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

MAILED
MAY - 2 2012
FCC Mail Room

In the Matter of	)	
	)	
Innovation in the Broadcast Television Bands:	)	
Allocations, Channel Sharing and Improvements	)	ET Docket No. 10-235
to VHF	)	

REPORT AND ORDER

Adopted: April 27, 2012 **Released: April 27, 2012**

By the Commission: Chairman Genachowski and Commissioners McDowell and Clyburn issuing separate statements.

TABLE OF CONTENTS

Heading Paragraph #

I. INTRODUCTION 1
II. BACKGROUND 3
III. DISCUSSION 9
A. General Channel Sharing Parameters 11
1. Channel Sharing Arrangements Will Be Voluntary 11
2. Channel Sharing Will Be Flexible 15
B. Basic Qualifications for Channel Sharing 19
1. Class A Television, Low Power Television and TV Translators 19
2. Parties Who May Implement Channel Sharing Arrangements 21
3. Commercial and Noncommercial Educational Stations 23
4. Other Issues 25
C. Preservation of Must Carry Rights 26
1. Cable Carriage 28
2. DBS Carriage 33
IV. PROCEDURAL MATTERS 35
A. Final Regulatory Flexibility Act Analysis 35
B. Final Paperwork Reduction Act of 1995 Analysis 36
V. ORDERING CLAUSES 39
APPENDIX A – LIST OF COMMENTERS
APPENDIX B – FINAL RULES
APPENDIX C – FINAL REGULATORY FLEXIBILITY ACT ANALYSIS

I. INTRODUCTION

1. In this Report and Order, we take preliminary steps toward making a portion of the UHF and VHF frequency bands (U/V bands) currently used by the broadcast television service available for new uses as required under the recently enacted *Spectrum Act*,[1] while also preserving the integrity of the

[1] *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § ___, 125 Stat. ____ (2012)(*Spectrum Act*)

television broadcast service. This new legislation gives the Commission authority to conduct incentive spectrum auctions and requires that it undertake such an auction for a portion of the U/V bands. The spectrum to be repurposed will serve to further address this nation's growing demand for wireless broadband services, promote ongoing innovation and investment in mobile communications, and help to ensure that the United States keeps pace with the global wireless revolution. We plan in subsequent actions to make the recovered spectrum available for flexible use in fixed and mobile wireless communications services, including mobile broadband. Repurposing of this spectrum will provide the necessary flexibility to meet the requirements of new wireless applications. At the same time, we recognize that over-the-air broadcast television continues to serve very important public interests.

2. Specifically, today we amend our rules to establish the basic ground rules for sharing of broadcast channels by stations that choose to share a 6 MHz channel with one or more other stations in connection with the incentive auction. Such sharing will allow stations to relinquish spectrum for new uses while continuing to provide television service to viewers. By adopting these rules now, we seek to provide greater certainty to stations that may wish to consider channel sharing.

II. BACKGROUND

3. *The National Broadband Plan And Broadcast Spectrum Analysis White Paper.* The *National Broadband Plan* was issued on March 17, 2010.[2] As required by Congress, the *Plan* seeks to ensure that every American has access to broadband capability and establishes benchmarks for meeting that goal.[3] It recommends that 500 megahertz of spectrum between 225 MHz and 3.7 GHz be made available to meet the needs of mobile, fixed, and unlicensed wireless broadband over the next ten years and that 300 megahertz of that amount be made available for mobile flexible uses within five years,[4] of which up to 120 megahertz would come from the broadcast television bands.[5] A few months later, in June 2010, the Commission issued the third Omnibus Broadband Initiative technical paper, entitled "Spectrum Analysis: Options for Broadcast Spectrum"[6] that described a voluntary, market-based process for repurposing a portion of the U/V bands by allowing individual stations to participate in an incentive auction. Under that process, a station could choose not to participate, to participate by sharing a channel, or to participate and relinquish all of its broadcast spectrum, *i.e.*, cease broadcasting. The *Technical Paper* suggested that, by providing stations a potential means to obtain a one-time financing benefit and the ability to reduce operating expenses through the channel sharing option, the Commission could promote longstanding policy goals for broadcast television, including localism, viewpoint diversity, and competition.[7]

4. *Current Uses of the U/V Bands Spectrum.* The U/V bands occupy 294 megahertz of

---

[2] *Connecting America: The National Broadband Plan*, Federal Communications Commission, Washington, D.C. (March 2010) (the *Plan*); available at http://www.broadband.gov/plan/. The Plan was developed by the staff of the Commission pursuant to the direction of Congress in the *American Recovery and Reinvestment Act of 2009*, Pub. L. No. 111-5, 123 Stat. 115 (2009)(*Recovery Act*).

[3] *See Recovery Act* at § 6001(k) (mandating that the Commission develop a national broadband plan in which it seeks "to ensure that all people of the United States have access to broadband capability....").

[4] *Plan* at 84. The frequency range between 225 MHz and 3.7 GHz is generally to be considered the most suitable spectrum for mobile communications.

[5] *Plan* at 88.

[6] *See* http://download.broadband.gov/plan/fcc-omnibus-broadband-initiative-(obi)-technical-paper-spectrum-analysis-options-for-broadband-spectrum.pdf (*Technical Paper*).

[7] *Technical Paper* at 30.

spectrum in the five frequency bands currently allocated for use by broadcast services.[8] All five bands are used principally for broadcast television under Part 73 of the rules.[9] Television stations operate on six-megahertz channels designated 2 to 51 in the five U/V frequency bands. In 2009, full power television stations completed a statutorily mandated conversion from analog to digital transmissions.[10] As part of that transition, 108 megahertz of UHF spectrum at 698-806 MHz was recovered for new uses, including fixed, mobile, and broadcasting; and 24 megahertz of that spectrum was set aside for public safety uses.[11]

5. In addition to full power TV stations, several other licensed services are permitted to operate in the U/V bands' TV channels. The 470-512 MHz (TV channels 14-20) segment of the above mentioned UHF band at 470-608 MHz is allocated for fixed and land mobile services on a co-primary basis with broadcasting.[12] Use of mobile services in this band segment is limited to thirteen geographic areas and to only a few specified purposes.[13] Low power television stations operate in the U/V bands' TV channels: Class A television stations under Subpart J of Part 73 of the rules[14] and low power TV and TV translator stations under Subpart G of Part 74 of the rules.[15] Part 74 also allows certain broadcast auxiliary operations on TV channels 14-69 on a secondary basis.[16] Further, the Part 74 and Part 15 rules permit certain entities to operate both licensed and unlicensed wireless microphones and other low power auxiliary transmitters on vacant TV channels on a secondary or non-interference basis.[17] Channel 37 (608-614 MHz) is not allocated for television but rather is used for receive-only radio astronomy

[8] *See* 47 C.F.R. § 2.106 (Table of Frequency Allocations); *see also* 47 C.F.R. § 73.603. The overall VHF and UHF regions occupy the spectrum in the frequency ranges 30 MHz to 300 MHz and 300 MHz to 3000 MHz, respectively.

[9] 47 C.F.R. Part 73. In addition, low power television stations and TV translators operate under regulations set forth in Part 74 of the Commission's rules.

[10] *See* Digital Television and Public Safety Act of 2005 ("DTV Act"), which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) ("DRA") (*codified at* 47 U.S.C. §§ 309(j)(14) and 337(e)); *see also* DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009).

[11] *See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service,* MM Docket No. 87-268, Sixth Report and Order, 12 FCC Rcd 14588 (1997); *see also Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, First Report and Order, 15 FCC Rcd 476 (2000); *Reallocation of Television Channels 60-69, the 746-806 MHz Band,* ET Docket No. 97-157, Report and Order, 12 FCC Rcd 22953 (1998); and *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, GN Docket No. 01-74, Report and Order, 17 FCC Rcd 1022 (2002).

[12] *See* 47 C.F.R. § 2.106, footnote NG66.

[13] *Id.*

[14] *See* 47 C.F.R. Part 73 Subpart J. Class A TV stations operate at the power levels permitted for low power television stations under Part 74 of the rules, but have certain protection rights with respect to full service digital TV stations that are not available to TV translator and low power TV stations.

[15] *See* 47 C.F.R. Part 74 Subpart G. Low power TV and TV translator stations operate on a "must protect" basis to full power TV stations and on an equal basis with Class A TV stations, provided they meet technical rules to prevent interference to reception of such stations. *Id.* Collectively, Class A television, low power TV and TV translator stations are commonly referred to here as "low power television stations."

[16] *See* 47 C.F.R. § 74.602(h). This rule section permits TV studio-transmitter links, TV relay stations, and TV translator relay stations to be authorized to operate fixed point-to-point service on UHF TV channels 14-69 on a secondary basis, subject to the provisions in Part 74, subpart G.

[17] *See* 47 C.F.R. Part 74 Subpart H and Part 15, Subpart C. The land mobile service is a mobile service between base stations and land mobile stations, or between land mobile stations. A base station is a land station in the land mobile service. A land mobile station is a mobile station in the land mobile service capable of surface movement within the geographical limits of a country or continent. The fixed service is a radiocommunication service between specified fixed points. *See* 47 C.F.R. § 2.1(c).

observations and wireless medical telemetry systems (WMTS).

6. Furthermore, under the fixed and land mobile allocations in the 470-512 MHz band segment (channels 14-20), licensees in the Private Land Mobile Radio Service (PLMRS) under Part 90 of the rules and in the Commercial Mobile Radio Service (CMRS) under Part 20 of the rules operate in eleven major metropolitan areas on one to three six-megahertz channels.[18] These licensees operate public safety and related land mobile communications and CMRS backhaul services. In addition, under Part 15 of the rules WMTS devices are permitted to operate on an unlicensed basis on any vacant TV channels in the range of channels 7-46, and unlicensed remote control devices are allowed to operate on any TV channels above 70 MHz (*i.e.*, above channel 4), except for channel 37.[19] The Offshore Radiotelephone Service operates on channels 15-17 in certain regions along the Gulf of Mexico.[20] In Hawaii, channel 17 is reserved for inter-island communications.[21] However, no active services are currently provided on this channel in Hawaii. Finally, the Commission has allowed low power unlicensed devices to operate on unused channels (white spaces) in the U/V bands.[22] The Commission recently finalized rules for these "TV white space" devices (TVWS devices) and approved two TV white space database systems for operation, and manufacturers are beginning to market products for this category of devices.[23] The figure below depicts the current allocations in the U/V bands.

