

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 73

[GN Docket No. 12–268; MB Docket No. 15–137; FCC 15–67]

#### 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

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission refines the rules it adopted in the Incentive Auction Report and Order and the preceding Channel Sharing Report and Order to provide greater flexibility and certainty regarding channel sharing agreements (“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.

**DATES:** Effective December 2, 2015, except for §§ 1.2204(c)(4) and 73.3700(b)(1), which contain new or modified information collection requirements that require approval by 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.

**FOR FURTHER INFORMATION CONTACT:** Kim Matthews, Media Bureau, Policy Division, 202–418–2154, or email at [kim.matthews@fcc.gov](mailto:kim.matthews@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s *First Order on Reconsideration*, FCC 15–67, adopted on June 11, 2015 and released on June 12, 2015. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission’s copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. This document will also be available via ECFS at <http://fjallfoss.fcc.gov/ecfs/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for

people with disabilities (Braille, large print, electronic files, audio format) by sending an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling the Commission’s Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

#### Paperwork Reduction Act of 1995 Analysis

The *First Order on Reconsideration* 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. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements contained in this First Order on Reconsideration as required by the PRA in a separate published *Federal Register* notice.

In addition, the Commission notes 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. 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.

#### Synopsis of the First Order on Reconsideration

##### 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. One of broadcasters’ bid options will be to relinquish rights in order to share a channel with another licensee. The Commission established rules governing channel sharing agreements (“CSAs”) in the *Incentive Auction Report & Order*, 79 FR 48442 (August 15, 2014) (“IA

*R&O*”) and the preceding *Channel Sharing Report & Order*, 77 FR 30423 (May 23, 2012) (“*Channel Sharing R&O*”). 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*”), 80 FR 40957, July 14, 2015, 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. 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. 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, 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 sharing a channel.” In the *Channel Sharing R&O*, the Commission established rules authorizing channel sharing in connection with the incentive auction.

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. 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. 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.

4. The Expanding Opportunities for Broadcasters Coalition ("EOBC") filed a Petition for Reconsideration of our channel sharing decisions in the *IA R&O*, urging 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."

5. The National Cable & Telecommunications Association ("NCTA") filed an opposition arguing that extending carriage rights to broadcasters that enter into post-auction CSAs would contravene the Spectrum Act. 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. CTIA supports all of EOBC's requests, as do Fox, Ion Media, Tribune, and Univision.

### 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, 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.

8. EOBC 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. 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. Fox, Ion Media, Tribune, and Univision, who filed a reply comment in response to the *Incentive Auction Comment PN*, agree with this position.

9. We grant EOBC's request. We clarify that parties to a CSA may grant each other options, puts, calls, rights of first refusal, and other common contingent interests, subject to all applicable Commission rules and policies, including the media ownership rules, without committing a *per se* violation of the reversionary interest rule. 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. 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. 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

10. 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, 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.

11. 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. Fox, Ion Media,

Tribune, and Univision, who filed a reply comment in response to the *Incentive Auction Comment PN*, agree with this position. EOBC argues that the carriage rights of parties to such post-auction CSAs would be protected under the Spectrum Act. CTIA agrees. NCTA, however, 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.

12. 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, 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.

13. Subject to these conditions, we agree with EOBC that pre- and post-auction CSAs are the same for purposes of the Spectrum Act. 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. Indeed, as EOBC notes, parties may be able to negotiate CSAs more readily after the auction is complete, when fewer variables remain unknown. This action also may help to preserve independent voices by enabling licensees to continue broadcasting after they voluntarily relinquish rights in the incentive auction. 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. 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.

14. 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.” It guarantees carriage rights, however, only for “a licensee that voluntarily relinquishes rights in order to channel share.” To fall within the scope of this 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. 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.

15. 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. 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 relinquishment deadline to enter into a CSA. 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.

16. 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. 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 within three months after receiving auction proceeds.” 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. 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*.

17. 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. 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. We direct the Media Bureau, in the Channel Reassignment PN to be released following the completion of the incentive auction, 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.

#### *C. Term-Limited Channel Sharing Agreements*

18. 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[.]” EOBC argues that we should “permit broadcasters to choose the length of their agreements.” “Once an agreement is terminated,” suggests EOBC, “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.” CTIA supports this approach, as do Fox, Ion Media, Tribune, and Univision. 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.

19. 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. We also agree with EOBC that providing such flexibility is appropriate to meet broadcasters’ individualized programming and economic needs. 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.

20. 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*

21. 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. The Commission further stated that 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.”

22. 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.” 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 . . . 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.” 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). 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).” No parties opposed this request.

23. 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. 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*.

