

**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
)	
)	
Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context)	MB Docket No. 15-137
)	

FIRST ORDER ON RECONSIDERATION AND NOTICE OF PROPOSED RULEMAKING

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I. INTRODUCTION

1. Broadcasters will have the unique financial opportunity in the broadcast television spectrum incentive auction to voluntarily return some or all of their licensed spectrum usage rights in exchange for incentive payments.¹ One of broadcasters' bid options will be to relinquish rights in order to share a channel with another licensee, allowing them to continue broadcasting while receiving payments that can fund new content, services, and delivery mechanisms.² The Commission established rules governing channel sharing agreements ("CSAs") in the *Incentive Auction Report & Order* ("IA R&O") and the preceding *Channel Sharing Report & Order* ("Channel Sharing R&O").³ In this First Order on Reconsideration, we refine those rules to provide greater flexibility and certainty regarding CSAs. Among other things, we modify our rules to allow broadcasters that relinquish rights in the incentive auction in order to channel share to enter into CSAs after the auction and, whether they enter into CSAs before or after the auction, to determine the length of their agreements. In the companion Notice of Proposed Rulemaking ("NPRM"), we tentatively conclude that we should authorize channel sharing by full power and Class A stations outside the incentive auction context, including "second generation" agreements in which one or both entities were parties to an auction-related CSA whose term has expired or that has otherwise been terminated.⁴ By providing greater flexibility and certainty regarding CSAs, our objective is to encourage voluntary participation by broadcasters in the incentive auction.

II. BACKGROUND

2. Congress authorized the Commission to conduct the incentive auction to help meet the Nation's growing spectrum needs.⁵ Section 1452(a)(2) of the Spectrum Act provides for three bid options that will be available to eligible full power and Class A broadcast television licensees in the auction,⁶ including relinquishment of "usage rights in order to share a television channel with another licensee" ("channel sharing bid"). Section 1452(a)(4) provides that a licensee that voluntarily relinquishes usage rights in order to channel share and that possessed carriage rights on November 30, 2010 "shall have, at its shared location, the carriage rights ... that would apply to such station at such location if it were not

¹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, para. 1 (2014) ("IA R&O") (petitions for reconsideration pending).

² *Id.* at 6572, para. 9.

³ *Id.* at 6726-29, paras. 374-78; 6795-96, para. 558; *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 R&O").

⁴ Channel sharing outside the context of the incentive auction is an entirely voluntary arrangement between stations; nothing in the NPRM is intended to require, encourage or discourage stations to enter into such arrangements. We recently proposed to authorize channel sharing by low-power television stations and translators in a separate proceeding. See *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, Third Notice of Proposed Rulemaking, 29 FCC Rcd 12536 (2014) ("LPTV DTV Third Notice").

⁵ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402 (codified at 47 U.S.C. § 309(j)(8)(G)), 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012) ("Spectrum Act").

⁶ 47 U.S.C. § 1452(a)(2). In the IA R&O, the Commission determined that it would also offer an option for high VHF stations to move to low VHF channels. See IA R&O, 29 FCC Rcd at 6729, para. 380.

sharing a channel.”⁷ In the *Channel Sharing R&O*, the Commission established rules authorizing channel sharing in connection with the incentive auction.⁸

3. The Commission addressed a variety of further issues related to channel sharing in the *IA R&O*. The Commission concluded that applicants that participate in the auction in order to share a channel must provide information concerning their Channel Sharing Agreements (“CSAs”) prior to the auction, as part of their pre-auction applications, and must submit a copy of the executed CSA with their applications.⁹ In addition, the Commission determined that licensees, in certain circumstances, may enter into CSAs in connection with the reverse auction pursuant to which they will change their communities of license, so long as their stations remain licensed to a community in the same Designated Market Area (“DMA”).¹⁰ With respect to licensing, the Commission determined that, following the auction, a licensee that enters into a CSA as the result of a winning reverse auction bid will be issued a new license indicating the station’s “shared” status and specifying the station’s designated shared operating frequency.¹¹ The Commission also decided that shared channels will be designated permanently as shared in the Table of Allotments, absent a future rulemaking proceeding to redesignate the channel for non-shared use.¹²

4. The Expanding Opportunities for Broadcasters Coalition (“EOBC”) filed a Petition for Reconsideration of our channel sharing decisions in the *IA R&O*, arguing that these decisions could discourage many broadcasters from considering channel sharing and thereby reduce voluntary participation in the auction.¹³ Specifically, EOBC urges the Commission to “(1) clarify that parties to broadcast CSAs are free to negotiate for common contractual rights; (2) permit broadcasters to enter into CSAs either before or after the incentive auction; (3) ensure that parties to CSAs have the flexibility to choose whether those agreements are permanent or for a fixed term; and (4) clarify that the Commission will never force a broadcaster to accept a channel sharing partner.”¹⁴ With regard to (3), EOBC argues that, if an agreement is terminated, both the sharer and sharee stations should be permitted to find a new channel sharing partner.¹⁵ EOBC further argues that these “second generation CSAs” should be subject to the same rights and restrictions as other CSAs and that such parties should “continue to be entitled to whatever carriage rights they had on November 30, 2010, but from their new shared location.”¹⁶

⁷ 47 U.S.C. § 1452(a)(4). See also 47 C.F.R. § 76.56(g). We use the term “sharee” in this Order to refer to a station that relinquishes its spectrum usage rights in order to share a channel with a “sharer” station. More than two stations may share a channel, see *IA R&O* at 6795, n. 1580 (citing the *NPRM* at 27 FCC Rcd at 12442 n. 382), so there may be multiple sharees in a channel sharing relationship, but only one sharer.

⁸ *Channel Sharing R&O*, 27 FCC Rcd. 4616. The Commission declined in the *Channel Sharing R&O* to address channel sharing outside the incentive auction context, stating that it would do so in a future proceeding. *Id.* at 4621-22, para. 11.

⁹ *IA R&O*, 29 FCC Rcd at 6744, para. 418; 6852, n. 1945.

¹⁰ *Id.* at 6726-28, paras. 372-77. The Commission noted that a station’s carriage rights will not be expanded or diminished through this process, although its ability to exercise these rights may change based upon the facts of its specific CSA if, for example, it can no longer provide a “good quality signal” to the cable or satellite provider at the shared channel. *Id.* at 6857-58, para. 709 (citing 47 U.S.C. §§ 338(b), 534(h)(1)(B)(iii)).

¹¹ See *IA R&O*, 29 FCC Rcd at 6795-96, para. 558.

¹² *Id.* at 6853, n. 1948.

¹³ EOBC Petition for Reconsideration, GN Docket No. 12-268 (filed Sept. 12, 2014) at 1 (“EOBC Petition”).

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 10-12.

¹⁶ *Id.* at 12 (citing Spectrum Act § 6403(a)(4)). EOBC also argues that these “transient” sharee stations should be permitted to propose community of license changes if they cannot satisfy signal coverage requirements from their

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5. The National Cable & Telecommunications Association (“NCTA”) filed an opposition arguing that extending carriage rights to broadcasters that enter into post-auction CSAs, and especially to “second generation CSAs,” would contravene the Spectrum Act.¹⁷ Specifically, NCTA objected to EOBC’s request that channel sharing partners be permitted to enter into channel sharing agreements up to twelve months following the sharee’s relinquishment date and that the CSAs be term-limited (thereby allowing for second generation CSAs). NCTA argues that this would cause uncertainty in the post-auction broadcaster transition process; confer greater cable carriage rights than Congress intended; lead to customer confusion; and might leave MVPDs unreimbursed.¹⁸ NCTA argues that “the plain language” of Section 1452(a)(4) of the Spectrum Act ties carriage rights to relinquishment of spectrum in the incentive auction.¹⁹ According to NCTA, the Spectrum Act allows only a one-time auction of television spectrum and, therefore, provides only a single opportunity to enter into a CSA covered by the channel sharing carriage provisions of the Spectrum Act.²⁰ CTIA supports all of EOBC’s requests,²¹ as do Fox, Ion Media, Tribune, and Univision.²²

III. FIRST ORDER ON RECONSIDERATION

6. We grant the EOBC Petition, with the exceptions noted below. In addition to addressing each of EOBC’s above-stated requests for reconsideration below, we modify and clarify the pre- and post-auction CSA filing requirements that apply before and after the auction and address the scope of CSA review by Commission staff.

A. Negotiating for Common Contractual Rights

7. In the *IA R&O*, we noted that channel sharing agreements for contingent rights must not violate the reversionary interest rule,²³ which precludes a seller from retaining an interest in the license it sells, and prohibits a licensee from granting a third party an automatic reversionary interest, such as a security interest, in its license.²⁴

8. EOBC expresses concern that broadcasters might interpret references to this rule as indicating that “the mere acts of entering into and participating in a CSA” triggers the reversionary

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new transmitter sites, provided that the new communities meet the same allotment priorities as the current ones and are located in the same DMA. *See id.* at 12.

¹⁷ *See* National Cable & Telecommunications Association, Opposition to Petition for Reconsideration, GN Docket No. 12-268 (November 12, 2014) (“NCTA Opp.”) at 3.

¹⁸ *Id.* at 1-2.

¹⁹ *Id.*

²⁰ *Id.* at 4.

²¹ Opposition and Reply of CTIA—the Wireless Association to Petitions for Reconsideration, GN Docket No. 12-268 (filed Nov. 12, 2014) (“CTIA Opp.”).

²² Joint Reply Comments of Fox Television Stations Inc., Ion Media Networks, Inc., Tribune Media Company, and Univision Communications Inc., GN Docket No. 12-268 (filed March 13, 2015) (“Fox Reply”) at 5-6.

²³ *IA R&O*, 29 FCC Rcd at 6852, n. 1942 (noting that “[a]ny rights of first refusal included in a CSA would have to be consistent with ... Commission rules and policies” and citing the reversionary interest rule) & 6853, n. 1948 (CSAs “may not contain provisions permitting one licensee to retain any reversionary interest in another licensee’s portion of the shared channel”).

²⁴ 47 C.F.R. § 73.1150 (providing that a licensee, “[i]n transferring a broadcast station ... may retain no right of reversion of the license, no right to reassignment of the license in the future, and may not reserve the right to use the facilities of the station for any period whatsoever.”). *See Kidd Communications v. FCC*, 427 F.3d 1, 5 (D.C. Cir. 2005) (“The Commission’s control-based rationale is not uniquely applicable to reversionary interests acquired at the time of a station’s transfer; logically it applies to the prohibition of a subsequently acquired reversionary interest or any type of security interest in a broadcast license.”).

interest rule or that the inclusion of contingent rights in a CSA violates this rule. EOBC therefore asks the Commission to clarify that the act of entering into a CSA, in and of itself, does not trigger the reversionary interest rule and that parties to CSAs may bargain for common contractual rights consistent with existing Commission rules and policies.²⁵ We received no opposition to EOBC's request. In its "Opposition and Reply," CTIA joins and supports all of EOBC's reconsideration requests regarding channel sharing.²⁶ Fox, Ion Media, Tribune, and Univision, who filed a reply comment in response to the *Incentive Auction Comment PN*, agree with this position.²⁷

9. We grant EOBC's request. Broadcasters may enter into, and participate in, CSAs without violating the reversionary interest rule. Specifically, parties to a CSA may grant each other options, puts, calls, rights of first refusal, and other common contingent interests without committing a *per se* violation of the reversionary interest rule.

10. The reversionary interest rule does not necessarily apply to a CSA, because a CSA does not involve the transfer of a license from one sharing partner to another. In addition, CSA provisions for contingent interests in the licenses involved in a CSA would not violate the reversionary interest rule absent grant of a prohibited security interest. Channel sharing parties may include contingent rights such as puts, calls, options, rights of first refusal, and other common rights in their CSAs subject to all applicable Commission rules and policies, including the media ownership rules. We recognize that contracting for these common contingent rights will enable sharing parties to eliminate some of the uncertainty regarding the identity of their sharing partners in the event that one sharing party decides to sell its license.²⁸ Moreover, we share EOBC's concern that, without the ability to bargain for these rights, broadcasters may not avail themselves of this bid option in the auction.