[18] *See* 47 C.F.R. Part 90 Subpart L and 47 C.F.R. Part 22 Subpart E. The rules specify channels in 13 metropolitan areas, however, operations are allowed in only 11 of those areas due to spectrum limitations in the U.S. border areas. The eleven markets where PLMRS facilities are currently operating on are: Boston, MA; Chicago, IL; Dallas/Ft. Worth, TX; Houston, TX; Los Angeles, CA; Miami, FL; New York, NY/NE Jersey; Philadelphia, PA; Pittsburgh, PA; San Francisco-Oakland, CA; and Washington, D.C. Cleveland, OH and Detroit, MI are designated in the rules as metropolitan areas where PLMRS facilities may operate on the 470-512 MHz band segment; however no PLMRS facilities are allowed on that band segment in those areas due to frequency limitations along the northern border.

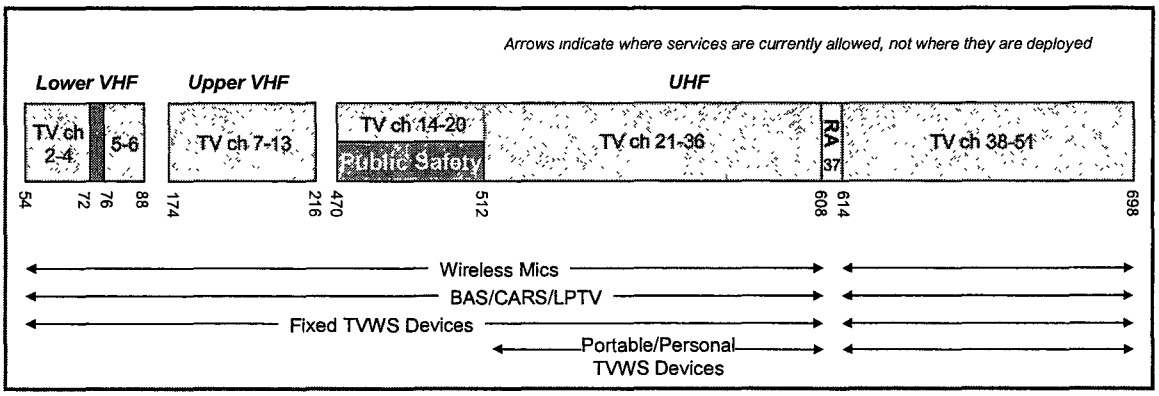
[19] *See* 47 C.F.R. §§ 15.231, 15.241 and 15.242. Effective October 16, 2002, the Commission ceased granting certifications for new medical telemetry equipment that operates on TV channels, but there is no cutoff on the sale or use of equipment that was certified before that date. *See* 47 C.F.R. § 15.37(i). To provide spectrum for wireless medical telemetry equipment, the Commission established the Wireless Medical Telemetry Service to operate on a primary basis in 13.5 megahertz of spectrum in the radio astronomy band at 608-614 MHz (TV channel 37) and in two bands at 1395-1400 MHz and 1427-1429.5 MHz. *See Amendment of Parts 2 and 95 of the Commission's Rules to Create A Wireless Medical Telemetry Service*, Report and Order, ET Docket No. 99-255, 15 FCC Rcd 11206 (2000). *See also Amendments to Parts 1, 2, 27, and 90 of the Commission's Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands*, WT Docket No. 02-8, Memorandum Opinion and Order, 18 FCC Rcd 16920 (2003).

[20] *See* 47 C.F.R. § 2.106 NG66(b) and 47 C.F.R. § 22.1007.

[21] *See* 47 C.F.R. § 22.591.

[22] *See Unlicensed Operation in the TV Bands*, ET Docket Nos. 04-186 and 02-380, Second Report and Order and Memorandum Opinion and Order, 23 FCC Rcd 16807 (2008).

[23] *See Unlicensed Operation in the TV Bands*, ET Docket Nos. 04-186 and 02-380, Second Memorandum Opinion and Order, 25 FCC Rcd 18661; *see also* separate *Public Notices* announcing approval of Spectrum Bridge, Inc. and Telcordia Technologies, Inc. to operate their TV white space database systems, *Public Notice*, DA 11-2043, released December 22, 2011 and *Public Notice*, DA 12-466, released March 26, 2012. On April 4, 2012, the Commission also adopted a *Third Memorandum Opinion and Order* in the TV white spaces proceeding, *Unlicensed Operation in the TV Bands*, ET Docket Nos. 04-186 and 02-380 Third Memorandum Opinion and Order, FCC 12-36, released April 4, 2012, in which it addressed several outstanding issues presented in petitions for reconsideration of the *Second Memorandum Opinion and Order* in that proceeding.



7. *Notice of Proposed Rulemaking.* In the *Notice of Proposed Rulemaking* (*Notice*) in this proceeding, the Commission proposed initial steps to enable the recovery of a portion of the U/V bands now used by broadcast television, spectrum which in later actions it expected to make available for flexible use by fixed and mobile wireless communications services, including mobile broadband.[24] The Commission proposed three actions: (1) add new allocations for fixed and mobile services in the U/V bands (excluding channel 37) to be co-primary with the existing broadcasting allocation in those bands; (2) establish a framework that, for the first time, permits two or more television stations to share a single six-megahertz channel; and (3) consider new methods to increase the utility of the VHF bands for the operation of television services. We received 73 comments and 25 reply comments in response to the *Notice*.[25]

8. *Legislation.* On February 22, 2012, the President signed the *Spectrum Act*, which, among other things, requires the Commission to conduct an incentive auction to recover a portion of the broadcast TV spectrum while preserving that service as a healthy, viable medium. More specifically, Section 6403 of the *Spectrum Act* contains special provisions applicable to an incentive auction of broadcast television spectrum.[26] Section 6403(a)(1) directs the Commission to conduct a "reverse auction" to determine the amount of compensation that each broadcast television licensee would accept for voluntarily relinquishing some or all of its spectrum usage rights for assignment through a system of competitive bidding, Section 6403(a)(2) sets forth a non-exclusive list of eligible relinquishments, including relinquishing usage rights in order to share a channel with another licensee, and Section 6403(a)(4) provides that a broadcast television station that voluntarily relinquishes spectrum in order to share a channel shall have, at its shared location, the carriage rights it would have at such location if it were not sharing a channel.[27]

---

[24] *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)(*Notice*).

[25] Appendix A includes a list of parties that submitted comments and reply comments, as well as the abbreviated name of each party.

[26] *See Spectrum Act* at § 6403. In addition, Section 6402 of the *Spectrum Act* adds to the Communications Act of 1934 (Communications Act) a new Section 307(J)(8)(G)(i) (47 U.S.C. 307(J)(8)(G)(i)), which provides in relevant part that "the Commission may encourage a licensee to relinquish voluntarily some or all of its licensed spectrum usage rights in order to permit the assignment of new initial licenses subject to flexible-use service rules by sharing with such licensee a portion, based on the value of the relinquished rights as determined in the reverse auction .... of the proceeds .... from the use of a competitive bidding system under this subsection." *Id.* at § 6402.

[27] *See Spectrum Act* at §§ 6403(a)(1), (2), (4). Section 6403 specifically provides that "[A] broadcast television station that voluntarily relinquishes spectrum usage rights under this subsection in order to share a television channel (continued....)

III. DISCUSSION

9. With this Report and Order, we take the first steps toward repurposing a portion of the U/V bands for new flexible uses, including mobile broadband services, while protecting the vitality of the television broadcast service. Specifically, we adopt the proposal in our *Notice* to establish a regulatory framework for the sharing of a single broadcast television channel by multiple licensees. These new channel sharing rules will facilitate the recovery of underutilized television channels for flexible use in a manner that meets consumer and business needs by enabling broadcasters to relinquish spectrum while continuing to maintain broadcast television service. As we begin this effort to repurpose spectrum in the U/V bands, we continue to recognize the vital role played by broadcast television. To this end, we intend to provide for an orderly transition of a portion of the U/V bands to flexible use in a manner cognizant of the impact on consumers of television programming viewed over-the-air and through multichannel video program distributors.

10. At this time we will not act on the *Notice*'s proposals to establish fixed and mobile allocations in the U/V bands or to improve TV service on VHF channels. We will undertake a broader rulemaking to implement the *Spectrum Act*'s provisions relating to an incentive auction for U/V band spectrum, and we believe it will be more efficient to address new allocations in that rulemaking. Furthermore, the record in this proceeding does not provide us a clear direction with respect to significantly increasing the utility of the VHF bands for the operation of television services. Comments on this issue generally argue that the Media Bureau's current practice of addressing service problems on VHF channels on a case-by-case basis, including through license modifications to allow power increases and changes in channels, have effectively resolved many of these problems. Thus, they assert that the proposals in the *Notice* would not offer significant additional improvements to VHF service. Moreover, commenters did not offer any significant alternatives to the proposals in the *Notice* with respect to improving VHF TV reception. We may, however, revisit this issue at a later time.

A. General Channel Sharing Parameters

1. Channel Sharing Arrangements Will Be Voluntary

11. At the outset, we stress that any channel sharing arrangements in the context of an incentive auction in the U/V bands will be voluntary.[28] Although few broadcasters commented on the overall merits of channel sharing, many urged that participation in a channel sharing arrangement should be done on an entirely voluntary basis.[29] The rules we adopt will not require any licensees to operate on a shared channel under any circumstances.[30] Nor will the rules we adopt authorize the Commission to choose channel sharing partners.[31] Rather, under the rules we adopt, broadcasters themselves will decide whether

---

(...continued from previous page)
and that possessed carriage rights under section 338, 614, or 615 of the Communications Act (47 U.S.C. §§ 338; 534; 535) on November 30, 2010, shall have, at its shared location, the carriage rights under such section that would apply to such station at such location if it were not sharing a channel."

[28] *See Spectrum Act* at § 6403(a)(1) (Granting authority for the Commission to conduct a "reverse auction to determine the amount of compensation that each broadcast television licensee would accept in return for *voluntarily* relinquishing some or all of its broadcast television spectrum . . . .") (*emphasis added*).

[29] *See, e.g.,* Public Broadcasters Comments at 9 ("incentive auctions must be entirely voluntary").

