

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

In the Matter of)	
)	
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions)	GN Docket No. 12-268
)	
)	
Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations)	MB Docket No. 03-185
)	
)	
Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context)	MB Docket No. 15-137
)	

REPORT AND ORDER

Adopted: March 23, 2017

Released: March 24, 2017

By the Commission: Chairman Pai and Commissioner O’Rielly issuing separate statements; Commissioner Clyburn approving in part, concurring in part, and issuing a statement.

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION.....	1
II. BACKGROUND.....	2
III. DISCUSSION	6
A. Extending Channel Sharing Outside the Incentive Auction	6
1. Full Power Stations	8
2. Secondary Stations	11
3. Sharer Stations.....	14
B. Carriage Rights Outside the Auction Context.....	15
1. Full Power Stations	20
2. Secondary Stations	23
3. Class A Stations.....	27
C. Licensing and Operating Rules Applicable to Channel Sharing Outside the Auction Context.....	30
1. Licensing Rules for Primary-Primary and Primary-Secondary Channel Sharing	31
a. Voluntary and Flexible	31
b. Licensing Procedures.....	34
c. Service and Technical Rules, Including Interference Protection.....	39
d. Station Relocations to Implement Channel Sharing.....	46
2. Channel Sharing Operating Rules	50
a. Channel Sharing Agreements	50
b. Termination, Assignment/Transfer, and Relinquishment of Channel Sharing Licenses	51

3. Reimbursement..... 52

4. Notice to MVPDs 53

D. ATSC 3.0 54

IV. PROCEDURAL MATTERS..... 55

 A. Final Regulatory Flexibility Analysis..... 55

 B. Final Paperwork Reduction Act Analysis..... 56

 C. Congressional Review Act..... 58

V. ORDERING CLAUSES..... 59

APPENDIX A – List of Commenters

APPENDIX B – Final Rules

APPENDIX C – Final Regulatory Flexibility Analysis

I. INTRODUCTION

1. In implementing Congress’s mandate to conduct a broadcast television spectrum incentive auction, the Commission previously established rules to allow full power and Class A stations that relinquish licensed spectrum usage rights in the reverse auction to share a channel with another station. These rules, however, confine channel sharing to auction-related agreements. The Commission also authorized channel sharing between low power television (LPTV) and television translator stations (collectively, “secondary stations”) to help mitigate the auction’s potential to displace secondary stations. In this Report and Order, we adopt rules to allow full power and Class A stations with auction-related channel sharing agreements (CSAs) to become sharees outside of the auction context so that they can continue to operate if their auction-related CSAs expire or otherwise terminate. We also adopt rules to allow all secondary stations to share a channel with another secondary station or with a full power or Class A station. This action will assist secondary stations that are displaced by the incentive auction and the repacking process to continue to operate in the post-auction television bands. The rules we adopt in this Report and Order will enhance the benefits of channel sharing for broadcasters without imposing significant burdens on multichannel video programming distributors (MVPDs).

II. BACKGROUND

2. Congress authorized channel sharing as a reverse auction bid option in the incentive auction.¹ The Spectrum Act provides that “[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

3. The Commission adopted rules for channel sharing in connection with the incentive auction in the *Channel Sharing Report and Order* and the *Incentive Auction Report and Order*.³ Those

¹ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6403(a)(2) (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012) (Spectrum Act). Section 6403(a)(2) of the Spectrum Act specifies three bid options for eligible full power and Class A broadcast television licensees in the auction, including relinquishment of “usage rights in order to share a television channel with another licensee” (a channel sharing bid). 47 U.S.C. § 1452(a)(2).

² 47 U.S.C. § 1452(a)(4).

³ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6726-28, paras. 372-77 (2014) (*Incentive Auction Report and Order*), subsequent history omitted; *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, ET Docket No. 10-235, Report and Order, 27 FCC Rcd 4616 (2012) (*Channel Sharing Report and Order*). The Commission declined at that time to address channel sharing outside the auction context, but stated that it would consider that issue in a future proceeding. See *Channel Sharing Report and Order*, 27 FCC Rcd at 4622, para. 11 and at 4626, para. 20.

rules effectively made channel sharing relationships permanent.⁴ In the *Incentive Auction First Order on Reconsideration*, the Commission revised its rules to provide greater flexibility and certainty regarding CSAs.⁵ Among other things, the modified rules allow CSA parties to choose the term length of their agreements, so that they may end the channel sharing relationship if they so choose while still having the opportunity to continue operating.⁶ The decision to allow term-limited CSAs raised the question of whether to authorize subsequent CSAs, outside of the auction context, when the term of an original CSA expires.⁷ The Commission subsequently proposed in the *Channel Sharing NPRM* to authorize channel sharing by full power and Class A stations outside the incentive auction context, including by one or both parties to auction-related CSAs after the agreement terminates.⁸

4. In the *Digital Low Power Third NPRM*, the Commission proposed to authorize channel sharing between secondary stations and also sought comment on whether to allow secondary stations to share with full power and Class A stations outside the auction context.⁹ In the *Digital Low Power Third Report and Order*, the Commission authorized channel sharing between secondary stations.¹⁰ The Commission also deferred a decision on whether to authorize sharing between secondary stations and full power and Class A stations.¹¹

5. The Commission sought further comment in the companion *Digital Low Power Fourth NPRM* on issues pertaining to full power and Class A stations sharing with secondary stations.¹² The Commission also sought comment on issues pertaining to secondary sharing that were not resolved previously in the *Digital Low Power Third Report and Order*, including whether a secondary sharee

⁴ See *Incentive Auction Report and Order*, 29 FCC Rcd at 6853-54, para. 701.

⁵ See *Incentive Auction First Order on Reconsideration*, 30 FCC Rcd 6668 (2015).

⁶ *Id.* at 6676, para. 20.

⁷ In this Order, we use the term “auction-related sharee” to refer to the full power and Class A station licensees that submit winning channel sharing bids and enter into “auction-related CSAs.” Auction-related CSAs are not subject to the rules adopted in this Report and Order. Rather, auction-related CSAs are subject to the requirements set forth in section 73.3700(h) of the Rules and in the *Channel Sharing Report and Order*, the *Incentive Auction Report and Order*, and subsequent orders on reconsideration. See *Incentive Auction First Order on Reconsideration*, 30 FCC Rcd 6668 (2015); *Incentive Auction Second Order on Reconsideration*, 30 FCC Rcd 12016 (2015).

⁸ See *Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context*, Notice of Proposed Rulemaking, 30 FCC Rcd 6668 (2015) (*Channel Sharing NPRM*). The *Channel Sharing NPRM* was adopted together with the companion *Incentive Auction First Order on Reconsideration*.

⁹ See *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations*, MB Docket No. 03-185, Third Notice of Proposed Rulemaking, 29 FCC Rcd 12536, 12542-48, paras. 13-28 (2014) (*Third Notice*).

¹⁰ See *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Third Report and Order, 30 FCC Rcd 14927, 14937-45, paras. 20-39 (2015) (*Digital Low Power Third Report and Order*). These rules are generally consistent with those proposed in the *Channel Sharing NPRM*.

¹¹ See *Digital Low Power Third Report and Order*, 30 FCC Rcd at 14930, para. 5 and 14963-64, para. 84. The Commission stated that it would resolve that issue in conjunction with the proposal in the *Channel Sharing NPRM* to allow channel sharing by full power and Class A stations outside the auction context. See *id.* at 14964, para. 85.

¹² See *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Fourth Notice of Proposed Rulemaking, 30 FCC Rcd 14927, 14963-64, paras. 84-86 (2015) (*Digital Low Power Fourth NPRM*).

station retains MVPD carriage rights.¹³ The Commission tentatively concluded that secondary sharee stations would have their preexisting MVPD carriage rights on their new shared channels and proposed to permit secondary stations to become sharees regardless of whether they possessed carriage rights or were operating on a non-shared channel prior to entering into a CSA.¹⁴ The Commission also sought comment on additional issues relating to sharing by secondary stations, including CSA term length, MVPD reimbursement for carriage expenses, and MVPD notice regarding changes in carriage obligations.¹⁵

III. DISCUSSION

A. Extending Channel Sharing Outside the Incentive Auction

6. We expand our channel sharing rules to allow full power stations with auction-related CSAs to become sharees outside of the auction context.¹⁶ We also permit all secondary stations to be sharee stations outside the auction context. We conclude that specific provisions of Title III of the Communications Act of 1934, as amended (the “Act”),¹⁷ provide us ample authority to adopt rules to expand channel sharing outside the auction context.¹⁸ Section 303(g) authorizes the Commission to “generally encourage the larger and more effective use of radio in the public interest.”¹⁹ Consistent with that provision, channel sharing promotes efficient use of spectrum by allowing two or more television stations to share a single 6 MHz channel. Section 307(b) directs the Commission to make “distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.”²⁰ Pursuant to its mandate under section 307(b), the Commission disfavors loss of broadcast service.²¹ Consistent with this provision, adopting channel sharing rules will help prevent loss of service by ensuring that stations that enter into CSAs in connection with the auction may continue broadcasting if and when their auction-related CSAs terminate or otherwise expire.²² In addition, authorizing additional types of channel sharing for secondary stations, including with primary stations, will increase the opportunities for displaced secondary stations to continue broadcasting after the incentive auction and the repacking.²³ Section 316 gives the Commission the authority to modify licenses, including by rulemaking, if it finds that will serve the public interest.²⁴ Consistent with this provision, we find that adopting channel sharing rules will serve

¹³ We use the term “sharee” in this Report and Order to refer to a station that relinquishes its spectrum usage rights in order to share a channel with a “sharer” or host station. More than two stations may share a channel, so there may be multiple sharees in a channel sharing relationship, but only one sharer. *See Incentive Auction Report and Order*, 29 FCC Rcd at 6795, note 1580.

¹⁴ *See Digital Low Power Fourth NPRM*, 30 FCC Rcd at 14964, para. 86.

¹⁵ *Id.*

¹⁶ We discuss Class A stations in Section III.C.

¹⁷ 47 U.S.C. §§ 301, *et seq.*

¹⁸ We came to the same conclusion in finding that Title III of the Communications Act provided ample authority to adopt rules to permit channel sharing between secondary stations. *See Digital Low Power Third Report and Order*, 30 FCC Rcd at 14938, para. 20.

¹⁹ 47 U.S.C. § 303(g).

²⁰ 47 U.S.C. § 307(b).

²¹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Notice of Proposed Rulemaking, 27 FCC Rcd 12357, 12375, para. 47 note 88 (2012).

²² *See infra* para. 7.

²³ *See infra* para. 10.

²⁴ 47 U.S.C. § 316. *See Celtronix Telemetry v. FCC*, 272 F.3d 585, 589 (D.C.Cir.2001)).

the public interest by promoting the efficient use of spectrum and facilitating the continued availability of broadcast television stations.

1. Full Power Stations

7. We permit full power stations with auction-related CSAs to become sharees outside of the auction context.²⁵ Our action will ensure that full power stations with auction-related CSAs are able to enter into new CSAs outside the auction context once their auction-related CSAs expire or otherwise terminate and, therefore, are able to continue to channel share and provide service to the public.²⁶ Permitting channel sharing outside the auction for full power stations with auction-related CSAs is a logical extension of our decision in the *Incentive Auction First Order on Reconsideration* to adopt more flexible auction-related channel sharing rules and to permit term-limited CSAs. As a number of commenters agree, for term-limited, auction-related CSAs to be practical, stations must have the option of entering into another channel sharing arrangement after the initial auction-related CSA expires or otherwise terminates, either with the same sharing partner or another (a “second-generation CSA”).²⁷ Without this flexibility, a full power station that is a party to an auction-related CSA would no longer be able to provide service to the public via channel sharing once its auction-related CSA expires or otherwise terminates.²⁸ We conclude that providing these stations with the ability to continue to share outside the auction context furthers Congress’s goals in the Spectrum Act to repurpose spectrum to meet the Nation’s increasing spectrum needs.

8. We will not allow full power stations without auction-related CSAs to become sharees following the auction.²⁹ There is little evidence of demand at this time for other full power stations to

²⁵ This decision encompasses a full power station with an auction-related CSA sharing a channel with another primary station (primary-primary sharing) or with a secondary station (primary-secondary sharing) outside the auction context. As the Commission explained previously, we will not accept an application from a station that submitted a winning channel sharing bid to enter into an auction-related CSA with a secondary station. *See Digital Low Power Third Report and Order*, 30 FCC Rcd at 14937, para. 20 note 55 (explaining that a “relinquishment to share with an LPTV station is not an available option in the incentive auction”). A full power station with an auction-related CSA may, however, enter into a CSA with a secondary station if its auction-related CSA expires or otherwise terminates. Authorizing both primary-primary and primary-secondary sharing outside the auction context may prove beneficial for full power stations with an auction-related CSA by expanding the number of potential stations that can be channel sharing partners if the auction-related CSA expires or otherwise terminates.

²⁶ Our decision applies to both the sharee station(s) and the sharer station that are parties to an auction-related CSA. Either type of station could become a prospective sharee station outside of the auction context. For example, based on the terms of an auction-related CSA that expires or otherwise terminates, the sharer station, rather than the auction-related sharee station, may be required to cease operation on the shared channel, thereby becoming a sharee station outside the auction context that is required to find a new sharing partner in order to be able to continue to channel share and provide service to the public.

²⁷ *See* NAB Comments, MB Docket No. 15-137, at 4; AT&T Comments, MB Docket No. 15-137, at 1; EOBC Comments, MB Docket No. 150137, at 2-3; and WPB Comments, MB Docket No. 15-137, at 4.

²⁸ A party to an auction-related CSA that expires, and that is required to cease operating on the shared channel, *see supra* note 27, must have the ability to continue to share outside the auction context with a new partner in order to continue operating.

²⁹ Nothing in this Order is intended to preclude a station from requesting, or the Bureau from considering an STA for “temporary joint use of a channel.” *See Incentive Auction Task Force and Media Bureau Announces Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, DA 17-106 at 16, para. 47 (rel. Jan. 27, 2017). Moreover, nothing in this Order addresses the permissibility of “local simulcasting” for purposes of transitioning to ATSC 3.0 under consideration in a separate proceeding. *See Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, Notice of Proposed Rulemaking, GN Docket 16-142, FCC 17-13 (Feb. 24, 2017); *see also* para. 53 and note 172 *infra*.

become sharees.³⁰ We believe it is unlikely that a full power station that chose not to bid to channel share in the auction, when it was eligible to be compensated for the spectrum it relinquished, would elect to channel share outside the auction context and to relinquish spectrum without compensation. We also believe it is unlikely that a full power station that submitted an unsuccessful channel sharing bid in the auction would seek to relinquish its spectrum outside the auction context without compensation in order to channel share rather than choosing another option, such as selling its station. We also note that the scenario in which a full power station would give up spectrum for free in order to channel share outside the auction context was not a focus of the record in this proceeding.³¹

9. In addition, by declining to allow full power stations without auction-related CSAs to become sharees outside the auction context, we address concerns that full power channel sharing outside the auction context could increase the number of full power stations MVPDs are required to carry.³² First, absent this limitation, channel sharing could allow unbuilt full power stations to become sharee stations, thereby providing these stations with a shortcut to obtaining carriage and artificially increasing the number of stations MVPDs are required to carry.³³ Second, absent this limitation, if a full power station vacates its channel post-auction to share another station's channel, the vacated channel could be made

³⁰ See NAB Reply Comments, MB Docket No. 15-137, at 6 (“[I]t is unlikely that channel sharing agreements that bear no direct or indirect relationship to the auction will be common. The reality is that broadcasters even potentially interested in channel sharing may have a significant financial incentive to participate in the auction to receive a share of auction proceeds for spectrum relinquishment. Post-auction channel sharing arrangements are likely to be the result of auction-related agreements expiring and the parties electing to seek new partners.”); Media General Reply Comments, MB Docket No. 15-137, at 1-2 (“Given the agency offers no incentive for a licensee to vacate a post-auction channel and voluntarily cede very valuable spectrum by entering into a CSA, Media General questions the practical utility of this rulemaking for broadcasters that did not relinquish spectrum as part of the incentive auction.”).

³¹ Commenters were focused on expanding our channel sharing rules in order to permit auction-related channel sharing stations to enter into second-generation CSAs and to allow secondary stations to channel share with primary stations as a means to mitigate the impact of the incentive auction and repacking. See NAB Comments, MB Docket No. 15-137, at 4; AT&T Comments, MB Docket No. 15-137, at 1; EOBC Comments, MB Docket No. 150137, at 2-3; and WPB Comments, MB Docket No. 15-137, at 4; ICN Comments, MB Docket No. 03-185, at 2; Michiana Comments, MB Docket No. 03-185, at 2.

