

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

In the Matter of)	
)	
Expanding the Economic and Innovation)	GN Docket No. 12-268
Opportunities of Spectrum Through)	
Incentive Auctions)	
)	
Channel Sharing by Full Power and Class)	MB Docket No. 15-137
A Stations Outside the Broadcast)	
Television Spectrum Incentive Auction)	
Context)	

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (NAB)¹ submits these comments in response to the Commission's Notice of Proposed Rulemaking proposing rules to permit channel sharing outside the context of the forthcoming broadcast spectrum incentive auction.² NAB generally supports the Commission's proposals, and encourages the Commission to adopt flexible rules for voluntary channel sharing arrangements.

I. THE COMMISSION SHOULD ADOPT FLEXIBLE CHANNEL SHARING RULES

NAB commends the Commission for its decision to adopt more flexible channel sharing rules. In particular, the Commission's decision to allow parties to define the term of channel

¹ The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context, First Order on Reconsideration and Notice of Proposed Rulemaking*, GN Docket No. 12-268, MB Docket No. 15-137, FCC 15-67 (June 12, 2015) (NPRM).

sharing arrangements, rather than making such arrangements permanent, may encourage more parties to consider channel sharing agreements and thus may increase participation in the forthcoming incentive auction.³ NAB supports the Commission's proposals to adopt rules for channel sharing arrangements outside the auction as a logical corollary to this decision. If broadcasters are free to set the duration of their channel sharing agreements, they should also be free to select new channel sharing partners when those agreements come to an end.

We also support the Commission's proposals to model the rules for channel sharing arrangements outside of the auction on the rules governing arrangements entered into as part of participation in the auction. This will provide predictability and allow parties to negotiate second-generation and non-auction related agreements based on a well-understood set of rules.

We urge the Commission to provide broadcasters with maximum flexibility in structuring the terms of channel sharing arrangements. For example, the Commission asks if it should require a minimum term for channel sharing agreements, such as three years, to minimize potential viewer disruption.⁴ This is unnecessary. The Commission adopted no such minimum term with respect to channel sharing agreements entered into as part of participation in the incentive auction; and there is no reason to take a different approach for subsequent agreements. Broadcasters are fully aware of the risk of viewer disruption and have no desire to create unnecessary confusion. At the same time, broadcasters may wish to enter into shorter-term channel sharing arrangements for a variety of reasons. Consistent with the flexible approach the Commission adopted for auction-related channel sharing

³ *Id.* at ¶¶ 19-21.

⁴ *Id.* at ¶ 48.

agreements, the Commission should allow parties to dictate the length of their non-auction channel sharing agreements.

Finally, the Commission's current rules should apply to any new vacant channels in the television band created by channel sharing outside of the auction context. Those channels should remain allocated for television use and be available for white spaces devices unless they are occupied by a television station. Maintaining the current allocation of these channels may also assist in any future transition to a new television standard.

II. THE COMMISSION SHOULD PRESERVE CARRIAGE AND RETRANSMISSION RIGHTS OF PARTIES PARTICIPATING IN CHANNEL SHARING ARRANGEMENTS

The NPRM tentatively concludes that the Communications Act provides stations that elect to channel share outside of the auction or in second-generation agreements the same satellite and cable carriage and retransmission consent rights the stations would have at the shared location if they were not channel sharing. NAB supports this conclusion, and urges the Commission promptly to adopt rules reflecting it.

First, the Commission is correct that nothing in the Communications Act requires a television station to occupy an entire 6 MHz channel for carriage rights.⁵ Thus, the rights provided by Sections 325, 338, 614, and 615 of the Communications Act are not subject to change by a station's election to participate in a channels sharing arrangement, regardless of whether that agreement is entered into in the context of the incentive auction.

Second, assuring broadcasters that entering into channel sharing agreements will not affect carriage or retransmission rights will help increase participation in the forthcoming broadcast spectrum incentive auction. Stations considering entering channel sharing agreements to participate in the auction must be concerned not only with preservation of

⁵ *Id.* at ¶ 38.

their own carriage rights, but also with the ability of future channel sharing partners to preserve their carriage rights.

For example, assume stations A and B are interested in channel sharing on A's facilities after the auction. The parties agree to a channel sharing agreement with a term of five years. B bids to relinquish its channel during the auction, has its bid accepted, and begins sharing using A's facilities. After five years, both parties are interested in renewing their agreement. At that point, B should be assumed to maintain all of the carriage and retransmission consent rights it would otherwise have at A's location. Alternatively, if B elects not to renew its agreement or the agreement otherwise terminates, and B is interested in finding a new channel sharing partner, B should be able to maintain its rights in a new channel sharing agreement with a new partner. Critically, if B does not have assurance now, before the auction begins, that it will maintain carriage and retransmission consent rights in a new or extended channel sharing agreement, with A or another potential partner in the market, it may be reluctant to participate in the auction in the first place.

If the Commission wants to encourage broadcaster participation in the auction through channel sharing agreements, it should promptly adopt rules providing certainty on this issue. Maintaining broadcasters' confidence concerning their rights not only in auction-related agreements, but second-generation or other channel sharing agreements will be critical for the auction, and the Commission should act before stations must make final decisions with respect to auction participation.

III. CONCLUSION

The incentive auction is currently scheduled to begin on March 29, 2016. Broadcasters applications to participate in the auction will be due this fall – just a few months from now. As broadcasters weigh their options for participation, they must consider the regulatory

environment governing not only their immediate agreements, but future arrangements after the expiration or termination of auction-related agreements. We urge the Commission to take this opportunity to provide regulatory certainty to broadcasters considering participation in the auction.

More generally, we urge the Commission to continue to allow parties flexibility to negotiate the terms of their agreements. Unduly burdensome or prescriptive regulations will only discourage channel sharing. The framework the Commission has established for auction-related channel sharing agreements should serve as a model for voluntary agreements outside of the auction context as well.

Respectfully submitted,

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