[30] Several commenters express the mistaken belief that our rules would force licensees into involuntary channel sharing arrangements. *See, e.g.*, ION Comments at 6; Belo Comments at 2-13; Cox Comments at 23; NAB Comments at 18; WBOC Comments at 2.

[31] For this reason, AT&T believes that "the concerns of ION Media and others worried about mandatory channel sharing should be alleviated." AT&T Reply Comments at 9.

to enter into a channel sharing arrangement and, as set forth below, will have flexibility to determine some of the key parameters under which they will combine their multiple television stations onto a single six MHz channel. We will establish in a future proceeding additional rules governing channel sharing arrangements. In this regard, we note that channel sharing under the rules we adopt herein will be limited to broadcasters participating in an incentive auction process. We will consider how channel sharing will be applied outside of the incentive auction context in a future proceeding.

12. We agree with the view expressed by several commenters that participation in a channel sharing arrangement has the potential to benefit broadcasters and the viewing public in addition to freeing spectrum for new wireless services.[32] For example, channel sharing may reduce operating costs,[33] providing broadcasters with additional net income to strengthen their operations and to improve programming services.[34] In particular, voluntary channel sharing may provide existing small and minority-owned stations, as well as other niche stations, an opportunity to use the capital infusion they receive from the incentive auction as well as provide operating-cost savings from sharing a transmission facility to enhance or preserve their local program offerings.[35] Channel sharing will provide a means for stations not interested in exiting the television business to participate in an incentive auction process. As CTIA notes, "because . . . channel sharing . . . is voluntary, it can be presumed that those broadcast licensees who take advantage of this regime are doing so because it will yield financial or other benefits for the licensee."[36] In this way, our voluntary channel sharing framework will help to preserve over-the-air television as a "healthy, viable medium going forward, in a way that would not harm consumers overall, while establishing mechanisms to make available additional spectrum for flexible broadband uses."[37]

13. Other commenters raise concerns about channel sharing. However, many of these stem from the apprehension that channel sharing would not be a voluntary process. For instance, NRB and Watchmen express the mistaken concern that stations "opting to channel share will not know which station they will join with, or whether another station will join with them."[38] Class A broadcaster KAXT expresses the fear that it might be forced as a result of channel sharing to move its transmitter location, a change it could not afford.[39] NAB argues that the "numerous complications" raised by channel sharing "are best sorted out in private negotiations among the participating parties, and the Commission should not intrude into the arrangements that stations make to address them. For these and other reasons, such as

---

[32] *See, e.g.*, AT&T Comments at 5-6 (channel sharing is a "win-win for all concerned") and Reply Comments at 10-11; CEA Comments at 12-13 and Reply Comments at 11; CTIA Comments 13-15 and Reply Comments 10-11; MMTC Comments 14-16; TIA Comments at 8; Univision Comments at 9.

[33] *See* AT&T Comments at 6; *see also* CEA Comments at 13 ("channel sharing will benefit licensees, particularly those that wish to save on their operating costs or minimize the amount of their investment in spectrum or transmission facilities").

[34] *See* TIA Comments at 8 (allowing television broadcasters the option of sharing one 6 MHz channel will "provide strong incentives for current licensees to participate in voluntary incentive auctions, while enabling new business opportunities for broadcasters"); *see also* CTIA Comments at 14 ("this framework could also lead to cost savings and additional income for broadcast licensees, enabling the development of new programming and strengthening over-the-air broadcasting overall").

[35] *See* MMTC Comments at 14 ("DTV subchannels allow businesses to increase audience share and provide consumers with increasingly diverse content by streaming programming online").

[36] CTIA Comments at 15.

[37] *Plan* at 89.

[38] NRB Comments at 9; *see also* Watchmen Comments at 2 ("sharing partners will not be known until after the auction. . . .").

[39] KAXT Comments at 2.

the complexities surrounding alienability of licenses once stations have entered into a channel-sharing arrangement, we agree with the Commission that any channel sharing construct must be voluntary."[40] Finally, Public Broadcasters urge that "public TV stations need to be entrusted with the right and responsibility to determine how best to serve the public interest in their communities."[41] We agree with commenters that channel sharing arrangements must be voluntary and that the sharing parties must have a say in selecting their sharing partners and fixing the terms of the sharing arrangements, subject to the rules to be adopted in connection with participation in the incentive auction. Therefore, concerns about the ramifications of stations being forced into channel sharing arrangements are unfounded.

14. Individual commenters raise other issues that likewise are largely addressed by the fact that channel sharing will be done on a voluntary basis. KAXT, as well as full power broadcasters Belo, ION, Trinity, and UNC, point out that, because they are currently using all of their channel capacity, they will be prevented from sharing a 6 MHz channel.[42] Nevertheless, ION states that, so long as channel sharing is voluntary, and a broadcaster has the option of "retain[ing] full use of its 6 MHz channel – and [the regime] protects these broadcasters from reduced service quality, coverage loss or consumer inconvenience, ION provisionally does not object to channel sharing."[43] LTB sees a drawback to channel sharing in that "there appears to be no mechanism that would allow [channel sharing stations] to move back to a full 6 MHz channel if they later decide they would like to provide consumers a more robust service such as high definition television or innovative supplementary services."[44] Finally, a number of commenters express concern that multiple stations operating on a single channel may encounter various technical problems.[45] We conclude that these technical concerns are unfounded and should not preclude us from allowing channel sharing among those stations that wish to take advantage of such an arrangement in conjunction with the incentive auction process. We anticipate that only those stations whose business plans accommodate sharing a channel and that have fully considered the technical issues surrounding a proposed sharing relationship will propose to share a channel in connection with the auction. Therefore, based upon an examination of the record in this proceeding, we will adopt the voluntary channel sharing regime proposed in the *Notice*.

---

[40] NAB Comments at 18; *see also* Venture Comments at 1 (arguing that "channel and transmitter sharing agreements should be independently negotiated between broadcasters, without the Commission getting involved").

[41] Public Broadcasters Comments at 9.

[42] Belo Comments at 13; ION Comments at 6; KAXT Comments at 2; UNC Comments at 7; Trinity Comments at 4.

[43] ION Comments at 6.

[44] LTB Comments at 24.

[45] Agape Comments at 2 (it is "unlikely that it can be known at this point whether failures will occur infrequently"); LIN Comments at 12 ("shared channels would, at best, reduce the technical quality of each sharing station . . . at worst they would preclude the launch of new and innovative services"); OMVC Comments at 17 ("channel sharing . . . could make it impossible for participating stations to provide Mobile DTV services"); Pearl Comments at 10 ("it will not be possible for a station sharing one-half of a standard 6 MHz channel to offer an HD stream and Mobile DTV"); Sinclair Comments at 7 ("is not feasible to transmit two high quality HD signals on a single 6 MHz ATSC channel"); Smith Comments at 1 ("sharing of channels will probably cause picture impairments to one or both of the stations sharing a channel"); Public Broadcasters Comments at 10 ("channel sharing would dramatically limit HD and multicast capabilities, potentially shrink coverage areas, and restrict the option of deploying new services"); Cox Comments at 19 (sharing a channel cannot allow each broadcaster to provide full-quality HDTV simultaneously; they cannot multicast; and they cannot offer broadcast mobile DTV); Ginter Comments at 2 (channel sharing "would only negatively affect the television viewer with diminished picture quality, fewer viewing options, and the high probability of expensive high definition equipment being rendered useless"); Khanna Comments at 3 ("sharing of TV channels would require re-tuning or possibly re-design of TV receivers"); LTB Comments at 22-23 ("channel sharing proposal would eviscerate the benefits that consumers currently derive from these innovative uses of spectrum as well as the benefits consumers will increasingly derive as Mobile DTV and other new services take hold").

2. Channel Sharing Will Be Flexible

15. As proposed in the *Notice*, we will require that all stations utilizing a shared channel retain spectrum usage rights sufficient to ensure at least enough capacity to operate one standard definition ("SD") programming stream at all times.[46] This requirement will ensure that each station will have sufficient channel capacity to meet our requirement to "transmit at least one over-the-air video broadcast signal provided at no direct charge to viewers."[47] However, because we recognize that "numerous permutations [of sharing a single channel] are possible, including dynamic arrangements whereby broadcasters sharing a channel reach agreements to exchange capacity to enable higher or lower transmission bit rates depending on market-driven choices,"[48] we will provide stations flexibility within this "minimum capacity" requirement to tailor their agreements. This flexibility will allow a variety of different types of spectrum sharing to meet the individualized programming and economic needs of the parties involved. To this end, while licensees sharing a given channel will independently retain their own rights and obligations under their respective licenses, we will not prescribe a fixed split of the capacity of the six MHz channel into discrete blocks from a technological or licensing perspective. Rather, the entire capacity of the six MHz channel will be shared from a licensing perspective, and the licensees will determine the manner in which that capacity will be divided among them, subject to the "minimum capacity" requirement.

16. In implementing a flexible channel sharing plan, we will retain our existing policy framework for allocating, licensing, and operating television stations.[49] Under this policy, despite sharing a single channel and transmission facility, each station will continue to be licensed separately. Each station will have its own call sign, and each licensee will separately be subject to all of the Commission's obligations, rules, and policies.[50] Each station must continue to comply with the technical, operational, and programming obligations (*e.g.*, children's programming, political broadcasting, minimum operating hours, main studio, Emergency Alert System) in our rules. Likewise, each station will retain its existing rights and protections while it operates on a shared-channel basis.[51] In that regard, a channel sharing licensee will not be held responsible for the programming content or rules violations of any other licensee sharing its channel.

17. As we observed in the *Notice*,[52] we have previously licensed spectrum in other services on a shared basis using a variety of different frameworks—all with each licensee remaining subject to its own obligations and holding its own licensed rights. For example, we allow the licensees of two noncommercial educational (NCE) television stations to operate on a single channel on a "time sharing"

---

[46] *See Notice*, 25 FCC Rcd at 16505.

[47] *See Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, Fifth Report and Order, 12 FCC Rcd 12809, 12859 (1997); 47 C.F.R. § 73.624(b) & (c).

[48] *Plan* at 90.

[49] MMTC argues that "instead of continuing 'as much of [the] existing policy framework for allocating, licensing, and operating television stations as possible [in which] each station will continue to be licensed and operated separately,' the Commission should design a program that resembles a condominium framework." MMTC Comments at 15. We do not agree that a complete overhaul of our spectrum licensing policy is necessary and we find that such a drastic change would cause needless confusion with no countervailing benefits. Therefore, we reject MMTC's proposal.

