

FCC Incentive Auction: Channel Sharing

August 13, 2015

Ex Parte Information

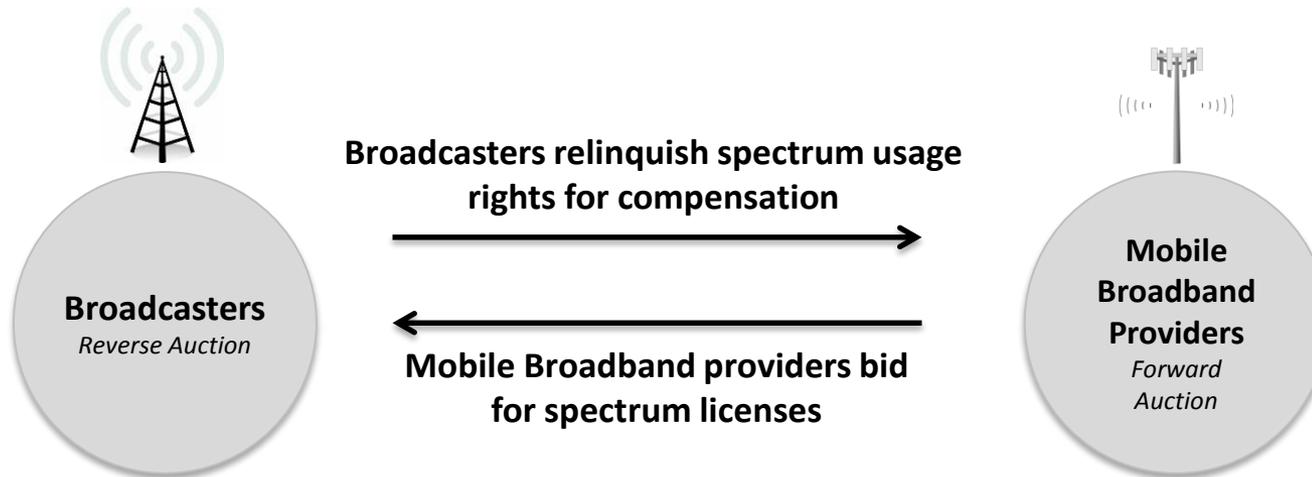
This webinar is an information session about the Broadcast Incentive Auction reverse auction channel sharing relinquishment option.

Participating in this webinar will not require a filing under the Commission's rules governing *ex parte* communications.

Background:

Broadcast Television Incentive Auction

- The Incentive Auction is a market-based approach to repurposing the 600 MHz spectrum band that will provide Broadcasters the opportunity to sell their spectrum usage rights while retaining the flexibility to remain on the air
- The Incentive Auction is comprised of a Reverse Auction and a Forward Auction, which together will create a structured spectrum marketplace for Broadcasters and Mobile Broadband Providers
- Broadcasters have three voluntary options for participation. They may go off air and relinquish their license or channel share, or they may move to a VHF channel. (A UHF station may move to High-VHF or Low-VHF, and a High-VHF station may bid to move to Low-VHF.)