B. Flexibility to Enter Into CSAs After the Incentive Auction

11. Under the rules adopted in the *IA R&O*, a reverse auction bidder interested in channel sharing must submit an executed copy of the CSA with its pre-auction application,²⁹ as well as certifications under penalty of perjury that it can meet its community of license requirements from the proposed sharer's site (or that it has identified a new community of license that meets the same, or a higher, allotment priority as its current community; or the next highest priority if no community meets the same or higher priority); that the CSA is consistent with all relevant Commission rules and policies; and that the applicant accepts any risk that the implementation of the CSA may not be feasible for any reason.³⁰

12. EOBC requests that the Commission modify its rules to allow a winning license relinquishment bidder to execute a CSA after bidding in the auction is complete.³¹ Fox, Ion Media, Tribune, and Univision, who filed a reply comment in response to the *Incentive Auction Comment PN*,

²⁵ EOBC Petition at 6. See 47 C.F.R. § 73.1150(a) ("In transferring a broadcast station, the licensee may retain no right of reversion of the license, no right to reassignment of the license in the future, and may not reserve the right to use the facilities of the station for any period whatsoever.").

²⁶ CTIA Opp. at 6-8.

²⁷ Fox Reply at 6.

²⁸ EOBC Petition at 6. See also *IA R&O*, 29 FCC Rcd at 6852-53, para. 700 ("Channel sharing will create new and complex relationships between television stations.").

²⁹ *IA R&O*, 29 FCC Rcd at 6748-49, para. 436.

³⁰ *Id.* at 6748-49, para. 436; 47 C.F.R. 1.2204(c)(5). We take this opportunity to clarify that after the auction closes, a winning channel sharing bidder changing its community of license will indicate the new community on Form 301 when it files the minor change application for a construction permit specifying the same technical facilities as the sharer station.

³¹ EOBC Petition at 7.

agree with this position.³² EOBC argues that the carriage rights of parties to such post-auction CSAs would be protected under the Spectrum Act.³³ CTIA agrees.³⁴ As stated above, however, NCTA asserts that grant of EOBC's request would (1) introduce additional uncertainty into the post-auction transition process; (2) confer greater cable carriage rights than Congress intended; (3) lead to customer confusion; and (4) risk leaving cable operators unreimbursed for mandatory carriage of sharee stations.³⁵

13. We grant EOBC's request, subject to the conditions set forth herein. Specifically, we modify our rules to allow winning bidders that relinquish their spectrum usage rights to enter into CSAs after the completion of the incentive auction, provided that they (1) indicate in their pre-auction applications that they have a present intent to find a channel sharing partner after the auction,³⁶ and (2) execute and implement their CSAs by the date on which they would otherwise be required to relinquish their licenses. Parties to post-auction CSAs will be entitled to the same carriage rights as parties to pre-auction CSAs. We emphasize, however, that the exception to the rule prohibiting certain communications before and during the incentive auction will apply only to parties to pre-auction CSAs.³⁷

14. Subject to these conditions, we agree with EOBC that pre- and post-auction CSAs are the same for purposes of the Spectrum Act, and we find that the Commission will have sufficient information to evaluate proposed CSAs. We also agree with EOBC that providing this flexibility will encourage broadcasters to consider the channel sharing bid option by enabling them to participate in the auction even if they do not find a channel sharing partner before the auction begins.³⁸ Indeed, as EOBC notes, parties may be able to negotiate CSAs more readily after the auction is complete, when fewer variables remain unknown.³⁹ This action also may help to preserve independent voices by enabling licensees to continue broadcasting after they voluntarily relinquish rights in the incentive auction.⁴⁰ As stated above, broadcasters that do not submit executed CSAs with their pre-auction applications will be ineligible for the exception to the prohibited communications rule.⁴¹ Accordingly, there will be no need for the staff to review a CSA prior to the auction to verify that the applicant qualifies for the exception.

15. In order to enter into a post-auction CSA, we will require that a license relinquishment bidder indicate in its pre-auction application its present intent to find a channel sharing partner after the auction. As we noted in the *Channel Sharing R&O*, "the Spectrum Act does not set a date restriction on the execution of channel sharing arrangements."⁴² It guarantees carriage rights, however, only for "a licensee that voluntarily relinquishes rights in order to channel share."⁴³ To fall within the scope of this

³² Fox Reply at 5.

³³ EOBC Petition at 8.

³⁴ CTIA Opp. at 7.

³⁵ NCTA Opp. at 1-2.

³⁶ As discussed below, the expression of present intent will not bind an applicant to seek out a channel sharing partner or enter into a post-auction CSA. *See infra*, para. 13.

³⁷ *IA R&O*, 29 FCC Rcd at 6740, para. 406 ("the exception to the prohibition for parties to a [CSA] will apply only if the agreement has been executed prior to the reverse auction application filing deadline and has been disclosed on the application.").

³⁸ EOBC Petition at 7-8.

³⁹ EOBC Reply at 6.

⁴⁰ *IA R&O*, 29 FCC Rcd at 6850, para. 695. *See* Section III.E (FCC Review of CSAs and Licensing of Channel Sharees).

⁴¹ *IA R&O*, 29 FCC Rcd at 6740, para. 406. *See supra*, para. 10.

⁴² *Channel Sharing R&O*, 27 FCC Rcd. at 4627, para. 21. *See* EOBC at 8, citing 47 U.S.C. § 1452(a)(2).

⁴³ 47 U.S.C. § 1452(a)(4). *See* NCTA Opp. at 3-4 ("[i]f a broadcaster has not volunteered to participate in the auction based on an intention to channel share, the Spectrum Act by its terms does not give it carriage rights at the

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guarantee, we conclude that a licensee availing itself of the flexibility we provide here must express a present intent to channel share in its pre-auction application.⁴⁴ We recognize that a successful bidder's interest in a post-auction CSA may depend on the outcome of the auction, and that its ability to execute a CSA with a sharing partner will not be entirely within its control. A successful bidder's expression of present intent, therefore, will not bind it to seek out a channel sharing partner or enter into a post-auction CSA.

16. In addition, post-auction CSAs must be executed and implemented (i.e., operations commenced on the shared channel) by the date on which the channel sharee otherwise would be required to relinquish its license. Pursuant to the *IA R&O*, a winning license relinquishment bidder must cease operations within three months after receiving its share of auction proceeds.⁴⁵ We conclude that a post-auction CSA must be executed and implemented by the license relinquishment deadline. In this regard, we disagree with EOBC that licensees should have up to twelve months after that deadline to enter into a CSA.⁴⁶ EOBC's reliance on Section 312(g) of the Communications Act, which provides that a broadcast license automatically expires if the station fails to broadcast for a consecutive 12-month period, is misplaced: a broadcaster holds a license during the statutory 12-month period, whereas a winning license relinquishment bidder will no longer hold a license after the license relinquishment deadline.⁴⁷ We also conclude that it is appropriate to limit post-auction CSAs in this manner in order to prevent a disruption in service to viewers, and smooth the MVPD's post-auction transition process.

17. This requirement addresses NCTA's concern that allowing auction participants to enter into post-auction CSAs would introduce additional uncertainty into the post-auction transition process. Sharees that enter into post-auction CSAs should be able to obtain the necessary authorizations to commence operations on a shared channel by the license relinquishment deadline, thereby enabling them to provide MVPDs with adequate "notice of an obligation to carry a sharee station."⁴⁸ Further, this requirement addresses NCTA's contention that allowing post-auction CSAs will "cause significant disruptions to operators who already may have started to use the spectrum on their cable plant for purposes other than carriage of the now-defunct station," and may therefore result in "substantial viewer confusion."⁴⁹ As NCTA notes, "[u]nder the current rules, sharing stations must notify the Commission of their intent to share prior to the auction and must file their application for license for the shared channel

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new shared location."). See also § 1452(a)(2) (providing that eligible relinquishments in the reverse auction shall include "[r]elinquishing usage rights in order to share a television channel with another licensee"). We note that § 1452(a)(4) also requires that the sharee have possessed carriage rights on November 30, 2010.

⁴⁴ NCTA Opp. at 1. In light of this requirement, we disagree with NCTA that allowing post-auction CSAs would "confer greater cable carriage rights on 'sharee' stations than Congress intended." *Id.* We need not address NCTA's argument that the Spectrum Act requires that a CSA be implemented by the time that spectrum usage rights are relinquished in order for the relinquisher to retain its cable carriage rights given our decision below to require that post-auction CSAs be implemented by the sharee's license relinquishment deadline. NCTA Opp. at 4.

⁴⁵ *IA R&O*, 29 FCC Rcd at 6803, para. 576; see also 47 C.F.R. § 73.3700(b)(4)(i) (requiring a winning license relinquishment bidder to terminate operations within three months of receiving its incentive auction payment).

⁴⁶ EOBC Petition at 9, citing 47 U.S.C. § 312(g).

⁴⁷ We clarify that, after the license relinquishment deadline, a winning license relinquishment bidder's license to operate on its pre-auction channel will be cancelled because, by the terms of its bid, it no longer will have any spectrum usage rights with respect to its pre-auction channel. See 47 U.S.C. § 1452(a)(2) (providing for the voluntary relinquishment of "all usage rights with respect to a particular television channel without receiving in return any usage rights with respect to another television channel"). A winning relinquishment bidder that is a party to a channel sharing agreement (pre-auction or post-auction) will then receive a new license for its new shared channel. The sharer station will also receive a new license. See *IA R&O*, 29 FCC Rcd at 6795-96, para. 558.

⁴⁸ NCTA Opp. at 5.

⁴⁹ *Id.* at 7.

within three months after receiving auction proceeds.”⁵⁰ Under our ruling here, sharee stations likewise will have to execute and implement their post-auction CSAs by the time they have to relinquish their licenses, and thus they will be on the same notification timeline as those stations that entered into pre-auction CSAs.⁵¹ We believe that this timeframe also will provide adequate time for parties to post-auction CSAs to comply with the consumer and MVPD notice requirements laid out in the *IA R&O*.⁵²

18. Finally, we find that the reimbursement process set out in the *IA R&O*, coupled with the requirements we adopt herein, will enable MVPDs to obtain reimbursement for their reasonable costs associated with mandatory carriage of stations that enter into post-auction CSAs.⁵³ NCTA argues that, if CSAs are not “in sync” with the deadline for submitting reimbursement estimates, MVPDs might not have notice of a carriage obligation by the deadline, impacting their ability to recover reasonable expenses related to carrying the sharee stations from their new locations.⁵⁴ We direct the Media Bureau, in the *Channel Reassignment PN* to be released following the completion of the incentive auction,⁵⁵ to identify those winning bidders that are eligible to channel share, either because they submitted an executed pre-auction CSA or expressed a present intent to enter into a post-auction CSA. Accordingly, the *Channel Reassignment PN* will provide MVPDs with notice of the identity of successful bidders who have executed pre-auction CSAs, as well as those who may enter post-auction CSAs, prior to the deadline for submitting estimated reimbursement costs, enabling MVPDs to account for these potential costs in their initial cost estimates. In addition, if necessary, MVPDs may update their estimates after the initial three-month deadline if necessary in order to account for post-auction CSAs.⁵⁶

C. Term-Limited Channel Sharing Agreements

19. Under the rules adopted in the *IA R&O*, CSAs are permanent in nature: CSAs may be amended, and rights under a CSA may be assigned or transferred subject to Commission approval, but “shared channels permanently will be designated as shared in the Table of Allotments, absent a future rulemaking proceeding to redesignate the channel for non-shared use,” and “CSAs may not contain any provision that would seek to dissolve or modify the shared nature of the channel[.]”⁵⁷ EOBC maintains that some broadcasters “might prefer to enter into agreements that last for as short as a few years.”⁵⁸ EOBC argues that we should “permit broadcasters to choose the length of their agreements. To facilitate these agreements, the [C]ommission could, as it has done in the context of time sharing, designate the shared nature on each participating license, subject to modification at the sole discretion of the licensees concerned, so long as the Commission is notified. Upon the expiration of a term sharing agreement, the

⁵⁰ *Id.* at 7, citing *IA R&O*, Appendix A, to be codified at 47 C.F.R. § 73.3700(b)(3).

⁵¹ *IA R&O*, 29 FCC Rcd at 6803, para. 577; *see also* 47 C.F.R. § 73.3700(b)(4)(ii) (requiring a channel sharing bidder to terminate operations on its pre-auction channel within three months of receiving its incentive auction payment).

⁵² *IA R&O*, 29 FCC Rcd at 6808, para. 588; 6810-12, paras. 594-7.

⁵³ The Spectrum Act provides for reimbursement of the reasonable costs of MVPDs that “continue to carry the signal of a broadcast television licensee . . . that voluntarily relinquishes spectrum usage rights to share a television channel with another licensee. . . .” *See* 47 U.S.C. § 1452(b)(4)(A)(ii).