[50] With respect to certain technical requirements that will be shared, such as RF compliance, we will address any need for additional rules and procedures in a future proceeding.

[51] *See* NAB Reply Comments at 29 *citing* APTS Comments at 8-13; Belo Comments at 12-13; ION Comments at 6-7; LeSEA Comments at 6; Local Broadcasters Comments at 18-22; NRB Comments at 8-9; Sinclair Comments at 7-8; Smartcomm Comments at 4; UNC Comments at 7-11; Univision Comments at 8-9.

[52] 25 FCC Rcd at 16506.

basis utilizing separate transmission facilities.[53] Our Mobile Satellite Service licensing regime for Big Low Earth Orbit systems includes a provision whereby up to four CDMA systems are each authorized to operate over 11.35 megahertz of bandwidth in the same 1.6 GHz band, leaving the inter-system coordination to the satellite licensees themselves.[54] Other shared use examples include: Certain Part 90 Private Land Mobile Radio Services (where the large number of shared users are coordinated through a system of frequency coordinators);[55] many Part 95 Personal Radio Services (such as the General Mobile Radio Service, where licensees share the same channels through an informal system of cooperation);[56] and the Part 97 Amateur Radio Service (where all frequencies are shared and coordinated by adherence to rules of operation set forth in Part 97).[57] Our decision today is consistent with these shared-use precedents and provides the first opportunity for multiple broadcast television licensees to operate on a single channel from a shared transmission facility.

18. In adopting rules as proposed in the *Notice*, we must balance competing concerns. As AT&T recognizes, we need to "take extreme care to not develop prescriptive rules that overly limit the ability of broadcasters to design creative ways of allocating use of a single 6 MHz channel."[58] Conversely, ION maintains that "there are additional details that have not been fleshed out, which, without more information, prevent us - either conceptually or mechanically - from making a meaningful evaluation" of whether to enter channel sharing arrangements.[59] Although we recognize that some licensees may want additional information, we believe the rules we adopt today will provide a necessary foundation for licensees to begin to assess whether to enter into a channel sharing arrangement without unduly limiting their flexibility in structuring such arrangements.[60] We delegate to the Media Bureau authority to establish the procedures through which stations may undertake their voluntary proposed channel sharing arrangements, so long as such procedures are consistent with our existing rules and with the additional rules governing channel sharing proposals in connection with an incentive auction that we intend to adopt in a future rulemaking.[61]

---

[53] *See* 47 C.F.R. §§ 73.561, 73.782(c) and 73.1715.

[54] *See Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, CC Docket No. 92-166, Report and Order, 9 FCC Rcd 5936 (1994), *on reconsideration*, Memorandum Opinion and Order, FCC 96-54, 11 FCC Rcd 12861 (1996).

[55] *See, e.g., Amendment of Part 90 of the Commission's Rules*, WT Docket No. 07-100, Second Report and Order and Second Further Notice of Proposed Rulemaking, 25 FCC Rcd 2479 (2010).

[56] *See, e.g., Review of the Commission's Part 95 Personal Radio Services Rules*, WT Docket No. 10-119, Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration, 25 FCC Rcd 7651 (2010).

[57] *See, e.g., Amendment of Part 97 of the Commission's Rules Governing the Amateur Radio Services*, WT Docket No., 04-140, Report and Order, 21 FCC Rcd 11643 (2006).

[58] AT&T Comments at 5.

[59] ION Comments at 6.

[60] The Commission adopted a similar incremental approach in the white spaces proceeding with respect to deciding whether to impose mandatory spectrum sharing provisions for Television Band Devices (TVBDs). *See Unlicensed Operation in the TV Broadcast Bands*, ET Docket No. 04-186, Second Report and Order and Memorandum Opinion and Order, , 23 FCC Rcd 16807, 16895 (2008). In that proceeding, the Commission deferred the creation of detailed spectrum sharing rules, noting that the IEEE industry group was already developing standards for spectrum sharing between TVBDs and expressing concern that any spectrum sharing requirements it might adopt could "conflict with the developing industry standards or otherwise limit manufacturers' flexibility in designing TVBDs." *Id.* The Commission did, however, pledge to "revisit this decision in the future if it appears that regulatory requirements for spectrum sharing between TVBDs are needed." *Id.*

[61] For example, we will consider such issues as the effect of non-renewal or revocation of license upon the stations operating on a shared channel.

B. Basic Qualifications for Channel Sharing

1. Class A Television, Low Power Television, and TV Translators

19. As proposed in the *Notice* and mandated in the *Spectrum Act*, we will permit only full power and Class A television stations to participate in channel sharing.[62] The reverse-auction provisions of Section 6403 of the *Spectrum Act* apply to "broadcast television licensees," which the statute defines as "the licensee of (A) a full-power television station; or (B) ... a Class A television licensee;"[63] only such licensees are eligible to participate in the reverse auction. Only these licensees enjoy primary interference status protection, and must therefore be protected when we devise our repacking plans pursuant to Section 6403.[64] Providing these primary licensees with the option of voluntarily relinquishing spectrum usage rights while continuing to broadcast via a channel sharing arrangement is consistent with the *Spectrum Act* and can facilitate the band clearing and relocation process.[65]

20. Some commenters support also allowing low power television stations and TV translators to participate in channel sharing.[66] Because the *Spectrum Act* limits participation in the reverse auction required by section 6403(a)(1) to only full power and Class A stations, low power stations would not be eligible to propose sharing a channel in conjunction with the incentive auction.[67] Further, because we license low power television stations and TV translators on a secondary interference basis, they create no impediment to repacking as we need not protect these facilities in our repacking plan.[68] For that reason, relinquishment of spectrum by these licensees through channel sharing arrangements will not aid the band clearing or relocation process—our immediate goal in this proceeding. Therefore, at this time we will not

---

[62] A number of commenters agree with this conclusion. *See* Venture Comments at 2; MMTC Comments at 16; Brown Comments at 3; ZGS Comments at 7-8. We acknowledge Venture's comments that "Class A operators who are paired with full-service broadcasters in shared arrangements would have to be allowed to have ERP greater than those currently allowed in the FCC rules." Venture Comments at 2. We agree that sharing the requisite single transmission facility may require that channel-sharing Class A stations operate at a greater power. Class A stations giving up their channel and sharing a channel with a full power television station would gain from this arrangement as their operating power and service area would be greater than that allowed by the Class A rules. Conversely, full power stations giving up their channel and sharing a Class A station's channel would have to agree to operate with less power and a smaller service area. In addition, Class A stations operating analog facilities who agree to share a full power station's digital channel would have to upgrade their station to digital operations. A Class A station with an analog facility that agreed to share its channel with a full power station would also have to convert to digital in order to accommodate the channel sharing arrangement. These are important issues that will be considered in a later proceeding.

[63] *Spectrum Act* at §§ 6001(6), 6403(a).

[64] "Repacking" refers to the implementation of the U/V spectrum repurposing effort mandated by the *Spectrum Act*. *See Spectrum* Act at § 6403(b).

[65] *See id.* at § 6403(a)(2)(C) (identifying voluntary relinquishment of spectrum usage rights to share a TV channel with another licensee as an eligible relinquishment for purposes of the reverse auction required by Section 6403(a)(1)).

[66] Venture Comments at 2; MMTC Comments at 16; Brown Comments at 3; Smartcomm Comments at 4-5; ZGS Comments at 7-8; Entravision Comments at 6.

[67] *See Spectrum Act* at § 6403(a)(1).

[68] *See* AT&T Reply Comments at 9-10 (". . . there is no basis for LPTV licensees to assume any extensive rights to continued operations. LPTV stations have always been authorized on a secondary, non-interference basis. LPTV operations, as has always been the case, do not have any protection rights nor any assurance that their operations would be protected from any reallocation process initiated by the Commission concerning the TV spectrum"). Section 6403(b)(5) of the *Spectrum Act* provides that "Nothing in this subsection shall be construed to alter the spectrum usage rights of low-power television stations."

permit low power television and TV translators to participate in channel sharing arrangements. We will consider channel sharing outside of the context of the incentive auction in a future proceeding. At that time, we will revisit whether to permit low power television stations to share channels.

2. Parties Who May Implement Channel Sharing Arrangements

21. Although the *Notice* proposed "to limit channel sharing to television stations with existing applications, construction permits or licenses as of [November 30, 2010], the date of adoption of this Notice,"[69] the *Spectrum Act* does not set a date restriction on the execution of channel sharing arrangements. It does, however, mandate that only licensees qualify to participate in the auction for releasing some or all of their broadcast television spectrum usage rights.[70] For this reason, we will allow any full power or Class A permittee or licensee, as well as any applicant for an original construction permit, to execute a channel sharing agreement. Applicants for original construction permits, as well as permittees of original permits, however, must complete construction of their facilities and receive a license prior to the commencement of the auction process, the timing of which will be determined in a future proceeding. We note that because we have an ongoing freeze on applications for new full power television stations,[71] and we do not have authority to authorize additional Class A stations, [72] only a few pending applications for new television stations and unlicensed original construction permits exist. Allowing the few outstanding applicants and permittees to execute channel sharing arrangements, so long as they receive a license prior to relinquishing spectrum, will help to free as much spectrum as possible, and provides the broadest chance for full power and Class A stations to realize the benefits of channel sharing opportunities.

22. UCC urges the FCC to allow new entrants to channel share with existing stations in order to avoid freezing current, already-low levels of minority and female broadcast ownership.[73] The purpose of our action today is to set the stage for the incentive auction process required by Section 6403 of the *Spectrum Act*, however, and expanding channel sharing eligibility beyond the scope necessary for that purpose raises broader issues that we will have to address in a future proceeding. As we begin this effort to repurpose spectrum in the U/V bands, we stress our continued recognition that broadcast television provides important benefits to the public. UCC's other comments, such as how the Commission should assess the effect of auctions and channel sharing on broadcast service to the public, whether we should eliminate the UHF discount, whether channel sharing arrangements will lead to market changes that may impact competition, localism, and diversity, how to encourage minority and female participation in the forward auction of spectrum for wireless use, and the S-Class proposal for a new class of stations ("Class S" stations) that would share time with the original licensees of multiplexed, full power, commercial digital TV stations likewise are beyond the scope of our decision today. None of our decisions today would prevent the Commission from initiating proceedings to consider UCC's proposals if the agency determines that such proceedings would serve the public interest. We also emphasize that we recognize the importance of media ownership by minorities and women, that our diversity task force will continue

[69] *See Notice*, 25 FCC Rcd at 16506.

