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Small Entity Compliance Guide

CHANNEL SHARING BY FULL POWER AND CLASS A STATIONS OUTSIDE THE BROADCAST TELEVISION SPECTRUM INCENTIVE AUCTION CONTEXT

FCC 17-29

GN Docket No. 12-268

MB Docket No. 03-185

MB Docket No. 15-137

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)
TTY: 1-888-TELL-FCC (1-888-835-5322)
Fax: 202-418-0232

OBJECTIVES OF THE PROCEEDING

In implementing Congress's mandate to conduct a broadcast television spectrum incentive auction, the Commission previously established rules to allow full power and Class A stations that relinquish licensed spectrum usage rights in the reverse auction to share a channel with another station. These rules, however, confine channel sharing to auction-related agreements. The Commission also authorized channel sharing between low power television (LPTV) and television translator stations (collectively, "secondary stations") to help mitigate the auction's potential to displace secondary stations.

In this Report and Order, the Commission took the next step and adopted rules to allow full power and Class A stations with auction-related channel sharing agreements (CSAs) to become sharees outside of the auction context so that they can continue to operate if their auction-related CSAs expire or otherwise terminate (second generation channel sharing). The Commission also adopted rules to allow all secondary stations to share a channel with another secondary station or with a full power or Class A station (primary-secondary channel sharing). This action will assist secondary stations that are displaced by the incentive auction repack (the reorganization and reallocation of television channels for use by new wireless licensees) to continue to operate in the post-auction television bands. The rules adopted in this Report and Order will enhance the benefits of channel sharing for broadcasters without imposing significant burdens on multichannel video programming distributors (MVPDs).

COMPLIANCE REQUIREMENTS

Licensing Rules

Sharing stations must obtain prior Commission authorization before implementing their channel sharing agreement (CSA). For the first step, if no technical changes are necessary for sharing, a channel sharee station will file the appropriate schedule of FCC Form 2100 for a digital construction permit specifying the same technical facilities as the sharer station (Schedule A, C or E); include a copy of the channel sharing agreement (CSA) as an exhibit; and cross reference the other sharing station(s). In this case, the sharer station does not need to take action at the time the sharee files its Form 2100. If the CSA requires technical changes to the sharer station's facilities, each sharing station will file the appropriate schedule to FCC Form 2100 to apply for a digital construction permit specifying identical technical facilities for the shared channel, along with the CSA.

Modification applications filed to implement CSAs will be treated as minor change applications, subject to certain exceptions. In the case of a full power sharee station, the Media Bureau will consider any loss in service resulting from the proposed sharing arrangement at the construction permit stage in determining whether to grant the permit. With channel sharing, service loss in one area (i.e., a portion of the area previously served by the sharee) might result in a gain in service to a different area (i.e., that served by the sharer). Moreover, absent the proposed sharing arrangement, a full power sharee station might not be able to continue to

provide service, such as in the case of the expiration or termination of its current CSA. The Media Bureau will consider these and other factors in determining whether a sharing arrangement proposed by a full power sharee station is consistent with Section 307(b) of the Communications Act and serves the public interest. After the full power sharee station's construction permit is granted, the Media Bureau will amend the Table of Allotments on its own motion to reflect the change in the channel allotted to the sharee station's community.

The Media Bureau began accepting applications for channel sharing outside of the auction context on August 10, 2017. With respect to a full power or Class A station sharing with a secondary station, if the sharee is a secondary station that is displaced as a result of the incentive auction and repacking process, it will not have to wait for the post-incentive auction displacement window to file its displacement application to propose sharing the sharer station's facilities. Rather, beginning on August 10, 2017 the secondary sharee station may file an application for a construction permit for the same technical facilities of the primary station and include a copy of the CSA as an exhibit. If the secondary station is the sharer and that station is displaced as a result of the incentive auction and repacking process, then, the secondary sharer would file during the post-incentive auction Special Displacement Window that will commence on April 10, 2018. If none of the parties to a non-auction-related CSA is a station that was displaced as a result of the incentive auction and repacking process, then the sharee station(s) may file channel sharing application(s) beginning on August 10, 2017.

