

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

In the Matter of	)	
	)	
Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations	)	MB Docket No. 03-185
	)	
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions	)	GN Docket No. 12-268
	)	
Amendment of Part 15 of the Commission’s Rules to Eliminate the Analog Tuner Requirement	)	ET Docket No. 14-175
	)	

**THIRD REPORT AND ORDER  
AND  
FOURTH NOTICE OF PROPOSED RULEMAKING**

**Adopted: December 16, 2015**

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By the Commission:

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**I. INTRODUCTION AND BACKGROUND**

1. In this Third Report and Order we adopt several measures to facilitate the final conversion of low power television (“LPTV”) and TV translator stations (referred to collectively as “LPTV and TV translator stations”) to digital service.<sup>1</sup> We also adopt proposals to mitigate the potential impact of the broadcast television spectrum incentive auction (“incentive auction”) and the repacking process on LPTV and TV translator stations and to help preserve the important services they provide. In the companion Fourth Notice of Proposed Rulemaking (Fourth Notice), we seek comment on additional issues relating to channel sharing outside of the auction context. We intend to resolve all of the outstanding issues regarding channel sharing outside the incentive auction context, including those raised in a prior notice, in a forthcoming decision.<sup>2</sup>

<sup>1</sup> Class A television stations are not included in this definition and are referred to separately.

<sup>2</sup> *In the Matter of 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*, GN Docket No. 12-268, MB Docket No. 15-137, Notice of Proposed Rulemaking, 30 FCC Rcd 6668 (2015) (*Primary-Primary Channel Sharing NPRM*). See para. [84].

2. In May 2014, we adopted rules to implement the incentive auction authorized by the Middle Class Tax Relief and Job Creation Act.<sup>3</sup> As we recognized in the *Incentive Auction R&O*, the auction will potentially displace a significant number of LPTV and TV translator stations.<sup>4</sup> This is because, as part of the incentive auction, we will reorganize or “repack” the broadcast television bands in order to free up a portion of the ultra-high frequency (UHF) band for new flexible uses.<sup>5</sup> Consistent with the requirements of the Spectrum Act, we must make all reasonable efforts to preserve the coverage area and population served of eligible full power and Class A television stations in the repacking process; however, LPTV and TV translator stations will not receive such protection.<sup>6</sup> Accordingly, some LPTV and TV translator stations may be displaced as a result of the auction or repacking process and required either to find a new channel from the smaller number of channels that will remain in the reorganized broadcast television bands or discontinue operations altogether.

3. In order to mitigate the impact of the auction and repacking process on LPTV and TV translator stations, we directed the Media Bureau to open a special displacement filing window for operating LPTV and TV translator stations that are displaced.<sup>7</sup> In addition, we stated our intention to initiate this proceeding “to consider additional measures that may help alleviate the consequences of LPTV and TV translator station displacements resulting from the auction and repacking process.”<sup>8</sup> In the *Third Notice*,<sup>9</sup> we sought comment on several such proposals to help LPTV and TV translators, and nearly all were supported by the majority of commenters.<sup>10</sup>

4. Based on the record in this proceeding, in this Third Report and Order, we: (1) extend the digital transition deadline for analog LPTV and TV translator stations to 12 months after completion of the 39-month Post-Auction Transition Period;<sup>11</sup> (2) harmonize this deadline with the construction

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<sup>3</sup> *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567 (2014) (*Incentive Auction R&O*), *aff’d*, *Nat’l Assoc. of Broadcasters, et al. v. FCC*, 789 F.3d 165 (D.C. Cir. 2015). See First Order on Reconsideration and Notice of Proposed Rulemaking, 30 FCC Rcd 6668 (2015) (*Incentive Auction First Order on Reconsideration and Primary-Primary Channel Sharing NPRM*); Second Order on Reconsideration, 30 FCC Rcd 6746 (2015) (*Incentive Auction Second Order on Reconsideration*); see also Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402 (codified at 47 U.S.C. § 309(j)(8)(G)), 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012) (Spectrum Act).

<sup>4</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6834-35, paras. 656-57.

<sup>5</sup> *Id.* at §§ IV.B (Reverse Auction) and III.B (Repacking the Broadcast Television Bands).

