

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

In the Matter of)	
)	
Expanding the Economic and Innovation)	GN Docket No. 12-268
Opportunities of Spectrum Through Incentive)	
Auctions)	
)	

**COMMENTS OF A BROADCASTER FOR THE PROMOTION OF
CHANNEL SHARING ARRANGEMENTS**

On behalf of a major market television broadcaster (“Broadcaster”),¹ these comments support a flexible auction process that maximizes the potential for spectrum recovery by eliminating unnecessary barriers for those stations most likely to participate. In particular, Broadcaster urges the Commission to permit changes to a station’s community of license in connection with a channel sharing bid.

Broadcaster believes that the Commission’s goal of recovering 120 MHz of spectrum in the voluntary auction is aggressive but achievable, even in the nation’s largest markets, provided the Commission establishes the right incentives and *opportunities* for stations to participate. To this end, Broadcaster applauds the Commission for considering simplicity and market-driven valuations as guiding principles for the auction. However, Broadcaster respectfully submits that

¹ Broadcaster wishes to remain anonymous at this time. Accordingly, these comments are being filed by counsel pursuant to the procedures set forth in the Commission’s December 18, 2012 Public Notice, DA 12-2040.

one tentative provision set forth in the Notice of Proposed Rulemaking² – a prohibition on community of license changes in channel sharing bids – would seriously undermine the potential success of the auction by precluding participation by an otherwise motivated station in one of the nation’s largest, and hence most difficult to clear, markets.

Broadcaster is a privately held company that operates a station in a top five Designated Market Area (“DMA”). The station is not affiliated with a major television network, but delivers award winning, station-originated, local news and information services to viewers. The station also produces significant quantities of locally-oriented news programming for distribution by other outlets. Broadcaster’s community of license is located in one of the outermost counties in the DMA, but the station’s facilities provide a robust, over-the-air, city grade signal to the largest city in the economic center of the DMA. As a result, Broadcaster is currently distributed to millions of homes – which represent the vast majority of all television households in the station’s DMA – via cable as well as direct broadcast satellite.

Broadcaster has invested, and intends to continue investing, substantial sums of human and financial capital to develop a thriving programming service that delivers high-value content to viewers throughout its DMA. Thus, Broadcaster has no interest in simply selling its spectrum, exiting the business, and sending its hundreds of employees home. Rather, Broadcaster sees an opportunity to continue to provide over-the-air service to viewers *and* to make spectrum available in the incentive auction by channel sharing.

As a privately-owned, non-network affiliated television station located in one of the nation’s largest markets, Broadcaster represents the prototypical owner that will be most willing to participate in a voluntary auction, and ultimately most critical to its success. However, the

² *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, Doc. No. 12-268 (Oct. 2, 2012) (“NPRM”).

Commission's tentative policy decision to prohibit city of license changes in channel sharing bids would, as a practical matter, preclude Broadcaster from actually participating.

In the NPRM, the Commission presumed that stations licensed to different communities would not be prevented from sharing channels.³ In the case of Broadcaster, however, that does not appear to be the case. Although Broadcaster delivers robust coverage to the center of the DMA and enjoys carriage rights there, the station's community of license is located further from the DMA's core than most other licensees. As a consequence, virtually no other television station in the market provides city grade coverage to Broadcaster's community of license. Given the absence of a willing partner with facilities capable of serving Broadcaster's community of license, Broadcaster could not offer its spectrum to the auction. Broadcaster also appears precluded as a practical matter from encouraging any other station to offer its spectrum to the auction and to operate in the future from Broadcaster's facilities. Despite Broadcaster's ability to reach the center of the DMA, its station's service contour also covers large, less populated areas of the DMA. Other stations potentially interested in channel sharing would risk losing over-the-air coverage of significant populations they currently serve, which would make Broadcaster a costly and unattractive sharing partner.

Thus, the Commission's tentative decision not to permit city of license changes in sharing bids would create an unnecessary conundrum. Broadcaster would have neither a viable partner whose facilities Broadcaster could share, nor a likely partner who would be willing to operate from Broadcaster's station. As this example vividly illustrates, the Commission's proposal would have the perverse result of effectively forcing a station that is willing to participate in the incentive auction to instead remain on the sidelines. A tremendous opportunity to secure

³ NPRM at ¶ 89.

additional spectrum in one of the largest, and most critical, markets in the country would be squandered, contrary to the clearly articulated Congressional goal of *maximizing* spectrum recovery by facilitating participation by willing broadcasters.

Permitting community of license changes in the context of the auction is in full harmony with Section 307(b) of the Communications Act, which provides for “a fair, efficient, and equitable distribution of radio service....”⁴ While the Commission has previously disfavored loss of service in city of license change proceedings, Congress has determined that service losses, which are an inescapable byproduct of the incentive auction, are required to address a critical national need for alternative communications services. If a *total* loss of service furthers Congressional policy, then a *lesser* loss – namely, service loss to a particular community but continued service elsewhere through channel sharing – inherently fulfills the *dual* Congressional objectives of maximizing spectrum recovery *and* maintaining a vibrant, free, over-the-air broadcast service.⁵

More than thirty years ago, the Commission ruled that removal of even the last local service to a community in the proper circumstances can best serve the public interest consistent with the policy objectives of Section 307(b).⁶ Given the unprecedented, once-in-a-lifetime opportunity to secure spectrum to meet a compelling, Congressionally-identified national

⁴ 47 U.C.S. § 307(b).

⁵ In addition, if Broadcaster’s sharing arrangement resulted in loss of over-the-air service to its community of license, Broadcaster would endeavor to find other means, if feasible, to provide an over-the-air service to its former community of license.

⁶ Amendment of the Commission’s Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License (Memorandum Opinion and Order), 5 FCC Rcd 7094, 7096 (1990).

demand, the Commission should find that city of license changes in channel sharing bids are consistent with, and indeed ultimately further, the purposes of Section 307(b).

In sum, Broadcaster seeks the opportunity to continue delivering a high value over-the-air television service *and* make spectrum available in the incentive auction through channel sharing. Permitting it to change its community of license in a sharing bid under the circumstances here would maximize the Commission's opportunity to secure critical spectrum for new services in one of the nation's most strategic markets.

Respectfully submitted,

BROADCASTER FOR THE PROMOTION
OF CHANNEL SHARING ARRANGEMENTS

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