERATION SHAREES

There is unanimous support in the record to permit second generation channel sharing.³ With no commenter opposing such arrangements, it is incumbent on the Commission to adopt its tentative conclusion that “authorizing channel sharing outside the auction context will encourage auction participation by giving prospective channel sharing bidders the knowledge that they can pursue future CSAs when their auction-related agreements expire.”⁴ The question, then, is what rules and restrictions the FCC should apply to these post-auction sharing agreements. We believe, and the record supports, that a robust and flexible sharing mechanism outside of the auction context will encourage wide broadcaster participation in the auction by ensuring that these broadcasters have viable business contingencies after the auction. To enhance the benefits

³ The commenters who propose limitations on post-auction CSAs only argue that the Commission should restrict sharing based on auction participation. *See* Comments of AT&T and DirecTV, GN Docket No. 12-268, MB Docket No. 15-137 (Aug. 13, 2015) (“AT&T/DirecTV Comments”) at 1 (“AT&T recommends, however, that channel sharing be limited to channel sharing-eligible auction winners”); Comments of National Cable & Telecommunications Association, GN Docket No. 12-268, MB Docket No. 15-137 at 3 (Aug. 13, 2015) (“NCTA Comments”) (arguing that sharing should be limited to “sharing linked to the auction”).

⁴ *Channel Sharing Recon. Order and NPRM* ¶ 31.

of channel sharing, the Commission should: (1) permit sharing by stations that did not relinquish their spectrum in the auction; and (2) permit sharing between a full power or Class A station and a low power or TV translator station.

First, the Commission should not restrict post-auction CSAs to *only* those stations that relinquished spectrum in the auction.⁵ There are a number of scenarios in which post-auction CSAs between stations that did not relinquish their spectrum in the auction will nevertheless drive auction participation and benefit the public interest. For example, if a station negotiates a channel sharing deal prior to the auction, but does not sell its spectrum at auction, that station could still reap the benefits of channel sharing to satisfy its programming and/or economic needs. Post-auction sharing could also encourage a secondary market for reallocation of broadcast spectrum that would serve the public interest goals of the auction.⁶ In particular, a broadcast station that initially chose not to participate in the auction and was assigned to a channel in the 600 MHz band might, under the right circumstances, subsequently elect to channel share, thereby eliminating impairment to wireless operations. The FCC's rules should encourage this type of activity, which would increase the value of impaired licenses in the forward auction while observing the market-based reallocation principles that the Commission has espoused.⁷

Additionally, to ensure that sharing is both robust and flexible, the Commission should make it clear that sharing agreements can include LPTV or TV translator stations. The only

⁵ See Comments of AT&T & DirecTV, GN Docket No. 12-268, MB Docket No. 15-137 (Aug. 13, 2015) (“AT&T/DirecTV Comments”) at 3-4; Comments of National Cable & Telecommunications Association, GN Docket No. 12-268, MB Docket No. 15-137 (Aug. 13, 2015) (“NCTA Comments”) at 1-2, 11.

⁶ In their comments, AT&T and DirecTV give an example—as a cautionary tale—of a station clearing its spectrum post auction. Respectfully, the Coalition can imagine a situation where this scenario would be welcome by the Commission, not worrisome to it.

⁷ See *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, FCC 14-50 at ¶¶ 1–2 (rel. June 2, 2014) (“*Incentive Auction Order*”) (discussing the goals of “more spectrum available for mobile broadband use” and “allow[ing] market forces to determine [spectrum’s] highest and best use”).

other commenter who addressed this issue agreed that channel sharing should be permitted between full power or Class A stations, on one hand, and LPTV or TV translator stations, on the other.⁸ There is no compelling reason to exclude these stations from sharing arrangements, and including them could encourage broader auction participation. To achieve the benefits of these sharing arrangements, however, the agency must promptly adopt rules permitting them so stations have ample time to make an informed decision regarding whether and how to participate in the reverse auction.

II. THE COMMISSION SHOULD NOT DEVIATE FROM THE RULES IT HAS ADOPTED FOR AUCTION-RELATED SHARING ARRANGEMENTS

The record supports our Coalition’s belief that the FCC should generally adopt the same approach to mandatory carriage for post-auction sharing agreements that the Commission did for auction-related sharing agreements.⁹ Specifically, with regard to mandatory carriage, sharee stations should retain their existing carriage rights, as applied to their new location. As the Commission already recognized in the context of auction-related CSAs, the policy benefits of this approach justify any marginal costs. The proposed limits on non-auction sharing agreements—that they would not result in a change to the sharee’s DMA, that they must be for at least three years, and that the sharee must continue to provide a good quality signal to the MVPD headends—substantially mitigate any disruption or expense. Additionally, the Commission should extend the same flexibility for stations to change their communities of license as it provided in the auction context.