<sup>6</sup> *Id.* at 6652, para. 185 and § III.B.3.d.iii (Facilities That Will Not Receive Discretionary Protection: LPTV and TV Translator Stations).

<sup>7</sup> *Id.* at 68356635-36, para. 659. This window will be opened after full power and Class A television stations relocating to new channels as a result of the reverse auction or repacking process have submitted their construction permit applications and have had an opportunity to request alternate channels or expanded facilities. *Id.* We also modified our rules to afford stations with mutually exclusive displacement applications in the window an opportunity to reach a settlement or an engineering solution. *Id.* at 6836-37, para. 661.

<sup>8</sup> *Id.* at 6838, para. 664.

<sup>9</sup> See *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations*, MB Docket No. 03-185, Third Notice of Proposed Rulemaking, 29 FCC Rcd 12536 (2014) (*Third Notice*).

<sup>10</sup> We received 59 comments, 34 reply comments, and several *ex parte* communications in response to the Third Notice. A list of the commenters in this proceeding, as well as the short names used throughout this Order, is contained in Appendix A.

<sup>11</sup> See 47 C.F.R. § 27.4 (defining Post-Auction Transition Period). We note that the 39-month post-incentive auction transition date is the subject of pending petitions for reconsideration. See *Second Order on Reconsideration*, 30 FCC Rcd at 6818, para. 160 (“We decline to consider at this time the . . . requests regarding the transition period for full power and Class A stations because the arguments the petitioners raise are the subject of a recent decision by the

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deadline for new digital LPTV and TV translator stations; and (3) adopt rules to allow channel sharing, outside the auction context, between LPTV and TV translator stations.<sup>12</sup> We also announce that we will use software developed for use in the incentive auction to assist LPTV and TV translator stations displaced by the auction and repacking process to identify new channels. In addition, we create a “digital-to-digital replacement translator” service for full power television stations. Finally, we eliminate, as of August 31, 2017, the requirement in section 15.117(b) of our rules that future TV receivers include analog tuners.<sup>13</sup>

5. In the Fourth Notice, we seek comment on additional issues relating to channel sharing between primary (full power and Class A) and secondary (LPTV and TV translator) stations (“primary-secondary sharing”) as well as between secondary stations (“secondary-secondary sharing”). First, we tentatively conclude to allow channel sharing between primary and secondary stations and propose rules for primary-secondary sharing that are consistent with those adopted for secondary-secondary sharing in the Third Report and Order and proposed for primary-primary sharing outside of the auction context in the *Primary-Primary Channel Sharing NPRM*. Second, with respect to both primary-secondary and secondary-secondary sharing, we seek comment on issues pertaining to the term length of channel sharing agreements and issues pertaining to multichannel video programming distributors (MVPD) carriage, reimbursement, and notice.

## II. THIRD REPORT AND ORDER

### A. LPTV and TV Translator Digital Transition Date

6. We adopt our proposal in the *Third Notice* and extend the September 1, 2015 deadline for analog LPTV and TV translator stations to complete their transition to digital.<sup>14</sup> This proposal received significant support.<sup>15</sup> Specifically, we set a new digital transition date for analog LPTV and TV translator stations of 12 months after completion of the 39-month Post-Auction Transition Period.<sup>16</sup> We also make

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United States Court of Appeals for the D.C. Circuit”). Should the length of the post incentive auction transition date be modified, the digital transition date for LPTV and TV translators will remain 12-months from the completion of the post-incentive auction transition period.

<sup>12</sup> We intend to issue a decision on whether to permit digital LPTV stations to operate analog FM radio type services on an ancillary or supplementary basis at a later date. See *Third Notice*, 29 FCC Rcd at 12554-566, paras. 47-53.

<sup>13</sup> 47 C.F.R. § 15.117(b).