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

Technical Rules

A sharee that opts to share a full power sharer's channel outside of the auction will be permitted to operate with the technical facilities of the full power station authorized under Part 73 of the rules. Conversely, a full power sharee sharing a Class A sharer's channel will be required to operate at the Class A station's lower Part 74 power level. The channel of a full power sharer sharing with a Class A sharee will remain in the DTV Table. In the case of a full power sharee that chooses to share the "non-tabled" channel of a Class A station, the Media Bureau will amend the DTV Table to reflect the change in the channel allotted to the full power sharee station's community.

A full power sharee station sharing a channel with a Class A sharer station will continue to be obligated to comply with the programming and other operational obligations of a Part 73 licensee. A Class A sharee station sharing a channel with a full power sharer station will continue to be obligated to comply with the programming and other operational obligations of a Class A licensee, including airing a minimum of 18 hours a day and an average of at least three

hours per week of locally produced programming each quarter, as required by § 73.6001 of the rules.

A secondary LPTV or TV translator station that shares the channel of a full power television station will be permitted to operate with the technical facilities of the full power station, including at the higher power limit specified in Part 73 of the rules.¹ The channel of a full power sharer station sharing with a secondary LPTV or TV translator sharee station will remain in the DTV Table. LPTV and TV translators that share the channel of a Class A station will continue to be limited to operation at the lower power specified for LPTV, TV translator, and Class A stations in Part 74 of our rules. An LPTV or TV translator station that shares a full power or Class A station's channel will obtain "quasi" primary interference protection for the duration of the channel sharing arrangement by virtue of the fact that the full power or Class A station is a primary licensee. Although the secondary station will continue to be licensed with secondary interference protection status, the host full power or Class A television station's primary status protects it from interference or displacement, and this protection will necessarily carry over to any station that is sharing its channel.

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

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

A reserved-channel full power noncommercial educational (NCE) licensee, whether it proposes to share a non-reserved channel or agrees to share its reserved channel with a commercial sharee station, will retain its NCE status and must continue to comply with the rules applicable to NCE licensees. In either case, the NCE full power station's portion of the shared channel will be reserved for NCE-only use.

Full power stations seeking to channel share as sharee stations outside of the incentive auction will be precluded from changing their community of license absent an amendment to the

¹ See 47 CFR § 73.622(h) with 47 CFR § 74.735(b).

DTV Table.² Absent such amendment, these stations will be limited to entering into a CSA with a sharer from whose transmitter site the sharee will continue to meet the community of license signal requirement over its current community of license.

The existing 30-mile and contour overlap restrictions that apply to Class A moves will be applied to Class A sharee stations that propose to move as a result of a sharing arrangement. Specifically, if requested in conjunction with a digital displacement application, a station relocation resulting from a proposed CSA, in order to be considered a minor change, may not be greater than 30 miles from the reference coordinates of the relocating station's community of license. In all other cases, a station relocating as a result of a proposed CSA, in order to be considered a minor change: (i) must maintain overlap between the protected contour of its existing and proposed facilities; and (ii) may not relocate more than 30 miles from the reference coordinates of the relocating station's antenna location.

The Media Bureau will consider waivers of these restrictions. A displaced LPTV or TV translator station proposing to channel share with a station located more than 30 miles from the reference coordinates of the displaced station's community of license will have to show: (i) that there are no channels available that comply with section 74.787(a)(4) of the rules; and (ii) that the proposed sharer station is the station closest to the reference coordinates of the displaced station's community of license that is available for channel sharing. The Media Bureau will apply a stricter standard for requests for waiver of our relocation rules with respect to non-displaced Class A, LPTV, and TV translator stations. In such cases, the Media Bureau will consider a waiver if the station seeking to relocate demonstrates: (i) that there is no other channel sharing partner that operates with a location that would comply with the contour overlap and 30-mile restrictions on the station seeking the waiver; and (ii) the population in the relocating station's loss area is de minimis, and/or well-served, and/or would continue to receive the programming aired by the relocating station from another station.