³² Full power commercial stations are entitled to assert mandatory carriage rights on cable systems throughout their DMA. See 47 U.S.C. §§ 534(a), (b)(1)(A)-(B), (h)(1)(A) & (C)(i); *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, MM Docket No. 92-259, Report and Order, 8 FCC Rcd 2965, 2975, para. 37 (1993) (*Must Carry Order*). See also 47 U.S.C. § 338 (satellite carriage of a commercial or noncommercial educational (NCE) station). An NCE station is eligible for mandatory carriage with respect to cable systems with headends located within 50 miles of its community of license or located within its noise limited service contour. See 47 U.S.C. §§ 535(l)(2)(A)-(B); see also 47 CFR §§ 76.55(b)(1)-(2).

³³ See NCTA Comments, MB Docket No. 15-137, at 6-7. As explained in the *Channel Sharing NPRM*, this concern is reflected in the Spectrum Act. *Channel Sharing NPRM*, 30 FCC Rcd at 6684, para. 43. Congress limited the carriage rights of auction-related sharee stations to those that possessed such rights on November 30, 2010. See 47 U.S.C. § 1452(a)(4). The date of November 30, 2010 refers to the Commission's issuance of the *2010 Channel Sharing NPRM* proposing to allow television stations to channel share. See *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, ET Docket No. 10-235, Notice of Proposed Rulemaking, 25 FCC Rcd 16498 (2010). In that *NPRM*, the Commission proposed to “limit channel sharing to television stations with existing applications, construction permits or licenses as of [November 30, 2010].” *Id.* at 16506, para. 22. In response, MVPDs expressed concern that allowing new stations that have not yet built facilities to become sharee stations would be a shortcut to obtaining MVPD carriage and thereby artificially increase the number of stations MVPDs are required to carry under the must-carry regime. In the Spectrum Act, Congress required a sharee station resulting from the incentive auction to have “possessed carriage rights” on November 30, 2010 in order have carriage rights at its shared location. Consistent with the concerns expressed by MVPDs, this approach precluded stations that were not licensed as of November 30, 2010 from being entitled to carriage under Section 1452(a)(4) because they did not “possess[] carriage rights” on that date.

available for licensing to a new full power station, thereby providing both the original station (now transmitting on a shared channel) and the new station with must-carry rights.³⁴ Thus, by limiting full power sharees outside of the auction context to only those with an auction-related CSA, we avoid an increase in the number of full power stations MVPDs are required to carry under the must-carry regime.

2. Secondary Stations

10. We permit all secondary stations to be sharee stations outside the auction context.³⁵ As the Commission has previously explained, channel sharing outside of the auction context has the potential to increase the opportunities for displaced secondary stations to survive the impending spectrum repack and continue providing programming to the public.³⁶ Channel sharing also has the potential to reduce construction and operating costs for resource-constrained secondary stations, including small, minority-owned, and niche stations.³⁷ Primary-secondary sharing will allow secondary stations to expand their coverage areas by sharing with full power sharer stations³⁸ and provide them with increased interference protection.³⁹ This type of “quasi” interference protection may serve to promote channel sharing as an

³⁴ See NCTA Comments, MB Docket No. 15-137, at 7-10. See *supra* note 33 (explaining that full power commercial stations are entitled to assert mandatory carriage rights on cable systems throughout their DMA).

³⁵ This decision encompasses both primary-secondary sharing and secondary-secondary sharing. Although the Commission authorized secondary-secondary sharing in the *Digital Low Power Third Report and Order*, we sought comment in the *Digital Low Power Fourth NPRM* on whether to permit secondary stations to become sharees regardless of whether they possessed carriage rights or were operating on a non-shared channel prior to entering into a sharing agreement. See *Digital Low Power Fourth NPRM*, 30 FCC Rcd at 14964, para. 86. We also sought comment on whether, as an alternative to channel sharing, a primary station could instead enter into a commercial agreement to air a secondary station’s programming as a multicast stream. See *id.* at 14951, para. 85. No commenter addressed this issue. Nothing in our decision today precludes stations from choosing a commercial programming agreement in lieu of a channel sharing arrangement. Stations are free to decide which option confers more benefits and is most suitable for them.

³⁶ See *Digital Low Power Third Report and Order*, 30 FCC Rcd at 14938, para. 21 (“[T]wo or more displaced LPTV or TV translator stations may file displacement applications proposing to share a single channel. Alternatively, a displaced LPTV or TV translator station could agree to share the channel of a non-displaced station.”). See also ICN Comments, MB Docket No. 03-185, at 2 (channel sharing could “at least help to some extent to advance the Commission’s stated goal of mitigating the negative impacts of the auction and repacking process on LPTV stations”).

³⁷ See *Digital Low Power Third Report and Order*, 30 FCC Rcd at 14938-39, para. 22; *Channel Sharing Report and Order*, 27 FCC Rcd at 4622, para. 12. See also ICN Comments, MB Docket No. 03-185, at 3. Our action is consistent with previous steps taken by Congress and the Commission over the years to protect and improve low power stations. For example, Congress directed the Commission to create the Class A television service to give primary status to certain LPTV stations to both facilitate the acquisition of capital needed by these stations to continue operating and to help preserve such stations during the digital transition. 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) (CBPA); *Establishment of a Class A Television Service*, Report and Order, 15 FCC Rcd 6355, 6355-58, paras. 1-5 (2000) (*Class A Report and Order*). In addition, the Commission has taken steps to mitigate the impact of the incentive auction on LPTV stations. See *Digital Low Power Third Report and Order*, 30 FCC Rcd at 14929-30, paras. 3-4. Supporting secondary stations also helps to foster the minority, female, and small business ownership of broadcasting facilities that has been cited as a hallmark of the low power television service and contributes to the dissemination of information from a multiplicity of sources. See *Class A Report and Order*, 15 FCC Rcd at 6358, para. 3.

³⁸ As Michiana points out, “in most if not all cases, the coverage area of the shared primary channel will be greater than that of the secondary station, and the programming of the secondary station will therefore often be receivable over a larger area.” Michiana Comments, MB Docket No. 03-185, at 3.

³⁹ Under the technical rules we adopt herein, in situations where a secondary station shares a channel licensed to a primary station, the secondary station will enjoy “de facto” primary status by virtue of the fact that the primary station sharer’s signal will be protected. See *infra* para. 41. Thus, a secondary sharee station will be protected from

(continued....)

attractive option to secondary stations that are seeking a method to avoid displacement of their facilities by primary users.⁴⁰

11. Our decision to allow all secondary stations to become sharee stations encompasses unbuilt secondary stations. This approach will assist permittees of secondary stations who prefer to commence service via channel sharing by allowing them to enter into a CSA without first constructing a stand-alone station.⁴¹ Because sharee stations must use the same transmission facility as the sharer, an unbuilt sharee will be able to either divide initial construction costs with the sharer or avoid such costs entirely. In addition, by sharing ongoing costs like electricity and maintenance with the sharer station, the unbuilt secondary permittee can free up resources that can be devoted to improving programming services.⁴²

12. We conclude that our action will not unduly burden cable operators.⁴³ As an initial matter, as discussed below, we interpret the must-carry provisions of the Act to deny carriage rights to secondary sharee stations that are not exercising must carry rights on their existing channel on the date of release of the *Closing and Reassignment PN*.⁴⁴ Thus, although we allow all secondary stations to become sharee stations outside the auction context, we ensure that stations cannot use sharing as a shortcut to obtaining cable carriage rights. Moreover, unlike full power commercial stations, which are entitled to assert mandatory carriage rights on cable systems throughout their DMA,⁴⁵ secondary stations qualify for must-carry on cable systems only under very limited circumstances set forth in section 614 of the Act.⁴⁶ The strict requirements for carriage set forth in the Act will continue to apply to secondary stations.⁴⁷

(Continued from previous page) _____

future displacement by another spectrum user with higher priority at least for the duration of the CSA. *See* ICN Comments, MB Docket No. 03-185, at 2 (“[t]he prospect of a long-term spectrum home will make a major difference in the ability of [secondary] stations to attract the investment capital needed to improve their programming services”).

⁴⁰ A full power station with an auction-related CSA could also choose to share with an LPTV or TV translator host station outside the auction context once its auction-related CSA terminates. As discussed below, a full power sharee that shares a secondary station’s channel will have to operate with the lower power limits specified in Part 74 of the rules for LPTV and TV translator stations. *See infra* para. 41.

⁴¹ As discussed below, such stations will not be eligible for cable carriage rights. *See infra* paras. 22, 24.

⁴² We decline at this time, however, to extend this same flexibility to commence operations via channel sharing to unbuilt full power, new-entrant NCE stations as proposed by APTS. *See* APTS Reply Comments, MB Docket No. 15-137, at 5. As we stated in the *Incentive Auction Report and Order*, to the extent that any loss in service results from the reverse auction, including a situation in which the last NCE station in a given community goes off the air as a result of the auction, we will consider appropriate actions to address such losses after the auction. *See Incentive Auction Report and Order*, 29 FCC Rcd at 6725, para. 368. *See also Incentive Auction Second Order on Reconsideration*, 30 FCC Rcd at 6822, para. 154.

⁴³ We limit our discussion to the burdens on cable operators because low power stations do not have DBS carriage rights. 47 U.S.C. § 338(a)(3). Thus, our decision to allow all secondary stations to become sharee stations will not burden DBS operators.

⁴⁴ *See infra* para. 23. The Media and Wireless Telecommunications Bureaus will issue this public notice upon the conclusion of the auction specifying the new channel assignments and technical parameters of any stations that are assigned new channels in the repacking process or that submit winning channel sharing bids. *See Incentive Auction Report and Order*, 29 FCC Rcd at 6789-6790, para. 544.

⁴⁵ *See supra* note 3.

⁴⁶ First, cable systems must carry local commercial television stations up to one-third of the aggregate number of usable activated channels. 47 U.S.C. § 534(b)(1). Only if there is not a sufficient number of full power local commercial television stations to fill this channel set aside, then a cable system with a capacity of 35 or fewer usable activated channels is required to carry one “qualified low power station” and a cable system with a capacity of more than 35 usable activated channels is required to carry two “qualified low power stations.” 47 U.S.C. § 534(c)(1).

(continued....)

3. Sharer Stations

13. We allow all full power and secondary stations to be sharer stations outside of the auction context, including full power stations that are not a party to an auction-related CSA. In a channel sharing relationship outside the auction context, the sharee station relinquishes its licensed frequencies without compensation and compensates the sharer station for sharing its licensed frequency with the sharee. Although we conclude above that full power stations that are not a party to an auction-related CSA will likely have no incentive to enter into such an arrangement,⁴⁸ the same is not true for potential sharers, who stand to benefit financially through payments from sharee stations. In addition, the ability of such stations to become sharers also benefits other stations by increasing the number of potential sharers. Allowing all stations to be sharers outside the auction context will not increase carriage burdens for MVPDs. Because a sharer station necessarily will have already constructed and licensed its facilities, there is no concern that such stations might use sharing as a shortcut to obtaining MVPD carriage.⁴⁹ In addition, because sharer stations do not relinquish spectrum usage rights, allowing all stations to be sharers does not present concerns with vacated channels being licensed to new stations that could increase the number of stations MVPDs are required to carry.

B. Carriage Rights Outside the Auction Context

14. We interpret the Act as providing full power stations with auction-related CSAs that subsequently become sharees outside of the auction context, as well as their sharer station hosts, with the same carriage rights at their shared location that they would have if they were not channel sharing. We also interpret the Act as providing secondary sharee stations, as well as their sharer station hosts, with the same carriage rights at their shared location that they would have if they were not channel sharing, provided the sharee station is exercising must carry rights on its existing channel on the date of release of the *Closing and Reassignment PN*. As discussed below, we find that our interpretation will effectuate the

(Continued from previous page) _____

Second, in order to be a “qualified low power station,” a secondary station must satisfy all of the following requirements: (A) such station broadcasts for at least the minimum number of hours of operation required by the Commission for television broadcast stations under part 73 of title 47, Code of Federal Regulations; (B) such station meets all obligations and requirements applicable to television broadcast stations under part 73 of title 47, Code of Federal Regulations, with respect to the broadcast of non-entertainment programming; programming and rates involving political candidates, election issues, controversial issues of public importance, editorials, and personal attacks; programming for children; and equal employment opportunity; and the Commission determines that the provision of such programming by such station would address local news and informational needs which are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station’s community of license; (C) such station complies with interference regulations consistent with its secondary status pursuant to part 74 of title 47, Code of Federal Regulations; (D) such station is located no more than 35 miles from the cable system’s headend, and delivers to the principal headend of the cable system an over-the-air signal of good quality, as determined by the Commission; (E) the community of license of such station and the franchise area of the cable system are both located outside of the largest 160 Metropolitan Statistical Areas, ranked by population, as determined by the Office of Management and Budget on June 30, 1990, and the population of such community of license on such date did not exceed 35,000; and (F) there is no full power television broadcast station licensed to any community within the county or other political subdivision (of a State) served by the cable system. 47 U.S.C. § 534(h)(2).

⁴⁷ Based on a review of the 2015 FCC Forms 325 filed by cable systems, only approximately 20 out of 1,975 LPTV stations and 15 of 417 Class A stations are carried on cable systems pursuant to mandatory carriage. The number of LPTV and Class A stations with mandatory cable carriage is approximate, as FCC Form 325 is filed annually only by systems with 20,000 or more subscribers. See 47 CFR § 76.403. In addition, the Commission requires Form 325 to be filed by a sampling of cable operators with less than 20,000 subscribers, *id.*, and the 2015 325 data includes information from these systems.

⁴⁸ See *supra* para. 8.

⁴⁹ *Channel Sharing NPRM*, 30 FCC Rcd at 6685, para. 45.

statutory purposes underlying the must-carry regime without burdening more speech than necessary to further those interests.

15. Under the Act, carriage rights differ depending on whether a station is full power or low power, or commercial or noncommercial, and also depending on whether carriage is sought on a cable or DBS system.⁵⁰ As the Commission has previously recognized, the must-carry provisions of the Act were “written with analog technology in mind” and “do not directly translate to digital technology generally.”⁵¹ Similarly, we conclude that the language of the must-carry provisions is ambiguous with respect to the issue of carriage rights in the context of channel sharing. The language of these provisions does not expressly preclude channel sharing stations from retaining must-carry rights at their shared location, nor does it compel a particular result. For example, in the case of a full power commercial station asserting mandatory cable carriage rights, both before and after the CSA, the station will be a “full power television broadcast station . . . licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is within the same television market as the cable system.”⁵² Accordingly, we choose a reasonable interpretation of the statutory text that best effectuates the statutory purpose underlying the must-carry regime.⁵³ We note that our interpretation is confined to channel sharing scenarios outside the context of the incentive auction and nothing in this Order affects carriage rights outside of those circumstances.

16. We disagree with NCTA’s claim that the must-carry provisions cannot be read to extend carriage rights to channel sharing stations. We do not agree that the definition of “a local commercial television station” is inextricably tied to its assignment to a 6 MHz channel and that, therefore, mandatory carriage obligations extend to only one programming stream per 6 MHz channel.⁵⁴ NCTA cites to Section 534 of the Act, which defines a “local commercial television station” as any commercial full power station “licensed and operating on a channel regularly assigned to its community by the Commission”⁵⁵ NCTA notes that our rules currently define a “channel” as 6 MHz wide.⁵⁶ Sections 614, 615, and 338, however, accord carriage rights to licensees without regard to whether they occupy a full 6 MHz channel or share a channel with another licensee. Nothing in the Act requires a station to occupy an entire 6 MHz channel in order to be eligible for must-carry rights; rather, the station must simply be a licensee eligible for carriage under the applicable provision of the Act. In this proceeding, the

⁵⁰ 47 U.S.C. §§ 338, 534, 535. We previously recited the relevant statutory sections in the *Channel Sharing NPRM* and do not repeat it here. *Channel Sharing NPRM*, 30 FCC Rcd at 6681-85, paras. 34-45.

⁵¹ *In the Matter of Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission’s Rules*, 20 FCC Rcd 4516, 4533, para. 34 (2005) (*Digital Must-Carry Second R&O*).

⁵² 47 U.S.C. § 534(h)(1). The same analysis applies with respect to broadcasters qualifying for cable must-carry rights as “qualified local noncommercial educational television stations” or “qualified low power stations,” and to broadcasters qualifying for DBS must-carry rights as “television broadcast stations.” 47 U.S.C. §§ 535(a), (b) & (1); 47 U.S.C. §§ 534(a), (c) & (h)(2); 47 U.S.C. § 338(a)(1).