⁵⁴ NCTA Opp. at 5. In the *IA R&O*, we established a procedure under which MVPDs must submit estimates of their costs eligible for reimbursement within three months of the close of the auction. *IA R&O*, 29 FCC Rcd at 6816-17, para. 609; 47 C.F.R. § 73.3700(e)(2)(i), as proposed.

⁵⁵ *See IA R&O*, 29 FCC Rcd at 6782, para. 525 (Media and Wireless Bureaus will announce the results of the incentive auction and the repacking process in the *Channel Reassignment PN*).

⁵⁶ Under the rules we established in the *IA R&O*, entities eligible for reimbursement may update estimates after the initial deadline if they become aware of additional costs. *See id.* at 6817, n. 1722 & n. 1723.

⁵⁷ *Id.* at 6853-54, para. 701 & n. 1948.

⁵⁸ EOBC Petition at 11.

parties to the agreement would have the option of continuing the agreement on mutually acceptable terms or terminating the agreement.”⁵⁹ More specifically, EOBC argues that “[o]nce an agreement is terminated, the host or sharer station could either find another channel sharing partner or notify the agency that it is no longer a shared station and that its license should be modified accordingly. The host station would then have the right to utilize the full capacity of its 6 MHz channel. The sharee station(s), meanwhile, could either relinquish their licenses or find a new partner, subject to the one-year time limit to resume transmissions under Section 312(g) of the Communications Act.”⁶⁰ CTIA supports this approach,⁶¹ as do Fox, Ion Media, Tribune, and Univision.⁶² EOBC further argues that we should authorize “second generation” CSAs subject to the same rights and restrictions as CSAs entered into in connection with the incentive auction.⁶³

20. We modify our rules to provide flexibility for broadcasters to determine the length of their CSAs. Specifically, we will permit broadcasters to choose the length of their channel sharing agreements. We agree that allowing term-limited CSAs will encourage channel sharing bids in the incentive auction by allowing parties to end the channel sharing relationship if they choose while still having the opportunity to continue operating.⁶⁴ We also agree with EOBC that providing such flexibility is appropriate to meet broadcasters’ individualized programming and economic needs.⁶⁵ Consistent with our decision, as discussed below, we will not permanently designate channels as “shared” in the Table of Allotments. Instead, a channel’s shared status will be indicated on a sharing station’s license.⁶⁶

21. However, our decision to allow term-limited CSAs raises the question of whether to authorize CSAs by full power and Class A stations outside the incentive auction context. In the companion Notice of Proposed Rulemaking, we tentatively conclude that we should allow future CSAs outside the incentive auction context, and we invite comment on issues attendant to that proposal.

D. Termination of a Sharing Station’s Spectrum Usage Rights

22. Under the rules adopted in the *IA R&O*, if a channel sharing station’s license is terminated due to voluntary relinquishment, revocation, failure to renew, or any other circumstance, the remaining channel sharing station or stations will continue to have rights to their portion(s) of the shared channel, and the rights to the terminated portion of the shared channel will revert to the Commission for reassignment.⁶⁷ The Commission further stated that shared channels “permanently will be designated as

⁵⁹ *Id.* (internal quotes and citations omitted).

⁶⁰ *Id.* at 11-12.

⁶¹ CTIA Opp. at 7.

⁶² Fox Reply at 6.

⁶³ EOBC Petition at 12.

⁶⁴ EOBC Petition at 11; CTIA Opp. at 7.

⁶⁵ EOBC Petition at 11 (“Rules that make it difficult to enter into term agreements are inconsistent with the Commission’s pledge to ‘allow a variety of different types of spectrum sharing to meet the individualized programming and economic needs of the parties involved.’”), quoting *Channel Sharing R&O*, 27 FCC Rcd. at 4625, para. 18.

⁶⁶ See Section II.D (Termination of a Sharing Station’s Spectrum Usage Rights).

⁶⁷ *IA R&O*, 29 FCC Rcd at 6853, para. 701. The Commission decided that final award of the rights to the terminated portion of the shared channel would be conditioned on the new channel sharing licensee agreeing to the terms of the existing CSA. *Id.* It recognized that, “in practice, very few television licenses are terminated,” but stated that “it is important to clarify our rules so that stations considering a channel sharing bid in the reverse auction can factor them into their channel sharing negotiations. *Id.* at 6853, n. 1950.

shared in the Table of Allotments, absent a future rulemaking proceeding to redesignate the channel for non-shared use.”⁶⁸

23. EOBC argues that “[e]ven the possibility that the FCC could appoint a successor sharing partner will be troublesome to most broadcasters considering the channel sharing option.”⁶⁹ Instead, EOBC argues that channel sharing parties should have “the option to reclaim the spectrum rights (but not the licenses) previously held by the departing party ... Thus, if a sharee station relinquishes its spectrum, the host station could either find a new channel sharing partner (among stations that relinquished spectrum in the auction) or resume use of the full six megahertz channel. If the host station relinquishes its spectrum, meanwhile, the sharee station(s) would have the option to assume the previously shared channel, subject to the technical parameters of the existing allotment.”⁷⁰ CTIA agrees that, if a sharing station relinquishes its license, then the right to use the relinquished portion of the shared spectrum should return to the remaining sharing partner(s).⁷¹ Similarly, Fox, Ion Media, Tribute, and Univision agree that “upon expiration or termination of a CSA sharing stations should have the flexibility either to utilize the full capacity of their shared channel or to enter into a channel sharing arrangement with a new partner (or partners).”⁷² No parties opposed this request.

24. We grant EOBC’s request, and modify our rules to allow parties to develop CSA terms that address what happens in the event that a sharing party’s license is terminated for any reason, rather than providing that the terminated spectrum usage rights revert to the Commission for reassignment. In addition, to provide flexibility for a channel’s return to non-shared status if only one sharing partner remains on a channel, we will not designate channels as “shared” in the Table of Allotments. Our decisions here do not affect the right of a channel sharing party to assign or transfer its license consistent with the IA R&O.⁷³

25. We agree with EOBC that, as business partners, channel sharers should “have the ability to choose partners that satisfy their own criteria.”⁷⁴ The Commission will not select a sharing partner. To accommodate this flexibility, we will not permanently designate channels as “shared” in the Table of Allotments, and a channel’s shared status will be indicated on the station license.⁷⁵ In the event that a sharing partner relinquishes its license, its spectrum usage rights (but not its license) may revert to the remaining sharing partners if the partners so agree.⁷⁶ Where only one sharing partner remains, it may apply to change its license to non-shared status using FCC Form 2100 Schedule B (formerly FCC Form 302) or F (formerly FCC Form 302-CA).⁷⁷ If a full power station that is sharing with a Class A station

⁶⁸ *Id.* n. 1948.

⁶⁹ EOBC Petition at 13.

⁷⁰ *Id.* at 13-14.

⁷¹ CTIA Opp. at 8.

⁷² Fox Reply at 6.

⁷³ In the *IA R&O*, we decided to allow rights under a CSA to be assigned or transferred, subject to the requirements of Section 310 of the Communications Act, our rules, and the requirement that the assignee or transferee comply with the applicable CSA. *IA R&O*, 29 FCC Rcd at 6853-54, para. 701.

⁷⁴ EOBC Petition at 13.

⁷⁵ See *supra*, Section III.C (Term-Limited Channel Sharing Arrangements).

⁷⁶ We note that reversion of a channel to non-shared status may reduce the number of stations in a market, which in turn may cause some existing station combinations to become non-compliant with the media ownership rules. Under such circumstances, the combination would be grandfathered, but in the event of a sale the new owner would have to comply with the rules in place at the time of the transaction or obtain a waiver. See *IA R&O*, 29 FCC Rcd at 6847-48, para 691.

⁷⁷ We note the various rules adopted in the *IA R&O* reference FCC Forms 301 and 302. Those forms have since been changed to FCC Form 2100. As noted in Appendix A, we revise these rules to reflect the new form number.

relinquishes its license, then the Class A station would continue to operate under the rules governing Class A stations.⁷⁸ If the sharing partner is a noncommercial educational (“NCE”) station operating on a reserved channel, its portion of the shared channel must continue to be reserved for NCE-only use.⁷⁹ In this regard, the Commission recognizes the important public service mission of NCE stations, and disfavors dereserving NCE-only channels.⁸⁰ Thus, in the unlikely event that a reserved-channel NCE station that shares with a commercial station faces involuntary license termination,⁸¹ creating a risk of dereservation, the Commission will exercise its broad discretion to ensure that the public interest is served.

E. Commission Review of CSAs and Licensing of Channel Sharees

26. In order to provide additional certainty to broadcasters interested in the channel sharing bid option, and in light of our decision to allow post-auction CSAs, we modify and clarify our procedures for submission and review of both pre-auction and post-auction CSAs. At the outset, we emphasize that we will not question parties’ business judgment in drafting CSAs. As EOBC notes, “broadcasters should be responsible for crafting agreements consistent with the rules adopted by the FCC.”⁸²

27. If a licensee submits an executed CSA before the auction along with its auction application, we will accept for purposes of determining eligibility to participate the applicant’s certification that the CSA complies with our channel sharing operating rules. We will not review the CSA itself at the pre-auction stage for compliance with our operating rules. We will review the CSA at the pre-auction stage solely to confirm that the parties qualify for the anti-collusion rule exception adopted in the *IA R&O*.⁸³

28. Post-auction, we will review CSAs submitted before or after the auction by successful bidders to determine whether the CSAs meet the requirements the Commission has adopted to ensure compliance with our CSA operating rules and policies.⁸⁴ Although in the *IA R&O* we reserved the right to review the CSA and require modification of any CSAs that do not comply with our CSA operating rules and policies,⁸⁵ we clarify that such review will occur after the auction. To allow time for such review, we modify our rules to require that, at least 60 days prior to the date by which it must implement the CSA,⁸⁶ the channel sharee file a minor change application for a construction permit specifying the

⁷⁸ See *IA R&O*, 29 FCC Rcd at 6855-57, paras. 705-707.

⁷⁹ *Id.*, 29 FCC Rcd at 6854-55, para. 703.

⁸⁰ See, e.g., *Amendment of the Television Table of Allotments to Delete Noncommercial Reservation on Channel *16, 482-488 MHz, Pittsburgh, Pennsylvania*, 17 FCC Rcd. 14038, 14048-49 paras 29-30 (2002) (“only under compelling circumstances will we consider deviation from this policy” disfavoring dereservation); see also *IA R&O* para. 704 (“we seek to ensure that we continue to reserve adequate NCE channel space in light of our previous decision to permit channel sharing between reserved-channel NCE stations and commercial stations”); See also, e.g., *In the Matter of: JBS, Inc. Licensee of Station WYSJ-CA, Yorktown, VA*, 29 FCC Rcd. 1121, 1122 para. 7 (2014) (allowing licensee facing possible license revocation to instead sell its station where doing so benefited the public interest and the wrongdoer would not benefit from the sale).

⁸¹ See *IA R&O*, 29 FCC Rcd at 6723, para. 364 (noting “longstanding policy of preventing a station from avoiding the consequences of its misdeeds through a station sale”).

⁸² EOBC Petition at 10.

⁸³ Under this exception, parties to an executed CSA may communicate during the auction about bids and bidding strategies. *IA R&O*, 29 FCC Rcd at 6740, para. 406; 47 C.F.R. § 1.2205(b)(2)(iii); see also *IA R&O*, 29 FCC Rcd at 6748-49, para. 436 (requirement for CSA filing).

⁸⁴ *Channel Sharing R&O*, 27 FCC Rcd. at 4624, para. 15; *IA R&O*, 29 FCC Rcd at 6852, para. 699.

⁸⁵ See *IA R&O*, 29 FCC Rcd at 6852, para. 699.