[70] *See Spectrum Act* at §§ 6402(G)(ii)(I) and 6403(a)(1). The *Spectrum Act* defines a "broadcast television licensee" that may participate in channel sharing, and that shall have the right to participate an incentive auction, as: "the licensee of (A) a full-power television station; or (B) ... a Class A television licensee." *Id.* at § 6001(6).

[71] *See* "Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes," *Public Notice*, 19 FCC Rcd 14810 (MB 2004).

[72] *See* Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594 – 1501A-598 (1999), *codified at* 47 U.S.C. § 336(f); *see also Establishment of a Class A Television Service*, MM Docket No. 00-10, Report and Order, 15 FCC Rcd 6355, 6360-62 (2000), Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 8244, 8250-52 (2001).

[73] *See* UCC Comments at 5.

to consider issues related to media ownership by minorities and women, and that such issues are part of our ongoing media ownership proceeding.[74]

3. Commercial and Noncommercial Educational Stations

23. We conclude that commercial and noncommercial educational (NCE) stations should be permitted to share a single television channel. Allowing commercial and NCE stations to operate on a shared channel, as Cablevision notes, "provides maximal flexibility to clear as much broadcast spectrum as possible, enabling shared channels to be located on frequencies that make the most sense from a band-sharing perspective. . . ."[75] Public Broadcasters support the concept of channel sharing as applied to NCE stations so long as we "ensure that certain essential safeguards remain in place."[76] Specifically, they believe that channel sharing between commercial and NCE stations must be done on a voluntary basis, must not result in the loss of NCE service, must permit the NCE station "to continue to support its local public service mission," and must "ensure that at least one of the stations licensed to share a reserved channel is an NCE station . . . ," and that the Commission must "guarantee that, at all times, there will be a continuing place on the reserved channel for NCE service."[77]

24. Our intent in allowing commercial and NCE stations to share a channel comports with these views. In response to the issues raised by Public Broadcasters, we emphasize that, whether or not they continue to operate on a reserved channel, NCE licensees must structure their channel sharing arrangements to ensure continued compliance with our NCE rules to avoid risking their NCE status.[78] On this point, we agree with Cablevision that our plan to maintain separate licenses for each channel sharing partner will help preserve "the different rights and obligations of commercial stations and NCEs."[79] To the extent that operation of a commercial broadcaster on a reserved channel through a channel sharing arrangement "requires modification of Section 73.622 [the digital table of allotments which indicates reserved NCE channels],"[80] we will consider the issues raised by such modification in a future proceeding. However, we will require that a reserved channel NCE licensee that moves to a non-reserved

---

[74] *See 2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 09-182 et al., Notice of Proposed Rulemaking, 26 FCC Rcd 17489 (2011).

[75] Cablevision Comments at 7. This flexibility will be especially beneficial in smaller markets which have fewer licensees with which to craft a channel sharing arrangement. *Id.*

[76] Public Broadcasters Comments at 11.

[77] Public Broadcasters Comments at 11. Public Broadcasters also argue that, because many NCE stations fully utilize their 6 MHz, relinquishing some spectrum will necessarily result in a reduction of NCE programming. As we noted in response to a similar argument raised by commercial broadcasters, such issues should not prevent us from authorizing channel sharing for those stations that want to enter voluntarily into such an arrangement.

[78] *See* 47 U.S.C. § 399B; *Revised Program Policies and Reporting Requirements Related to Public TV and Radio Programming,* Notice of Proposed Rulemaking, 87 FCC 2d 716, 730 (1981) and *Reexamination of Comparative Standards for Noncommercial Educational Applicants,* Further Notice of Proposed Rulemaking, 13 FCC Rcd 21167, n.2 (1998). A station licensed on a non-reserved channel may elect to operate as an NCE. In order to maintain NCE status, the licensee may not broadcast commercial material, and must comply with the other NCE requirements. *Id.*

[79] Cablevision Comments at 7. *See also* NJDRC Comments at 6 (channel sharing between commercial and NCE stations would not affect these stations' separate carriage rights since they will be licensed and operated separately and "there would be no overlap of programming between the two stations").

[80] Public Broadcasters Comments at 11. Public Broadcasters also caution that any de-reservation of TV channels "would be an extraordinary step that must be carefully evaluated." *Id.*

channel as part of a channel sharing arrangement continue to operate on an NCE basis.[81] In imposing this requirement, we seek to optimize possible channel sharing arrangements, thereby increasing the recovery of spectrum, while protecting the integrity of the NCE service.

4. Other Issues

25. In the *Notice* we sought comment on whether we should consider any prospective loss of television service when determining whether to permit stations to modify their transmission facilities in order to accommodate a channel sharing arrangement.[82] We emphasize that channel sharing stations will be required to continue to provide minimum coverage of their principal community of license.[83] Beyond this requirement, we will address in a future proceeding whether, and to what extent, we will allow service losses and whether we will take potential losses into account when considering the proposed sharing arrangement.[84]

C. Preservation of Must Carry Rights

26. As mandated by the *Spectrum Act*, a broadcast station that relinquishes spectrum usage rights in the reverse auction required by section 6403(a)(1) in order to channel share is entitled to the same cable and satellite carriage rights at its shared location as it would have at that same location if it were not channel sharing.[85] Under the Communications Act, cable and satellite operators must carry local broadcast stations that serve the same market, so long as the broadcast station meets certain technical requirements.[86] Pursuant to section 6403, these carriage requirements apply to stations that relinquish spectrum usage rights in the reverse auction required by that provision in order to channel share in the same manner as they apply to non-sharing stations. In this regard, we note that these carriage requirements extend only to one programming stream per station.[87] Thus, under the channel sharing rules

[81] Our current policy allows an NCE operator licensed on a non-reserved channel to convert to commercial operations without Commission consent. This policy will not change: an NCE operator licensed to a non-reserved channel prior to effectuating a channel sharing arrangement will continue to have the right to convert to commercial operations.

[82] *See Notice*, 25 FCC Rcd at 16507.

[83] *See* 47 C.F.R.§ 73.625 (full power television). The Class A television service does not have a minimum community coverage requirement.

[84] In the *Notice* we also sought comment on what impact channel sharing may have on the media ownership rules. *See Notice*, 25 FCC Rcd at 16508. Given the nascence of our implementation of the *Spectrum Act* and of the channel sharing provisions in particular, it is too early to assess any potential implications this implementation may have for our future media ownership rules. Any such implications can be assessed in a future proceeding.

[85] *See Spectrum Act* at § 6403(a)(4) ("A broadcast television station that voluntarily relinquishes spectrum usage rights ... in order to share a television channel and that possessed carriage rights under section 338, 614, or 615 of the Communications Act of 1934 (47 U.S.C. §§ 338; 534; 535) on November 30, 2010, shall have, at its shared location, the carriage rights under such section that would apply to such station at such location if it were not sharing a channel.").

[86] Under Sections 614 and 615 of the Communications Act, local commercial and noncommercial television broadcast stations may require a cable operator that serves the same market as the broadcaster to carry its signal so long as the station meets certain technical obligations such as the delivery of a good quality signal to the MVPD's receive facility. *See* 47 U.S.C. §§ 534 (cable carriage of commercial stations), 535 (cable carriage of non-commercial stations). In addition to these cable "must-carry" rights, Section 338 of the Communications Act requires a satellite carrier to carry upon request all local television broadcast station signals in an area where the satellite carrier provides any local television signals to subscribers, subject to certain technical requirements such as the delivery of a good quality signal to the carrier's receive facility. *See* 47 U.S.C. § 338.

[87] *See* 47 U.S.C. §§ 534(b)(3)(A), 535(g)(1) (requiring cable carriage of the broadcast station's primary transmission in its entirety). *See also* 47 C.F.R. § 76.66(b) (implementing 47 U.S.C. § 338(a)(1) to specifically require satellite

(continued....)

we adopt to implement section 6403, each separately licensed broadcast station sharing a single six MHz channel will have at least one—but only one[88]—"primary" stream of programming entitled to carriage rights at its shared location, just as it would have at the same location were it not sharing, so long as the station meets the technical requirements of the Communications Act's carriage provisions.[89]

27. The statutory protection provided by section 6403(a)(4) moots the concerns expressed by commenters such as LTB who argued that, absent a change in federal law, the agency's adoption of carriage rules for channel sharing stations could leave these stations without carriage rights "in the event that the courts find fault with the Commission's new interpretation of the must-carry provisions of the Communications Act."[90] Because the rules adopted herein do not impose carriage requirements beyond those already granted licensees operating on a non-channel sharing basis from the same location, we also note that there will be no expansion of "capacity or other burdens on cable systems, satellite operators and telco video providers."[91] Furthermore, we note that the *Spectrum Act* mandates reimbursement of the "costs reasonably incurred," if any, by multichannel video programming distributors in order to continue to carry the signal of a broadcast television licensee who relinquishes spectrum to channel share.[92] With respect to broadcasters, licensees choosing to operate over a single shared channel will neither enhance nor forfeit the carriage rights to which they would otherwise be entitled from the channel sharing location.[93] We examine more fully below the carriage issues outlined in the *Notice*.

(...continued from previous page)
carriage of the broadcaster's primary programming stream); *In Re Implementation of Satellite Home Viewer Improvement*, CS Docket No. 00-96, Report and Order, 16 FCC Rcd 1918, 1923 (2000) (determining that because The Satellite Home Viewer Improvement Act directs the Commission to apply the cable carriage content requirements to satellite carriers, it will require a satellite operator to carry a local television station's primary programming stream).

[88] *See* NCTA Reply Comments at 4 ("if the rules permit multiple broadcast licensees to share a single station's multicast capabilities, the mandatory carriage obligation must remain limited to one video programming stream per existing licensee").

[89] In a future proceeding we will discuss whether to allow a licensee to effectuate a channel sharing arrangement that will result in a change in the station's community of license and/or a change in the station's DMA. At that time we will address the issues raised by Cablevision, if necessary, with respect to relocation of a channel sharing station to a new DMA. To the extent that we allow such a change, we clarify that, pursuant to section 6403(a)(4) of the *Spectrum Act*, the channel sharing licensee that moves to a new community of license and/or DMA will have the same carriage rights at that new location as it would at that same location if it were not sharing a channel.