⁵³ *See National Cable and Telecommunications Ass’n v. Brand X Internet Services*, 545 U.S. 967, 980 (2005) (“ambiguity in statutes within an agency’s jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion”). In *Turner I*, the Supreme Court held that the must-carry provisions of the Act are subject to intermediate scrutiny under the First Amendment. *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 662 (1994) (*Turner I*). In *Turner II*, a majority of the Supreme Court recognized that the must-carry provisions serve the important and interrelated governmental interests of: (1) “preserving the benefits of free, over-the-air broadcast television,” and (2) promoting “the widespread dissemination of information from a multiplicity of sources.” *Turner Broadcasting Systems, Inc. v. FCC*, 520 U.S. 180, 189-90 (1997) (*Turner II*) (quoting *Turner*, 512 U.S. at 662.)).

⁵⁴ NCTA Comments, MB Docket No. 15-137, at 5.

⁵⁵ *Id.* at 5-6 (citing 47 U.S.C. § 534(h)(1)(A) (emphasis added)).

⁵⁶ *Id.* at 6 (citing 47 CFR §§ 73.624(a), 73.601).

Commission is revising its rules to permit digital stations to share a 6 MHz channel and will require that channel sharing stations be separately licensed and authorized to operate on that channel. Under the rules adopted in this Report and Order, therefore, both the sharer and sharee will be “licensed and operating on a channel” that is “regularly assigned to its community” by the Commission.⁵⁷

17. We also disagree with NCTA that the Act’s “primary video” restriction fails to preserve the carriage rights of stations that enter into channel sharing arrangements outside the context of the auction.⁵⁸ NCTA asserts that the must-carry provisions of the Act require cable operators to carry only one primary video signal per television “channel.”⁵⁹ In this regard, NCTA cites to Section 614 of the Act, which requires cable operators to carry only the “primary video” of “each of the local commercial television stations” carried on the cable system.⁶⁰ NCTA argues that a broadcaster that gives up its spectrum to transmit television programming using a portion of another broadcaster’s 6 MHz channel has no greater carriage rights than those of the other broadcaster’s multicast streams or the streams provided by a lessee of the broadcaster’s multicast capacity.⁶¹ However, the language of the primary video provision of the Act does not support NCTA’s view. Section 614(b)(3)(A) requires a cable operator to carry the primary video “of each of the local commercial television *stations* carried on the cable system.”⁶² The statute, therefore, imposes a requirement to carry one primary video stream per station, not one primary video stream per channel.

18. We also disagree with NCTA’s claim that Congress specifically addressed the carriage rights of auction-related channel sharing stations in the Spectrum Act because, absent this provision, the must-carry provisions of the Act would not afford such rights.⁶³ Rather, in light of the ambiguity in the

⁵⁷ During the post-auction transition period, channels of full-power stations will be “regularly assigned” to communities on a case-by-case basis in response to applications rather than by amending the DTV Table. The Commission authorized the Media Bureau to reissue a DTV Table in the future, but until that occurs there will be no DTV Table. *See Incentive Auction Report and Order*, 29 FCC Rcd at 6789, para. 544, note 1545. (“After the Commission completes the repacking and channel substitution process, the Media Bureau will resume using the current rulemaking process to make new channel allotments and intends to initiate a proceeding to amend § 73.622 of the rules to reflect all new full power channel assignments in a revised Table of Allotments.”).

⁵⁸ *See* NCTA Comments, MB Docket No. 15-137, at 3-10.

⁵⁹ *Id.* at 4.

⁶⁰ 47 U.S.C. § 534(b)(3)(A) (“A cable operator shall carry in its entirety...the primary video, accompanying auction, and line 21 closed caption transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers.”). *See also* 47 U.S.C. § 535(g)(1); 47 U.S.C. § 338(j); 47 CFR § 76.66(j)(1). The Commission has interpreted the primary video restriction to apply not only to multiple streams of the broadcaster’s own programming but also to situations in which the broadcaster leases a portion of its channel for the provision of programming by entities other than the broadcaster. *See Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission’s Rules; Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues, Application of Network Non-Duplication, Syndicated Exclusivity and Sports Blackout Rules to Satellite Retransmission of Broadcast Signals*, First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 2598, 2620-21 (2001) (*Digital Must-Carry First R&O*); *Digital Must-Carry Second R&O*, 20 FCC Rcd at 4531-38.

⁶¹ *See* NCTA Comments, MB Docket No. 15-137, at 5.

⁶² 47 U.S.C. § 534(b)(3)(A) (emphasis added). *See* 47 U.S.C. § 535(g)(1) (“[a] cable operator shall retransmit in its entirety the primary video . . . of each qualified local noncommercial educational television *station* whose signal is carried on the cable system”) (emphasis added); 47 CFR § 76.66(j)(1) (“Each television *station* carried by a satellite carrier, pursuant to this section, shall include in its entirety the primary video”) (emphasis added).

⁶³ NCTA Comments, MB Docket No. 15-137, at 4. *See* 47 U.S.C. § 1452(a)(4) (providing that sharee stations resulting from the incentive auction have the same carriage rights on the shared channel that each station would have on that channel and from that location if it were not sharing).

statutory language of the Act with respect to the carriage rights of channel sharing stations, we conclude that Congress added this provision to provide certainty to potential reverse auction bidders. Moreover, as explained in the *Channel Sharing NPRM*, the Spectrum Act did not simply clarify carriage rights under the Act, it also limited the carriage rights of sharee stations in connection with the incentive auction to those that possessed such rights on November 30, 2010.⁶⁴

1. Full Power Stations

19. We interpret the Act as providing full power stations with auction-related CSAs that become sharees outside of the auction context, as well as their sharer station hosts, with the same carriage rights at their shared location that they would have if they were not channel sharing. As an initial matter, we will continue to apply the November 30, 2010 date for possession of carriage rights to auction-related full power sharee stations entering into a second-generation CSA.⁶⁵ The Spectrum Act limits the carriage rights of sharee stations in connection with the incentive auction to those that possessed such rights on November 30, 2010.⁶⁶ If we did not extend this date to second-generation CSAs, auction-related full power sharees that did not possess carriage rights as of November 30, 2010 could enter into a short-term auction-related CSA, during which time they would not possess carriage rights, and subsequently enter into a second-generation CSA with carriage rights at the shared location. We conclude that extending the November 30, 2010 date for possession of carriage rights to an auction-related full power sharee entering into a second-generation CSA avoids undermining the statutory objective of Section 1452(a)(4). Because Section 1452(a)(4) does not apply to auction-related sharer stations, however, we decline to apply this date restriction to auction-related sharer stations that become prospective sharee stations outside of the auction context.⁶⁷

20. We find that our interpretation will effectuate the statutory purposes underlying the must-carry regime without burdening more speech than necessary to further those interests. This interpretation ensures that full power stations with auction-related CSAs can continue to share outside the auction context once their auction-related CSAs expire or otherwise terminate while retaining their carriage rights. Full power stations with auction-related CSAs already possess carriage rights and will continue to possess such rights during the terms of their auction-related CSAs pursuant to Section 1452(a)(4).⁶⁸ Continuing carriage rights during the terms of second-generation CSAs maintains these rights. If MVPDs stopped carrying the signals of full power stations with auction-related CSAs during second-generation CSAs, these broadcasters would stand to lose a significant audience and associated advertising revenues, thus jeopardizing their continued health and viability. In addition, absent mandatory carriage during the terms of second-generation CSAs, winning channel sharing bidders that indicated on their reverse auction application a present intent to enter into an auction-related CSA after the conclusion of the incentive auction might elect not to channel share post-auction and to instead relinquish their license.⁶⁹ Thus, continued carriage of full power stations with auction-related CSAs serves the important governmental interests of preserving the benefits of free, over-the-air broadcast television and their contribution to source diversity.⁷⁰

⁶⁴ *Channel Sharing NPRM*, 30 FCC Rcd at 6684, para. 43. See also *supra* note 34.

⁶⁵ An “auction-related sharee” is a station that submitted a winning channel sharing bid in the reverse auction and enters into an auction-related CSA with an auction-related sharer station. See *supra* note 7.

⁶⁶ See 47 U.S.C. § 1452(a)(4). See also *supra* note 34.

⁶⁷ See *supra* note 34.

⁶⁸ See 47 U.S.C. § 1452(a)(4).

⁶⁹ See *Application Procedures PN*, 30 FCC Rcd at 11049, para. 39.

⁷⁰ *Turner II*, 520 U.S. at 189-90. NCTA argues that the interests served by the must-carry provisions are no longer “important” or “substantial” in light of the Spectrum Act, which NCTA claims “encourage[d] a substantial number of broadcasters to cease over-the-air broadcasting.” See NCTA Comments, MB Docket No. 15-137, at 9. We

(continued....)

21. We find that our interpretation will not burden more speech than necessary. First, because full power stations that are parties to auction-related CSAs have already built and licensed their stations on a non-shared channel, our action does not provide unbuilt full power stations with a shortcut to obtaining carriage rights, which would increase the number of stations MVPDs are required to carry.⁷¹ Second, our decision declining to allow full power stations without auction-related CSAs to become sharees outside the auction context mitigates NCTA's concern regarding the potential increase in MVPD carriage obligations that could result from licensing new stations on channels vacated as a result of new post-auction sharing arrangements.⁷² Because we permit only full power stations that are already parties to an auction-related CSA to become sharees outside of the auction context, there will be no full power channels vacated after the auction by full power stations electing to become channel sharees. Third, as discussed below, we preclude full power stations with auction-related CSAs that become sharees outside of the auction context from changing their community of license absent an amendment to the DTV Table.⁷³ These actions will further mitigate the impact of channel sharing on MVPD carriage burdens.

2. Secondary Stations

22. We interpret the Act as providing secondary sharee stations, as well as their sharer station hosts, with the same carriage rights at their shared location that they would have if they were not channel sharing, provided the sharee station is exercising must carry rights on its existing channel on the date of release of the *Closing and Reassignment PN*.

23. We find that our interpretation will effectuate the statutory purposes underlying the must-carry regime without burdening more speech than necessary to further those interests. As explained above, sharing could prove beneficial for secondary stations by mitigating the impact of the incentive auction and repacking process on displaced stations.⁷⁴ If cable operators did not carry the signals of

(Continued from previous page) _____
disagree. We do not interpret Congress's decision to allow broadcasters to voluntarily choose to participate in the reverse auction as evidence that the government no longer maintains an important, substantial, or other interest sufficient to justify the must-carry provisions under First Amendment scrutiny. Moreover, Congress provided broadcasters with bid options that would allow broadcasters to remain on the air (channel sharing and UHF-to-VHF bids). See 47 U.S.C. § 1452(a)(2)(B)-(C). Far from encouraging broadcasters to cease over-the-air broadcasting, "[p]ayments to broadcasters that participate in the reverse auction can strengthen broadcasting . . ." *Incentive Auction Report and Order*, 29 FCC Rcd at 6569-70, para. 1. See *id.* at 6850, para. 695 ("Voluntary participation in the reverse auction, via a channel sharing, UHF-to-VHF, or high-VHF-to-low-VHF bid, offers a significant and unprecedented opportunity for these owners to raise capital that may enable them to stay in the broadcasting business and strengthen their operations.").

⁷¹ See *supra* para. 9.

⁷² See *id.* See also NCTA Comments, MB Docket No. 15-137, at 7-10.

⁷³ See *infra* para. 45. Satellite and cable carriage rights on a particular MVPD system generally depend on the station's DMA. See 47 U.S.C. §§ 534 (cable carriage of a commercial station), 338 (satellite carriage of a commercial or NCE station). Requiring full power sharees to continue to serve their communities of license means they will remain in the same DMA. A full power commercial station that moves within its DMA while retaining the same community of license, however, may gain or lose carriage on a cable system as a result of a market modification request or a change in the cable headends reached by the station. See 47 U.S.C. §§ 534(h)(1)(C)(ii)(I)—(IV). See also *Incentive Auction Report and Order*, 29 FCC Rcd at 6857-58, para. 709. An NCE station is eligible for mandatory carriage only with respect to cable systems with headends located within 50 miles of its community of license or located within its noise limited service contour. See 47 U.S.C. §§ 535(l)(2)(A)—(B); see also 47 CFR §§ 76.55(b)(1)-(2). While an NCE sharee station could not change its community of license as a result of channel sharing absent an amendment to the DTV Table, it could shift its signal contour, thereby gaining carriage on some cable systems and losing carriage on others. See *Incentive Auction Report and Order*, 29 FCC Rcd at 6858, note 1981.

⁷⁴ See *supra* para. 10. As noted above, sharing also presents cost savings, provides secondary stations with expanded coverage area by sharing with a full power station, and provides secondary stations with "de facto" primary status when sharing with a primary station. See *id.*

secondary sharee stations and their sharer hosts that otherwise qualify for carriage under Section 614(h)(2), these broadcasters would stand to lose a significant audience and associated advertising revenues, thus jeopardizing their continued health and viability. Carriage of secondary sharees and their sharer hosts that otherwise qualify for carriage under Section 614(h)(2) serves the important governmental interests of preserving the benefits of free, over-the-air broadcast television and their contribution to source diversity.⁷⁵ At the same time, we interpret the Act in a manner that will minimize the possibility of a net increase in carriage burdens.⁷⁶ We note that nothing in this Order prohibits a low power station from privately negotiating for carriage by an MVPD.

24. Significantly, although we allow all secondary stations to become sharee stations outside the auction context, we do not permit secondary stations to enter into channel sharing arrangements solely as a means to newly obtain must-carry rights. We find that it would not serve the purpose of mitigating the impact of the auction and repacking process on displaced LPTV stations to permit stations to qualify for carriage, when they previously were unable to do so under the Act, simply because they have decided to channel share. In order for a secondary sharee station to be eligible for carriage rights at the shared location under our interpretation, it must qualify for, and be exercising, must carry rights on its existing channel on the date of release of the *Closing and Reassignment PN*. We choose this date to consider whether a secondary station is exercising must-carry rights because the Media Bureau has previously notified secondary stations that they must be in operation by this date in order to be eligible for the special post-auction displacement window.⁷⁷

25. We conclude that affording secondary sharees with the same carriage rights at their shared location that they would have if they were not channel sharing, provided the sharee station is exercising must carry rights on its existing channel as of the date of release of the *Closing and Reassignment PN*, will not burden more speech than necessary.⁷⁸ Even if a secondary station is exercising carriage rights on its existing channel as of this date, it must still independently satisfy the statutory requirements for carriage at the shared location in order to have carriage rights once it begins channel sharing. As noted above, secondary stations qualify for must-carry on cable systems only under very limited circumstances set forth in the Act.⁷⁹ Even assuming that a channel vacated by a secondary sharee is made available for licensing to a new secondary station, the strict statutory requirements for carriage make the likelihood that the new secondary station would qualify for carriage very low.⁸⁰ For the same reason, it is unlikely that a secondary sharee station would qualify for carriage at a shared location. The probability that the sharee would qualify for carriage is reduced even further by two additional factors. First, as discussed below, we limit the distance of secondary sharee station moves resulting from channel

⁷⁵ *Turner II*, 520 U.S. at 189-90.

⁷⁶ See Letter from Matthew Brill, Latham & Watkins LLP, to Marlene Dortch, Secretary, FCC, MB Docket Nos. 15-137 and 03-185, dated March 13, 2017 (“NCTA March 13, 2017 *ex parte*”), at 1 (expressing concerns regarding increased carriage burdens as a result of LPTV channel sharing); Letter from Rick Chesson, Senior Vice President, Law and Regulatory Policy, NCTA, to Marlene Dortch, Secretary, FCC, MB Docket Nos. 15-137 and 03-185, dated March 16, 2017 (“NCTA March 16, 2017 *ex parte*”) at 1.

⁷⁷ *Media Bureau Announces Date by Which LPTV and TV Translator Stations Must Be “Operating” in Order to Participate in Post-Incentive Auction Special Displacement Window, Public Notice*, 31 FCC Rcd 5383 (MB 2016). Under this test, stations necessarily must be constructed and operating to be eligible for carriage; unbuilt secondary sharees will not be eligible for carriage rights.

⁷⁸ Secondary stations do not have DBS carriage rights. 47 U.S.C. § 338(a)(3).

⁷⁹ See *supra* para. 12.