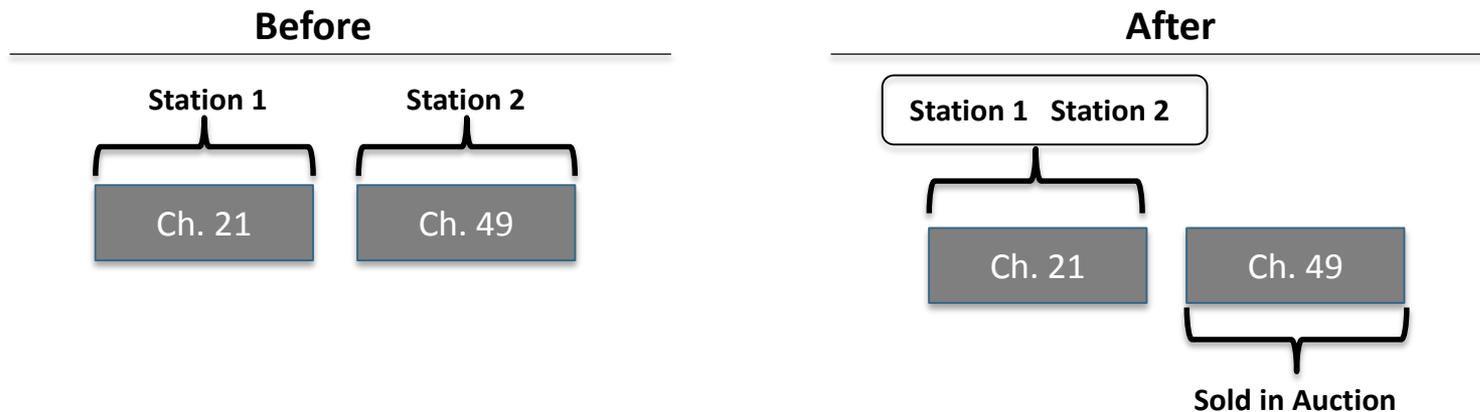


Channel Sharing Overview

- Under the channel sharing option, a licensee voluntarily relinquishes its 6 MHz channel in the Reverse Auction using the Go Off-Air option and, after the auction, moves to a shared 6 MHz channel.
 - The relinquishing licensee participating in the auction is known as the “sharee.”
 - The licensee sharing its channel is known as the “sharer.”
- More than two stations may share a channel.
- Each sharing station remains a primary FCC licensee with all current licensee rights and responsibilities.
 - A channel sharing station is entitled to the same cable and satellite carriage rights at its shared location as it would have at that same location were it not channel sharing.
- Channel sharing can take place on a UHF or a VHF channel.
- Licensees may enter into a Channel Sharing Agreement before the reverse auction application filing deadline, or after the auction closes but at least 60 days prior to the date on which the sharee must terminate operations on its pre-auction channel.

Channel Sharing Overview (cont.)

- In the scenario below, Station 2 relinquishes its right to use Channel 49 in the Reverse Auction. After the auction, Station 2 will move to share Channel 21 with Station 1.
 - If the sharer is assigned a new channel as part of the repacking process, then the sharee will share on that new channel.
 - If the sharer wins a bid to move to High-VHF or Low-VHF, then the sharee will share on that new VHF channel.
- The opening prices for the Go Off-Air option apply to channel sharing participants.
 - A licensee relinquishing its 6 MHz channel will receive auction proceeds.
 - Division of those proceeds among channel sharing partner(s) is determined by private agreement.
- Winning sharees do not receive reimbursement for implementing the sharing arrangement from the \$1.75B Broadcaster Relocation Fund.



Channel Sharing Overview (cont.)

- Each Channel Sharing licensee must be able to provide at least one Standard Definition (SD) program stream at all times.
 - Broadcasters will be able to decide how the 6 MHz will be utilized depending on their own unique circumstances.
 - The Commission does not require that each partner share an equal amount of the bitstream;
 - Sharing can be on a fixed or dynamic basis.
 - Broadcasters in dozens of markets already transmit two top-4 network signals on a single 6 MHz channel.
- In the event that a shared license is relinquished either voluntarily or involuntarily:
 - The spectrum usage rights of the relinquishing partner (but not its license), may revert to the remaining sharing partners if the partners so agree.
 - Where only one sharing partner remains, that licensee may apply to change its license to non-shared status using a license to cover application.

Relocation of Channel Sharee

- A sharee may change its community of license if it cannot satisfy the community of license signal requirement from the sharer's transmission site.
 - The new community of license must meet the same or a higher allotment priority as the sharee's current community.
 - In the unlikely event that the sharee cannot identify such a community, it must choose a new community of license that meets the next highest priority.
- A sharee may not make a community of license change that will change its DMA.
 - A sharee may not select a community of license located in another DMA.
 - The sharee may operate from a shared transmission site located in another DMA so long as operating from that location does not change the DMA to which the sharee is assigned.

Relocation of Channel Sharee (cont.)

- For a channel sharing arrangement submitted with an auction application, the proposed sharee and sharer must certify that the proposed arrangement will not violate the multiple ownership rules, based on the facts at the time the application is submitted.
 - If a waiver is required in order to make that certification, a sharee must request and obtain a grant of that waiver prior to submitting its application to participate; and
- Regardless of whether an arrangement is entered into pre- or post-auction, a sharee must include a showing of compliance with the multiple ownership rules in its construction permit application if relocation creates a new combination that is subject to those rules.
 - For pre-auction arrangements, the showing must be based on the facts at the time the sharee filed its application to participate in the auction; for post-auction arrangements, the showing must be based on the facts as of the filing of the construction permit application.
- All sharees must certify in their construction permits that the arrangement complies with the Commission’s multiple and cross-ownership rules.
- Carriage rights of sharee stations:
 - A must carry sharee retains its must carry rights at its new shared location.
 - Operation from the shared location could result in changes in a sharee’s network nonduplication and syndicated exclusivity zones of protection, particularly if the sharee changes its community of license.
 - A full power commercial station that relocates in order to channel share will lose its status as “significantly viewed” for purposes of MVPD carriage in those counties and communities it can no longer reach with its over-the-air signal, and it will have to apply for such status in counties or communities it will newly be able to reach from its shared location.