⁸⁶ *Id.* at 6803, paras. 577-578; see *supra*, Section III.B (Flexibility to Enter Into CSAs After the Incentive Auction).

same technical facilities as the sharer station,⁸⁷ and include a copy of the CSA with its application.⁸⁸ This requirement will be the same regardless of whether the parties execute their CSA before or after the auction.⁸⁹ Following grant of the construction permit and initiation of shared operations, both the sharee and sharer must file a license application. We emphasize again that the Commission does not involve itself in private contractual agreements,⁹⁰ and we do not intend during our review of the CSA to substitute our judgment for that of the parties with respect to the terms of the agreement. Thus, we will limit our post-auction 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 licensee agreements.⁹¹ We also reiterate that any application for a construction permit or modified license filed in accordance with the requirements established here or in the *IA R&O* will not trigger the filing of competing applications.⁹²

F. Exception to Prohibited Communications for Parties to CSAs

29. Under the rules adopted in the *IA R&O*, all parties to a CSA submitted with a reverse auction application may communicate with each other about their bids and bidding strategies.⁹³ The Commission adopted this exception to the rule generally prohibiting such communications in order to encourage channel sharing relationships, allowing potential channel sharers to fully engage as various options are presented during the auction process.⁹⁴ In light of the risk of agreements to reduce competition in response to auction conditions, however, the exception is limited to CSAs executed prior to the reverse auction application filing deadline and submitted with the reverse auction application.⁹⁵ We note that a CSA may have more than two parties (if, for instance, three stations propose to share the same channel), and all parties to a pre-auction CSA may communicate during the auction. Commenters have

⁸⁷ Consistent with the approach we adopted in the *IA R&O*, this application will be treated as a minor change because it does not propose new facilities and because following the minor change procedures will enable us to expeditiously implement the results of the auction and help facilitate a smooth post-auction transition. *IA R&O*, 29 FCC Rcd at 6790-91, para. 546. The procedure for the sharer station remains the same as adopted in the *IA R&O*. It must file a license application at the time it commences shared operations. *IA R&O*, 29 FCC Rcd at 6795-96, para. 558.

⁸⁸ We will allow the applicant to redact confidential or proprietary terms. Pursuant to our public file rules, this construction permit application, including the CSA, must be placed in the station's public file until action on the application becomes final. Section 73.3526(e)(2) requires a commercial station to place in the public file a "copy of any application tendered for filing with the FCC, together with all related material . . ." 47 C.F.R. § 73.3526(e)(2); see also 47 C.F.R. § 73.3527(e)(2) (non-commercial). We note that CSAs need not be filed with the Commission under Section 73.3613, which generally requires the filing of contracts containing provisions related to the present or future ownership or control of the licensee, absent inclusion in the CSA of provisions triggering the filing requirements of that rule. 47 CFR § 73.3613.

⁸⁹ Winning bidders that intend to channel share may request a three-month extension of the license relinquishment deadline. Whether the deadline has been extended or not, however, whenever the relinquishment period runs, a station that has not found a sharing partner will be held to its relinquishment commitment. It will have received its auction proceeds by then, and its license will terminate.

⁹⁰ *IA R&O*, 29 FCC Rcd at 6852-53, para. 700.

⁹¹ 47 C.F.R. 73.3700(h)(4).

⁹² *IA R&O*, 29 FCC Rcd at 6790, n. 1546. Consideration of competing applications would not serve the public interest in the unique context of the incentive auction because it would create uncertainty for potential bidders, thereby chilling auction participation, and would delay the post-auction transition and the introduction of new services on repurposed spectrum.

⁹³ *IA R&O*, 29 FCC Rcd at 6740, para. 406.

⁹⁴ *Id.*

⁹⁵ *Id.*

proposed that we also allow stations to enter into multiple contingent CSAs.⁹⁶ We will address this issue in a forthcoming decision.

IV. NOTICE OF PROPOSED RULEMAKING

30. In this Notice of Proposed Rulemaking (“*NPRM*”), we propose to adopt rules to permit channel sharing by and between full power and Class A television stations outside the context of the incentive auction, including by one or both parties to auction-related CSAs with other entities after those auction-related agreements terminate. Below we propose a regulatory framework for these agreements. We do not propose to distinguish between the “second generation” CSAs that EOBC requested, and which would succeed a CSA executed in connection with the auction, and new CSAs between stations that did not channel share in connection with the auction. Accordingly, there is no need to determine whether “second generation” CSAs would fall under the Spectrum Act’s carriage rights protection because the sharee station “voluntarily relinquish[ed] spectrum usage rights’ under the Spectrum Act ‘in order to share a television channel.’”⁹⁷ Instead, we propose to authorize non-auction-related CSAs without regard to their relationship to incentive auction-related CSAs. As discussed below, we believe that the carriage rights of parties to such CSAs would be protected under the Communications Act.

A. Public Interest and Legal Authority

31. While the Commission declined in the *Channel Sharing R&O* to address channel sharing outside the auction context,⁹⁸ we now believe it is appropriate to do so. We tentatively conclude that authorizing channel sharing outside the auction context will encourage auction participation by giving prospective channel sharing bidders the knowledge that they can pursue future CSAs when their auction-related agreements expire. But the public interest benefits of channel sharing by full power and Class A stations are likely to extend beyond the auction. When it adopted a general framework for channel sharing by full power and Class A stations in the context of the incentive auction, the Commission concluded that channel sharing will help broadcasters, including existing small, minority-owned, and niche stations, to reduce operating costs and provide broadcasters with additional net income to strengthen operations and improve programming services.⁹⁹ We also believe that authorizing channel sharing by full power and Class A stations outside the context of the incentive auction will promote spectral efficiency. We seek comment on our tentative conclusion that authorizing channel sharing by full power and Class A stations outside the context of the action will serve the public interest.

32. We tentatively conclude that the authority conferred on the Commission by Title III of the Communications Act of 1934, as amended,¹⁰⁰ permits us to adopt channel sharing rules for full power and Class A television stations, and seek comment on this tentative conclusion.¹⁰¹

⁹⁶ For instance, we note that Fox, Ion Media, Tribune, and Univision filed a reply comment in response to the *Incentive Auction Comment PN* suggesting that we should allow broadcasters “to enter into multiple contingent CSAs prior to the auction.” Fox Reply at 5.

⁹⁷ EOBC Petition at 11, quoting 47 U.S.C. § 1452(a)(4). See also NCTA Opp. at 3-4 (arguing that CSAs must be “linked” to the incentive auction process in order to fall under the Spectrum Act’s carriage rights provision for channel sharing parties).

⁹⁸ See *Channel Sharing R&O*, 27 FCC Rcd at 4622, para. 11 and at 4626, para. 20. The Commission stated that it would consider how channel sharing will be applied outside of the incentive auction context in a future proceeding. *Id.*

⁹⁹ See *Channel Sharing Order*, 27 FCC Rcd at 4622, para. 12. See also *LPTV Channel Sharing NPRM*, 29 FCC Rcd at 12541, para. 14 (noting that channel sharing could permit tower leases, infrastructure, and other costs to be shared).

¹⁰⁰ See 47 U.S.C. §§ 303(g), 303(r), 307(b), and 309(a). Cf. Spectrum Act at § 6403(a)(2)(C) (identifying channel sharing as an eligible relinquishment in the broadcast incentive auction).

B. Carriage Rights

33. We tentatively conclude that the Communications Act provides stations that elect to channel share outside the aegis of the Spectrum Act the same satellite and cable carriage rights on their new shared channels that the stations would have at the shared location if they were not channel sharing.¹⁰² We seek comment on this tentative conclusion. We note that this is consistent with the approach to channel sharing must-carry rights established by Congress in the Spectrum Act.¹⁰³

34. The Communications Act establishes slightly different thresholds for carriage, depending on whether the 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. The must-carry rights of full-power commercial stations on cable systems are set forth in Section 614 of the Act.¹⁰⁴ Pursuant to Section 614(a), “[e]ach cable operator shall carry, on the cable system of that operator, the signals of local commercial television stations . . . as provided by this section.”¹⁰⁵ The term “local commercial television station” means “any full power television broadcast station, other than a qualified noncommercial educational television 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.”¹⁰⁶ “Television market” is defined by Commission’s rules as a Designated Market Area (“DMA”).¹⁰⁷

35. The must-carry rights of full power noncommercial stations on cable systems are set forth in Section 615 of the Act.¹⁰⁸ Section 615(a) provides that “each cable operator of a cable system shall carry the signals of qualified noncommercial educational television stations in accordance with the provisions of this section.”¹⁰⁹ A qualified noncommercial educational station can be considered “local,” and thus eligible for mandatory carriage on a cable system, in one of two ways. It may either be licensed to

(Continued from previous page) _____

¹⁰¹ We tentatively concluded that the same Title III authority authorizes us to permit channel sharing by and between LPTV stations and TV translators in the *LPTV Channel Sharing NPRM*, 29 FCC Rcd at 12541, para. 13.

¹⁰² See discussion in paras. 34-45 below (citing 47 U.S.C. §§ 338, 614, 615).

¹⁰³ See 47 U.S.C. § 14529a(4). See also Third Omnibus Broadband Initiative technical paper, *Spectrum Analysis: Options for Broadcast Spectrum*, at 23 (recommending with respect to channel sharing that the FCC “modify its current licensing framework specifically to maintain must-carry rights”). See [http://download.broadband.gov/plan/fcc-omnibus-broadband-initiative-\(obi\)-technical-paper-spectrum-analysis-options-for-broadband-spectrum.pdf](http://download.broadband.gov/plan/fcc-omnibus-broadband-initiative-(obi)-technical-paper-spectrum-analysis-options-for-broadband-spectrum.pdf).

¹⁰⁴ 47 U.S.C. § 534.

¹⁰⁵ 47 U.S.C. § 534(a) (“[e]ach cable operator shall carry, on the cable system of that operator, the signals of local commercial television stations and qualified low power stations as provided in this section”). Class A stations are “low power stations” for mandatory carriage purposes. See *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. Low power stations are entitled to mandatory cable carriage only under very limited circumstances and are not entitled to mandatory satellite carriage. See 47 U.S.C. §§ 534(c)(1), 534(h)(2)(A)-(F), 338(a)(3).

¹⁰⁶ 47 U.S.C. § 534(h)(1)(A).

¹⁰⁷ 47 C.F.R. §§ 76.55(e)(2).

¹⁰⁸ 47 U.S.C. § 535.

¹⁰⁹ 47 U.S.C. § 535(a). The term “qualified noncommercial educational television station” means “any television broadcast station which—(A)(i) under the rules and regulations of the Commission in effect on March 29, 1990, is licensed by the Commission as a noncommercial educational television broadcast station and which is owned and operated by a public agency, nonprofit foundation, corporation, or association; and (ii) has as its licensee an entity which is eligible to receive a community service grant, or any successor grant thereto, from the Corporation for Public Broadcasting, or any successor organization thereto, on the basis of the formula set forth in section 396(k)(6)(B) of this title; or (B) is owned and operated by a municipality and transmits predominantly noncommercial programs for educational purposes.” 47 U.S.C. § 535(l)(1)(A).

a principal community within 50 miles of the system's headend, or place a "Grade B" signal over the headend.¹¹⁰

36. The must-carry rights of low power stations, including Class A stations, on cable systems are set forth in Section 614(c) of the Act.¹¹¹ Under very narrow circumstances, such stations can become "qualified" and eligible for must carry.¹¹² Among the several requirements for reaching "qualified" status with respect to a particular cable operator, the station must be "located no more than 35 miles from the cable system's headend."¹¹³

37. The must-carry rights of full power stations (both commercial and noncommercial) on DBS providers are set forth in Section 338 of the Act.¹¹⁴ A full power "television broadcast station" is entitled to request carriage by a DBS provider any time that provider relies on the statutory copyright license¹¹⁵ to retransmit the signal of any other "local" station¹¹⁶ (*i.e.*, one located in the same DMA¹¹⁷). A "television broadcast station" is defined as "an over-the-air commercial or noncommercial television broadcast station licensed by the Commission."¹¹⁸ Low-power stations, including Class A stations do not have DBS carriage rights.¹¹⁹

38. Under the foregoing Communications Act provisions, carriage rights are accorded to licensees without regard to whether they occupy a full six megahertz channel or share a channel with another licensee. Nothing in the Communications Act requires a station to occupy an entire six megahertz 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 Communications Act. Thus, the carriage rights conferred by Sections 614, 615, and 338 of the Act apply to channel sharees as they do to any other licensee.

39. Based on these provisions, we tentatively conclude that a sharee station participating in a CSA that moves to a different frequency (that of the "sharer" station) remains entitled to must carry rights, but at the sharer's location. 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

¹¹⁰ 47 U.S.C. § 535(1)(2).

¹¹¹ 47 U.S.C. 534(c).

¹¹² 47 U.S.C. § 534(h)(2). For example, if a full power station is located in the same county or other political subdivision (of a State) as an otherwise qualified low power station, then the low power station will not be eligible for cable must-carry status. *See* 47 U.S.C. § 534(h)(2)(F); *see also 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, 2983, para. 67 & n.211 (1993) (*Must Carry Order*). Moreover, an otherwise qualified low power station qualifies for cable carriage only if the community of license of that station and the franchise area of the cable system on which it seeks carriage 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 the community of license on that date did not exceed 35,000. *See* 47 U.S.C. § 534(h)(2)(E).