24. We agree with EOBC that, as business partners, channel sharers should “have the ability to choose partners that satisfy their own criteria.” 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. 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. 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). If a full power station that is sharing with a Class A station relinquishes its license, then the Class A station would continue to operate under the rules governing Class A stations.

#### *E. Commission Review of CSAs and Licensing of Channel Sharees*

25. 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.

26. 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 channel sharing exception to the rule prohibiting certain communication adopted in the *IA R&O*.

27. 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. 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, 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, the channel sharee file a minor change application for a construction permit specifying the same technical facilities as the sharer station, and include a copy of the CSA with its application. This requirement will be the same regardless of whether the parties execute their CSA before or after the auction. 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, 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. 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.

#### *F. Exception to Prohibited Communications for Parties to CSAs*

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

### **IV. Procedural Matters**

#### *A. Supplemental Final Regulatory Flexibility Act Analysis*

29. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”), an Initial Regulatory Flexibility Analysis (“IRFA”) was incorporated in the *Notice of Proposed Rule Making* (“*Notice*”). The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. The Commission subsequently incorporated a Final Regulatory Flexibility Analysis (“FRFA”) in the Report and Order. 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”).

30. 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. 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.

31. 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; 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.

32. 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.

33. 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.

34. 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. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small government 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 SBA.

35. 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. 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*.

36. 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*. 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.

37. 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."

38. 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.

39. 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.

Federal Rules That Might Duplicate, Overlap, or Conflict With the Rules

40. None.

Report to Congress

41. The Commission will 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).

Report to Small Business Administration

42. 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.

B. Final Paperwork Reduction Act Analysis

43. 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 will be invited to comment on the new or modified information collection requirements contained in this proceeding in a separate published **Federal Register** notice. 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.

44. 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.

V. Ordering Clauses

45. 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. 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 of the *First Order on Reconsideration*.

46. IT IS FURTHER ORDERED that the rules adopted herein will become effective December 2, 2015, 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.

47. 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 CFR 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.

48. 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, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

49. 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).

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Television.

47 CFR Part 73

Television, Reporting and recordkeeping requirements.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison.

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

**Authority:** 15 U.S.C. 79, *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

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

§ 1.2200 Definitions.

\* \* \* \* \*

(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.

\* \* \* \* \*

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

§ 1.2204 Applications to participate in competitive bidding.

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

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

\* \* \* \* \*

PART 73—RADIO BROADCAST SERVICES

■ 4. The authority citation for part 73 continues to read as follows:

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

■ 5. 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) introductory text, (b)(2)(ii), and (b)(3); and revising paragraphs (h)(2) through (5) to read as follows:

**§ 73.3700 Post-incentive auction licensing and operation.**

(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 paragraphs (b)(4)(i) and (ii) of this section. 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, or a broadcast television station described in paragraph (b)(1)(iv)(B) of this section 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, or a broadcast television station described in paragraph (b)(1)(iv)(B) of this section 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 (or, in the case of a broadcast television station described in paragraph (b)(1)(iv)(B) of this section that is not reassigned to a new channel, a change in its authorized technical parameters) 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) and (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).

(3) *Channel sharing between full power television and Class A television stations.* (i) A CSA may be executed between licensees of full power television stations, between licensees of Class A television stations, and between licensees of full power and Class A television stations.

(ii) A Class A channel sharee station licensee that is a party to a CSA with a full power channel sharer station licensee must comply with the rules of part 73 governing power levels and interference, and must comply in all other respects with the rules and policies applicable to Class A television stations, as set forth in §§ 73.6000 *et seq.*

(iii) A full power channel sharee station licensee that is a party to a CSA with a Class A channel sharer station

licensee must comply with the rules of part 74 of this chapter governing power levels and interference.

(iv) A Class A channel sharee station may qualify only for the cable carriage rights afforded to “qualified low power television stations” in § 76.56(b)(3) of this chapter.

(4) *Channel sharing between commercial and noncommercial educational television stations.* (i) A CSA may be executed between commercial and NCE broadcast television station licensees.

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

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

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

(5) *Required CSA provisions.* (i) CSAs must contain provisions outlining each licensee’s rights and responsibilities regarding:

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

(B) Allocation of bandwidth within the shared channel;

(C) 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;

(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) CSAs must include provisions:

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

(B) 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.

\* \* \* \* \*

[FR Doc. 2015-27738 Filed 10-30-15; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[GN Docket No. 12-268 and MB Docket No. 15-137; FCC 15-139]

#### Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this Second Order on Reconsideration, the Federal Communications Commission (Commission) provides more flexibility to broadcasters interested in the channel sharing option in the broadcast incentive auction by clarifying that back-up channel sharing agreements (“CSAs”) are permitted under its rules and providing more time for successful bidders to transition to shared facilities after the auction. The Commission also provides guidance regarding how the CSA exception to the prohibited communications rule applies with respect to back-up CSAs.