Channel Sharing and the Rules Prohibiting Certain Communications

- The FCC's rules prohibit auction-eligible broadcasters from communicating directly or indirectly with any other eligible broadcaster (and with forward auction applicants) regarding an applicant's bids or bidding strategy. This prohibition extends from the deadline to submit auction application until the results of the auction are announced by public notice.
- Channel Sharing Exception: Parties to an executed Channel Sharing Agreement (CSA) filed with a reverse auction application may communicate with each other about their bids and bidding strategies during the auction.
- This exception only applies to an applicant that submits an executed CSA to the Commission prior to the application filing deadline. After the deadline, the prohibition on communications applies to discussions regarding unexecuted CSAs or post-auction CSAs.
- The prohibition on communications does not apply to discussions and negotiations that are unrelated to bids and bidding strategies or to post-auction market structure.
- In addition to the FCC's prohibited communications rules, bidders are subject to the antitrust laws.

Channel Sharing Between Full Power and Class A Stations

- Full power and Class A stations may Channel Share with each other.
- A Class A sharee that relinquishes its channel to share with a full power sharer:
 - Benefits from the full power signal of its full power host, but
 - Remains subject in all other respects to the rules and policies applicable to Class A television stations, including carriage rights.
- A full power sharee that relinquishes its channel to share with a Class A sharer:
 - Is subject to the Class A rules governing power levels and interference; but
 - Remains subject in all other respects to the rules and policies applicable to full power stations, including carriage rights.
 - A full power sharee station operating at the Class A sharer station's reduced power level may need to use means other than its over-the-air signal to deliver a good quality signal to a cable system headend.
 - NCE stations that share with a Class A station will retain the ability to secure must-carry rights, but only with respect to headends located within 50 miles of their communities of license, or located within their noise limited service contours.

Channel Sharing Between Commercial and Noncommercial Educational Stations

- Commercial and NCE broadcast television station licensees, including those on a reserved channel, may channel share with each other.
- An NCE licensee, whether a sharee or sharer, will retain its NCE status.
 - It must continue to comply with the rules applicable to NCE licensees.
 - It must continue to “be used primarily to serve the educational needs of the community; for the advancement of educational programs; and to furnish a nonprofit and noncommercial television broadcast service” (§ 73.621(a)); and
 - It continues to be prohibited from broadcasting advertisements on its portion of a shared channel. (47 U.S.C. § 399B(b)(2)).
 - If the shared channel is a reserved channel, the NCE station’s portion of the shared channel will continue to be reserved for NCE use.
- The channel sharing NCE and commercial stations retain the MVPD carriage rights for their respective services.
- A reserved-channel NCE sharing station may assign its license only to a qualified NCE entity.
- The IRS has advised that NCE stations that are considering channel sharing with a commercial broadcaster should ensure that the CSA complies with the tax requirements regarding prohibited inurement and impermissible benefit to private parties.

Channel Sharing Agreements

- The business terms of a CSA are for the parties to determine.
- A licensee proposing a sharing arrangement with itself need not prepare a Channel Sharing Agreement.
- 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.
- CSAs may be term-limited. The Commission has proposed to allow channel sharing outside the incentive auction context, including “second generation” CSAs upon the expiration of a term-limited CSA.
- The CSA must contain provisions outlining each licensee’s rights and responsibilities regarding:
 - Access to facilities, including whether each licensee will have unrestrained access to the shared transmission facilities;
 - Allocation of bandwidth within the shared channel;
 - 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;
 - Transfer/assignment of a shared license, including the ability of a new licensee to assume the existing CSA; and
 - Termination of the license of a party to the CSA, including reversion of spectrum usage rights to the remaining parties to the CSA.
- The CSA must include provisions specifically:
 - Affirming compliance by each licensee with all applicable channel sharing rules and policies.
 - Requiring that each channel sharing licensee retain spectrum usage rights adequate to allow it to provide at least one standard definition program stream at all times.

Application Process

- Opening prices will be announced at least 60 days before the application deadline.
- The reverse auction application filing window will open in Fall 2015. Exact dates will be announced later.
- A licensee must identify, for each station, every bid option for which it would consider bidding in the reverse auction. Applicants are not required to bid on the options they identify on their auction applications; however, applicants cannot later bid for any option they failed to identify.
- An applicant that wants to relinquish its channel in order to channel share must include the Go Off-Air option; and
 - if it has already executed a CSA, submit its pre-auction CSA and any other required information; or
 - if it has not executed a CSA, but is potentially interested in entering into a post-auction CSA, indicate that potential interest on its application.
- An applicant with a pre-auction CSA may indicate its interest in a post-auction CSA to have an alternative should the pre-auction CSA not be consummated.