¹¹³ 47 C.F.R. § 534(h)(2)(D).

¹¹⁴ 47 U.S.C. § 338.

¹¹⁵ 17 U.S.C. § 122.

¹¹⁶ 47 U.S.C. § 338(a)(1) ("[e]ach satellite carrier providing ... secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station shall carry upon request the signals of all television broadcast stations located within that local market...").

¹¹⁷ 17 U.S.C. § 122(j)(2).

¹¹⁸ 47 U.S.C. § 338(k)(10); 47 U.S.C. § 325(b)(7).

¹¹⁹ 47 U.S.C. § 338(a)(3).

Commission that, with respect to a particular cable system, is within the same television market as the cable system.”¹²⁰ The same analysis applies with respect to broadcasters qualifying for cable must-carry rights as “qualified local noncommercial educational television stations,”¹²¹ and “qualified low power stations,”¹²² and to broadcasters qualifying for DBS must-carry rights as “television broadcast stations.”¹²³

40. We tentatively conclude that, under the statutory definitions outlined above, the sharee station’s carriage rights would be determined at the new shared location.¹²⁴ Carriage rights in this situation would be determined under Sections 338, 614, and 615 of the Communications Act in the same manner as they would outside the context of channel sharing, such as where stations change transmitter location, community of license, or DMA. We seek comment on this interpretation.

41. We tentatively conclude that each broadcaster participating in a CSA will continue to be entitled to must-carry rights for a single, primary video stream. Section 614(b)(3) of the Communications Act provides that “[a] cable operator shall carry in its entirety, on the cable system of that operator, the primary video ... of each of the local commercial television stations carried on the cable system...”¹²⁵ Although digital technology enables broadcasters to transmit multiple program streams simultaneously on each six MHz channel, the Commission has determined that the must-carry provisions require only that a cable operator carry a single programming stream.¹²⁶ We tentatively conclude that a sharee station’s transmission of its signal on a different channel following implementation of a CSA does not alter the station’s must-carry right to carriage of a single “primary video” programming stream.

42. Section 1452(a)(4) provides 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, but this provision by its terms addresses only auction-related CSAs. For this reason, as noted above, we conclude that the carriage rights of sharees outside the context of the

¹²⁰ 47 U.S.C. § 534(h)(1).

¹²¹ See 47 U.S.C. §§ 535(a), (b) & (l).

¹²² See 47 U.S.C. §§ 534(a), (c) & (h)(2).

¹²³ See 47 U.S.C. § 338(a)(1).

¹²⁴ Full power commercial stations are considered “local” to the entire market to which they are assigned and are entitled to assert mandatory carriage rights on cable systems located throughout that same market. See 47 U.S.C. §§ 534(a), (b)(1)(A)-(B), (h)(1)(A) & (C). A commercial broadcast television station’s market is its DMA as determined by the Nielsen Media Research. See 47 C.F.R. § 76.55(e)(2). Thus, a full power commercial station that changes location within the DMA will retain carriage rights on all cable systems within the DMA. 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 C.F.R. §§ 76.55(b)(1)-(2). Accordingly, if an NCE station changes its community of license or shifts its signal contour, it may gain carriage on some cable systems and lose carriage on others. Furthermore, if a Class A station moves for purposes of channel sharing, its subsequent cable carriage rights will depend upon its ability to meet the same requirements applicable to qualified low power stations at its new location, including that (i) it not be located in the same county or other political subdivision (of a State) as a full power station; (ii) its transmitter be within 35 miles of the cable system’s principal headend; and (iii) it deliver a good quality signal to that headend (although, unlike NCE and full power commercial stations, it will have no right to improve the quality of its signal to meet the signal quality threshold). See 47 U.S.C. § 534(h)(2)(D) & (F); 47 C.F.R. § 76.55(d)(4) & (6).

¹²⁵ 47 U.S.C. § 534(b)(3). Section 615(g)(1), pertaining to noncommercial educational stations, contains similar requirements. See 47 U.S.C. § 535(g)(1). Comparable requirements also apply to satellite carriers. See 47 U.S.C. § 338(j) and 47 C.F.R. § 76.66(j).

¹²⁶ See *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, Second Report and Order and First Order on Reconsideration, 20 FCC Rcd 4516, 4532, para. 33 (2005). Satellite carriers also are required to carry only a television station’s main programming stream, except in Alaska and Hawaii where they must also carry multicast streams. See 47 U.S.C. §§ 338(a)(4), (j). See also 47 C.F.R. §§ 76.66 (b), (j).

incentive auction are determined not by the Spectrum Act but by the carriage provisions of the Communications Act.

43. Notably, however, Section 1452(a)(4) does not simply affirm carriage rights under the Communications Act, it also limits the carriage rights of sharee stations in connection with the incentive auction to those that possessed such rights on November 30, 2010.¹²⁷ 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.¹²⁸ In the *2010 Channel Sharing NPRM*, the Commission proposed to "limit channel sharing to television stations with existing applications, construction permits or licenses as of [November 30, 2010]."¹²⁹ 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.¹³⁰ In the Spectrum Act, Congress adopted a different approach than the one proposed in the *2010 Channel Sharing NPRM* by requiring 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.¹³¹ Consistent with the concerns expressed by MVPDs, this approach precluded stations that were not licensed as of November 30, 2010 from the entitlement to carriage under Section 1452(a)(4) because they did not "possess[] carriage rights" on that date.

44. Consistent with Section 1452(a)'s objective of avoiding artificially creating new stations that can demand MVPD carriage, we propose that a full power or Class A station will be eligible to become a sharee station outside of the auction context only if it possessed carriage rights under sections 338, 614, or 615 of the Communications Act through an auction-related channel sharing agreement, pursuant to Section 1452(a)(4), or because it was operating on its own non-shared channel immediately prior to entering into a channel sharing agreement. We also seek comment on any alternative approaches that would address Congress's concern that channel sharing not be used as a means to artificially increase the number of stations that MVPDs are required to carry, including the adoption of November 30, 2010, or some later date certain for the possession of carriage rights as a condition precedent to becoming a sharee. Another approach would be to extend eligibility of a sharee station for carriage rights outside of the auction context only to a station that has constructed and licensed facilities without relying on sharing

¹²⁷ 47 U.S.C. § 1452(a)(4) ("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, 534, or 535 of this title *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.") (emphasis added).

¹²⁸ *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) ("*2010 Channel Sharing NPRM*").

¹²⁹ *Id.* at 16506, para. 22.

¹³⁰ See Comments of DIRECTV Inc., ET Docket No. 10-235 (March 18, 2011), at 3 ("By permitting entities that have not yet met the Commission's requirements for receiving a television broadcast license to engage in channel sharing, the Commission would not only fail to preserve the status quo but would also create a new, artificially easy path to creating new 'stations.' Rather than having to demonstrate a commitment by investing in facilities, broadcasters could simply rely on previously filed application paperwork, enter into a spectrum-sharing arrangement, and demand carriage from MVPDs. . . . Today, broadcasters must make substantial investments before they can demand carriage from MVPDs. Channel sharing should not change this."); Comments of DISH Network L.L.C., ET Docket No. 10-235 (April 18, 2011), at 1 ("The Commission should clarify that channel sharing does not . . . lead to the artificial creation of new 'stations' that can demand carriage by [MVPDs]."); Reply Comments of The National Cable and Telecommunications Association, ET Docket No. 10-235 (April 25, 2011), at 3. See also Comments of ION Media Networks Inc., ET Docket No. 10-235 (March 18, 2011), at 6-7 ("[A]ny channel sharing implementation must . . . [not] impos[e] potential new capacity or other burdens on cable systems, satellite operators and telco video providers.").

¹³¹ See 47 U.S.C. § 1452(a)(4).

with another station, regardless of when that station possessed carriage rights. How would this approach apply to a station that entered into an auction-related sharing agreement for a limited term and subsequently seeks to enter into a new sharing agreement outside the auction context with the same or different sharer? Are there any other alternative approaches that we should consider?

45. We do not propose, however, to restrict full power and Class A stations from becoming sharer stations outside of the auction context, regardless of when or whether such stations have obtained carriage rights. We believe this approach is consistent with Section 1452(a)(4), which pertains to the carriage rights of only sharee stations, not sharer stations.¹³² Because a sharer station necessarily would have already constructed and licensed its facilities, there is no apparent concern that such stations could use sharing as a shortcut to obtaining MVPD carriage. Moreover, we believe the ability of such stations to serve as sharers would benefit other stations, including those participating in the incentive auction, by increasing the number of potential sharers. We seek comment on this approach.

C. Voluntary and Flexible Channel Sharing

46. We propose to adopt rules and procedures for channel sharing for full power and Class A stations outside the auction context that are generally similar to those we adopted in connection with the incentive auction, as modified in the companion First Order on Reconsideration. We propose that channel sharing be voluntary and flexible, that stations be permitted to choose their channel sharing partners, that channel sharing agreements be required to outline stations' rights with respect to certain matters, and that stations be permitted to assign or transfer their rights under a CSA. We do not intend to be involved in the process of matching licensees interested in channel sharing with potential partners. Instead, full power and Class A stations would decide for themselves whether and with whom to enter into a CSA.

47. In addition, consistent with our approach toward channel sharing in the auction context, we propose to require all stations involved in channel sharing to retain spectrum usage rights sufficient to ensure at least enough capacity to operate one standard definition ("SD") programming stream at all times. This requirement will ensure that each station has 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"¹³³ We propose, however, to allow stations flexibility beyond this "minimum capacity" requirement to tailor their agreements and allow a variety of different types of spectrum sharing to meet the individualized programming and economic needs of the parties involved. We do not propose to prescribe a fixed split of the capacity of the six megahertz channel between the stations from a technological or licensing perspective. We propose that all channel sharing stations be licensed for the entire capacity of the six megahertz channel and that the stations be allowed to determine the manner in which that capacity will be divided among themselves subject only to the minimum capacity requirement.

48. In the companion First Order on Reconsideration, we determined that CSAs need not be permanent in nature and modified our rules to permit broadcasters to choose the length of their CSAs.¹³⁴ Similarly, we propose to permit term-limited CSAs outside the auction context. We also invite comment on whether we should establish a minimum term for CSAs that are unrelated to the auction. Our goal in permitting term-limited CSAs is to provide flexibility for broadcasters that choose to end the channel sharing relationship while maintaining the opportunity to continue to operate.¹³⁵ We are concerned,

¹³² 47 U.S.C. § 1452(a)(4) ("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, 534, or 535 of this title 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.") (emphasis added).

¹³³ See 47 C.F.R. § 74.790(g)(3).

¹³⁴ See, *supra*, Section III.C (Term-Limited Channel Sharing Agreements).

¹³⁵ *Id.*

however, about the potential disruption to viewers that could occur if channel sharing stations enter into short-term CSAs or terminate CSAs early, resulting in frequent channel moves. In addition, we note that MVPDs could experience carriage-related disruptions should there be a multitude of short-term CSAs. Given this, should we establish a minimum term for CSAs, or would this unduly constrain channel sharing partners who may prefer a short-term agreement or want to terminate a CSA early? If we were to establish a minimum term for CSAs, what minimum term would be appropriate (e.g., three years)?

D. Licensing Procedures

49. We also propose to extend to non-auction-related sharing agreements our existing policy framework for the licensing and operation of channel sharing stations. Under this policy, despite sharing a single channel and transmission facility, each full power and Class A station would continue to be licensed separately. Each station would have its own call sign, and each licensee would separately be subject to all of the Commission's obligations, rules, and policies. We seek comment on these proposals.

50. We propose to adopt a two-step process for implementing non-auction-related channel sharing by and between full power and Class A stations outside the auction context.¹³⁶ If no technical changes are necessary for sharing, a channel sharing station relinquishing its channel first would file an application for digital construction permit for the same technical facilities as the sharer station. That application would include a copy of the CSA as an exhibit and cross reference the other sharing station(s). The sharer station would not need to take action at this time unless the CSA required technical changes to the sharer station's facilities. If changes to the sharer station facilities were required, each sharing station would file an application for construction permit for identical technical facilities proposing to share the channel, along with the CSA. As a second step, after the sharing stations have obtained the necessary construction permits, implemented their shared facility, and initiated shared operations, a station relinquishing its channel would notify the Commission that it has terminated operation on that channel. At the same time, sharing stations would file applications for license to complete the licensing process. We seek comment on these proposed procedures.