<sup>14</sup> On April 24, 2015, the Media Bureau suspended the September 1, 2015 digital transition date for LPTV and TV translator stations pending the outcome of this proceeding. See *Suspension of September 1, 2015 Digital Transition Date for Low Power Television and TV Translator Stations*, Public Notice, 30 FCC Rcd 3741 (MB 2015). As we explained in the *Third Notice*, we did not propose to extend the digital transition deadline for Class A television station stations. See *Third Notice*, 29 FCC Rcd at 12538, para. 2 n.6, citing *Incentive Auction R&O*, 29 FCC Rcd at 6652, paras. 184-85, 6812, para. 601. Therefore, the September 1, 2015 transition date was not suspended for Class A television stations and all Class A television stations were required to terminate all analog operations by 11:59 p.m. local time on September 1, 2015 and go silent if they had not completed construction of their digital facilities.

<sup>15</sup> See APTS/PBS/CPB Comments at 3; ATBA Comments at 2; Flinn Comments at 2-3; Joint Transition Date Commenters Comments at 3; Joint Transition Date Commenters Reply at 4; Leggett Comments at 1; LPTV Coalition Comments at 4; NAB Comments at 3; NPR Comments at 2-3; NTA Comments at 4-5; SWCOTV Comments at 7; Signal Comments at 2-3; Sinclair Comments at 1; Syncom Comments at 1; Venture Comments at 8-9; WVEBA Comments at 9-10. WISPA “does not oppose an extension of the September 1, 2015 digital conversion deadline, so long as the Commission allows unused spectrum to be used for unlicensed purposes.” WISPA Reply at 3; see also OTI/PK Comments at 7-8. WISPA argues that protection in the white space database “should be afforded only to those stations that are providing service to the public so that WISPs, local communities and others may use the vacant spectrum for fixed broadband services under the Part 15 TV white space rules.” *Id.* We address these arguments separately in § II.E.5. - Other Changes to Commission Rules.

<sup>16</sup> The Post-Auction Transition Period, a 39-month period during which full power and Class A stations assigned to new channels in the repacking process will transition to their new channels, will be announced in the *Channel*

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corresponding changes to our extension rules. In addition, we harmonize our digital construction deadlines by applying the new digital transition date to entities with valid construction permits for new digital LPTV and TV translator stations.<sup>17</sup>

### 1. Extending the Digital Transition Date for Analog LPTV and TV Translator Stations

7. In 2011, the Commission established the September 1, 2015 digital transition deadline, reasoning that a deadline four years in the future would allow time for analog LPTV and TV translator operators to learn more about the then-future reallocation of broadcast TV spectrum.<sup>18</sup> Congress subsequently enacted the Spectrum Act in February 2012, and the Commission began the process of adopting rules and procedures for undertaking the first-ever incentive auction. In 2013, the Commission declined to postpone the September 1, 2015 deadline, reasoning that the incentive auction was then expected to occur in 2014, well before the deadline.<sup>19</sup> However, we now intend to begin accepting applications to participate in the incentive auction and to start the auction on March 29, 2016,<sup>20</sup> just a few months after the September 1, 2015 transition date.

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*Reassignment PN* announcing new full power and Class A channel assignments. *Incentive Auction R&O*, 29 FCC Rcd at 6783-4, para. 529. See 47 C.F.R. §§ 27.4, 73.3700(b)(4)(iii). The Commission anticipates that this public announcement will occur simultaneously with public announcement of the completion of the reverse and forward auctions. *Incentive Auction R&O*, 29 FCC Rcd at 6783-844, para. 529.

<sup>17</sup> The digital transition date adopted in the Third Report and Order applies to (1) digital construction permits held by analog LPTV and TV translator stations transitioning to digital; and (2) construction permits for new digital LPTV and TV translator stations. The digital transition date does not apply to construction permits to modify already licensed digital LPTV and TV translator stations or to construction permits for digital replacement translators. Those construction permits are issued for a standard three-year construction period. See 47 C.F.R. § 73.3598(a).

<sup>18</sup> See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Second Report and Order, 26 FCC Rcd 10732, 10735-39, paras. 6-12 (2011) (*LPTV DTV Second Report and Order*). The Commission concluded, “[e]ven if the reallocation is not concluded before the conversion deadline, a 2015 deadline will permit low power operators to take specific proposals into account when finalizing their transition plans.” *Id.* at 10736, para. 8.