[90] LTB Comments at 23; *see also* UNC Comments at 10 ("channel sharing would put MVPD carriage of UNC-TV's stations at risk").

[91] *See* ION Comments at 6-7; *see also* NCTA Reply Comments at 2 (NCTA "does not oppose the channel-sharing proposal so long as it does not result directly or indirectly in the expansion of cable operators' 'must carry' obligations") and 4 ("nothing in the statute or the Commission's rules interpreting the statute's applicability to carriage of digital signals would remotely authorize or justify a requirement that mandates higher quality cable carriage than the broadcaster provides to its over-the-air viewers").

[92] *See Spectrum Act* at § 6403(b)(4)(A)(ii). This negates the concern expressed by NCTA about cable systems shouldering additional costs in order to carry channel sharing stations. *See* NCTA Comments at 7.

[93] As we noted previously, channel sharing will involve only existing television stations and, contrary to Dish Network's concerns, will not "lead to the artificial creation of new 'stations' that can demand carriage by multichannel video programming distributors . . . ." Dish Network Comments at 1. *See also* DIRECTV Comments at 2 (urging "that channel sharing not artificially increase the number of stations with carriage rights, when compared to those that would exist absent channel sharing").

1. Cable Carriage

28. Commenters have argued that, in order to encourage television stations to participate in the incentive auction by agreeing to share single channels, we must ensure that each channel-sharing station's individual must-carry rights will not be diminished or enlarged by entering a sharing arrangement, including relocation incidental to such an arrangement.[94] Congress mandated no less in the *Spectrum Act* when it provided that each channel-sharing station "shall have, at its shared location, the carriage rights under such section that would apply to such station at such location if it were not sharing a channel."[95] We agree with Cablevision and other commenters that the "mere fact that multiple broadcast licensees share a single broadcast channel should not affect their must carry rights."[96]

29. Under federal law, a commercial television station qualifies for carriage on a cable system when the community to which it is licensed is within the same Nielsen designated market area (DMA) as the cable system.[97] Under the rules adopted in this Order, the channel sharing station which, as noted earlier, will continue to be licensed separately,[98] will qualify for carriage in a particular DMA so long as the channel sharing arrangement provides for operation on a channel assigned to a community within the same DMA as the cable or satellite operator. This will be the case even if one sharing station elects retransmission consent and the other elects must carry.[99] Accordingly, consistent with section 6403(a)(4) of the *Spectrum Act*, commercial stations will retain the same carriage rights operating on a channel sharing basis from a particular location as they would operating from the same location on a non-channel sharing basis.[100]

30. We caution that, in order to ensure carriage, broadcasters must continue to meet the eligibility requirements in our rules after implementing the channel sharing arrangement. In particular, in the *Notice* we pointed out that carriage rights extend only to those local commercial stations that provide a "good quality signal" of at least -61 dBm to the cable or satellite provider.[101] Thus, channel sharing stations

---

[94] *See* Cablevision Comments at 9.

[95] *Spectrum Act* at § 6403(a)(4). With this pronouncement, Congress settled the issue, raised by LTB, of whether two broadcast licensees sharing a transmitter will continue to be considered separate stations for carriage purposes. LTB Comments at 20-21.

[96] Cablevision Comments at 9; *see also* CTIA Comments at 14 (broadcasters "could still receive full must carry rights on cable and satellite provider networks"); NAB Comments at 19 ("should stations choose to share a channel each station would retain its must-carry rights for its primary signal"); NJDRC Comments at 7 ("any new channel sharing framework should not affect broadcasters' carriage rights"); Harris Comments at 2 ("Commission should continue to treat stations that choose to share a channel as discrete stations with the same rights (must carry) and obligations (public service) as if they had their own transmission facility").

[97] *See* 47 U.S.C. § 534(h); *see also* 47 C.F.R. § 73.622 (digital table of allotments).

[98] NAB believes that "the Commission should make clear that a station entering into a channel-sharing arrangement would remain a separately licensed entity and retain all rights and protections afforded to any broadcast television licensee, whether it is the sole occupant of a channel or operating on a shared-channel basis." NAB Comments at 19. We believe that we have done so in this item. *See supra*, para. 16.

[99] *See* 47 U.S.C. §325(b); *see also* §(b)(2)(A) (noncommercial stations may not elect retransmission consent).

[100] A channel sharing station wishing to modify its market will follow the same existing procedures as a station not engaged in a channel sharing operation.

[101] *See* 47 U.S.C. §§ 338(b), 534(h)(1)(B)(iii). *See also Carriage of Digital Television Broadcast Signals*, CS Docket Nos. 98-120, 00-96 and 00-2, First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 2598 (2001) (establishing the service level for cable) *and Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues*, CS Docket No. 00-96, Second Report and Order, Memorandum Opinion and Order, and Second Further Notice of Proposed Rulemaking, 23 FCC Rcd 5351 (2008) (adopting identical requirements in the satellite context).

must provide this signal level in order to qualify for carriage from the shared location. Additionally, a channel sharing Class A television station must be "located no more than 35 miles from the cable system's headend" in order to qualify for must carry on a particular cable operator, even if that Class A station shares channels with a full power station not subject to the 35 mile requirement.[102] We expect that stations will take into account technical obligations that could affect their continuing carriage rights when designing their channel sharing arrangements.

31. With respect to NCE stations, we agree with Public Broadcasters that the must-carry rules are "critical to public TV's universal service mission" and that these rules "must remain in place for sharing stations as if such stations were still operating on separate channels."[103] Under our current rules, an NCE station can be considered "local," and thus eligible for mandatory carriage on a cable system, in one of two ways: it may either be licensed to a community within 50 miles of the system's headend; or the system's headend[104] must be located within the station's digital noise limited service contour ("NLSC").[105] Pursuant to the *Spectrum Act* and as proposed in our *Notice*, a channel sharing NCE station that meets these requirements from the shared location will be entitled to the same must-carry rights as it would be if it were not in a channel sharing arrangement.[106]

32. Regarding the practical impact of adhering to the eligibility requirements of the Communications Act's carriage provisions under a channel sharing situation, UNC points out that moving transmission facilities in order to accommodate channel sharing will change "the reach of the station's signal ... in almost every instance, and, in some cases, that change will compromise the station's ability to satisfy the carriage criteria, putting the station at risk of losing MVPD carriage rights" from the new

---

[102] *See* 47 U.S.C. § 534(h)(2). For purposes of mandatory carriage, Class A television stations are considered in the same manner as low power television stations. These stations have limited mandatory carriage rights.

[103] Public Broadcasters Comments at 12.

[104] 47 U.S.C. § 535(l)(2); *see also* LeSEA Comments at 2 ("channel sharing may require moves that jeopardize mandatory carriage rights" such as "moving beyond 35 miles from a cable system principal headend"); *compare* Venture Comments at 2. (Class A stations "should not be limited to the 35-mile copyright protection rule if they share a channel with a full service station and the protected contour of the full service station goes beyond 35 miles").

[105] Since the conversion of full power stations to digital operations, the Commission uses the noise limited service contour (NLSC), set forth in 47 C.F.R. § 73.622(e), in place of the analog Grade B contour set forth in 47 C.F.R. § 73.683(a). *See In the Matter of 2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* MB Docket No. 09-182, Notice of Inquiry, 25 FCC Rcd 6086, 6117 n. 148 (2010) (stating that the Commission developed the digital NLSC to approximate the same probability of service as the Grade B contour and has stated that the two are roughly equivalent). The two standards define the noise-limited service contours for the respective analog and digital television transmission systems. The Commission has used the NLSC since the digital conversion in both cable proceedings and in other settings (satellite proceedings, ownership proceedings, etc.). *See, e.g., Tennessee Broadcasting Partners*, Memorandum Opinion and Order, 25 FCC Rcd 4857, 4859 at para. 6, n. 14 (2010) (stating that the Commission has treated a digital station's noise-limited service contour as the functional equivalent of an analog station's Grade B contour). Congress has also acted on the presumption that the two standards are roughly equivalent, by adopting parallel definitions for households that are "unserved" by analog (measured by Grade B) or digital (measured by NLSC) broadcasters in the Satellite Television Extension and Localism Act (STELA) legislation enacted after the television digital conversion. 17 U.S.C. § 119(d)(10)(A)(i).

[106] Venture specifically supports this conclusion. *See* Venture Comments at 2. As we previously discussed, we will address whether to allow a licensee to effectuate a channel sharing arrangement that will result in a change in the station's community of license in a future proceeding. To the extent that we allow such a change, we clarify that the channel sharing licensee that moves to a new community of license will have the same carriage rights at that new location as it would at that same location if it were not sharing a channel.

location.[107] Although we understand that concern, because participation in channel sharing will be voluntary, we expect that NCE stations will account for such possible effects on mandatory carriage rights when considering their channel sharing options. Further, some public broadcasters have negotiated contractual carriage rights beyond the statutory carriage rights, including carriage of multicast services which, Public Broadcasters argue, may be lost "if a sharing station reduces its HD and/or multicast services transmitted via its over the air signal."[108] We encourage parties to consider the impact of a channel sharing operation on any such private carriage arrangements before deciding to voluntarily relinquish spectrum in order to channel share.

2. DBS Carriage

33. As we explained in the *Notice*, satellite carriers have a statutory copyright license allowing them to retransmit local broadcast programming to subscribers in that local station's television market.[109] Generally, each satellite carrier that chooses to provide this "local-into-local" carriage for one broadcaster must carry every local television station in the particular DMA that requests carriage so long as the station complies with carriage requirements, including providing a good quality signal to the satellite carrier's local receive facility.[110] This "carry one, carry all" requirement applies to both commercial and NCE stations.[111]

34. We agree with satellite carriers DIRECTV and Dish Network that channel sharing should "neither increase nor decrease the carriage rights of any broadcaster."[112] As with cable carriage discussed above, under the *Spectrum Act* a station choosing to channel share shall have, at its shared location, the same satellite carriage rights that would apply to such station at such location if it were not sharing a channel so long as it meets the carriage requirements at that location.[113] Finally, Dish Network and DIRECTV emphasize the importance of keeping "MVPDs apprised of any potential disruption to current operations, allowing MVPDs to properly alert their subscribers."[114] We recognize the importance of informing all relevant constituencies of the implementation of channel sharing, as well as repacking, and will address the institution of notice requirements in a future proceeding.