⁸⁰ See *supra* note 48 (explaining that only approximately 20 out of 1,975 LPTV stations are carried on cable systems pursuant to mandatory carriage).

sharing.⁸¹ Second, a secondary station sharing the channel of a full power station would not be eligible for mandatory carriage under Section 614(h)(2)(F) of the Act,⁸² which the Commission has previously interpreted to mean that “if a full power station is located in the same county or political subdivision (of a State) as an otherwise ‘qualified’ low power station, the low power station will not be eligible for must-carry status.”⁸³ Channel sharing stations necessarily share the same transmission facility and, thus, are necessarily “located in the same county or political subdivision (of a State).” Thus, consistent with the Commission’s previous interpretation of this statutory provision, when a secondary station shares with a full power station, the secondary station will not qualify for mandatory carriage because it will be located in the same county or political subdivision as a full power station.⁸⁴

3. Class A Stations

26. We permit all Class A stations to be sharee stations or sharer stations outside the auction context. For Class A stations that enter into CSAs for the first time outside the incentive auction context, we interpret the Act as providing such Class A sharee stations, as well as their sharer station hosts, with the same carriage rights at their shared location that they would have if they were not channel sharing provided the Class A sharee meets the same condition we impose above for secondary stations; that is, it is exercising must carry rights on the date of release of the *Closing and Reassignment PN*.⁸⁵ As with secondary stations, this limitation ensures that these Class A stations do not qualify for carriage, when they previously were unable to do so under the Act, simply because they have decided to channel share.⁸⁶ We treat Class A stations participating in second-generation CSAs differently. For a Class A station that

⁸¹ As discussed below, we apply the existing 30-mile and contour overlap restrictions to secondary sharees. See *infra* para. 46. Cable carriage of secondary stations depends on, among other things, the distance between the cable headend and the station’s transmission facility. See 47 U.S.C. §§ 534(h)(2)(D). A secondary station may gain carriage on some cable systems, but lose carriage on other systems, as a result of a change in the location of the station’s transmission facility resulting from channel sharing. See *Incentive Auction Report and Order*, 29 FCC Rcd at 6858, note 1981.

⁸² 47 U.S.C. § 534(h)(2)(F).

⁸³ *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2983, para. 67, note 211 (1993).

⁸⁴ This interpretation applies regardless of whether the secondary station is the sharee or sharer station. Although a full power sharee station will operate at lower Part 74 power levels and with secondary interference protection when it shares with a secondary sharer station, we nonetheless consider it to be a full power station because it will continue to be subject to the Part 73 programming and other operational obligations applicable to full power stations. See *infra* para. 39. The term “full power television broadcast station” is not defined in Section 614 or elsewhere in the Act. We do not think, however, that it is reasonable to interpret this term as including only those stations operating above a certain power level. Indeed, because a station’s coverage area depends on factors in addition to power level, such as frequency and antenna height, a “full power” station could operate at a lower power level than a “low power” station. Rather, we interpret the Act as distinguishing “full power” stations from “low power” stations based on their programming and other operational obligations. The Part 73 programming and other operational obligations will continue to apply to full power stations even when sharing with a low power sharer station. See *id.* This is consistent with other provisions of the Act, which distinguish between full power stations and low power stations based on their programming and other operational obligations. See 47 U.S.C. § 534(h)(2)(A)-(B) (defining a “qualified low power station” entitled to carriage as one that broadcasts the “minimum number of hours of operation required by the Commission for television broadcast stations under part 73” and that “meets all obligations and requirements applicable to television broadcast stations under part 73, with respect to the broadcast of non-entertainment programming; programming and rates involving political candidates; . . . programming for children; and equal employment opportunity”); 47 U.S.C. 336(f)(2)(A)(ii) (extending Class A status to low power stations that are “in compliance with the Commission’s operating rules for full-power television stations”).

⁸⁵ See *supra* para. 22.

⁸⁶ See *supra* note 7 (noting that auction-related CSAs are not subject to the rules adopted in this Report and Order).

participated in an auction-related CSA, and that enters into a second-generation CSA once their auction-related CSA ends, we interpret the Act as providing the Class A sharee, and their sharer station host, with the same carriage rights at their shared location that they would have if they were not channel sharing provided the Class A sharee exercised carriage rights under its original, “first-generation,” auction-related CSA. We treat Class A stations participating in second-generation CSAs differently to ensure that these Class A stations can continue to exercise their carriage rights in subsequent CSAs if they qualified for, and exercised, carriage rights in their first-generation CSA. This approach does not increase carriage burdens for MVPDs beyond those created by first-generation CSAs pursuant to the Spectrum Act.

27. Class A stations share certain similarities with both full power and secondary stations. Class A stations are similar to full power stations insofar as most Class A stations were eligible to participate in the reverse auction. Thus, like with full power stations, it is important for Class A stations with auction-related CSAs to be able to be sharees outside of the auction context so they can enter into new CSAs once their auction-related CSAs expire or otherwise terminate. Class A stations are also similar to secondary stations, however, insofar as a small number of Class A stations may be displaced by the auction and repacking process.⁸⁷ Thus, as with secondary stations, channel sharing outside the auction context has the potential to increase the opportunities for displaced Class A stations to survive the impending spectrum repack and continue providing programming to the public. With respect to cable carriage, however, Class A stations are treated identically to secondary stations under the Communications Act and thus qualify for must-carry on cable systems only under very limited circumstances set forth in the Act.⁸⁸ Even assuming that a channel vacated by a Class A station is made available for licensing to a new low power station, the likelihood that the new low power station would qualify for carriage is low given the very limited circumstances under which a low power station qualifies for carriage under the Act.⁸⁹ In addition, as with secondary stations, it is unlikely that a Class A sharee station would qualify for carriage at a shared location because of the very limited circumstances under which a Class A station qualifies for carriage under the Act,⁹⁰ our decision to limit the distance of Class A sharee station moves resulting from channel sharing, and the fact that a Class A station sharing with a full power station would not be eligible for mandatory carriage under Section 614(h)(2)(F) of the Act.⁹¹

⁸⁷ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Second Order on Reconsideration, 30 FCC Rcd 6746, 6767-75, paras. 50-63 (2015) (discussing Class A stations that are not eligible for protection in the repacking process).

⁸⁸ Class A stations and secondary stations are “low power stations” for mandatory cable carriage purposes. See 47 U.S.C. § 534(c)(1), (h)(2); *Establishment of a Class A Television Service*, MM Docket No. 00-10, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 8244, 8259-60, paras. 40, 42 (2001). See also *supra* para. 12 (discussing criteria under which a cable operator is required to carry a low power station). In addition, like secondary stations, Class A stations do not have DBS carriage rights. 47 U.S.C. § 338(a)(3).

⁸⁹ See *supra* note 48 (explaining that only approximately 20 out of 1,975 LPTV stations are currently carried on cable systems pursuant to mandatory carriage).

⁹⁰ See *id.* (explaining that only approximately 15 out of 417 Class A stations are currently carried on cable systems pursuant to mandatory carriage).

⁹¹ See *supra* para. 25. Furthermore, unlike with full power and secondary stations, sharing by Class A stations does not present concerns with unbuilt stations obtaining a shortcut to carriage. All Class A stations necessarily are already constructed on a non-shared channel because only LPTV stations that were operational during the 90 days preceding November 29, 1999 were eligible for Class A status under the Community Broadcasters Protection Act. 47 U.S.C. § 336(f)(2)(A)(i).

C. Licensing and Operating Rules Applicable to Channel Sharing Outside the Auction Context

28. In this section, we discuss the licensing and operating rules applicable to primary-primary and primary-secondary sharing outside of the auction context.⁹² We note that the rules governing non-auction-related CSAs set forth below are relevant for both auction-related sharees and non-auction-related sharees. With respect to auction-related sharees, the rules we adopt here apply to their second-generation CSAs.⁹³ With respect to non-auction-related sharees, the rules apply to their initial CSAs and second-generation CSAs.

1. Licensing Rules for Primary-Primary and Primary-Secondary Channel Sharing

a. Voluntary and Flexible

29. Consistent with the sharing rules the Commission has adopted previously, channel sharing between primary stations and between primary and secondary stations outside of the auction will be “entirely voluntary.”⁹⁴ Stations can structure their CSAs in a manner that will allow a variety of different types of spectrum sharing to meet the individualized programming and economic needs of the parties involved.⁹⁵ We will, however, require each station involved in a CSA to operate in digital on the shared channel and to retain spectrum usage rights sufficient to ensure at least enough capacity to operate one standard definition (SD) programming stream at all times.⁹⁶ We will not prescribe a fixed split of the capacity of the 6 MHz channel between the stations from a technological or licensing perspective. All channel sharing stations will be licensed for the entire capacity of the 6 MHz channel, and stations will be allowed to determine the manner in which that capacity will be divided among themselves subject only to the minimum capacity requirement.⁹⁷

30. We apply our existing framework for channel sharing licensing and operation to sharing between primary stations and between primary and secondary stations.⁹⁸ Under this framework, each sharing station will continue to be licensed separately, each will have its own call sign, and each licensee

⁹² We adopt certain rules that are also applicable to secondary-secondary sharing. *See infra* para. 32 (CSA term limits), Section III.C.3 (MVPD reimbursement), and Section III.C.4 (MVPD notification).

⁹³ *See supra* para. 7.

⁹⁴ *See Channel Sharing Report and Order*, 27 FCC Rcd at 4621-22, para. 11; *Digital Low Power Third Report and Order*, 30 FCC Rcd at 14940-2, paras. 25-28. We do not intend to take a role in matching licensees interested in channel sharing with potential partners. *See Incentive Auction Report and Order*, 29 FCC Rcd at 6729, note 1127; *Digital Low Power Third Report and Order*, 30 FCC Rcd at 14940-2, para. 25.

⁹⁵ *See Channel Sharing Report and Order*, 27 FCC Rcd at 4624, para. 15; *Digital Low Power Third Report and Order*, 30 FCC Rcd at 14940, para. 26. We agree with ICN that “[i]t is . . . important that sharers have flexibility to reallocate bit capacity on a continuing dynamic basis” and that “[f]inancial arrangements should also be flexible” and that “neither revenue nor expense sharing should be restricted” ICN Comments, MB Docket No. 03-185, at 4.

⁹⁶ *See Channel Sharing Report and Order*, 27 FCC Rcd at 4624, para. 15; *Digital Low Power Third Report and Order*, 30 FCC Rcd at 14940, para. 26. As the Commission has explained previously, the latter requirement is necessary to 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” *Id.* *See* 47 CFR § 73.624(b). *See also* 47 CFR § 74.790(g)(3).

⁹⁷ *See Channel Sharing Report and Order*, 27 FCC Rcd at 4624, para. 15; *Third Report and Order*, 30 FCC Rcd at 14940, paras. 26.

⁹⁸ *See Channel Sharing Report and Order*, 27 FCC Rcd at 4624, para. 16; *Third Report and Order*, 30 FCC Rcd at 14940, para. 27.

will be independently subject to all of the Commission's obligations, rules, and policies.⁹⁹ The Commission retains the right to enforce any violation of these requirements against one or both parties to the CSA.¹⁰⁰ As is always the case, the Commission would take into account all relevant facts and circumstances in any enforcement action, including the relevant contractual obligations of the parties involved.

31. Similar to our approach for auction-related and secondary-secondary CSAs,¹⁰¹ we will permit term-limited CSAs outside the auction context for primary-primary and primary-secondary sharing. Our goal is to provide the same flexibility to broadcasters outside the auction context to determine the length of their CSAs and to end the channel sharing relationship while continuing to operate. No commenter opposed this approach. We decline to establish a minimum term for non-auction-related CSAs.¹⁰² While some commenters support requiring a three-year minimum term for CSAs outside the auction context,¹⁰³ we are not persuaded at this point that this step is necessary to protect viewers and MVPDs from unnecessary disruption or costs. We agree with NAB that broadcasters are aware of the risk of viewer disruption and have no desire to create unnecessary confusion.¹⁰⁴ We also agree with NAB that broadcasters should have the same flexibility to determine the length of their CSAs and to enter into shorter-term arrangements that we gave them in the auction context.¹⁰⁵ Should we become aware of issues related to short-term CSAs outside the auction context, we may reconsider this decision at a later date.

b. Licensing Procedures

32. Similar to the rules we have adopted previously to implement channel sharing arrangements,¹⁰⁶ we adopt a two-step process for reviewing and licensing channel sharing arrangements

⁹⁹ *Id.*; see also *Incentive Auction Report and Order*, 29 FCC Rcd at 6854, para. 702. We reject ICN's request to provide incentives to primary stations to share channels with secondary stations, such as the ability to shift programming obligations (such as children's programming) between the sharing stations and to have one party provide main studio presence in terms of facilities and staff for the other. See ICN Comments, MB Docket No.03-185, at 4 and ICN Comments, MB Docket No. 15-137, at 3. We find this suggestion to be misguided as it conflicts with our decision here and in other channel sharing orders that each licensee in a channel sharing arrangement remains separately subject to all of the Commission's obligations, rules, and policies.

¹⁰⁰ We decline APTS's requests to clarify the responsibilities of channel sharing partners; rather, we reiterate that each licensee in a CSA retains an independent obligation to comply with all pertinent statutory requirements and Commission rules. See *Incentive Auction Report and Order*, 29 FCC Rcd at 6852-53, paras. 699-700; *Digital Low Power Third Report and Order*, 30 FCC Rcd at 14944, para. 36; *Channel Sharing Report and Order*, 27 FCC Rcd at 4624, para. 15. See also APTS Reply Comments, MB Docket No. 15-137, at 7 (urging the Commission to clarify that it will not penalize a channel sharing partner if the other partner fails to abide by obligations required by the Commission to be embodied in a CSA and to confirm that, if the licensees have allocated certain responsibilities (such as tower maintenance) in the CSA, the Commission will respect that allocation and not seek to hold one licensee responsible for its partner's failure to carry out its responsibilities).

¹⁰¹ *First Order on Reconsideration*, 30 FCC Rcd at 6675-76, para. 19-21; *Third Report and Order*, 30 FCC Rcd at 14940, para. 39. See also *Channel Sharing NPRM*, 30 FCC Rcd at 6685-86, para. 48; *Digital Low Power Fourth NPRM*, 30 FCC Rcd at 14951, para. 86.

¹⁰² While we did not establish a minimum term for CSAs in the auction context, we sought comment on whether we should do so outside the auction context. See *Channel Sharing NPRM*, 30 FCC Rcd at 6685-86, para. 48; *Digital Low Power Fourth NPRM*, 30 FCC Rcd at 14951, para. 86.

¹⁰³ See AT&T Comments, MB Docket No. 15-137, at 5 and EBOC Reply Comments, MB Docket No. 15-137, at 5.

¹⁰⁴ See NAB Comments, MB Docket No. 15-137, at 3.

¹⁰⁵ *Id.*

¹⁰⁶ See *Incentive Auction First Order on Reconsideration*, 30 FCC Rcd at 6678-79, paras. 26-28; *Digital Low Power Third Report and Order*, 30 FCC Rcd at 14941-42, para. 30.

that fit within the categories authorized in this Report and Order. For the first step, if no technical changes are necessary for sharing, a channel sharee station will file the appropriate schedule to FCC Form 2100 for a digital construction permit specifying the same technical facilities as the sharer station (Schedule A, C or E), include a copy of the channel sharing agreement (CSA) as an exhibit,¹⁰⁷ and cross reference the other sharing station(s). In this case, the sharer station does not need to take action at this point. If the CSA requires technical changes to the sharer station's facilities, each sharing station will file the appropriate schedule to FCC Form 2100 to apply for a digital construction permit specifying identical technical facilities for the shared channel, along with the CSA.

33. We will treat modification applications filed to implement the additional channel sharing arrangements authorized herein as minor change applications, subject to certain exceptions.¹⁰⁸ Although a channel sharing arrangement results in a sharee station changing channels, which is a major change under our rules,¹⁰⁹ we conclude that treating channel changes as minor when done in connection with channel sharing is appropriate because the sharee will be assuming the authorized technical facilities of the sharer station, meaning that compliance with our interference and other technical rules would have been addressed in licensing the sharer station.¹¹⁰ In the case of a full power sharee station, we will consider any loss in service resulting from the proposed sharing arrangement at the construction permit stage in determining whether to grant the permit.¹¹¹ We note that, with channel sharing, service loss in one area (i.e., a portion of the area previously served by the sharee) might result in a gain in service to a different area (i.e., that served by the sharer). Moreover, absent the proposed sharing arrangement, a full power sharee station might not be able to continue to provide service, such as in the case of the expiration or termination of its current CSA. The Media Bureau will consider these and other factors in determining whether a sharing arrangement proposed by a full power sharee station is consistent with section 307(b) and serves the public interest.