<sup>19</sup> See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-183, Second Memorandum Opinion and Order, 28 FCC Rcd 14412, 14412-14, paras. 2-4 (2013). However, the Commission stated that its decision was “without prejudice to the Commission’s ability to consider making adjustments to the timing of the low power television transition in [the incentive auction] proceeding as the Commission develops the schedule for holding the incentive auction and implementation of the subsequent repacking.” *Id.* at 14414, para. 4. We note that Signal Above, LLC filed a Petition for Review of the Commission’s decision with the United States Court of Appeals for the District of Columbia Circuit, which the court has held in abeyance. See *Signal Above, LLC v. FCC*, No. 14-1069 (D.C. Cir. 2014).

<sup>20</sup> See Public Notice, “Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002,” AU Docket No. 14-252, GN Docket No. 12-268, 29 FCC Rcd 15750, 15755, para. 8 (2014); See *Procedures for Competitive Bidding in Auction 1000, Including Initial Clearing Target Determination, Qualifying to Bid, and Bidding in Auctions 1001 (Reverse) and 1002 (Forward)*, AU Docket No. 14-252, GN Docket No. 12-268, WT Docket No. 12-268, Public Notice, 30 FCC Rcd 8975(2015) (*Auctions Procedures PN*).

8. The incentive auction and repacking process are likely to have a significant impact on LPTV and TV translator digital conversion plans.<sup>21</sup> Given this, we agree with those commenters that recognize that the current timing of the incentive auction necessitates a modification of the digital transition date.<sup>22</sup> With the auction now scheduled to start in early 2016, had we maintained the 2015 transition date, many analog LPTV and TV translator stations would have been forced to complete their digital conversion in September only to find that their newly constructed digital facilities were displaced as a result of the repacking process. Such stations would have been required to find a new channel and modify their new digital facilities accordingly, or potentially cease operations entirely if they were unable to find a new channel.<sup>23</sup> This scenario has created “extreme discomfort and unrest” in the LPTV and TV translator communities, with the prospect of stations having to make significant expenditures in new digital facilities despite the risk of displacement.<sup>24</sup>

9. To avoid the feared “double build” scenario and provide relief to analog LPTV and TV translator stations, we extend the digital transition date. We agree with commenters who argue that it is appropriate to set a new date now rather than wait until after the completion of the incentive auction.<sup>25</sup> Therefore, we adopt a new transition date of 12 months following the completion of the 39-month Post-Auction Transition Period (or 51 months from the completion of the incentive auction and the release of the post-auction *Channel Reassignment PN*).<sup>26</sup> We extend the construction deadline/expiration date of all valid outstanding digital construction permits held by analog LPTV and TV translator stations transitioning to digital (currently September 1, 2015) to the new transition date. This new deadline is

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<sup>21</sup> See, e.g., APTS/PBS/CPB Comments at 2-3; Flinn Comments at 2-3; Signal Comments at 2; Joint Transition Date Commenters Comments at 3; Joint Transition Date Commenters Reply at 4-5; WVEBA Comments at 3; NTA Comments at 5; LPTV Coalition Comments at 4.

<sup>22</sup> See Signal Comments at 2; Joint Transition Date Commenters Comments at 3; Joint Transition Date Commenters Reply at 4-5; WVEBA Comments at 3.

<sup>23</sup> The record indicates that transitioning an analog facility to digital can cost between \$50,000 to \$70,000, and that doing so with a channel move can cost over \$200,000. See APTS/PBS/CPB Comments at 2-3 (public television stations “rely on various federal loans and programs to fund facilities upgrades, and completing these upgrades often requires multiple funding cycles and construction seasons”); Signal Comments at 2-3 (“[f]ew licensees would be able to absorb the impact of the financial loss that would result from either losing a license as a result of displacement or of having to construct new facilities”); SWCOTV Reply at 2 (“[t]o ask stations to build digital facilities not once but twice is asking many stations to do the impossible”). See also NTA Comments at 4; LPTV Coalition Comments at 4.

<sup>24</sup> See Joint Transition Date Commenters Comments at 3; Joint Transition Date Commenters Reply at 4-5. For example, NCE state broadcaster WVEBA observes that if the transition deadline had not been extended, licensees like WVEBA, with limited financial wherewithal, would have been placed in the difficult position of having to decide whether to transition their analog facilities to digital by September 1, 2015, or cease analog operations altogether in order to avoid the risk of their new digital facilities being displaced. WVEBA Comments at 3. Similarly, NTA states that “many licensees have been afraid to invest in costly digital upgrades in the face of government-created uncertainty and the fear of losing their transmission channels and/or their necessary ‘translated’ input channels.” NTA Comments at 5.