IV. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Act Analysis

35. The Final Regulatory Flexibility Analysis is attached to this Report and Order as Appendix C.

---

[107] UNC Comments at 10-11.

[108] Public Broadcasters Comments at 12.

[109] 47 C.F.R. § 76.66(a)(6). Generally, a television station's "local market" is the DMA in which it is located. *See* 17 U.S.C. §122(j)(2)(A); 47 U.S.C. § 340(i)(1).

[110] *See* 47 U.S.C. § 338.

[111] 47 U.S.C. §§ 338(a)(1) and (3).

[112] *See* DIRECTV Comments at 2. Significantly, DIRECTV notes that if it "can carry a full-power station today, it can continue to carry that station if it moves to a shared arrangement." *Id.; see also* Dish Network Comments at 1 (channel sharing should not create new carriage rights for existing broadcasters).

[113] *Spectrum Act* at § 6403(a)(4). To the extent that our rules require satellite operators to carry multicast streams for stations licensed in Alaska and Hawaii, that requirement remains in effect for each of the multicast programming streams broadcast by channel sharing stations licensed in those states. *See* 47 C.F.R. § 76.66(b)(2).

[114] Dish Network Comments at 3; *see also* DIRECTV Comments at 2.

B. Final Paperwork Reduction Act of 1995 Analysis

36. Upon further consideration, we have determined that this Report and Order contains no new or revised information collection requirements subject to the Paperwork Reduction Act of 1995.[115] For additional information concerning the information collection requirement contained in this Report and Order, contact the Office of Managing Director ("OMD"), Performance Evaluation & Records Management ("PERM"), Cathy Williams, Cathy.Williams@fcc.gov, at 202-418-2918.

37. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

38. The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[116]

V. ORDERING CLAUSES

39. IT IS ORDERED that pursuant to Sections 4(i), 301, 302, 303(e), 303(f), 303(r) and 309(j)(8) of the Communications Act of 1934, as amended, 47 USC Sections 154(i), 301, 302, 303(e), 303(f), 303(r) and 309(j(8), this Report and Order IS ADOPTED and the Commission's rules ARE HEREBY AMENDED as set forth in Appendix B. The rules and procedures adopted in this Report and Order are effective 30 days after the date of publication of the summary of this Report and Order in the Federal Register.

40. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

41. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[115] The Paperwork Reduction Act of 1995 ("PRA"), Pub. L. No. 104-13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

[116] *See* 5 U.S.C. 801(a)(1)(A).

APPENDIX A

List of Commenters

Commenters (73)

Agape Church, Inc. (Agape)
Association of Public Television Stations, National Public Radio, Public Broadcasting Service and the Corporation for Public Broadcasting (Public Broadcasters)
AT&T Inc. (AT&T)
Belo Corp. (Belo)
Block Communications, Inc. and its wholly owned subsidiaries Lima Communications Corporation, Independence Television Company, Idaho Independent Television, Inc., WAND(TV) Partnership, and West Central Ohio Broadcasting, Inc. (Block)
Hank Bovis (Bovis)
Broadcaster Coalition
Daniel Brown (Brown)
Cablevision Systems Corporation (Cablevision)
Capitol Broadcasting Company, Inc. (Capitol)
CMMB America, LLC (CMMB)
Cohen, Dippell and Everist, PC (Cohen)
Mark J. Colombo (Colombo)
Communications Technologies, Inc. (CTI)
Consumer Electronics Association (CEA)
CTIA- The Wireless Association (CTIA)
Cox Media Group, Inc. (Cox)
Fred Dahlgren (Dahlgren)
Thomas Desmond (Desmond)
DIRECTV, Inc. (DIRECTV)
Entravision Holdings, LLC (Entravision)
Ericsson
Andrew J. Ginter (Ginter)
Robert Gitzen (Gitzen)
Rick Goetz (Goetz)
William F. Hammett (Hammett)
Harris Corporation (Harris)
High Tech Spectrum Coalition (HTPC)
Intercollegiate Broadcasting System (IBS)
ION Media Networks, Inc. (ION)
KAXT, LLC (KAXT)
S. K. Khanna (Khanna)
Land Mobile Communications Council (LMCC)
LeSEA Broadcasting Corporation (LeSea)
Ms. Marsha Levy (Levy)
LIN Television Corporation (LIN)
Local Television Broadcasters (LTB)
City of Los Angeles (City of LA)
Los Angeles County Sheriff's Department (LA County Sheriff)
Los Angeles Regional Interoperable Communications System (LARICS)
Metro TV, Inc. (Metro TV)
Minority Media and Telecommunications Council (MMTC)
Michael Mahan (Mahan)
Mobile 500 Alliance (Mobile 500)

National Association of Broadcasters and the Association for Maximum Service Television (NAB)
National Radio Astronomy Observatory (NRAO)
National Religious Broadcasters (NRB)
National Translator Association (NTA)
New Jersey Division of Rate Counsel (NJDRC)
The Office of Communication of the United Church of Christ, Inc., Media Alliance, National Organization for Women, the Benton Foundation, and Campaign Legal Center (UCC)
Open Mobile Video Coalition (OMVC)
Pearl Mobile DTV Company, LLC (Pearl)
Qualcomm Incorporated (Qualcomm)
RadioShack Corporation (RadioShack)
REC Networks (REC)
Daniel K. Reichenberg (Reichenberg)
Shure Incorporated (Shure)
Sinclair Broadcast Group, Inc. (Sinclair)
Smartcomm, L.L.C. (Smartcomm)
Thomas C. Smith (Smith)
Michael N. Taniwha (Taniwha)
T-Mobile USA, Inc. (T-Mobile)
TechAmerica (TechAmerica)
Telecommunications Industry Association (TIA)
Trinity Christian Center of Santa Ana, Inc. (Trinity)
The University of North Carolina (UNC)
Univision Communications, Inc. (Univision)
Charles Vaughn (Vaughn)
Venture Technologies Group, LLC (Venture)
Watchmen Broadcasting Productions International, Inc. (Watchmen)
WatchTV, Inc. (WatchTV)
WBOC, Inc. (WBOC)
Wireless Internet Service Providers Association (WISPA)
ZGS Communications, Inc. (ZGS)

Reply Commenters (24)

William Ammons (Ammons)
AT&T
Bovis
Ronald J. Brey (Brey)
CBS Corporation (CBS)
Cocola Broadcasting Companies, LLC (Cocola)
CEA
CTIA
Dish Network, LLC (Dish Network)
The Walt Disney Company (Disney)
Khanna
LIN
LTB
Media Alliance, National Organization For Women Foundation Benton Foundation (Media Alliance)
Named State Broadcasters Associations (Named Associations)
National Cable & Telecommunications Association (NCTA)
NAB
NJDRC

NPSTC
The Honorable William L. Owens (Owens)
RadioShack
Sinclair
Smartcomm
Daniel F. Viles, Jr. (Viles)

APPENDIX B

Final Rules

1. A new section 73.3700 is added as follows:

§ 73.3700 Channel Sharing.

(a) *Channel sharing generally.* For purposes of this subsection, "reverse auction" shall mean the reverse auction set forth in Section 6403(a) of the Middle Class Tax Relief and Job Creation Act of 2012. Subject to the provisions of this section, qualified television stations may voluntarily seek Commission approval to share a single six megahertz channel with a proposal submitted in conjunction with the reverse auction. Each station sharing a single channel shall continue to be licensed and operated separately, have its own call sign and be separately subject to all of the Commission's obligations, rules, and policies.

(b) *Basic Qualifications.*

(1) Any full power television station or Class A television station permittee or licensee, as well as any applicant for an original construction permit may execute a channel sharing agreement to be considered in conjunction with the reverse auction.

(2) The party relinquishing spectrum pursuant to a channel sharing agreement must hold a license prior to the commencement of the reverse auction in connection with its channel sharing agreement shall be considered.

(3) Channel sharing agreements shall contain a provision requiring that each channel sharing licensee shall retain spectrum usage rights adequate to ensure a sufficient amount of the shared channel capacity to allow it to provide at least one Standard Definition (SD) program stream at all times.

(4) Channel sharing is permissible between commercial and noncommercial educational television stations.

(5) Channel sharing is permissible between full power television stations, between Class A television stations and between full power and Class A television stations.

(c) *Preservation of Carriage Rights.* A broadcast television station that voluntarily relinquishes spectrum usage rights under this subsection in order to share a television channel and that possessed carriage rights under section 338, 614, or 615 of the Communications Act of 1934 (47 U.S.C. 338; 534; 535) on November 30, 2010, shall have, at its shared location, the carriage rights under such section that would apply to such station at such location if it were not sharing a channel.

2. Section 76.56 is revised as follows:

§ 76.56 Signal carriage obligations.

* * *

(g) *Channel Sharing Carriage Rights.* A broadcast television station that voluntarily relinquishes spectrum usage rights under Section 73.3700 of this Part in order to share a television channel and that possessed carriage rights under section 338, 614, or 615 of the Communications Act of 1934 (47 U.S.C. 338; 534; 535) on November 30, 2010, shall have, at its shared location, the carriage rights under such section that would apply to such station at such location if it were not sharing a channel.

* * * *

3. Section 76.66 is revised as follows:

§ 76.66 Satellite broadcast signal carriage.

* * *

(n) Channel Sharing Carriage Rights. A broadcast television station that voluntarily relinquishes spectrum usage rights under Section 73.3700 of this Part in order to share a television channel and that possessed carriage rights under section 338, 614, or 615 of the Communications Act of 1934 (47 U.S.C. 338; 534; 535) on November 30, 2010, shall have, at its shared location, the carriage rights under such section that would apply to such station at such location if it were not sharing a channel.

* * * *

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA")[1] an Initial Regulatory Flexibility Analysis ("IRFA") was included in the *Notice of Proposed Rulemaking* in this proceeding.[2] Written public comments were requested on the IRFA. This present Final Regulatory Flexibility Analysis.[3]

A. Need for, and Objectives of, the Proposed Rules

2. In the *Report and Order*, the Commission amends its rules to establish a framework that permits two or more television licensees to share a single six megahertz TV channel. The new channel sharing rules framework will, for the first time, permit two or more television stations to share a single channel. Such sharing will allow stations to relinquish a portion of their spectrum for new uses while continuing to provide television service to viewers.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

3. There were no comments received in response to the IRFA.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[4] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[5] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[6] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[7]

5. **Television Broadcasting**. This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television

---

[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996).