34. In addition, while a full power television station seeking to change its channel normally must first submit a petition to amend the DTV Table of Allotments (Table), we will not apply this process to full power sharee stations. Rather, after the full power sharee station's construction permit is granted,

¹⁰⁷ We will allow the applicant to redact confidential or proprietary terms of the CSA, consistent with our rules. See 47 CFR § 0.459. See also *Incentive Auction First Order on Reconsideration*, 30 FCC Rcd at 6679, para. 28 note 88; *Digital Low Power Third Report and Order*, 30 FCC Rcd at 14941, para. 30 note 96.

¹⁰⁸ 47 CFR § 73.3572(a)(1),(2); 47 CFR § 74.787(b). See *Channel Sharing NPRM*, 30 FCC Rcd at 6686, para. 51. This is similar to the approach adopted for channel sharing between secondary stations and auction-related channel sharing. See *Digital Low Power Third Report and Order*, 30 FCC Rcd at 14942, note 97; *Incentive Auction Report and Order*, 29 FCC Rcd at 6795-96, para. 558 n.1584, 6789-90, para. 544. We will treat the modification as major if (1) any proposed modifications of the sharer station's facilities would qualify as a major change or (2) in the case of a Class A or secondary sharee station that is not granted a waiver, the station proposes to relocate beyond the 30-mile or contour overlap restrictions. See *infra* paras. 47- 48.

¹⁰⁹ See 47 CFR § 73.3572(a)(1),(2); 47 CFR § 74.787(b).

¹¹⁰ See *Incentive Auction Report and Order*, 29 FCC Rcd at 6790, para. 545 (explaining that applications for permits to construct channel assignments resulting from the repacking process would be considered minor changes because, among other reasons, compliance with our interference and other technical rules would be addressed through the repacking methodology).

¹¹¹ Pursuant to its mandate under section 307(b), the Commission disfavors modifications of a station's facilities that would result in a loss of service. See 47 U.S.C. § 307(b); *Incentive Auction NPRM*, 27 FCC Rcd at 12375, para. 47 note 88 (explaining that the Commission has strongly disfavored modification of a station's facilities that would create a "white" or "gray" area (an area where the population does not receive any over-the-air television service or only one over-the-air service, respectively), or an "underserved" area (where the population in the loss area would receive less than five over-the-air television signals), but that the FCC generally regards loss of service of marginal significance if the area is "well-served" by five or more signals) (citations omitted). See also *Television Corp. of Michigan v. FCC*, 294 F.2d 730, 733 (1961) ("Neither [§ 307(b)] nor the [allotment priorities] express rigid and inflexible standards.").

the Bureau will amend the Table on its own motion to reflect the change in the channel allotted to the sharee station's community. We find that the initial step to amend the Table is unnecessary in the sharing context because issues that would be considered through the use of those procedures, such as preservation of service to existing viewers and compliance with our interference and other technical rules, will be handled through the construction permit application process.

35. We will begin accepting non-auction-related channel sharing applications on a date after the completion of the incentive auction specified by the Media Bureau.¹¹² With respect to a full power or Class A station sharing with a secondary station, if the sharee is a secondary station that is displaced as a result of the incentive auction or repacking process, it will not have to wait for the post-incentive auction displacement window to file its displacement application to propose sharing the sharer station's facilities.¹¹³ Rather, beginning on the specified date, the secondary sharee station may file an application for a construction permit for the same technical facilities of the primary station and include a copy of the CSA as an exhibit. If the secondary station is the sharer and that station is displaced as a result of the incentive auction or repacking process, then, the secondary sharer would file during the post-incentive auction displacement window if it is eligible.¹¹⁴ If none of the parties to a non-auction-related CSA is a station that was displaced as a result of the incentive auction or repacking process, then the sharee station(s) may file channel sharing application(s) beginning on the date after the completion of the incentive auction specified by the Media Bureau.¹¹⁵

36. As a second step, after the sharing stations have obtained the necessary construction permits, implemented their shared facility, and initiated shared operations, the sharee station(s) will notify the Commission that the station has terminated operation on its former channel.¹¹⁶ At the same time, all sharing stations will file the appropriate schedule to Form 2100 for a license in order to complete the licensing process (Schedule B, D or F). Parties to channel sharing arrangements outside of the auction context will have three years to implement their arrangements.¹¹⁷

c. Service and Technical Rules, Including Interference Protection

37. *Primary-Primary Sharing.* We adopt technical rules that are consistent with those we previously adopted with respect to channel sharing between primary stations in the context of the incentive auction. Thus, a Class A sharee that opts to share a full power sharer's channel outside of the auction will be permitted to operate with the technical facilities of the full power station authorized under

¹¹² To the extent the rules we adopt in this Report and Order are not effective when the auction is complete, we will begin accepting non-auction-related channel sharing applications after the rules are effective. We delegate authority to the Media Bureau to issue a Public Notice announcing the date when it will begin accepting non-auction-related channel sharing applications.

¹¹³ See *Digital Low Power Third Report and Order*, 30 FCC Rcd at 14942, para. 30 note 98.

¹¹⁴ Only "operating" secondary stations may file displacement applications during the post-auction LPTV and TV translator displacement window. See *Incentive Auction R&O*, 29 FCC Rcd at 6835, para. 657. See also *supra* note 78.

¹¹⁵ Although we will begin to accept non-auction-related channel sharing applications beginning on the date after the completion of the incentive auction specified by the Media Bureau, we will not accept an application from a station that submitted a winning channel sharing bid to enter into an auction-related CSA with a secondary station. See *Digital Low Power Third Report and Order*, 30 FCC Rcd at 14937, para. 20 note 55 (explaining that a "relinquishment to share with an LPTV station is not an available option in the incentive auction").

¹¹⁶ See 47 CFR § 73.1750 ("The licensee of each station shall notify by letter the FCC . . . of the permanent discontinuance of operation at least two days before operation is discontinued").

¹¹⁷ APTS supports providing channel sharing stations with a full three-year construction period to implement the sharing arrangement. See APTS Reply Comments, MB Docket No. 15-137, at 8. A three-year time period is also consistent with the period of time adopted for secondary stations to implement secondary-secondary CSAs. See *Digital Low Power Third Report and Order*, 30 FCC Rcd at 14942, para. 31.

Part 73 of the rules.¹¹⁸ Conversely, a full power sharee sharing a Class A sharer's channel will be required to operate at the Class A station's lower Part 74 power level.¹¹⁹ As with channel sharing between full power and Class A stations in the incentive auction context, the channel of a full power sharer sharing with a Class A sharee will remain in the DTV Table. In the case of a full power sharee that chooses to share the "non-tabled" channel of a Class A station, we will amend the DTV Table to reflect the change in the channel allotted to the full power sharee station's community.

38. A full power sharee station sharing a channel with a Class A sharer station will continue to be obligated to comply with the programming and other operational obligations of a Part 73 licensee.¹²⁰ A Class A sharee station sharing a channel with a full power sharer station will continue to be obligated to comply with the programming and other operational obligations of a Class A licensee, including airing a minimum of 18 hours a day and an average of at least three hours per week of locally produced programming each quarter, as required by § 73.6001 of the rules.¹²¹

39. *Primary-Secondary Sharing.* A secondary LPTV or TV translator station that shares the channel of a full power television station will be permitted to operate with the technical facilities of the full power station, including at the higher power limit specified in Part 73 of the rules.¹²² The channel of a full power sharer station sharing with a secondary LPTV or TV translator sharee station will remain in the DTV Table. LPTV and TV translators that share the channel of a Class A station will continue to be limited to operation at the lower power specified for LPTV, TV translator, and Class A stations in Part 74 of our rules.¹²³ An LPTV or TV translator station that shares a full power or Class A station's channel will obtain "quasi" primary interference protection for the duration of the channel sharing arrangement by virtue of the fact that the full power or Class A station is a primary licensee.¹²⁴ Although the secondary station will continue to be licensed with secondary interference protection status, the host full power or Class A television station's primary status protects it from interference or displacement,¹²⁵ and this protection will necessarily carry over to any station that is sharing its channel.

¹¹⁸ See *Incentive Auction Report & Order*, 29 FCC Rcd at 6855-56, para. 705; 47 CFR § 73.622(f). In this situation, there would be no change to the stations' interference protection rights because both stations would be licensed on a primary basis. No special technical rules are necessary for channel sharing between full power stations outside of the auction context because all sharing stations would operate under the same Part 73 technical rules.

¹¹⁹ See 47 CFR § 74.735(b).

¹²⁰ See, e.g., 47 CFR § 73.1740(a)(2) (minimum operating requirements).

¹²¹ See 47 CFR § 73.6001(b). In addition, as explained in the *Incentive Auction Report and Order*, a Class A licensee that channel shares with a full power station outside of the auction context will continue to be subject to the restrictions set forth in § 336(f)(7)(B) of the Communications Act. See 47 U.S.C. § 336(f)(7)(B) (requiring modifications of Class A licenses to protect certain LPTV stations); see *Incentive Auction Report and Order*, 29 FCC Rcd at 6855, note 1967.

¹²² Compare 47 CFR § 73.622(h) with 47 CFR § 74.735(b). This approach is consistent with our rules for channel sharing between stations with differing technical rules (full power and Class A television stations) in the context of the incentive auction. See *Incentive Auction Report and Order*, 29 FCC Rcd at 6855-56, para. 705.

¹²³ Class A television stations are authorized at the same power level as LPTV and TV translators. See 47 CFR § 74.735(b).

¹²⁴ We agree with ICN that "[t]he primary status of the spectrum should be determined by the status of the host sharer station." ICN Comments, MB Docket No. 03-185, at 2.

¹²⁵ See 47 CFR § 73.623.

40. A full power sharee that shares a secondary station's channel will have to operate with the lower power limits specified in Part 74 of the rules for LPTV and TV translator stations.¹²⁶ When a full power sharee shares the "non-tabled" channel of a LPTV or TV translator station, we will amend the DTV Table to reflect the change in the channel allotted to the sharee station's community. A full power or Class A sharee sharing a channel with a secondary station sharer will be subject to displacement because it will be sharing a channel with secondary interference protection rights.

41. A full power sharee station sharing a channel with a secondary sharer station will continue to be obligated to comply with the programming and other operational obligations of a Part 73 licensee.¹²⁷ Similarly, a Class A sharee station sharing a channel with a secondary sharer station will continue to be obligated to comply with the programming and other operational obligations applicable to Class A licensees.¹²⁸ A secondary sharee station sharing a channel with a full power or Class A sharer station will continue to be subject to the programming and other operational obligations applicable to LPTV or translator stations and will not be subject to such obligations applicable to full power or Class A stations.

42. We decline to adopt Mayhugh's suggestions to formally relicense LPTV stations as full power stations if the LPTV station shares its channel with a full power station, or to allow a full power station sharing on a secondary station's channel to retain its primary interference protection.¹²⁹ This would result in the formal creation of a new class of primary stations. We do not believe it is appropriate to use this proceeding to make such extensive changes to our licensing or technical rules. We also decline to adopt ICN's proposal that primary stations be given priority access to the best remaining repacked channels in a market if they agree to share with a secondary station and grant access to at least one-third of their bandwidth.¹³⁰ This proposal would have required adding constraints on the reverse auction and repacking processes that have long since been established and were utilized in the incentive auction. In addition, we reject Media General's suggestion that we exempt stations that enter into CSAs outside the auction context from the Commission's multiple ownership rules to provide an incentive for stations to enter into a non-auction-related CSA.¹³¹ Media General has presented no legal or policy basis on which we should alter our multiple ownership restrictions and thereby reduce ownership and program diversity to promote CSAs outside the auction context.

43. *Reserved-Channel NCE Sharing Stations.* Consistent with our approach adopted in the auction context, a reserved-channel full power NCE licensee, whether it proposes to share a non-reserved channel or agrees to share its reserved channel with a commercial sharee station, will retain its NCE status and must continue to comply with the rules applicable to NCE licensees.¹³² In either case, the NCE full power station's portion of the shared channel will be reserved for NCE-only use.¹³³

¹²⁶ See 47 CFR § 74.735(b). A Class A television station that opts to share with a secondary LPTV or TV translator sharer station would not experience a change in authorized power level because Class A stations already operate under Part 74 lower power limits.

¹²⁷ See, e.g., 47 CFR § 73.1740(a)(2) (minimum operating requirements).

¹²⁸ See *supra* para. 39. In addition, a Class A licensee that channel shares with a secondary station outside of the auction context will continue to be subject to the restrictions set forth in § 336(f)(7)(B) of the Act. See *id.* See also 47 U.S.C. § 336(f)(7)(B).

¹²⁹ Mayhugh Comments, MB Docket No. 03-185, at 4.

¹³⁰ See ICN Comments, MB Docket No.03-185, at 4.

¹³¹ See Media General Reply Comments, MB Docket No. 15-137, at 2.

¹³² See *Incentive Auction Report and Order*, 29 FCC Rcd at 6854-55, para. 703; *Channel Sharing Report and Order*, 27 FCC Rcd at 4628-29, para. 24.

¹³³ In addition, an NCE licensee sharing with a commercial licensee must continue to satisfy the obligation set forth in Section 73.621 of our rules to "be used primarily to serve the educational needs of the community; for the

(continued....)

d. Station Relocations to Implement Channel Sharing

44. We will preclude full power stations seeking to channel share as sharee stations outside of the incentive auction from changing their community of license absent an amendment to the DTV Table.¹³⁴ Absent such amendment, we will limit these stations to a CSA with a sharer from whose transmitter site the sharee will continue to meet the community of license signal requirement over its current community of license.¹³⁵ This approach differs from the one the Commission took with respect to channel sharing in the auction context, where the Commission sought to facilitate broadcaster participation in the auction and to avoid any detrimental impact on the speed and certainty of the auction.¹³⁶ Because those considerations do not apply outside the auction context, we disagree with EBOC that we should provide the same relocation flexibility to channel sharees outside the auction.¹³⁷ Precluding full power sharee stations from changing their communities of license absent an amendment to the DTV Table advances our interest in the provision of service to local communities. While our goal is to accommodate channel sharing, we also seek to ensure that stations continue to provide service to their communities of license and to avoid situations in which stations abandon their communities in order to relocate to more populated markets. In addition, this approach will help to avoid viewer disruption and any potential impact on MVPDs that might result from community of license changes.¹³⁸

(Continued from previous page) _____

advancement of educational programs; and to furnish a nonprofit and noncommercial television broadcast service.” *Incentive Auction Report and Order*, 29 FCC Rcd at 6854, para. 703 note 1958 (citing 47 CFR § 73.621(a)). Also, because NCE licensees are prohibited from broadcasting advertisements, NCE stations that participate in channel sharing agreements will be prohibited from broadcasting advertisements on their portion of a shared channel. *See id.* (citing 47 U.S.C. § 399b(b)(2)).

¹³⁴ Like other full power stations, we will require a full power sharee station outside the auction context seeking to change its community of license to file a Petition for Rulemaking to amend the DTV Table. *See* 47 CFR § 1.420(i). In considering a reallocation proposal, the Commission compares the existing allotment versus the proposed allotment to determine whether the change in allotment will result in a preferential arrangement of allotments based on the Commission’s television allotment priorities. *Amendment of Section 3.606 of the Commission’s Rules and Regulations*, Sixth Report and Order, 41 F.C.C. 148, 167 (1952) (these allotment priorities are to: (1) provide at least one television service to all parts of the country; (2) provide each community with at least one television broadcast station; (3) provide a choice of at least two television services to all parts of the country; (4) provide each community with at least two television broadcast stations; and (5) assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities).

¹³⁵ *See Channel Sharing NPRM*, 30 FCC Rcd 6687, para. 53. Under the Commission’s rules, a full power television station must locate its transmitter at a site from which it can place a principal community contour over its entire community of license. *See* 47 CFR § 73.625.

¹³⁶ In the *Incentive Auction Report and Order*, we allowed an auction-related sharee to change its community of license if the sharee could not meet its community of license signal requirements operating from the sharer’s transmission site, provided that the sharee chose a new community of license that was in its current DMA and, at a minimum, met the same allotment priorities as its current community. *See Incentive Auction R&O*, 29 FCC Rcd at 6727, para. 374. The Commission explained that a prohibition on changes in communities of license would severely constrain a broadcaster’s ability to find a channel sharing partner, thereby undermining the goals of the reverse auction. *See id.* at 6727, para. 375. Moreover, the Commission explained that its approach would promote the goals of section 307(b) while avoiding any detrimental impact on the speed and certainty of the auction or discouraging reverse auction participation. *See id.* at 6727-28, para. 376.

¹³⁷ *See* EBOC Comments, MB Docket Nos. 15-137 and 03-185, at 6-8.