**DATES:** Effective December 2, 2015.

**FOR FURTHER INFORMATION CONTACT:** Shaun Maher, *Shaun.Maher@fcc.gov* of the Media Bureau, Video Division, (202) 418-2324.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Second Order on Reconsideration, FCC 15-139, adopted October 21, 2015, in MB Docket No. 15-137. The full text of the Second Order on Reconsideration is available for inspection and copying during regular business hours in the FCC Reference Center, 445 12th Street SW., Room CY-A257, Portals II, Washington, DC 20554. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by email: *FCC504@fcc.gov* or phone: 202-418-0530 or TTY: 202-418-0432.

*Paperwork Reduction Act of 1995 Analysis:* This Second Order on Reconsideration does not contain any additional new or modified information collection requirements subject to the Paperwork Reduction Act of 1995

(“PRA”), Public Law 104-13, beyond those that were already in the Commission’s Incentive Auction Report and Order, 79 FR 48442-01 (Aug. 15, 2014) (“Incentive Auction R&O”). In addition, therefore, it does not contain any additional new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, beyond those that were already in the Incentive Auction R&O.

The Commission is seeking separate OMB approval for FCC Form 2100, Schedule B (for a full power station) and F (for a Class A station) and FCC Form 177.

#### Synopsis

1. The Commission adopted rules for the broadcast incentive auction in the Incentive Auction R&O including rules for parties interested in entering into CSAs. The Commission recently modified those channel sharing rules to provide greater flexibility to stations considering that option. In this Second Order on Reconsideration, the Commission announces that the availability of back-up channel sharing arrangements would provide additional flexibility for stations considering channel sharing. In particular, it would enable both parties to a CSA to participate in the auction while mitigating the risk that the auction system could freeze both stations in the same round and thus deprive both stations of a post-auction host or “sharer” station. For some, the risk of being left without any spectrum on which to share may be too great and foreclose that kind of participation. The Commission concludes that a back-up CSA could mitigate that risk and encourage greater participation.

2. The Commission clarifies that, if both parties to a CSA participate in the auction, the rules allow either or both parties to also enter into a back-up CSA with one other station in the same DMA to act as the back-up host or sharer station. By allowing the parties to secure a fallback arrangement in the event that both parties relinquish their spectrum usage rights in the auction, this clarification will help promote wider participation in the auction by broadcasters that require assurance that they will remain on the air in the DMA. The Commission reminds parties that all of their auction-related activity and communications, including with respect to back-up CSAs, must adhere to the antitrust laws as well as the rules.

3. In the Second Order on Reconsideration, the Commission rejects

the Broadcaster Representatives’ request to allow “contingent multi-party CSAs across multiple markets.” The Commission concludes that multi-market back-up CSAs are not necessary to address the uncertainty created if multiple parties to a particular CSA participate in the auction. Such a result would undermine the general goal of the rules prohibiting certain communications, which are intended to reinforce existing antitrust laws, facilitate the detection of collusive conduct, and assure incentive auction participants that the auction process will be fair and objective. The Commission restated that it crafted the CSA exception to apply on an agreement-by-agreement basis in order to encourage channel sharing relationships without undermining these objectives.

4. The Commission also clarifies that, consistent with the foregoing, the CSA exception to the reverse auction rule prohibiting certain communications applies only to communications between parties to a single CSA at any given time. Further, the CSA exception only applies to a CSA, including back-up CSAs, if the CSA was entered into and filed with the Commission by the application deadline. If both stations pursuant to the primary CSA have a bidding status of “frozen—provisional winner,” *i.e.*, the auction system determines that the station can never be assigned a feasible channel in its pre-auction band in the current stage, then parties to a back-up CSA may communicate regarding bids and bidding strategy and must cease communication of this type with the party to the original CSA. Prior to that point, the rationale for the CSA exception—that parties to a CSA should be able to “fully engage as various options are presented during the auction process”—is inapplicable with respect to the back-up CSA. Once the relinquishment bid of the prospective host of the CSA is provisionally accepted by the auction system in a given stage of the auction, the CSA exception may be utilized for otherwise prohibited communications involving the parties to the back-up agreement, and can no longer be utilized for parties to the primary agreement in that stage.

5. The Commission notes that under the reverse auction bidding procedures, the bidding status of a “frozen—provisional winner” may change to “bidding in the current round” if the auction enters a subsequent stage. Accordingly, if the host in the primary CSA, which was no longer operative because its bidding status became “frozen—provisional winner” in the