51. We propose to treat applications for a construction permit in order to channel share as minor change applications, similar to the approach we adopted for auction-related channel sharing.¹³⁷ We believe that the use of minor change applications is appropriate to facilitate CSAs, particularly if we prohibit sharee stations from relocating outside their community of license in order to channel share, as discussed below. We seek comment on this approach.

52. We also seek comment on an appropriate length of time for channel sharing full power and Class A stations to implement their agreements. In the *IA R&O*, we required that CSAs be implemented within three months after the relinquishing station receives its reverse auction proceeds.¹³⁸ In the companion First Order on Reconsideration, we modify our rules to permit post-auction CSAs, and to permit a successful license relinquishment bidder who in its application expresses a present intent to enter a post-auction CSA up to three months from the receipt of auction proceeds to execute and implement a sharing agreement.¹³⁹ The exigencies of the auction process do not apply in setting a deadline for stations to implement their CSAs outside the auction context.¹⁴⁰ In the *LPTV Channel Sharing NPRM*, we sought comment on whether to allow channel sharing stations the standard three-year

¹³⁶ This approach is similar to the one we proposed to follow with respect to LPTV and TV translator channel sharing in the *LPTV Channel Sharing NPRM*. See *LPTV Channel Sharing NPRM*, 29 FCC Rcd at 12544, para. 20.

¹³⁷ See *IA R&O*, 29 FCC Rcd at 6795-96, para. 558, note 1584 and at 6789-90, para. 544. Unlike major change applications, minor change applications are not subject to local public notice requirements or a 30-day petition to deny filing window. See 47 C.F.R. §§ 73.3580, 73.3584.

¹³⁸ See *IA R&O*, 29 FCC Rcd at 6803, para. 577.

¹³⁹ We also permitted these stations to request an extension of time to implement their CSA in certain circumstances.

¹⁴⁰ Accord *LPTV Channel Sharing NPRM*, 29 FCC Rcd at 12544, para. 20.

construction period under the rules to implement their sharing deals.¹⁴¹ Should we also give full power and Class A stations the standard three-year construction period in which to implement CSAs? Is there another timeframe that would be more appropriate?

53. We also seek comment on the degree of flexibility we should provide to potential sharee stations seeking to relocate to take advantage of channel sharing. In the *IA R&O*, we stated that we would permit a sharee to change its community of license only in situations where the sharee cannot meet community of license signal requirements operating from the sharer's transmission site and provided that the sharee chooses a new community of license that, at a minimum, meets the same allotment priorities as its current community.¹⁴² In addition, the Commission stated that it would not allow a bidder to propose a community of license change that would change its DMA.¹⁴³ The Commission adopted this restriction on changes in community of license in the auction context in order to promote the goals underlying Section 307(b) of the Communications Act¹⁴⁴ while at the same time avoiding any detrimental impact on the speed and certainty of the auction, as well as on broadcaster participation, that would result from application of the Commission's usual analysis of community of license changes.¹⁴⁵ Outside the auction context, we propose to preclude sharee stations from changing their community of license, and to limit these stations to CSAs 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.¹⁴⁶ Precluding relocation that would require a community of license change would advance our interest in ensuring the provision of service to local communities, avoid viewer disruption, and avoid any potential impact on MVPDs that might result from community of license changes.

54. In the event that we permit sharee stations to propose a change in community of license in order to channel share, we invite comment on how we should evaluate such requests. Should we use our traditional television allotment rules and policies, pursuant to which a proposed full power television sharee would have to file a petition for rulemaking and demonstrate that the requested change in community would result in a preferential arrangement of television allotments under Section 307(b) and the Commission's allotment priorities?¹⁴⁷ Alternatively, should we adopt a more streamlined approach

¹⁴¹ *Id.*

¹⁴² See *IA R&O*, 29 FCC Rcd at 6727, para. 374. We also stated that, in the unlikely event that the sharee cannot identify any community that meets the same or a higher allotment priority, it must choose a new community of license to which it will provide the next highest priority. *Id.* at n. 1117.

¹⁴³ *Id.*

¹⁴⁴ 47 U.S.C. § 307(b) ("In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such 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.").

¹⁴⁵ See *IA R&O*, 29 FCC Rcd at 6727-28, para. 376.

¹⁴⁶ 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 C.F.R. § 73.625. Class A television stations do not have a contour coverage requirement.

¹⁴⁷ Pursuant to Section 1.420(i) of the Commission's rules, the Commission may modify a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest where the amended allotment would be mutually exclusive with the licensee's present allotment. See 47 C.F.R. § 1.420(i). See also *Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). 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. This determination is based upon the television allotment priorities set forth in *Amendment of Section 3.606 of the Commission's Rules and Regulations*, Sixth Report and Order, 41 F.C.C. 148, 167-173 (1952). The television allotment priorities are to: (1) provide at least one television service to all parts of the United States; (2) provide

(continued....)

that would dispense with a rulemaking? Outside the auction context, the concerns we expressed in the *IA R&O* about the potential impact on the auction of our usual analysis of community of license changes are not relevant. We seek comment on these possible approaches to community of license changes.

E. Channel Sharing Operating Rules

55. We propose to adopt channel sharing operating rules similar to those adopted for full power and Class A television stations in the *IA R&O*, as modified by the First Order on Reconsideration. In the *IA R&O*, we determined that CSAs for full power and Class A stations must include provisions governing certain key aspects of their operations: (1) access to facilities, including whether each licensee will have unrestrained access to the shared transmission facilities; (2) allocation of bandwidth within the shared channel; (3) 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 (4) termination or transfer/assignment of rights to the shared licenses, including the ability of a new licensee to assume the existing CSA. We propose to require full power and Class A CSAs outside the auction context to contain the same key information. We also propose to reserve the right to review CSA provisions and require modification of any that do not comply with these requirements or the Commission's rules. We seek comment on these proposals.

56. *Termination, Assignment/Transfer, and Relinquishment of Channel Sharing Licenses.* We propose to apply to full power and Class A CSAs entered into outside the auction context the same rules regarding termination, assignment/transfer, and voluntary relinquishment of channel sharing rights that we adopted in the *IA R&O*, as modified by the First Order on Reconsideration. Under this proposed approach we would allow rights under a CSA to be assigned or transferred, subject to the requirements of Section 310 of the Communications Act,¹⁴⁸ our rules, and the requirement that the assignee or transferee undertake to comply with the applicable CSA. In the event a channel sharing party's license is terminated due to voluntary relinquishment, revocation, or failure to renew, consistent with the approach we adopt in the First Order on Reconsideration we propose that the relinquished spectrum usage rights in the shared channel revert to the other sharing parties. Further, where only one sharing partner remains on a channel after its partner relinquishes its license, it may request that its channel return to non-shared status. We seek comment on this approach.

F. Channel Sharing Between Full Power and Class A Stations

57. In the *IA R&O*, we allowed channel sharing between full power and Class A television stations despite the fact that each operate with different technical rules.¹⁴⁹ We concluded that the Class A television station sharing a full power television station's channel after the incentive auction would be permitted to operate under the Part 73 rules governing power levels and interference.¹⁵⁰ Similarly, we concluded that a full power station sharing a Class A station's channel after the incentive auction would be permitted to operate under the Part 74 power level and interference rules.¹⁵¹ We propose herein to permit channel sharing between full power and Class A stations outside the auction context and to apply to such agreements the same rules we adopted in the *IA R&O*. We seek comment on this approach.

(Continued from previous page) _____

each community with at least one television broadcast station; (3) provide a choice of at least two television services to all parts of the United States; (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.

¹⁴⁸ 47 U.S.C. § 310.

¹⁴⁹ See *IA R&O*, 29 FCC Rcd at 6855-56, para. 705.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

G. Reimbursement

58. With respect to CSAs entered into outside the auction context, we do not propose to adopt rules regarding reimbursement of costs imposed on MVPDs as a result of CSAs. We note that 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 the incentive auction.¹⁵² Thus, by the plain language of Section 1452, reimbursement under the Spectrum Act applies only to costs associated with channel sharing bids;¹⁵³ reimbursement does not extend to CSAs unrelated to the auction.

59. Accordingly, costs associated with channel sharing outside the auction context will be borne by broadcasters and MVPDs in the same manner as these parties are traditionally responsible for costs associated with television station channel moves. 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.¹⁵⁴ 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. In addition, a television station that relocates may gain carriage on a different cable or satellite system(s), which may incur costs for new equipment or other changes associated with adding the channel.

H. Notice to MVPDs

60. Similar to the requirement we adopted in the *IA R&O*, we propose to require stations participating in CSAs to provide notice to those MVPDs that: (1) no longer will be required to carry the station because of the relocation of the station; (2) currently carry and will continue to be obligated to carry a station that will change channels; or (3) will become obligated to carry the station due to a channel sharing relocation.¹⁵⁵ We propose that the notice contain the following information: (1) date and time of any channel changes; (2) the channel occupied by the station before and after implementation of the CSA; (3) modification, if any, to antenna position, location, or power levels; (4) stream identification information; and (5) engineering staff contact information.¹⁵⁶ We propose that stations be able to elect whether to provide notice via a letter notification¹⁵⁷ or provide notice electronically, if pre-arranged with the relevant MVPD. We also propose to require that sharee stations provide notice at least 30 days prior to terminating operations on the sharee's channel and that both sharer and sharee stations provide notice

¹⁵² 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).

¹⁵³ *See id.*

¹⁵⁴ *See* 47 U.S.C. § 534(h)(1)(B)(iii) and 47 C.F.R. § 76.55(c)(3) (defining "local commercial television station" to exclude those stations failing to deliver a good quality signal to a cable system's headend, unless the station bears the cost of delivering such signal). *See also* 47 U.S.C. § 535(i)(I) (stating that an NCE station "may be required to bear the cost associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system").

¹⁵⁵ *See IA R&O*, 29 FCC Rcd at 6810-11, para. 594.

¹⁵⁶ *Id.* at 6811, para. 595.

¹⁵⁷ As we stated in the *IA R&O*, the letter must be addressed to the system's official address of record provided in the cable system's most filing on the Cable Operations and Licensing Systems (COALS) Form 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. *Id.*

at least 30 days prior to initiation of operations on the sharer channel.¹⁵⁸ Should the anticipated date to either cease operations or commence channel sharing operations change, we propose to require that the station(s) send a further notice to affected MVPDs informing them of the new anticipated date(s). We seek comment on these proposals.

V. PROCEDURAL MATTERS – FIRST ORDER ON RECONSIDERATION

A. Supplemental Final Regulatory Flexibility Act Analysis

61. As required by the Regulatory Flexibility Act of 1980 (“RFA”),¹⁵⁹ the Commission includes in Appendix B a Supplemental Final Regulatory Flexibility Analysis (“FRFA”) relating to this First Order on Reconsideration.

B. Final Paperwork Reduction Act Analysis

62. 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.

63. We have assessed the effects of the policies adopted in this First Order on Reconsideration 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 providing them with options for voluntarily relinquishing broadcast spectrum usage rights and by streamlining the pre-auction application process. In addition, we have described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Supplemental FRFA in Appendix B.

C. Congressional Review Act

64. The Commission will send a copy of this First Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

VI. PROCEDURAL MATTERS - NPRM

A. Ex Parte Presentations

65. The proceeding this *NPRM* initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁶⁰ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or

¹⁵⁸ *Id.* at para. 596.

¹⁵⁹ 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).

¹⁶⁰ 47 C.F.R. §§ 1.1200 *et seq.*

other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Initial Regulatory Flexibility Act Analysis.

66. The Regulatory Flexibility Act of 1980, as amended ("RFA"), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

67. With respect to this *NPRM*, an Initial Regulatory Flexibility Analysis ("IRFA") under the Regulatory Flexibility Act¹⁶¹ is contained in Appendix D. Written public comments are requested on the IRFA, and must be filed in accordance with the same filing deadlines as comments on the *NPRM*, with a distinct heading designating them as responses to the IRFA. The Commission will send a copy of this *NPRM*, including the IRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, a copy of this *NPRM* and the IRFA will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the *Federal Register*.

C. Paperwork Reduction Act Analysis.

68. This *NPRM* contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, *see* 44 U.S.C. § 3507. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

D. Comment Filing Procedures

69. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

¹⁶¹ *See* 5 U.S.C. § 603.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

70. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

71. *Additional Information:* For additional information on this *NPRM*, please contact Kim Matthews of the Media Bureau, Policy Division, Kim.Matthews@fcc.gov, (202) 418-2154.