¹³⁸ NCTA supports precluding prospective channel sharees outside the auction context from moving outside their assigned community of license. *See* NCTA Reply Comments, MB Docket No. 15-137, at 5. We decline to adopt Venture’s proposal that we allow a full power station to change its community of license to a location within its existing DMA or within an adjacent DMA, provided that the existing transmitter site of the station is within that adjacent DMA. *See* Venture Comments, MB Docket No. 15-137, at 4. This proposal would allow even more

(continued....)

45. We will apply the existing 30-mile and contour overlap restrictions that apply to Class A moves to Class A sharee stations that propose to move as a result of a sharing arrangement.¹³⁹ In adopting rules for secondary-secondary sharing, we determined that we would apply our existing 30-mile and contour overlap restrictions to station relocations resulting from proposed CSAs.¹⁴⁰ Specifically, if requested in conjunction with a digital displacement application, a station relocation resulting from a proposed CSA, in order to be considered a minor change, may not be greater than 30 miles from the reference coordinates of the relocating station's community of license.¹⁴¹ In all other cases, a station relocating as a result of a proposed CSA, in order to be considered a minor change: (i) must maintain overlap between the protected contour of its existing and proposed facilities; and (ii) may not relocate more than 30 miles from the reference coordinates of the relocating station's antenna location.¹⁴² We concluded that continued application of these restrictions was necessary to curtail abuse of the Commission's policies by stations seeking to relocate large distances in order to move to more populated markets under the cover of needing to implement a channel sharing arrangement.¹⁴³ At the same time, we stated that we would consider waivers for secondary stations to allow channel sharing modifications that do not comply with these limits.¹⁴⁴ We extend these same restrictions to Class A sharee stations and secondary sharee stations that move as a result of a primary-primary or primary-secondary sharing arrangement outside the auction context.

46. We will consider waivers of our Part 74 modification restrictions based on the same criteria we adopted in the *Digital Low Power Third Report and Order*.¹⁴⁵ A displaced LPTV or TV translator station (or auction ineligible Class A station displaced by the incentive auction or repacking) proposing to channel share with a station located more than 30 miles from the reference coordinates of the displaced station's community of license will have to show: (i) that there are no channels available that comply with section 74.787(a)(4) of the rules; and (ii) that the proposed sharer station is the station closest to the reference coordinates of the displaced station's community of license that is available for channel sharing. We will apply a stricter standard for requests for waiver of our relocation rules with respect to non-displaced Class A, LPTV, and TV translator stations because the proposed modification

(Continued from previous page) _____

latitude to relocate than we provided to channel sharing stations in the context of the incentive auction. See *Incentive Auction Report and Order*, 29 FCC Rcd at 6727, para. 374. As discussed above, outside the context of the incentive auction, we are not persuaded that the public interest would be served by providing this degree of flexibility to potential sharee stations. *Id.*

¹³⁹ We decline to adopt our proposal to preclude Class A sharee stations from changing their communities of license as a result of a sharing arrangement. See *Channel Sharing NPRM*, 30 FCC Rcd 6687, para. 53. Unlike full power television stations, low power television stations, including Class A stations, are not allocated pursuant to a Table of Allotments and are not subject to the Commission's allotment priorities. See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television*, Second Report and Order, 26 FCC Rcd 10732, 10757, para. 54 (2011). See also *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, First Report and Order, 13 FCC Rcd 15920, ¶ 115 n.109 (1998). Moreover, Class A television stations do not have a community of license signal requirement. *Class A Report and Order*, 15 FCC Rcd at 6367, para. 28. Thus, a rule restricting Class A sharees from entering into a CSA with a sharer from whose transmitter site the sharee could not meet its community of license signal requirement would be meaningless.

¹⁴⁰ *Digital Low Power Third Report and Order*, 30 FCC Rcd at 14943, para. 33.

¹⁴¹ See 47 CFR § 74.787(a)(4). Changes greater than 30 miles will be considered a "major change" and the filing of applications for major change is currently frozen.

¹⁴² See 47 CFR § 74.787(b)(1).

¹⁴³ *Digital Low Power Third Report and Order*, 30 FCC Rcd at 14943, para. 33.

¹⁴⁴ *Id.* at 14943-44, para. 34.

¹⁴⁵ See *id.*

would be voluntary. In such cases, we will consider a waiver if the station seeking to relocate demonstrates: (i) that there is no other channel sharing partner that operates with a location that would comply with the contour overlap and 30-mile restrictions on the station seeking the waiver; and (ii) the population in the relocating station's loss area is *de minimis*, and/or well-served, and/or would continue to receive the programming aired by the relocating station from another station.

47. For any CSA that involves licensing both a full power sharee and Class A, LPTV, or TV translator sharer, we will combine the above outlined restriction on full power sharees changing their community of license with the limits on modifications to Class A, LPTV and TV translator station facilities outlined in the rules.¹⁴⁶ Thus, a full power sharee station seeking to implement a CSA with a Class A, LPTV or TV translator station will not be permitted to change its community of license. A Class A, LPTV, or TV translator sharee station seeking to implement a CSA with a full power station will be subject to the 30-mile and contour overlap restrictions described above.

2. Channel Sharing Operating Rules

a. Channel Sharing Agreements

48. We will require that all CSAs entered into pursuant to the rules we adopt herein include provisions outlining each licensee's rights and responsibilities in the following areas: (i) access to facilities, including whether each licensee will have unrestricted access to the shared transmission facilities; (ii) allocation of bandwidth within the shared channel; (iii) operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment, a description of each party's financial obligations, and any relevant notice provisions; (iv) transfer/assignment of a shared license, including the ability of a new licensee to assume the existing CSA; and (v) termination of the license of a party to the CSA, including reversion of spectrum usage rights to the remaining parties to the CSA.¹⁴⁷ Channel sharing partners may craft provisions as they choose, based on marketplace negotiations, subject to pertinent statutory requirements and the Commission's rules and regulations. By requiring that such provisions be reduced to writing, we seek to avoid disputes that could lead to a disruption in service to the public and to ensure that each licensee will be able to fulfill its independent obligation to comply with all pertinent statutory requirements and our rules.¹⁴⁸ A station seeking approval to channel share must submit a copy of its CSA along with its application for a digital construction permit.¹⁴⁹ The Commission will review the CSA to ensure compliance with our rules and policies. We will limit our review to confirming that the CSA contains the required provisions and that any terms beyond those related to sharing of bitstream and related technical facilities comport with our general rules and policies regarding license

¹⁴⁶ For Class A-Class A CSAs, the 30-mile and contour overlap restrictions will apply.

¹⁴⁷ We adopted these provisions for full power and Class A television channel sharing arrangements entered into in conjunction with the incentive auction, and for secondary-secondary CSAs. *See Incentive Auction Report and Order*, 29 FCC Rcd at 6852-53, paras. 699-700; *First Order on Reconsideration*, 30 FCC Rcd at 6677-78, paras. 24-25; *Digital Low Power Third Report and Order*, 30 FCC Rcd at 14963, para. 36.

¹⁴⁸ *See Incentive Auction Report and Order*, 29 FCC Rcd at 6852-53, para. 700. As noted in the *Incentive Auction R&O*, we do not anticipate being involved in any disputes between channel sharing stations to the extent that such disputes are not directly related to compliance with the Communications Act or applicable Commission policies and rules. We expect that any disputes concerning the terms and conditions of the CSA, including those that are directly related to compliance with the Communications Act or our rules, would be handled in the first instance by the channel sharing stations as a private contractual enforcement matter and that we would independently determine if additional regulatory enforcement steps would be warranted. *See Incentive Auction R&O*, 29 FCC Rcd at 6853-54, para. 699 note 1944. *See also Digital Low Power Third Report and Order*, 30 FCC Rcd at 14944, para. 36 note 119.

¹⁴⁹ *See supra* para. 33.

agreements.¹⁵⁰ We reserve the right to require modification of a CSA that does not comply with our rules or policies.¹⁵¹

b. Termination, Assignment/Transfer, and Relinquishment of Channel Sharing Licenses

49. We will allow rights under a CSA to be assigned or transferred, subject to the limits we adopt herein, the requirements of Section 310 of the Communications Act,¹⁵² our rules, and the requirement that the assignee or transferee comply with the applicable CSA.¹⁵³ When a primary or secondary sharing station's license is terminated due to voluntary relinquishment, revocation, failure to renew, or any other circumstance, its spectrum usage rights (but not its license) may revert to the remaining sharing partner(s) if the partner(s) so agree and this provision is set forth in the CSA.¹⁵⁴ In the event that only one station remains on the shared channel, that station may apply to change its license to non-shared status using FCC Form 2100 — Schedule B (for a full power station), Schedule D (for an LPTV/translator station), or Schedule F (for a Class A station).¹⁵⁵ If a full power station that is sharing with a Class A, LPTV, or TV translator station relinquishes its license, then the Class A, LPTV, or TV translator station would operate under the rules governing their particular service (Class A, LPTV, or TV translator).¹⁵⁶ Similarly, if a Class A station that is sharing with a LPTV or TV translator station relinquishes its license, then the LPTV or TV translator station would operate under the rules governing their particular service. If the sharing partner is an NCE station operating on a reserved channel, its portion of the shared channel must continue to be reserved for NCE-only use.¹⁵⁷ As stated previously, we recognize the important public service mission of NCE stations, and we disfavor dereserving NCE-only channels.¹⁵⁸ Thus, in the unlikely event that a reserved-channel NCE station that shares with a commercial station faces involuntary license termination, creating a risk of dereservation, the Commission will exercise its broad discretion to ensure that the public interest is served.¹⁵⁹

¹⁵⁰ *Incentive Auction First Order on Reconsideration*, 30 FCC Rcd at 6678-79, para. 28; *Incentive Auction Report and Order*, 29 FCC Rcd at 6852-53, para. 700; *Digital Low Power Third Report and Order*, 30 FCC Rcd at 14939, para. 37.

¹⁵¹ See *Digital Low Power Third Report and Order*, 30 FCC Rcd at 14939, para. 37.

¹⁵² 47 U.S.C. § 310.

¹⁵³ Consistent with the approach adopted in connection with the incentive auction, the assignee or transferee will have to agree to the terms of the CSA in existence at the time of the transfer or assignment, unless the assignee/transferee and the remaining sharing station(s) agree to amend the CSA and the amendment is approved by the Commission. See *Incentive Auction R&O*, 29 FCC Rcd at 6853-54, para. 701 note 1952. A reserved-channel NCE sharing station may assign its license only to a qualified NCE entity. *Id.* at 6854-55, para. 703 (citing 47 CFR § 73.621).

¹⁵⁴ Alternatively, the station may enter into a CSA with another station subject to the limitations adopted herein and to prior Commission approval. These two alternative approaches are consistent with our proposal in the *Channel Sharing NPRM*, our decision on reconsideration with respect to the loss of a channel sharing station in the context of the auction, and our decision with respect to secondary sharing arrangements outside the auction context. See *Channel Sharing NPRM*, 30 FCC Rcd at 6688, para. 56; *Incentive Auction First Order on Reconsideration*, 30 FCC Rcd at 6676-78, paras. 22-25; *Digital Low Power Third Report and Order*, 30 FCC Rcd at 14939, para. 38.

¹⁵⁵ See 47 CFR § 74.800(e).

¹⁵⁶ See *Incentive Auction First Order on Reconsideration*, 30 FCC Rcd at 6677-78, para. 25.

¹⁵⁷ *Incentive Auction Report and Order*, 29 FCC Rcd at 6854-55, para. 703.

¹⁵⁸ *Incentive Auction First Order on Reconsideration*, 30 FCC Rcd at 6677-78, para. 25.

¹⁵⁹ *Id.*

3. Reimbursement

50. We will not require reimbursement of costs imposed on MVPDs as a result of CSAs entered into outside the context of the incentive auction, including costs resulting from second-generation CSAs of auction-related sharees.¹⁶⁰ Our current rules do not require reimbursement of MVPD costs in connection with channel changes or other changes that modify carriage obligations outside the auction context. Further, the reimbursement provisions of the Spectrum Act apply only to CSAs made in connection with winning channel sharing bids in the incentive auction.¹⁶¹ Accordingly, costs associated with channel sharing outside the auction will be borne by broadcasters and MVPDs in the same manner as they are for other channel moves.¹⁶² While we have explained previously that channel sharing may impose some costs on MVPDs,¹⁶³ there is no record evidence to suggest that the cost to MVPDs of accommodating channel sharing outside the auction context will impose an undue burden. We retain the right to reconsider our decision in this regard should we receive future evidence to the contrary.

4. Notice to MVPDs

51. Similar to the rules we adopted in the *Incentive Auction Report and Order*,¹⁶⁴ we will require stations participating in CSAs outside the auction context to provide notice to those MVPDs that: (i) no longer will be required to carry the station because of the relocation of the station; (ii) currently carry and will continue to be obligated to carry a station that will change channels; or (iii) will become obligated to carry the station due to a channel sharing relocation.¹⁶⁵ The notice must contain the following information: (i) date and time of any channel changes; (ii) the channel occupied by the station before and after implementation of the CSA; (iii) modification, if any, to antenna position, location, or power levels; (iv) stream identification information; and (v) engineering staff contact information.¹⁶⁶ Stations may elect whether to provide notice via a letter notification¹⁶⁷ or electronically, if pre-arranged with the relevant

¹⁶⁰ See *Channel Sharing NPRM*, 30 FCC Rcd at 6689, paras. 58-59; *Digital Low Power Fourth NPRM*, 30 FCC Rcd at 14964, para. 86.

¹⁶¹ The Spectrum Act requires the Commission to reimburse broadcast television licensees for costs “reasonably incurred” by an MVPD in order to continue to carry the signal of a broadcast television licensee that “voluntarily relinquishes spectrum usage rights under subsection (a) to share a television channel with another licensee” 47 U.S.C. § 1452(b)(4)(A)(ii)(III). Subsection (a) of Section 1452 authorizes the Commission to conduct an incentive auction and identifies the types of bids to be accepted in connection with the auction, including channel sharing bids. *Id.* § 1452(b)(4)(A)(ii)(III).

¹⁶² NAB supports this approach. See NAB Reply Comments, MB Docket No. 15-137, at 6. For example, to obtain carriage, a local commercial television station must be capable of delivering a good quality signal to a cable system headend or bear responsibility for the cost of delivering such a good quality signal. A television station that cannot deliver a good quality signal to a cable system headend it previously could reach with its over-the-air signal may bear costs associated with use of alternative means, such as fiber or microwave, to deliver a good quality signal to the headend. See 47 U.S.C. § 534(h)(1)(B)(iii); 47 CFR § 76.55(c)(3). See also 47 U.S.C. § 535(i)(l).

¹⁶³ *Incentive Auction Report and Order*, 29 FCC Rcd at 6814, para. 603 (explaining that in most channel sharing arrangements the MVPD likely already carries the sharer station, so the MVPD’s costs will be relatively inexpensive because it will not be required to accommodate a new channel assignment, but there may be situations in which an MVPD incurs a new carriage obligation due to the relocation of a sharee station).

¹⁶⁴ See *Incentive Auction Report and Order*, 29 FCC Rcd at 6810-11, para. 594.

¹⁶⁵ Although their carriage rights are limited, we impose these notice provisions on Class A, LPTV and TV translator stations, including those carried by a cable system, that seek to modify their facilities or change their channel in conjunction with a channel sharing arrangement. See 47 U.S.C. § 534(c) (low power station carriage obligations).

¹⁶⁶ See *Incentive Auction Report and Order*, 29 FCC Rcd at 6811, para. 595. AT&T supports these content requirements. See AT&T Comments, MB Docket No. 15-137, at 6.

¹⁶⁷ As we stated in the *Incentive Auction R&O*, the letter must be addressed to the system’s official address of record provided in the cable system’s most recent filing on the Cable Operations and Licensing Systems (COALS) Form

(continued....)

MVPD. As suggested by AT&T, we will require that sharee stations provide notice at least 90 days prior to terminating operations on the sharee's channel and that both sharer and sharee stations provide notice at least 90 days prior to initiation of operations on the sharer channel.¹⁶⁸ Should the anticipated date to either cease operations or commence channel sharing operation change, the station(s) must send a further notice to affected MVPDs informing them of the new anticipated date(s). Finally, we expect that, during the 90-day notice period, the parties to the CSA will continue to coordinate the implementation of the CSA with each MVPD that they seek to carry their transmissions.¹⁶⁹

D. ATSC 3.0

52. The conclusions we reach herein regarding channel sharing outside the context of the incentive auction, including our interpretation of the Communications Act's must-carry provisions with respect to channel sharing stations, apply to situations in which one station relinquishes a channel in order to channel share. They are not intended to prejudge issues regarding "local simulcasting" that are raised in the pending proceeding regarding the ATSC 3.0 broadcast transmission standard.¹⁷⁰

IV. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

53. Pursuant to the Regulatory Flexibility Act of 1980 ("RFA"), as amended,¹⁷¹ the Commission's Final Regulatory Flexibility Analysis ("FRFA") relating to this Report and Order is attached as Appendix C.