Auction Process

- Initial Commitments and Start of the Auction
 - By March 29, 2016, Applicants must commit to a preferred initial relinquishment bid option (which would be the “Go Off-Air Option” for a licensee whose preferred option is to relinquish its channel in order to channel share).
 - By doing so, the bidder commits to relinquish the relevant spectrum usage rights at the opening price.
- Based on the initial commitments made, the Commission sets the initial clearing target.
 - The first round of the reverse auction will take place after the initial clearing target is announced. The first round of the forward auction will take place after completion of the initial stage of the reverse auction.
- After the auction closes, the Commission announces winning bidders and new channel assignments for repacked stations in the *Channel Reassignment Public Notice*.
- The Commission remits proceeds to winning bidders as quickly and efficiently as possible after spectrum licenses have been granted to winning forward auction bidders.

Channel Sharing Licensing Process

- For an Applicant that submits an executed CSA with its auction application:
 - The sharee has 90 days from receipt of its auction proceeds to terminate operation on its pre auction channel and apply for a license on its shared channel. It may request a 90 day extension of that deadline.
 - The sharee must submit a construction permit application that includes the executed CSA (with confidential or proprietary terms redacted as appropriate) 60 days before the termination deadline.
- For an Applicant that executes a CSA after the auction:
 - The winning “Go Off-Air” bidder has 90 days from receipt of its auction proceeds to terminate operation on its pre auction channel. It may request a 90 day extension of that deadline.
 - If the Go Off-Air bidder wishes to channel share, then 60 days before the termination deadline it must submit a construction permit application that includes the executed CSA (redacted as appropriate).
 - If it has requested an extension of time, then it has up to 120 days from when it receives proceeds before it must execute a CSA.
 - The FCC will look favorably upon a request for extension of time in order to accommodate parties trying to reach a channel sharing arrangement.
- After the sharee(s) and sharer implement the channel sharing arrangement, which must be no later than the sharee’s deadline for terminating operation on its pre-auction channel—they must each file a license application.
- The sharee must locate on the sharer’s channel within the time frame above, even if the sharer will subsequently be moving to a new channel in the repacking process or will be moving bands pursuant to a winning High-VHF or Low-VHF bid.

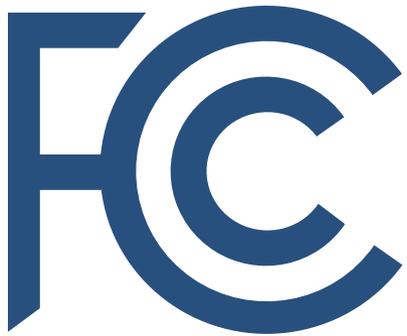
Los Angeles Channel Sharing Pilot Results

- Trials conducted in early 2014 technologically validated channel sharing.
- In early 2014, KLCS, Los Angeles, California and KJLA, Ventura, California tested the feasibility of having two non-affiliated broadcast television stations sharing a single 6 MHz channel.
- The trial succeeded on both a virtual and physical level according to the Technical Report released by the stations on March 28, 2014:
 - On a virtual level, all the TVs and tuners tested were able to receive and correctly parse all the required information. This included virtual channel ratings (both major and minor), audio configuration, codecs, program titles and descriptions.
 - On a physical level, testing demonstrated that it is technically feasible to combine various permutations of SD and HD streams on a single channel, including:
 - 2 HD (720p) streams with several variations of additional SD program streams
 - 1 HD stream and up to 7 SD streams
- Future technological improvements may increase the available streaming combinations.

Additional Resources

- FCC's LEARN website: <http://wireless.fcc.gov/incentiveauctions/learn-program>
- APTS Model Channel Sharing Agreement: http://wireless.fcc.gov/incentiveauctions/learn-program/Form_Channel_Sharing_Facilities_Agreement.pdf
- Section 73.3700 of the Commission's Rules (47 C.F.R. § 73.3700)
- Channel Sharing Orders
 - Incentive Auction Report and Order: https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-50A1.pdf
 - Channel Sharing Reconsideration and NPRM: <https://www.fcc.gov/document/commission-adopts-channel-sharing-order-reconsideration-and-nprm>
- IRS guidance on the tax implications of the incentive auction:
 - IRS letter regarding commercial stations:
<http://wireless.fcc.gov/incentiveauctions/learn-program/docs/irs-letter.pdf>
 - IRS letter regarding NCE stations:
<http://wireless.fcc.gov/incentiveauctions/learn-program/docs/irs-ltr-7-14-15.pdf>
- E-mail questions to incentiveauctions@fcc.gov.

LEARN Webinar



Questions?