[2] *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)(*Notice*).

[3] *See* 5 U.S.C. § 604.

[4] 5 U.S.C. § 603(b)(3).

[5] 5 U.S.C. § 601(6).

[6] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

[7] *See* Small Business Act, 15 U.S.C. § 632 (1996).

broadcasting studios and facilities for the programming and transmission of programs to the public."[8] The SBA has created the following small business size standard for Television Broadcasting firms: those having $14 million or less in annual receipts.[9] The Commission has estimated the number of licensed commercial television stations to be 1,387.[10] In addition, according to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,387 commercial television stations (or approximately 72 percent) had revenues of $13 million or less.[11] We therefore estimate that the majority of commercial television broadcasters are small entities.

6. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[12] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

7. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 393.[13] These stations are non-profit, and therefore considered to be small entities.[14]

8. In addition, there are also 6,739 low power television stations (LPTV), TV Translators and Class A television stations.[15] Given the nature of this service, we will presume that all of these licensees qualify as small entities under the above SBA small business size standard.

9. **Cable Television Distribution Services**. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.

---

[8] U.S. Census Bureau, 2007 NAICS Definitions, "515120 Television Broadcasting" (partial definition); http://www.census.gov/econ/industry/def/d515120.htm.

[9] 13 C.F.R. § 121.201, NAICS code 515120 (updated for inflation in 2008).

[10] *See FCC News Release*, "Broadcast Station Totals as of December 31, 2011," dated January 11, 2012; http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-311837A1.pdf.

[11] We recognize that BIA's estimate differs slightly from the FCC total given *supra*.

[12] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 21.103(a)(1).

[13] *See FCC News Release*, "Broadcast Station Totals as of December 31, 2011," dated January 11, 2012; http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-311837A1.pdf.

[14] *See generally* 5 U.S.C. §§ 601(4), (6).

[15] *See FCC News Release*, "Broadcast Station Totals as of December 31, 2011," dated January 11, 2012; http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-311837A1.pdf.

Transmission facilities may be based on a single technology or a combination of technologies."[16] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts.[17] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[18] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[19] Thus, the majority of these firms can be considered small.

10. **Cable Companies and Systems**. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.[20] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[21] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[22] Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000-19,999 subscribers.[23] Thus, under this second size standard, most cable systems are small.

11. **Cable System Operators**. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[24] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[25] Industry data indicate that, of

[16] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.

[17] 13 C.F.R. § 121.201, NAICS code 517110.

[18] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[19] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[20] 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

[21] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

[22] 47 C.F.R. § 76.901(c).

[23] Warren Communications News, *Television & Cable Factbook 2008*, "U.S. Cable Systems by Subscriber Size," page F-2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

[24] 47 U.S.C. § 543(m)(2); *see* 47 C.F.R. § 76.901(f) & nn. 1-3.

[25] 47 C.F.R. § 76.901(f); *see* Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, DA 01-158 (Cable Services Bureau, Jan. 24, 2001).

1,076 cable operators nationwide, all but ten are small under this size standard.[26] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[27] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

D. Description of Projected Reporting, Recordkeeping, and other Compliance Requirements for Small Entities

12. The Report and Order contains no new or revised information collection requirements subject to the Paperwork Reduction Act of 1995.[28]

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

13. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[29]

14. The Report and Order adopted general channel sharing rules and policies. Among these, the Commission determined that only licenseeswould be permitted to participate in channel sharing in conjunction with the reverse auction. The Commission found that the burden on small entities of limiting channel sharing to only licensees is outweighed by the need to clear as many television channels are possible for reallocation and use by commercial wireless entities to enhance broadband wireless offerings.

15. The Commission permitted Class A television stations to participate in channel sharing but channel sharing by low power television stations and TV translators was not permitted. The Commission determined that the burden on small entities is outweighed by the intent of Congress to limit channel sharing in conjunction with the reverse auction to only full power television and Class A stations as well as the need to complete the successful repacking of television channels and identify channels for reallocation to broadband wireless use.

16. The Commission determined that commercial and noncommercial educational television stations could share a single television channel. The Commission did not find that there would be a significant impact on small entities by this decision. The decision would have little impact and any impact would affect all entities equally.

---

[26] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

[27] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. *See* 47 C.F.R. § 76.909(b).

[28] The Paperwork Reduction Act of 1995 ("PRA"), Pub. L. No. 104-13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

[29] *See* 5 U.S.C. § 603(c).

17. The Commission adopted a requirement that stations involved in channel sharing retain the right to use at least enough spectrum to operate one SD channel. The Commission did not find that there would be a significant impact on small entities by this requirement. Since channel sharing is voluntary, the requirement of retaining sufficient channel capacity to operate at least 1 SD channel would have little impact and any impact would affect all entities equally.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

18. None.

G. Report to Congress

19. The Commission will send a copy of the *Report and Order*, including the FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[30] In addition, the Commission will send a copy the *Report and Order*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *Report and Order* and FRFA (or summaries thereof) will be published in the Federal Register.[31]

[30] *See* 5 U.S.C. § 801(a)(1)(A). The Congressional Review Act is contained in Title II, § 251, of the CWAAA, *see* Pub. L. No. 104-121, Title II, § 251, 110 Stat. 868.

[31] *See* 5 U.S.C. § 604(b).

STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI

Re: Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF (ET Docket No. 10-235)

Two months ago, Congress passed the Spectrum Act, authorizing the FCC to design and conduct the world's first voluntary incentive auctions. Today, we take our first significant action at the Commission level to put this historic legislation into effect.

Incentive auctions are an innovative, market-based mechanism that will enable the repurposing of much needed spectrum, including broadcast spectrum, for flexible use such as mobile services.

Incentive auctions are unprecedented and complex – but they are an opportunity to unleash vitally needed additional spectrum for mobile broadband, helping promote U.S. leadership in mobile, and driving tremendous value creation for American consumers – from improving mobile service to economic growth and job creation to improvements in education, health care, and public safety.

The new legislation authorizes the Commission to offer broadcasters the opportunity to share in auction proceeds -- an unprecedented opportunity for capital infusions for broadcasters. One key mechanism for such capital infusions is channel sharing – which in conjunction with the auction process would provide funds to compensate broadcasters for contributing a portion of their spectrum capacity, while preserving the must-carry rights of the stations sharing channels.

We recognize that broadcasters need good information to inform their decisions, and today's first incentive auction Report and Order is an important step in that process. It establishes a framework for broadcaster participation in a channel sharing agreement with another station, including specifying the rights that channel-sharing stations will have.

We will continue our work to ensure that broadcasters have the information they need with a channel-sharing workshop on May 22.

There are many steps to follow, as we seek to implement the new law and maximize its opportunities. I thank my commissioner colleagues for working together on today's important step, and I look forward to ongoing collaborative efforts to implement the new law.

I encourage all interested stakeholders to participate in the proceedings we will launch to implement the law. Working together, we can make the incentive auction a win-win for the broadcasting industry, the mobile industry, our economy, and all consumers.

My thanks to everyone in the Media Bureau, as well as in OET, for all their hard work on this item.

STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL

Re: Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF (ET Docket No. 10-235)

I commend the Chairman and the bureaus for quickly starting to prepare for the post-incentive auction world. I am voting to approve today's order, which sets forth new rules that will allow any broadcaster that may elect to participate in a future incentive auction to share a six megahertz channel with one or more other stations. Although today's action is a baby step, it is nonetheless a first step down what will be a lengthy road, undoubtedly with many twists and turns. I look forward to continuing to work with my colleagues, our talented staff, and all interested parties as we move ahead to implement Congress's directives. Thank you to all of the team that contributed to this order.

STATEMENT OF COMMISSIONER MIGNON L. CLYBURN

Re: Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF (ET Docket No. 10-235)

Chairman Genachowski is to be commended for presenting this Channel Sharing Order just two months after President Obama and the Congress gave the Commission voluntary incentive auction authority. The Order takes preliminary steps toward making frequency bands, which are principally used for TV service, available for new uses such as mobile broadband service. It provides some basic ground rules, such as identifying the entities that may participate in channel sharing, and clarifies that channel sharing will be voluntary and flexible. To be sure, this is only the first of several Orders the Commission must issue before it can conduct voluntary incentive auctions. But, moving quickly to adopt these ground rules reinforces to all how urgent it is to find more spectrum for mobile broadband services.

This Order also identifies fundamental principles that should guide the Commission, as it initiates other rulemaking proceedings to implement incentive auctions. Congress provided the Commission with the opportunity to reallocate spectrum that our mobile services industry needs, in order to keep pace with consumer demand. But with this opportunity, comes several important obligations.

In my opinion, the top two, are that we must comply with the specific mandates in the statute, and we must conduct this proceeding, in a manner that preserves the integrity of broadcast television service. The item follows these guiding principles in several areas. Notably, and consistent with Section 6403(a) of the new legislation, the Order makes clear that any rules we adopt will ensure that a broadcast TV station, which chooses to channel share, receives the same cable and satellite carriage rights at its new shared location that it had at its original location.

Another important obligation is that we carefully consider the important technical issues raised by the new law. For example, channel sharing arrangements may require broadcast TV licensees to modify their transmission facilities. But, these modifications could lead to loss of television service. The extent to which the Commission should consider possible loss of service, during a modification application, raises difficult questions. This Order explains that the Commission must establish a proper record, in another proceeding, before deciding such issues. I am glad that the Order clarifies, however, that channel sharing stations will be required to provide minimum coverage to their principal community of license.

I also want to thank my colleagues for agreeing to underscore that nothing in this Order would prevent the Commission, from initiating proceedings in response to United Church of Christ's requests, to promote greater diversity in ownership. The recent report of fans sending several racist tweets in response to the late-game heroics of Joel Ward, an African American professional hockey player, serves as a stark reminder that unfortunately, we still have a ways to go to achieve true racial harmony. Diversity of ownership and diversity of programming in the broadcast media, are tools that can be used to promote racial harmony, in local communities where those tensions still exist.

I thank Ruth Milkman, Bill Lake, and Julie Knapp and the expert staffs of the Media Bureau and OET, for their hard work on this item.