B. Final Paperwork Reduction Act Analysis

54. This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104-13. It will be submitted to the Office of Management and Budget ("OMB") for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. 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.

55. We have assessed the effects of the policies adopted in this Report and Order with regard to information collection burdens on small business concerns, and find that these policies will benefit many companies with fewer than 25 employees by permitting broadcast television stations to channel

(Continued from previous page) _____

322. For all MVPDs that do not file the Form 322, the letter must be addressed to the official corporate address registered with their State of incorporation. *Incentive Auction Report and Order*, 29 FCC Rcd at 6811, para. 595.

¹⁶⁸ We recognize the concerns raised by AT&T that providing only 30-day notice as we originally proposed may be inadequate in some circumstances. AT&T Comments, MB Docket No. 15-137, at 6-7. We agree that, outside the context of the incentive auction, a 90-day notice provision will help to avoid possible disruptions in service. A 30-day notice period remains appropriate, however, for incentive auction channel sharing stations. Unlike channel sharing outside of the auction, where parties will have three years to implement their arrangements and thus a 90-day notice period should not interfere with their plans, incentive auction channel sharing stations must terminate operations within six months of receiving their auction proceeds. See 47 CFR §73.3700(b)(4)(ii). Thus, incentive auction channel sharing stations may not be able to wait out a 90-day MVPD notice period before terminating operations on the sharee channel and initiating operations on the shared channel.

¹⁶⁹ AT&T Comments, in MB Docket No. 15-137, at 7.

¹⁷⁰ See GN Docket No. 16-142.

¹⁷¹ The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

share outside the auction context, which could reduce operating costs and provide broadcasters with additional net income to strengthen operations and improve programming. In addition, the Report and Order will mitigate the potential impact of the broadcast television spectrum incentive auction and repacking process on LPTV and TV translator stations and help preserve the important services they provide. In addition, we have described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA in Appendix C.

C. Congressional Review Act

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

V. ORDERING CLAUSES

57. **IT IS ORDERED** that, pursuant to the authority contained in Sections 1, 4, 301, 303, 307, 308, 309, 310, 316, 319, 338, 403, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, 338, 403, 534, and 535, this Report and Order **IS ADOPTED**.

58. **IT IS FURTHER ORDERED** that the Commission's rules **ARE HEREBY AMENDED** as set forth in the Appendix B.

59. **IT IS FURTHER ORDERED** that the rules adopted herein **WILL BECOME EFFECTIVE** 30 days after the date of publication in the *Federal Register*, except for sections 73.3800, 73.6028, and 74.799(h) which contain new or modified information collection requirements that require approval by the OMB under the PRA and **WILL BECOME EFFECTIVE** after the Commission publishes a notice in the *Federal Register* announcing such approval and the relevant effective date.

60. **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.

61. **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 Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. §801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**List of Commenters****MB Docket No. 15-137****Commenters**

AT&T and DIRECTV (AT&T)
Expanding Opportunities for Broadcasters Coalition (EOBC)
International Communications Network, Inc. (ICN)
National Association of Broadcasters (NAB)
National Cable & Telecommunications Association (NCTA)
Venture Technologies Group, LLC (Venture)
Western Pacific Broadcast, LLC (Western)

Reply Commenters

EOBC
Media General, Inc. (Media General)
NAB
NCTA
Public Broadcasting Service, Association of Public Television Stations, and Corporation for Public Broadcasting (PTV)

Ex Parte Filings

ICN filed January 27, 2016
Pearl TV filed July 30, 2015
NCTA filed June 15, 2016
NCTA filed March 13, 2017
NCTA filed March 16, 2017

MB Docket No. 03-185**Commenters**

ICN
Michiana Public Broadcasting Corporation (Michiana)
NCTA
Roy William Mayhugh (Mayhugh)

Reply Commenters

None

Ex Parte Filings

ICN filed January 27, 2016

LPTV Spectrum Rights Coalition filed February 3, 2016

Free Access & Telemedia, LLC filed February 5, 2016

NCTA filed June 15, 2016

NCTA filed March 13, 2017

NCTA filed March 16, 2017

APPENDIX B**Final Rules****PART 73 – RADIO BROADCAST SERVICES**

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339

2. Section 73.3572 is revised as follows:

§ 73.3572 Processing of TV broadcast, Class A TV broadcast, low power TV, TV translators, and TV booster applications.

(a) Applications for TV stations are divided into two groups:

* * * *

(3) Other changes will be considered minor including changes made to implement a channel sharing arrangement provided they comply with the other provisions of this section and provided, until October 1, 2000, proposed changes to the facilities of Class A TV, low power TV, TV translator and TV booster stations, other than a change in frequency, will be considered minor only if the change(s) will not increase the signal range of the Class A TV, low power TV or TV booster in any horizontal direction.

2. Section 73.3800 is added to read as follows:

§ 73.3800 Full Power Television Channel Sharing Outside the Incentive Auction

(a) Eligibility. Subject to the provisions of this section, a full power television station with an auction-related Channel Sharing Agreement (CSA) may voluntarily seek Commission approval to relinquish its channel to share a single six megahertz channel with a full power, Class A, low power, or TV translator television station. An auction-related CSA is a CSA filed with and approved by the Commission pursuant to 47 C.F.R. 73.3700(b)(vii).

(b) Licensing of Channel Sharing Stations.

(1) Each station sharing a single channel pursuant to this section shall continue to be licensed and operated separately, have its own call sign, and be separately subject to all applicable Commission obligations, rules, and policies.

(2) A full power television channel sharing station relinquishing its channel must file an application for a construction permit (FCC Form 2100), include a copy of the CSA as an exhibit, and cross reference the other sharing station(s). Any engineering changes necessitated by the CSA may be included in the station's application. Upon initiation of shared operations, the station relinquishing its channel must notify the Commission that it has terminated operation pursuant to 47 C.F.R. 73.1750 and each sharing station must file an application for license (FCC Form 2100).

(c) Channel Sharing Between Full Power Television Stations and Class A, Low Power Television, or TV Translator Stations.

(1) A full power television sharee station (defined as a station relinquishing a channel in order to share) that is a party to a CSA with a Class A sharer station (defined as the station hosting a sharee pursuant to a CSA) must comply with the rules governing power levels and interference applicable to Class A stations,

and must comply in all other respects with the rules and policies applicable to full power television stations set forth in part 73 of this chapter.

(2) A full power television sharee station that is a party to a CSA with a low power television or TV translator sharer station must comply with the rules of part 74 of this chapter governing power levels and interference applicable to low power television or TV translator stations, and must comply in all other respects with the rules and policies applicable to full power television stations set forth in part 73 of this chapter.

(d) Channel Sharing Between Commercial and Noncommercial Educational Television Stations.

(1) A CSA may be executed between commercial and NCE broadcast television station licensees.

(2) The licensee of an NCE station operating on a reserved channel under § 73.621 that becomes a party to a CSA, either as a channel sharee station or as a channel sharer station, will retain its NCE status and must continue to comply with § 73.621.

(3) If the licensee of an NCE station operating on a reserved channel under § 73.621 becomes a party to a CSA, either as a channel sharee station or as a channel sharer station, the portion of the shared television channel on which the NCE station operates shall be reserved for NCE-only use.

(4) The licensee of an NCE station operating on a reserved channel under § 73.621 that becomes a party to a CSA may assign or transfer its shared license only to an entity qualified under § 73.621 as an NCE television licensee.

(e) Deadline For Implementing CSAs. CSAs submitted pursuant to this section must be implemented within three years of the grant of the channel sharing construction permit.

(f) Channel Sharing Agreements (CSAs).

(1) CSAs submitted under this section must contain provisions outlining each licensee's rights and responsibilities regarding:

(i) Access to facilities, including whether each licensee will have unrestrained access to the shared transmission facilities;

(ii) Allocation of bandwidth within the shared channel;

(iii) Operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment, a description of each party's financial obligations, and any relevant notice provisions; and

(iv) Transfer/assignment of a shared license, including the ability of a new licensee to assume the existing CSA; and

(v) Termination of the license of a party to the CSA, including reversion of spectrum usage rights to the remaining parties to the CSA.

(2) CSAs must include provisions:

(i) Affirming compliance with the channel sharing requirements in this section and all relevant Commission rules and policies; and

(ii) 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 program stream at all times.

(g) Termination and Assignment/Transfer of Shared Channel.

(1) Upon termination of the license of a party to a CSA, the spectrum usage rights covered by that license may revert to the remaining parties to the CSA. Such reversion shall be governed by the terms of the CSA in accordance with paragraph (f)(1)(v) of this section. If upon termination of the license of a party to a CSA only one party to the CSA remains, the remaining licensee may file an application for license to change its status to non-shared.

(2) If the rights under a CSA are transferred or assigned, the assignee or the transferee must comply with the terms of the CSA in accordance with paragraph (f)(1)(iv) of this section. If the transferee or assignee and the licensees of the remaining channel sharing station or stations agree to amend the terms of the existing CSA, the agreement may be amended, subject to Commission approval.

(h) Notice to MVPDs.

(1) Stations participating in channel sharing agreements must provide notice to MVPDs that:

- (i) no longer will be required to carry the station because of the relocation of the station;
- (ii) currently carry and will continue to be obligated to carry a station that will change channels; or
- (iii) will become obligated to carry the station due to a channel sharing relocation.

(2) The notice required by this section must contain the following information:

- (i) date and time of any channel changes;
- (ii) the channel occupied by the station before and after implementation of the CSA;
- (iii) modification, if any, to antenna position, location, or power levels;
- (iv) stream identification information; and
- (v) engineering staff contact information.

(3) Should any of the information in (h)(2) of this section change, an amended notification must be sent.

(4) Sharee stations must provide notice as required by this section at least 90 days prior to terminating operations on the sharee's channel. Sharer stations and sharee stations must provide notice as required by this section at least 90 days prior to initiation of operations on the sharer channel. Should the anticipated date to either cease operations or commence channel sharing operations change, the stations must send a further notice to affected MVPDs informing them of the new anticipated date(s).

(5) Notifications provided to cable systems pursuant to this section must be either mailed to the system's official address of record provided in the cable system's most recent filing in the FCC's Cable Operations and Licensing System (COALS) Form 322, or emailed to the system if the system has provided an email address. For all other MVPDs, the letter must be addressed to the official corporate address registered with their State of incorporation.

4. Section 73.6028 is added to read as follows:

§ 73.6028 Class A Television Channel Sharing Outside the Incentive Auction

(a) Eligibility. Subject to the provisions of this section, Class A television stations may voluntarily seek Commission approval to share a single six megahertz channel with other Class A, full power, low power, or TV translator television stations.

(b) Licensing of Channel Sharing Stations.

(1) Each station sharing a single channel pursuant to this section 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.

(2) A station relinquishing its channel must file an application for a construction permit, include a copy of the Channel Sharing Agreement (CSA) as an exhibit, and cross reference the other sharing station(s). Any engineering changes necessitated by the CSA may be included in the station's application. Upon initiation of shared operations, the station relinquishing its channel must notify the Commission that it has terminated operation pursuant to 47 C.F.R. 73.1750 and each sharing station must file an application for license.

(c) Channel Sharing Between Class A Television Stations and Full Power, Low Power Television, and TV Translator Stations.

(1) A Class A television sharee station (defined as a station relinquishing a channel in order to share) that is a party to a CSA with a full power television sharer station (defined as the station hosting a sharee pursuant to a CSA) must comply with the rules of part 73 of this chapter governing power levels and interference, and must comply in all other respects with the rules and policies applicable to Class A television stations, as set forth in §§ 73.6000 et seq.

(2) A Class A television sharee station that is a party to a CSA with a low power television or TV translator sharer station must comply with the rules of part 74 of this chapter governing power levels and interference that are applicable to low power television or TV translator stations, and must comply in all other respects with the rules and policies applicable to Class A television stations, as set forth in §§ 73.6000 et seq.

(d) Deadline For Implementing CSAs. CSAs submitted pursuant to this section must be implemented within three years of the grant of the initial channel sharing construction permit.

(e) Channel Sharing Agreements (CSAs).

(1) CSAs submitted under this section must contain provisions outlining each licensee's rights and responsibilities regarding:

(i) Access to facilities, including whether each licensee will have unrestrained access to the shared transmission facilities;

(ii) Allocation of bandwidth within the shared channel;

(iii) Operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment, a description of each party's financial obligations, and any relevant notice provisions;

(iv) Transfer/assignment of a shared license, including the ability of a new licensee to assume the existing CSA; and

(v) Termination of the license of a party to the CSA, including reversion of spectrum usage rights to the remaining parties to the CSA.

(2) CSAs must include provisions:

(i) Affirming compliance with the channel sharing requirements in this section and all relevant Commission rules and policies; and

(ii) 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 program stream at all times.

(f) Termination and Assignment/Transfer of Shared Channel.

(1) Upon termination of the license of a party to a CSA, the spectrum usage rights covered by that license may revert to the remaining parties to the CSA. Such reversion shall be governed by the terms of the CSA in accordance with paragraph (e)(1)(v) of this section. If upon termination of the license of a party to a CSA only one party to the CSA remains, the remaining licensee may file an application for license to change its status to non-shared.

(2) If the rights under a CSA are transferred or assigned, the assignee or the transferee must comply with the terms of the CSA in accordance with paragraph (e)(1)(iv) of this section. If the transferee or assignee and the licensees of the remaining channel sharing station or stations agree to amend the terms of the existing CSA, the agreement may be amended, subject to Commission approval.

(g) Notice to Cable Systems.

(1) Stations participating in channel sharing agreements must provide notice to cable systems that:

(i) no longer will be required to carry the station because of the relocation of the station;

(ii) currently carry and will continue to be obligated to carry a station that will change channels; or

(iii) will become obligated to carry the station due to a channel sharing relocation.

(2) The notice required by this section must contain the following information:

(i) date and time of any channel changes;

(ii) the channel occupied by the station before and after implementation of the CSA;

(iii) modification, if any, to antenna position, location, or power levels;

(iv) stream identification information; and

(v) engineering staff contact information.

(3) Should any of the information in (g)(2) of this section change, an amended notification must be sent.

(4) Sharee stations must provide notice as required by this section at least 90 days prior to terminating

operations on the sharee's channel. Sharer stations and sharee stations must provide notice as required by this section at least 90 days prior to initiation of operations on the sharer channel. Should the anticipated date to either cease operations or commence channel sharing operations change, the stations must send a further notice to affected cable systems informing them of the new anticipated date(s).

(5) Notifications provided to cable systems pursuant to this section must be either mailed to the system's official address of record provided in the cable system's most recent filing in the FCC's Cable Operations and Licensing System (COALS) Form 322, or emailed to the system if the system has provided an email address.

5. Section 74.800 is renumbered and revised as follows:

§ 74.799 Low Power Television and TV Translator Channel Sharing

(a) Channel sharing generally.

(1) Subject to the provisions of this section, low power television and TV translator stations may voluntarily seek Commission approval to share a single six megahertz channel with other low power television and TV translator stations, Class A television stations, and full power television stations.

* * * * *

(g) Channel Sharing Between Low Power Television or TV Translator Stations and Class A Television Stations or Full Power Television Stations.

(1) A low power television or TV translator sharee station (defined as a station relinquishing a channel in order to share) that is a party to a CSA with a full power television sharer station (defined as the station hosting a sharee pursuant to a CSA) must comply with the rules of part 73 of this chapter governing power levels and interference, and must comply in all other respects with the rules and policies applicable to low power television or TV translator stations set forth in part 74 of this chapter.

(2) A low power television or TV translator sharee station that is a party to a CSA with a Class A television sharer station must comply with the rules governing power levels and interference that are applicable to Class A television stations, and must comply in all other respects with the rules and policies applicable to low power television or TV translator stations set forth in part 74 of this chapter.

(h) Notice to Cable Systems.

(1) Stations participating in channel sharing agreements must provide notice to cable systems that:

- (i) no longer will be required to carry the station because of the relocation of the station;
- (ii) currently carry and will continue to be obligated to carry a station that will change channels; or
- (iii) will become obligated to carry the station due to a channel sharing relocation.