VII. ORDERING CLAUSES

72. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in Sections 1, 4, 301, 303, 307, 308, 309, 310, 316, 319, and 405 of the Communications Act of 1934, as amended, and sections 6402 and 6403 of Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, 47 U.S.C. §§ 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, 405, 1404, and 1452, this **FIRST ORDER ON RECONSIDERATION** is **ADOPTED** and Parts 1 and 73 of Commission's rules are **AMENDED** as set forth in the Appendix A.

73. **IT IS FURTHER ORDERED** that the rules adopted herein **WILL BECOME EFFECTIVE** thirty days after the date of publication in the *Federal Register*, except for Sections 1.2204(c)(4) and 73.3700(b)(1), 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.

74. **IT IS FURTHER ORDERED** that, that pursuant to sections 4(i), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 405, and section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, the Petition for Reconsideration filed by the Expanding Opportunities for Broadcasters Coalition **IS HEREBY GRANTED IN PART AND IS OTHERWISE DISMISSED AS MOOT**.

75. **IT IS FURTHER 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, 614 and 615,]this Notice of Proposed Rulemaking **IS ADOPTED**.

76. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this First Order on Reconsideration and Notice of Proposed Rulemaking, including the Supplemental Final Regulatory

Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

77. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this First Order on Reconsideration 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

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends Parts 1 and 73 of Title 47 of the Code of Federal Regulations as follows:

PART 1—PRACTICE AND PROCEDURE

1. Section 1.2200 is amended by revising paragraph (d) to read as follows:

(d) Channel sharing bid. The term channel sharing bid means a bid to relinquish all spectrum usage rights with respect to a particular television channel in order to share a television channel with another broadcast television licensee by an applicant that submits an executed channel sharing agreement with its application.

2. Section 1.2204 is amended by redesignating paragraphs (c)(4)(i) through (c)(4)(iii) as (c)(4)(ii) through (c)(4)(iv), and adding new paragraph (c)(4)(i) to read as follows:

(c) ***

(4) ***

- (i) Whether it intends to enter into a channel sharing agreement if it becomes a winning bidder;

PART 73—RADIO BROADCAST SERVICES

3. Section 73.3700 is amended by revising paragraph (a)(3); revising paragraph (b)(1)(i); adding paragraph (b)(1)(vii); revising paragraphs (b)(2)(i), (b)(2)(ii) and (b)(3); removing paragraphs (h)(3)(v) and (h)(5); redesignating paragraphs (h)(2) through (h)(4) as (h)(3) through (h)(5); adding a new paragraph (h)(2); revising redesignated paragraph (h)(5)(i)(D); adding new paragraph (h)(5)(i)(E); and revising redesignated paragraph (h)(5)(ii)(A) to read as follows:

(a) ***

(3) Channel sharee station. For purposes of this section, channel sharee station means a broadcast television station for which a winning channel sharing bid, as defined in § 1.2200(d) of this chapter, was submitted or a broadcast television station for which a winning license relinquishment bid, as defined in § 1.2200(g) of this chapter, was submitted where the station licensee executes and implements a post-auction channel sharing agreement.

(b) ***

(1) ***

(i) Licensees of reassigned stations, UHF-to-VHF stations, and High-VHF-to-Low-VHF stations must file a minor change application for a construction permit for the channel specified in the Channel Reassignment Public Notice using FCC Form 2100 Schedule A (for a full power station) or E (for a Class A station) within three months of the release date of the Channel Reassignment Public Notice. Licensees that are unable to meet this filing deadline may request a waiver of the deadline no later than 30 days prior to the deadline.

(vii) Channel sharee stations must file a minor change application for a construction permit for the channel on which the channel sharer operates at least sixty (60) days prior to the date by which it must terminate operations on its pre-auction channel pursuant to § 73.3700(c)(4)(i) and (ii) of this rule. The application must include a copy of the executed channel sharing agreement.

(2) ***

(i) Alternate channels. The licensee of a reassigned station, a UHF-to-VHF station, or a High-VHF-to-Low-VHF station will be permitted to file a major change application for a construction permit for an alternate channel on FCC Form 2100 Schedules A (for a full power station) and E (for a Class A station) during a filing window to be announced by the Media Bureau by public notice, provided that: ***

(ii) Expanded facilities. The licensee of a reassigned station, a UHF-to-VHF station, or a High-VHF-to-Low-VHF station will be permitted to file a minor change application for a construction permit on FCC Form 2100 Schedules A (for a full power station) and E (for a Class A station) during a filing window to be announced by the Media Bureau by public notice, in order to request a change in the technical parameters specified in the Channel Reassignment Public Notice with respect to height above average terrain (HAAT), effective radiated power (ERP), or transmitter location that would be considered a minor change under §§ 73.3572(a)(1),(2) or 74.787(b) of this chapter.

(3) License applications for channel sharing stations. The licensee of each channel sharee station and channel sharer station must file an application for a license for the shared channel using FCC Form 2100 Schedule B (for a full power station) or F (for a Class A station) within three months of the date that the channel sharee station licensee receives its incentive payment pursuant to section 6403(a)(1) of the Spectrum Act.

(h) ***

(2) 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 (h)(5)(i)(E) 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 to change its license to non-shared status using FCC Form 2100, Schedule B (for a full power licensee) or F (for a Class A licensee).

(5) ***

(i) ***

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

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

(ii) ***

(A) Affirming compliance with the requirements in paragraph (h)(5) of this section and all relevant Commission rules and policies; and

APPENDIX B

Supplemental Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),¹ an Initial Regulatory Flexibility Analysis (“IRFA”) was incorporated in the *Notice of Proposed Rule Making* (“Notice”).² The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA.³ The Commission subsequently incorporated a Final Regulatory Flexibility Analysis (“FRFA”) in the Report and Order.⁴ This Supplemental FRFA conforms to the RFA and incorporates by reference the FRFA in the IA R&O. It reflects changes to the Commission’s rules arising from the First Order on Reconsideration prepared in response to the Petition for Reconsideration filed by the Expanding Opportunities for Broadcasters Coalition (“EOBC”).⁵

A. Need for, and Objectives of, the Order

2. This First Order on Reconsideration affirms the Commission’s commitment to making the channel sharing reverse auction bid option attractive to television broadcasters. In the *Channel Sharing R&O*, the Commission established rules authorizing channel sharing in connection with the incentive auction.⁶ The Commission addressed a variety of further issues related to channel sharing in the *IA R&O* in order to complete the framework for incentive auction-related channel sharing. In this First Order on Reconsideration, the Commission generally grants the EOBC Petition, finding that modifying its original determination will increase broadcasters’ flexibility to use the channel sharing bid option, will make the option more attractive and will provide an improved ability of the Commission to monitor compliance of CSAs with our rules.

3. Specifically, in the First Order on Reconsideration, the Commission grants in part the EOBC petition for reconsideration by: clarifying that the reversionary interest rule does not apply to CSAs; allowing parties the flexibility to enter into term-limited CSAs and to execute a CSAs post-auction;⁷ and modifying the rules to allow the spectrum usage rights of a sharing party whose license is terminated to revert to the remaining sharing parties rather than having the rights revert to the Commission for reassignment. The Order also clarifies that at the pre-auction stage Commission staff will only review CSAs to determine whether the bidder qualifies for the anti-collusion rule exception. To allow review for compliance with Commission rules, the Order requires that a channel sharee file a construction permit application, including a copy of the CSA, after the auction. Most notably, the flexibility granted herein will make it easier for entities such as small businesses and non-commercial education stations to avail themselves of the opportunity to channel share as part of the incentive auction.

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, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd 12357, 12523-544, Appendix B (2012) (“*IA Notice*”).

³ *Id.* at 12495, para. 421.

⁴ See *IA R&O*, 29 FCC Rcd 6567, 6947-66, Appendix B.

⁵ EOBC Petition for Reconsideration, GN Docket No. 12-268 (filed Sept. 12, 2014). In addition to this Order, a subsequent Order on Reconsideration will address Petitions for Reconsideration of the *IA R&O* related to issues other than the channel sharing bid option.

⁶ *Channel Sharing R&O*, 27 FCC Rcd. 4616 (2012).

⁷ Though EOBC requested the right of a winning license relinquishment bidder to enter into a CSA post auction up to 12 months after the license relinquishment date, we are requiring that the bidder enter into the CSA no later than the license relinquishment date.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA and the IA R&O.

4. No commenters directly responded to the IRFA in the *Notice*. Because a number of commenters raised concerns about the impact on small businesses of various auction design issues, the FRFA in the *IA R&O* addressed those concerns. The EOBC Petition addressed herein, and associated pleadings, did not raise any concerns with the FRFA.⁸

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

5. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the rules adopted in this proceeding.

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

6. 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 adopted rules, if adopted.⁹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”¹⁰ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹¹ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹²

7. As noted, we incorporated a FRFA into the *IA R&O*. In that analysis, the Commission described in detail the various small business entities that may be affected by the final rules, including television broadcast entities.¹³ This First Order on Reconsideration amends the final rules adopted in the *IA R&O* affecting television broadcasting. This Supplemental FRFA incorporates by reference the description and estimate of the number of television broadcasting small entities from the IRFA in the Notice of Proposed Rulemaking accompanying this First Order on Reconsideration.¹⁴

⁸ Two parties did file Petitions for Reconsideration related to the FRFA. We will address those pleadings in a subsequent Order on Reconsideration of the *IA R&O*.

⁹ 5 U.S.C. § 603(b)(3).

¹⁰ *Id.* § 601(6).

¹¹ *Id.* § 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 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).

¹² 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.

¹³ *See supra*, para. 1 & n. 155. Additionally, an updated description of “television broadcasting” can be found in the Initial Regulatory Flexibility Analysis included as Appendix D.

¹⁴ *See infra* Appendix D at Section C.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

8. In Section D of the FRFA incorporated into the *IA R&O*, the Commission described in detail the projected recording, recordkeeping, reporting and other compliance requirements for small entities arising from the rules adopted in the *IA R&O*.¹⁵ This Supplemental FRFA incorporates by reference the requirements described in Section D of the FRFA. In this First Order on Reconsideration, however, the Commission adds and modifies rules adopted in the *IA R&O*. It adds the requirement that in order to take advantage of the flexibility adopted in this First Order on Reconsideration to enter into a channel sharing agreement post-auction, a license relinquishment bidder must indicate its intent to enter a post auction channel sharing agreement on its pre-auction application. The First Order on Reconsideration also requires channel sharee stations to file an application for construction permit, including a copy of the executed channel sharing agreement. Commercial stations must pay the fee associated with this filing. (Non-commercial entities are fee exempt.) In addition, it require CSAs to include a provision regarding the reversion of spectrum usage rights to remaining channel sharing partners in the event that one party has its license terminated. Finally, to take advantage of the new rule allowing the last remaining licensee to a channel sharing agreement to have its license revert to non-shared status, that last remaining licensee must file a license application requesting this reversion.

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

9. The RFA requires an agency to describe any significant alternatives that it has considered in developing its 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 and reporting requirements under the rule for such 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 such small entities.”

10. The reporting, recordkeeping, and other compliance requirements resulting from the First Order on Reconsideration will apply to all entities in the same manner. The Commission believes that applying the same rules equally to all entities in this context promotes fairness. The Commission does not believe that the costs and/or administrative burdens associated with the rules, including the payment of a construction permit filing fee by commercial broadcasters who are reverse auction winners and who will channel share, will unduly burden small entities. (Non-commercial broadcasters are exempt from such filing fees.) The construction permit itself will contain the same information included in the construction permit and license information of the channel sharer station and therefore can be copied without additional engineering work. The submission of the executed channel sharing agreement does not add cost as the rules already require execution of a channel sharing agreement between sharing parties.

11. While these new rules require additional filings for those reverse auction winning bidders that channel share, they give bidders, including broadcast television entities meeting the definition of small businesses, the increased flexibility to enter into post auction CSAs, to limit the term of their CSAs rather than make them permanent, and to request reversion of spectrum usage rights in the event of the termination of the license of a broadcaster with whom they share spectrum. Lastly, the requirement that a channel sharee file a construction permit including a copy of the channel sharing agreement will streamline the pre-auction application process.

G. Federal Rules that Might Duplicate, Overlap, or Conflict with the Rules

12. None.

¹⁵ *IA R&O* at 6959-64, Appendix D, paras. 37-54.

H. Report to Congress

13. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.