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

Channel Sharing Agreements

² See 47 CFR § 1.420.

Each station involved in a CSA must include a provision in their CSA that they will operate in digital mode on the shared channel and will retain spectrum usage rights sufficient to ensure at least enough capacity to operate one standard definition (SD) programming stream at all times.

CSAs must include provisions outlining each licensee's rights and responsibilities in the following areas: (i) access to facilities, including whether each licensee will have unrestricted access to the shared transmission facilities; (ii) allocation of bandwidth within the shared channel; (iii) operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment; a description of each party's financial obligations, and any relevant notice provisions; (iv) transfer/assignment of a shared license, including the ability of a new licensee to assume the existing CSA; and (v) termination of the license of a party to the CSA, including reversion of spectrum usage rights to the remaining parties to the CSA.

The rights under a CSA may be assigned or transferred, subject to the limits adopted in the Report and Order, the requirements of Section 310 of the Communications Act, the Commission's rules, and the requirement that the assignee or transferee comply with the applicable CSA. When a primary or secondary sharing station's license is terminated due to voluntary relinquishment, revocation, failure to renew, or any other circumstance, its spectrum usage rights (but not its license) may revert to the remaining sharing partner(s) if the partner(s) so agree and this provision is set forth in the CSA. In the event that only one station remains on the shared channel, that station may apply to change its license to non-shared status using FCC Form 2100 — Schedule B (for a full power station), Schedule D (for an LPTV/translator station), or Schedule F (for a Class A station). If a full power station that is sharing with a Class A, LPTV, or TV translator station relinquishes its license, then the Class A, LPTV, or TV translator station would operate under the rules governing their particular service (Class A, LPTV, or TV translator). Similarly, if a Class A station that is sharing with a LPTV or TV translator station relinquishes its license, then the LPTV or TV translator station would operate under the rules governing their particular service. If the sharing partner is an NCE station operating on a reserved channel, its portion of the shared channel must continue to be reserved for NCE-only use.

MVPD Notice

Stations participating in CSAs outside the auction context must provide notice to those MVPDs that: (i) no longer will be required to carry the station because of the relocation of the station; (ii) currently carry and will continue to be obligated to carry a station that will change channels; or (iii) will become obligated to carry the station due to a channel sharing relocation. The notice must contain the following information: (i) date and time of any channel changes; (ii) the channel occupied by the station before and after implementation of the CSA; (iii) modification, if any, to antenna position, location, or power levels; (iv) stream identification information; and (v) engineering staff contact information. Stations may elect whether to provide notice via a letter notification or electronically, if pre-arranged with the relevant MVPD. Sharee stations must provide the MVPD notice at least 90 days prior to terminating operations on

the sharee's channel and that both sharer and sharee stations provide the MVPD notice at least 90 days prior to initiation of operations on the sharer channel. Should the anticipated date to either cease operations or commence channel sharing operation change, the station(s) must send a further notice to affected MVPDs informing them of the new anticipated date(s). During the 90-day notice period, the parties to the CSA are expected to continue to coordinate the implementation of the CSA with each MVPD that they seek to carry their transmissions.

Compliance Date. Because channel sharing outside of the auction context is voluntary, there is no deadline for stations to decide whether they want to channel share. Should they decide to channel share, stations have a three-year construction period to implement their shared operations.

INTERNET LINKS

- Report and Order (FCC 17-29)

https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-29A1.pdf

- Federal Register summary of Public Notice

<https://www.gpo.gov/fdsys/pkg/FR-2017-08-10/pdf/2017-16848.pdf>