(2) The notice required by this section must contain the following information:

- (i) date and time of any channel changes;
- (ii) the channel occupied by the station before and after implementation of the CSA;
- (iii) modification, if any, to antenna position, location, or power levels;

(iv) stream identification information; and

(v) engineering staff contact information.

(3) Should any of the information in (h)(2) of this section change, an amended notification must be sent.

(4) Sharee stations must provide notice as required by this section at least 90 days prior to terminating operations on the sharee's channel. Sharer stations and sharee stations must provide notice as required by this section at least 90 days prior to initiation of operations on the sharer channel. Should the anticipated date to either cease operations or commence channel sharing operations change, the stations must send a further notice to affected cable systems informing them of the new anticipated date(s).

(5) Notifications provided to cable systems pursuant to this section must be either mailed to the system's official address of record provided in the cable system's most recent filing in the FCC's Cable Operations and Licensing System (COALS) Form 322, or emailed to the system if the system has provided an email address.

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ Initial Regulatory Flexibility Analyses (“IRFAs”) were incorporated in the *First Order on Reconsideration and Notice of Proposed Rulemaking* and *Third Report and Order* and *Fourth Notice of Proposed Rulemaking* (“NPRMs”). The Commission sought written public comment on the proposals in the NPRMs, including comment on the IRFAs. Because we amend the rules in this *Report and Order*, we have included this Final Regulatory Flexibility Analysis (“FRFA”) which conforms to the RFA.²

A. Need for and Objectives of the Rules

2. The *Report and Order* adopts rules permitting full power stations with auction-related channel sharing agreements (CSAs) to become “sharee” stations outside the auction context. Our goal in this regard is to permit full power stations with auction-related CSAs to continue to share, and to find a new host station, once their auction-related CSAs expire or otherwise terminate. We also adopt rules to allow all secondary stations, including those that have not yet constructed facilities and are not operating at the time they enter into a CSA, to share a channel with another secondary station or with a full power or Class A station. This action will reduce construction and operating costs for resource-constrained secondary stations and assist those secondary stations that are displaced by the incentive auction and the repacking process to continue to operate in the post-auction television bands. We also permit all Class A stations to become sharee stations outside the auction context. In addition, we permit all stations, both primary and secondary, to be “sharers” outside the auction context. The rules we adopt in this *Report and Order* will enhance the benefits of channel sharing for broadcasters without imposing significant burdens on multichannel video programming distributors (MVPDs).

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

3. No formal comments were filed on the IRFAs but some commenters raised issues concerning the impact of the various proposals in this proceeding on small entities. These comments were considered in the *Report and Order* and in the FRFA.

C. Response to comments by the Chief Counsel for Advocacy of the Small Business Administration

4. No comments were filed on the IRFAs by the Small Business Administration.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

5. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted.³ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”⁴ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁵ A small business concern

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 604.

³ *Id.* at § 603(b)(3).

⁴ 5 U.S.C. § 601(6).

⁵ *Id.* at § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), 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

(continued....)

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.⁶

6. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”⁷ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.⁸ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts.⁹ The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of \$25,000,000 or less, 25 had annual receipts between \$25,000,000 and \$49,999,999 and 70 had annual receipts of \$50,000,000 or more.¹⁰ Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

7. The Commission has estimated the number of licensed commercial television stations to be 1,384.¹¹ Of this total, 1,264 stations (or about 91 percent) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on February 24, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 394.¹² Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

8. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations¹³ 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, another element of the definition of “small business” requires that an entity not be dominant in its field of

(Continued from previous page) _____

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).

⁶ 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

⁷ U.S. Census Bureau, 2012 NAICS Definitions, “515120 Television Broadcasting,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁸ U.S. Census Bureau, 2012 NAICS Definitions, “515120 Television Broadcasting,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>

⁹ 13 CFR § 121.201; 2012 NAICS code 515120.

¹⁰ U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting). https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

¹¹ *Broadcast Station Totals as of December 31, 2016*, Press Release (MB, rel. January 5, 2017) (*January 5, 2017 Broadcast Station Totals Press Release*), <https://www.fcc.gov/document/broadcast-station-totals-december-31-2016>.

¹² *January 5, 2017 Broadcast Station Totals Press Release*.

¹³ “[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 the power to control both.” 13 C.F.R. § 21.103(a)(1).

operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast 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.

9. *Class A TV and LPTV Stations.* The same SBA definition that applies to television broadcast stations would apply to licensees of Class A television stations. As noted above, the SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts.¹⁴ The Commission has estimated the number of licensed Class A television stations to be 417.¹⁵ Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition.

10. There are also 1,966 LPTV stations and 3,789 TV translator stations.¹⁶ Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

11. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “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 communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”¹⁷ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.¹⁸ Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.¹⁹ Thus, under this size standard, the majority of firms in this industry can be considered small.

12. *Cable Companies and Systems (Rate Regulation).* The Commission has 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 there are currently 4,600 active cable systems in the United States.²¹ Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard.²² In addition, under the Commission's rate regulation rules, a “small system” is a cable system serving 15,000 or fewer subscribers.²³ Current Commission records show 4,600 cable systems nationwide.²⁴ Of this total, 3,900

¹⁴ 13 CFR § 121.201; NAICS code 515120.

¹⁵ See *January 5, 2017 Broadcast Station Totals Press Release*.

¹⁶ See *id.*

¹⁷ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

¹⁸ See 13 CFR § 120.201, NAICS Code 517110.

¹⁹ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

²⁰ 47 CFR 76.901(e).

²¹ See August 15, 2015 Report from the Media Bureau based on data contained in the Commission's Cable Operations and Licensing System (COALS). See <http://www.fcc.gov/coals>.

²² See SNL KAGAN at <https://snl.com/interactivex/topcableMSOs.aspx>.

²³ 47 CFR 76.901(c).

cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.²⁵ Thus, under this standard as well, we estimate that most cable systems are small entities.

13. *Cable System Operators (Telecom Act Standard)*. The Communications Act 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.”²⁶ There are approximately 52,403,705 cable video subscribers in the United States today.²⁷ Accordingly, an operator serving fewer than 524,037 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.²⁸ Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.²⁹ 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.³⁰ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

14. *Direct Broadcast Satellite (DBS) Service*. DBS Service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber’s location. DBS is now included in SBA’s economic census category “Wired Telecommunications Carriers.” The Wired Telecommunications Carriers 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. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.³¹ The SBA determines that a wireline business is small if it has fewer than 1500 employees.³² Census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees.³³ Based on that data, we conclude that the majority of wireline firms are small under the

(Continued from previous page) _____

²⁴ See August 15, 2015 Report from the Media Bureau based on data contained in the Commission’s Cable Operations and Licensing System (COALS). See <http://www.fcc.gov/coals>.

²⁵ *Id.*

²⁶ 47 CFR § 76.901(f) and notes ff. 1, 2, and 3.

²⁷ See SNL KAGAN at www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx.

²⁸ 47 CFR § 76.901(f) and notes ff. 1, 2, and 3.

²⁹ See SNL KAGAN at www.snl.com/interactivex/TopCableMSOs.aspx.

³⁰ 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 section 76.901(f) of the Commission’s rules. See 47 CFR § 76.901(f).

³¹ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³² NAICs CODE 517110; 13 CFR § 121.201.

³³ http://factfinder.census.gov/faces/tableservices.jasf/pages/productview.xhtml?pid+ECN_2012_US.51SSSZ4&prodType=table.

applicable standard. However, currently only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network.³⁴ DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we must conclude that internally developed FCC data are persuasive that in general DBS service is provided only by large firms.

E. Description of Projected Reporting, Recordkeeping and other Compliance Requirements

15. The *Report and Order* adopted the following new reporting requirements. To implement channel sharing outside of the auction context, the Commission will follow a two-step process – stations will first file an application for construction permit and then an application for license. Stations terminating operations to share a channel will be required to submit a termination notice pursuant to the existing Commission rule. These existing forms and collections will be revised to accommodate these new channel-sharing related filings and to expand the burden estimates. In addition, channel sharing stations will be required to submit their channel sharing agreements (CSAs) with the Commission and be required to include certain provisions in their CSAs. In addition, if upon termination of the license of a party to a CSA only one party to the CSA remains, the remaining licensee may file an application to change its license to non-shared status. The existing collection concerning the execution and filing of CSAs will be revised. In addition, stations participating in CSAs outside the auction context are required to provide notice to those MVPDs that: (i) no longer will be required to carry the station because of the relocation of the station; (ii) currently carry and will continue to be obligated to carry a station that will change channels; or (iii) will become obligated to carry the station due to a channel sharing relocation. The existing collection concerning MVPD notification will be revised.

16. These new reporting requirements will not differently affect small entities.

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

17. 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.³⁵

18. The rules adopted in the *Report and Order* will allow full power stations with auction-related CSAs to continue to share, and to find a new host station, once their auction-related CSAs expire or otherwise terminate, thereby allowing them to continue to provide service to the public. In addition, channel sharing can help resource-constrained Class A and secondary stations, including existing small, minority-owned, and niche stations, to reduce operating costs and provide them with additional net income to strengthen operations and improve programming services. The rules adopted in the *Report and Order* could also assist stations that are displaced by the incentive auction reorganization of spectrum by allowing these stations to channel share and thereby reduce the cost of having to build a new facility to replace the one that was displaced. Stations can share in the cost of building a shared channel facility and will experience cost savings by operating a shared transmission facility. In addition, channel sharing is voluntary and only those stations that determine that channel sharing will be advantageous will enter into this arrangement. At the same time, the sharing rules we adopt will not impose significant burdens on multichannel video programming distributors (MVPDs). For example, by limiting full power sharees

³⁴ See 15th Annual Video Competition Report, 28 FCC Rcd at 1057, Section 27.

³⁵ 5 U.S.C. § 603(c)(1)-(c)(4).

outside of the auction context to only those with an auction-related CSA, we avoid an increase in the number of full power stations MVPDs are required to carry under the must-carry regime.

19. The Commission's licensing and operating and MVPD notice rules for channel sharing outside of the auction context were designed to minimize impact on small entities. The rules provide a streamlined method for reviewing and licensing channel sharing for these stations as well as a streamlined method for resolving cases where a channel sharing station loses its license on the shared channel. These rules were designed to reduce the burden and cost on small entities.

20. **Report to Congress:** The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.³⁶ In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.³⁷

³⁶ See 5 U.S.C. § 801(a)(1)(A).

³⁷ See 5 U.S.C. § 604(b).

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268; *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185; *Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context*, MB Docket No. 15-137.

In the 1980s, the Care Bears taught a generation of young television viewers that “sharing is caring.” And now, sharing is about to play an important role in broadcast television itself. Channel sharing may be a difficult concept to appreciate for non-engineers, but it’s an important one. It promotes the efficient use of spectrum by allowing two or more broadcast television stations to share a single 6 MHz channel. And it will help to facilitate the continued availability of TV stations following the FCC’s incentive auction, thus ensuring that the public will continue to benefit from free, over-the-air broadcast programming.

The Commission realized this when it previously established rules permitting primary stations (full power and Class A TV stations) that chose to relinquish spectrum in the incentive auction to share a channel with another station. But these regulations limited sharing to the auction context; what happened after the auction’s end, and after auction-related channel-sharing agreements expired, was an open question.

Today, we answer that question by allowing broadcast TV stations to channel-share outside of the incentive auction context. Specifically, we will permit primary stations to enter into new sharing agreements, either with the same sharing partner or a new one, once their auction-related agreements terminate or otherwise expire. This will help prevent loss of broadcast service to the public by ensuring that stations with auction-related channel sharing agreements can continue broadcasting once their agreements end. We will also permit Class A stations that were not parties to auction-related sharing agreements to channel-share outside of the auction context.

Today’s *Order* will also further benefit secondary stations that may be displaced by the post-auction repacking—that is, low-power television and television translator stations—by increasing those stations’ opportunities for channel sharing. The FCC previously authorized channel sharing between secondary stations to help mitigate the auction’s potential to displace these stations; this *Order* goes one step further and permits all secondary stations to share a channel outside the auction context not only with another secondary station but with a primary station as well. This expanded flexibility will help ensure that secondary stations displaced by the repack can continue to operate after the auction concludes. Moreover, increased channel options could potentially reduce construction and operating costs for resource-constrained secondary stations, including small, minority-owned, and niche stations.

We are in debt to the dedicated Commission staff who worked so diligently on this complex *Order*. From the Media Bureau, I’d like to thank Michelle Carey, Hillary DeNigro, Martha Heller, Shaun Maher, and Kim Matthews. From the Office of General Counsel, thank you to David Konczal and Bill Scher. And last but certainly not least, from the Incentive Auction Task Force, thank you to Jean Kiddoo. Pardon the bad pun, but the credit deserves to be shared among all of you.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN
APPROVING IN PART, CONCURRING IN PART**

Re: *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context, Report and Order, GN Docket No. 12-268, MB Docket No. 03-185, MB Docket No. 15-137*

On the surface, our channel sharing *Report and Order*, designed to establish rules among broadcast television stations outside of the incentive auction context, might look and sound like just another technical proceeding before the Commission. While it is true, that the actions leading up to this *Report and Order*, and those needed to implement it, are technical in nature, the more meaningful story should actually be, what channel sharing means for those who love broadcast television, as well as the opportunities it presents for the nation's smallest broadcasters.

In the five years since Congress passed the Spectrum Act, I have heard from many LPTV and translator stations that are in fear of being displaced, following the incentive auction repacking process. Today's *Report and Order* had the potential to do more to put those station owners at ease, but I am less confident today of that happening, than when the item originally circulated. Establishing channel sharing between secondary stations or with full power or Class A stations, has the ability to provide these stations, with a new 'lease on life,' providing them the opportunity to continue serving their communities with diverse and local television programming.

As the Order correctly recognizes, channel sharing can help "resource-constrained Class A and secondary stations, including existing small, minority-owned, and niche stations, to reduce operating costs and provide them with additional net income to strengthen operations and improve programming services." Channel sharing may also enable secondary stations to expand their coverage area, which would mean bringing more variety programming, to more households.

What disappoints me is that today, we have actually closed the door on the very rare instances, in which a secondary station could gain must carry rights, as a result of channel sharing. In doing so, we have stricken from the Order, a simple acknowledgement that the "benefits of channel sharing for secondary stations, outweigh any theoretical increase in the number of secondary stations cable operators may be required to carry." Nonetheless I acknowledge that LPTV stations are free to privately negotiate for carriage, and am hopeful that many stations will find this to be a viable option.

According to the FCC's own data, LPTV stations are a relative bright-spot, when it comes to broadcast ownership diversity. Women owned 14.9 percent of LPTV stations, compared to just 6.3 percent of full power commercial TV stations in 2013. Similarly, the Commission's own data found that Hispanics owned three percent of full power stations, compared to 10 percent of LPTV stations. I am still optimistic, that the expanded channel sharing options authorized by this Order, will help provide the boost needed to keep more women and minorities in the broadcast business.

Thank you to the Media Bureau staff, including Michelle Carey, Hillary DeNigro, Martha Heller, Shaun Maher and Kim Matthews for their work on this item. Your efforts to enable channel sharing, ensure the public airwaves are used efficiently and for the greatest public good.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268; Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, MB Docket No. 03-185; Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context, MB Docket No. 15-137

The central purpose of this item is to establish rules for television channel sharing outside of the scope of the broadcast incentive auction. A main component in doing so is determining the sharing procedures for incentive auction channel sharers that essentially divorce and seek to marry another partner in the future. Another aspect is permitting sharing in the future by certain stations that do not establish a sharing arrangement during the incentive auction. In reality, the number of instances triggering these rules is not expected to be significantly high, but when needed, these rules will provide a flexible but necessary structure and offer some certainty for television stations that have a sharing partner today or may seek one in the future. As such, I am willing to support the item.

One area that gives me some concern is the idea that this action could be seen as setting the stage for stations to channel share in order to lease out their spectrum to unrelated wireless services or for purposes of building their own wireless network. This possibility has been bandied about in D.C. conferences and conversation for some time. While I may or may not be in favor of permitting such arrangements in the future, this item does not serve to answer the necessary questions that would need to be addressed before allowing that to happen. In other words, this item does not prejudice a more fulsome discussion that would be appropriate should someone seek to pursue this course of action.

In addition, the Commission is making clear with changes made to the text before us compared to the circulated version that television station must carry rights are not being expanded in any aspect. Simply put, the item maintains the status quo with regards to must carry: whatever right stations had to trigger must carry previously are maintained and no new rights are being created. As someone who is not necessarily the biggest supporter of must carry, we are correctly deciding not to reopen that can of worms here.