⁸ See Comments of International Communications Network, Inc., GN Docket No. 12-268, MB Docket No. 15-137 (Aug. 13, 2015) at 1

⁹ See, e.g., AT&T/DirectTV Comments at 6 (arguing that “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”); Comments of the National Association of Broadcasters, GN Docket No. 12-268, MB Docket No. 15-137 (Aug. 13, 2015) (“NAB Comments”) the Commission’s conclusion that “the Communications Act provides stations that elect to channel share outside of the auction or in second-generation agreements the same satellite and cable carriage and retransmission consent rights the stations would have at the shared location if they were not channel sharing”).

A. Sharee Stations Should Be Allowed to Take Their Existing Mandatory Carriage Rights to Their Shared Location.

The record supports the Commission’s tentative conclusion that “stations that elect to channel share outside the aegis of the Spectrum Act [should have] 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.”¹⁰ As the Commission explained in the auction context: “[a] station’s carriage rights will not be expanded or diminished through this process, although its ability to exercise these rights may change based upon the facts of its specific channel sharing arrangement.”¹¹ Although no commenters directly opposed this conclusion, some raised concerns about the related costs.¹² Such concerns are overstated.

First, just as with auction-related CSAs, the Commission can minimize potential disruption and costs by only allowing stations to enter into sharing arrangements “so long as they remain in the same DMA.”¹³ There is no opposition to this approach.

Second, the Commission can mitigate the disruption and cost of non-auction-related sharing agreements by imposing a reasonable minimum term of three years. Although the record is mixed on this point,¹⁴ our Coalition believes the combination of: (i) the lack of urgency outside the auction context; and (ii) the stability that a reasonable minimum term provides justifies this exception to the principal that the same rules should apply to all CSAs, whether or not they are in the auction context.

¹⁰ *Channel Sharing Recon. Order and NPRM* ¶ 33

¹¹ *Incentive Auction Order* ¶ 709.

¹² See AT&T/DirecTV Comments at 7-8; NCTA Comments at 11.

¹³ *Incentive Auction Order* ¶ 709.

¹⁴ Compare AT&T/DirecTV Comments at 5 (supporting three year minimum term) with NAB Comments at 2 (contending that a minimum term is “unnecessary”).

Finally, just as broadcasters in auction-related sharing arrangements (and broadcasters generally) are required to provide a good-quality signal to avail themselves of mandatory carriage rights, the same should be true for stations in post-auction CSAs. Specifically, “in order to ensure carriage, broadcasters must continue to meet the eligibility requirements in [the Commission’s] rules after implementing the channel sharing arrangement.”¹⁵ This baseline requirement should be standard for broadcasters regardless of whether the CSA is related to the auction. For stations sharing post-auction, any other costs associated with mandatory carriage should be *de minimis*.

B. Sharee Stations Should Have Flexibility to Change Their Community of License to Accommodate Otherwise Permissible Sharing Arrangements.

The record does not support the Commission’s proposal to apply a different standard for television stations needing to change their community of license based on whether or not they are entering into a CSA in connection with the auction; rather, the agency should extend the same flexibility to choose a new community of license to post-auction and auction-related sharees, alike. The one other commenter addressing this issue agrees.¹⁶ Just as with auction-related CSAs, this flexibility will ensure that all broadcasters have multiple options for sharing partners, creating a robust marketplace for sharing deals and preventing a situation where the sharer station can exert undue influence on the sharee. Providing an adequate safety net for stations that need to enter into second generation CSAs will have the effect of encouraging stations to enter into CSAs in the first place. As such, extending community of license flexibility

¹⁵ See *In the Matter of Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Report and Order, FCC 12-45 at ¶ 30 (rel. Apr. 27, 2012).

¹⁶ See Comments of Venture Technologies Group, LLC, GN Docket No. 12-268, MB Docket No. 15-137 (Aug. 13, 2015) at 2–4.

will advance the public interest benefits of the auction by removing a disincentive to channel sharing.

III. CONCLUSION

The rules that the Commission develops for channel sharing *outside* of the auction context will indirectly affect how broadcasters approach channel sharing in the auction itself. Accordingly, first and foremost, the FCC must ensure that its rules provide sufficient flexibility after the auction to broadcasters interested in the channel sharing option during the auction. Additionally, to the extent practicable, the agency should apply the same rules to both auction-related sharing and to post-auction sharing. By adhering to these principles, the Commission will ensure that channel sharing is truly the “win-win” that the agency has touted, providing a viable and attractive alternative for broadcasters that want to continue to serve the public while also recognizing the promise of the incentive auction.

Respectfully submitted,

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