I. Report to Small Business Administration

14. The Commission will send a copy of this First Order on Reconsideration, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

APPENDIX C**Proposed Rules**

Part 73 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

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. New section 73.3800 is added to read as follows:

§ 73.3800 Full Power Television Channel Sharing Outside the Auction Context

(a) Channel sharing generally.

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

(2) 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.

(b) Licensing of Channel Sharing Stations. A full power television channel sharing station relinquishing its channel must file an application for the initial channel sharing construction permit (FCC Form 2100), include a copy of the channel sharing agreement as an exhibit, and cross reference the other sharing station(s). Any engineering changes necessitated by the channel sharing agreement 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) Deadline For Implementing Channel Sharing Agreements. Channel sharing agreements submitted pursuant to this section must be implemented within three years of the grant of the initial channel sharing construction permit.

(d) Channel Sharing Agreements (CSAs).

(1) Channel sharing agreements 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) 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

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

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

(2) Channel sharing agreements submitted under this section must include a provision affirming compliance with the channel sharing requirements in this section including a provision requiring that each channel sharing licensee shall retain spectrum usage rights adequate to ensure a sufficient amount of the shared channel capacity to allow it to provide at least one Standard Definition (SD) program stream at all times.

(e) Termination and Assignment/Transfer of Shared Channel. 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 (d)(1)(iv) 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 to change its license to non-shared status using FCC Form 2100, Schedule B (for a full power licensee) or F (for a Class A licensee).

(f) 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) Sharee stations (those relinquishing a channel in order to share) must provide notice as required by this section at least 30 days prior to terminating operations on the sharee's channel. Sharer stations (those hosting a sharee as part of a channel sharing agreement) and sharee stations must provide notice as required by this section at least 30 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).

(4) 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.

3. New section 73.6028 is added to read as follows:

§ 73.6028 Class A Television Channel Sharing Outside the Auction Context

(a) Channel sharing generally.

(1) 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 and full power television stations.

(2) 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.

(b) Licensing of Channel Sharing Stations. A full power television channel sharing station relinquishing its channel must file an application for the initial channel sharing construction permit (FCC Form 2100), include a copy of the channel sharing agreement as an exhibit, and cross reference the other sharing station(s). Any engineering changes necessitated by the channel sharing agreement 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) Deadline For Implementing Channel Sharing Agreements. Channel sharing agreements submitted pursuant to this section must be implemented within three years of the grant of the initial channel sharing construction permit.

(d) Channel Sharing Agreements (CSAs).

(1) Channel sharing agreements 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) 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

(iii) Termination or transfer/assignment of rights to the shared licenses, including the ability of a new licensee to assume the existing CSA.

(2) Channel sharing agreements submitted under this section must include a provision affirming compliance with the channel sharing requirements in this section including a provision requiring that each channel sharing licensee shall retain spectrum usage rights adequate to ensure a sufficient amount of the shared channel capacity to allow it to provide at least one Standard Definition (SD) program stream at all times.

(e) Termination and Assignment/Transfer of Shared Channel. 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 (d)(1)(iv) 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 to change its license to non-shared status using FCC Form 2100, Schedule B (for a full power licensee) or F (for a Class A licensee).

(f) 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) Sharee stations (those relinquishing a channel in order to share) must provide notice as required by this section at least 30 days prior to terminating operations on the sharee's channel. Sharer stations (those hosting a sharee as part of a channel sharing agreement) and sharee stations must provide notice as required by this section at least 30 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 station(s) must send a further notice to affected MVPDs informing them of the new anticipated date(s).

(4) 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.

APPENDIX D

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (“IRFA”) concerning the possible significant economic impact on small entities of the policies and rules proposed in the *Notice of Proposed Rulemaking* (“NPRM”). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).² In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.³

Need for, and Objectives of, the Proposed Rule Changes

2. The *NPRM* proposes to adopt rules to permit channel sharing by and between full power and Class A television stations outside the context of the incentive auction, including by one or both parties to auction-related CSAs with other entities after those auction-related agreements terminate. Our goal is to provide clarification regarding the scope of channel sharing outside the context of the incentive auction in order to encourage auction participation. In addition, our goal is to extend the public interest benefits of channel sharing to full power and Class A stations that are not participating in the auction. The Commission has previously concluded that channel sharing can help broadcasters, including existing small, minority-owned, and niche stations, to reduce operating costs and provide broadcasters with additional net income to strengthen operations and improve programming services. Thus, extending channel sharing to full power and Class A stations outside the auction context would permit these stations to take advantage of the potential benefits of channel sharing.

Legal Basis

3. The proposed action is authorized pursuant to 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, 614 and 615.

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

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁵ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁶ A small business

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. § 603(a).

³ See *id.*

⁴ 5 U.S.C. § 603(b)(3).

⁵ 5 U.S.C. § 601(6).

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

concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁷ Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

5. *Wired Telecommunications Carriers.* The North American Industry Classification System (“NAICS”) defines “Wired Telecommunications Carriers” as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. 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.”⁸ The SBA has developed a small business size standard for wireline firms for the broad economic census category of “Wired Telecommunications Carriers.” Under this category, a wireline business is small if it has 1,500 or fewer employees.⁹ Census data for 2007 shows that there were 3,188 firms that operated for the entire year.¹⁰ Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.¹¹ Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

6. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which category is defined above.¹² The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees.¹³ Census data for 2007 shows that there were 3,188 firms that operated for the entire year.¹⁴ Of this total, 3,144 firms had fewer than 1,000 employees, and

⁷ 15 U.S.C. § 632.

⁸ U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. Examples of this category are: broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television (“CCTV”) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (“DTH”) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (“MMDS”).

⁹ 13 C.F.R. § 121.201; NAICS code 517110.

¹⁰ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ5; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

¹¹ *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

¹² See also U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

¹³ 13 C.F.R. § 121.201; NAICS code 517110.

¹⁴ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ5; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

44 firms had 1,000 or more employees.¹⁵ Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

7. *Cable Companies and Systems.* 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.¹⁶ Industry data shows that there are currently 660 cable operators.¹⁷ Of this total, all but ten cable operators nationwide are small under this size standard.¹⁸ In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.¹⁹ Current Commission records show 4,629 cable systems nationwide.²⁰ Of this total, 4,057 cable systems have less than 20,000 subscribers, and 572 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, we estimate that most cable systems are small entities.

8. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."²¹ There are approximately 54 million cable video subscribers in the United States today.²² Accordingly, an operator serving fewer than 540,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.²³ Based on available data, we find that all but ten incumbent cable operators are small entities under this size standard.²⁴ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual

¹⁵ *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

¹⁶ 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the Cable Television Consumer Protection And Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, MM Docket No. 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408, ¶ 28 (1995).

¹⁷ NCTA, Industry Data, Number of Cable Operators and Systems, <http://www.ncta.com/Statistics.aspx> (visited October 13, 2014). Depending upon the number of homes and the size of the geographic area served, cable operators use one or more cable systems to provide video service. See *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 12-203, Fifteenth Report, 28 FCC Rcd 10496, 10505-6, ¶ 24 (2013) ("15th Annual Competition Report").

¹⁸ See SNL Kagan, "Top Cable MSOs – 12/12 Q"; available at <http://www.snl.com/InteractiveX/TopCableMSOs.aspx?period=2012Q4&sortcol=subscribersbasic&sortorder=desc>.

¹⁹ 47 C.F.R. § 76.901(c).

²⁰ The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on October 10, 2014. A cable system is a physical system integrated to a principal headend.

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

²² See NCTA, Industry Data, Cable's Customer Base, <http://www.ncta.com/industry-data> (visited October 13, 2014).

²³ 47 C.F.R. § 76.901(f); see *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

²⁴ See NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013).

revenues exceed \$250 million.²⁵ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, 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.

9. *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, by exception, is now included in the SBA’s broad economic census category, Wired Telecommunications Carriers,²⁶ which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.²⁷ Census data for 2007 shows that there were 3,188 firms that operated for that entire year.²⁸ Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees.²⁹ Therefore, under this size standard, the majority of such businesses can be considered small entities. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled “Cable and Other Program Distribution.” As of 2002, the SBA defined a small Cable and Other Program Distribution provider as one with \$12.5 million or less in annual receipts.³⁰ Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network.³¹ Each currently offers subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined under the superseded SBA size standard would have the financial wherewithal to become a DBS service provider.

²⁵ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules. *See* 47 C.F.R. § 76.901(f).

²⁶ *See* 13 C.F.R. § 121.201, 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. 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.*” (*Emphasis added to text relevant to satellite services.*) U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers,” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

²⁷ 13 C.F.R. § 121.201; 2012 NAICS code 517110.

²⁸ U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ5; available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

²⁹ *Id.*

³⁰ *See* 13 C.F.R. § 121.201, NAICS code 517510 (2002).

³¹ *See 15th Annual Competition Report*, 28 FCC Rcd at 10507, ¶ 27. As of June 2012, DIRECTV is the largest DBS operator and the second largest MVPD in the United States, serving approximately 19.9 million subscribers. DISH Network is the second largest DBS operator and the third largest MVPD, serving approximately 14.1 million subscribers. *Id.* at 10507, 10546, ¶¶ 27, 110-11.

10. *Television Broadcasting.* This economic census category “comprises establishments primarily engaged in broadcasting images together with sound.”³² The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts.³³ The 2007 U.S. Census indicates that 808 firms in this category operated in that year. Of that number, 709 had annual receipts of \$25,000,000 or less, and 99 had annual receipts of more than \$25,000,000.³⁴ Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded \$38.5 million in that year, we conclude that the majority of television broadcast stations were small under the applicable SBA size standard.

11. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial television stations to be 1,390 stations.³⁵ Of this total, 1,221 stations (or about 88 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 July 2, 2014. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 395.³⁶ NCE stations are non-profit, and therefore considered to be small entities.³⁷ Therefore, we estimate that the majority of television broadcast stations are small entities.

12. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations³⁸ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

13. *Class A TV 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.³⁹ The Commission has estimated the number of licensed Class A television stations to be 405.⁴⁰

³² U.S. Census Bureau, 2012 NAICS Definitions, “515120 Television Broadcasting,” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. This category description continues, “These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. 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 studios, from an affiliated network, or from external sources.”

³³ 13 C.F.R. § 121.201; 2012 NAICS code 515120.

³⁴ U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series – Establishment and Firm Size: Receipts Size of Firms for the United States: 2007* (515120), http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table.

³⁵ See *Broadcast Station Totals as of March 31, 2015*, Press Release (MB rel. April 9, 2015) (*Broadcast Station Totals*) at <http://www.fcc.gov/document/broadcast-station-totals-march-31-2015>.

³⁶ See *Broadcast Station Totals*, *supra*.

³⁷ See generally 5 U.S.C. §§ 601(4), (6).

³⁸ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.” 13 C.F.R. § 21.103(a)(1).

³⁹ 13 C.F.R. § 121.201; NAICS code 515120.

⁴⁰ See *Broadcast Station Totals*, *supra*.

Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

14. The *NPRM* proposes several regulatory requirements that will require either new information collections or revisions to existing collections. The *NPRM* proposes to require full power and Class A stations seeking to channel share outside the auction context to follow a two-step licensing process - first filing an application for construction permit and then an application for license. These existing collections will need to be revised to reflect these new channel-sharing related filings and the associated burden estimates. In addition, the *NPRM* proposes that channel sharing stations submit their channel sharing agreements (CSAs) with the Commission and be required to include certain provisions in their CSAs. The existing collection concerning the execution and filing of CSAs will need to be revised. Finally, the *NPRM* proposes to require channel sharing stations to notify affected MVPDs.

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

15. 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, standard; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁴¹

16. The *NPRM* proposes to permit channel sharing by and between full power and Class A television stations outside the context of the incentive auction and seeks comment on that proposal as well as a proposed regulatory framework for such agreements. The Commission has previously concluded that channel sharing can help broadcasters, including existing small, minority-owned, and niche stations, to reduce operating costs and provide broadcasters with additional net income to strengthen operations and improve programming services. Thus, the proposals in the *NPRM* may help smaller broadcasters conserve resources. In addition, the *NPRM* proposes licensing and operating rules for channel sharing by and between full power and Class A stations that are designed to minimize impact on small entities. The rules provide a streamlined method for reviewing and licensing channel sharing for these stations and seek comment on whether to adopt a streamlined approach for reviewing proposals for a change in community of license of sharee stations. The Commission will consider all comments submitted in connection with the *NPRM*, including any suggested alternative approaches to channel sharing by full power and Class A stations that would reduce the burden and costs on smaller entities.

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

17. None.

⁴¹ 5 U.S.C. § 603(c).