<sup>25</sup> See Flinn Comments at 3; Flinn Reply at 2; Joint Transition Date Commenters Comments at 4; Joint Transition Date Commenters Reply at 5; LPTV Coalition Comments at 9-10.

<sup>26</sup> See ATBA Comments at 2 (“extend those deadlines until a date well after the close of the auction when all full power and Class A assignments have become final and with sufficient margin to ensure that all LPTV permittees have a full set of information on which to base their construction decisions”); Flinn Comments at 3 (requesting that the Commission adopt “[a] transition date set for 39 months (plus one year) after the completion of an incentive auction”); Joint Transition Date Commenters Comments at 2 (requesting that “licensees be allowed to maintain their present analog operations for at least one year following the completion of the repacking process”); LPTV Coalition Comments at 9-10 (“the FCC could just choose a blanket date of ‘39-month repack plus one year’ or 51-months post auction”).

sufficiently far enough after the public announcement of the outcome of the incentive auction and the repacking process so as to provide stations with enough time to analyze the outcome and determine the best route to convert their analog facilities. The new deadline will provide analog stations that are displaced as a result of the auction and the repacking process a reasonable timeframe in which to obtain displacement channels, construct digital facilities, and begin operating.<sup>27</sup> We stress that we are adopting a new *deadline* -- those stations that determine from the release of the post-auction *Channel Reassignment PN* that they are not affected by the incentive auction and the repacking process are encouraged to complete their transition to digital as soon as feasible after the completion of the auction.

10. We disagree with commenters that argue that we do not have “sufficient information” to set a new deadline now and that we should wait until after the conclusion of the incentive auction.<sup>28</sup> Because we do not set a specific transition date as the Commission did in the past, but rather establish a deadline that will provide a set period of time after the incentive auction and the post-auction transition process for stations to complete their digital transitions, regardless of when the auction is complete, we find there is no additional information we need to make a decision regarding the digital transition deadline.<sup>29</sup> Moreover, we disagree that lack of knowledge of the actual impact of the auction and the post-auction transition process on analog LPTV and TV translator stations should prevent us from establishing a new digital transition date at this time.<sup>30</sup> We are setting a transition date far enough after the completion of the auction (51 months) and Post-Auction Transition Period (12 months) that stations should have more than a sufficient amount of time to react, coordinate, and complete their digital transition.

11. We also reject LPTV Coalition’s alternative proposal to adopt a series of different deadlines based upon differing station criteria.<sup>31</sup> We conclude that such a proposal would be confusing

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<sup>27</sup> Further, as we outline in Section II. A. 2, those analog LPTV and TV translator stations that need additional time to construct may seek one last extension of time prior to the digital transition date.

<sup>28</sup> See ATBA Comments at 2-3 (“the FCC cannot reasonably establish transition and construction deadlines until after the auction”); Signal Comments at 4 (“since there are no final rules in place, the timetable and process for the incentive auction are still very much subject to change . . . [r]evisiting the conversion date after the incentive auction will provide a more rational basis for determining a date”); NTA Comments at 5 (“because of the uncertainty of all aspects of the spectrum auction and subsequent repacking process, and because of the dwindling support for TV translator stations . . . the setting of any new transition date cannot safely or fairly be done until at least twelve months after the auction is completed”); Venture Comments at 9 (the Commission should “examine the outcome of the incentive auction and take into account the overall impact of the repacking process on LPTV and TV translator stations before settling on a new transition date”); WVEBA Comments at 9-10 (the Commission should “delay setting a new deadline for the low power digital transition until it has assessed ‘the overall impact of the repacking process on LPTV and TV translator stations’”); Syncom Reply at 2.

<sup>29</sup> In advocating the postponement of the transition deadline, ATBA counters that construction “resources will be in short supply and subject to very high demand for years after the close of the auction” and for this reason alone, “the FCC cannot reasonably establish transition and construction deadlines until after the auction.” ATBA Comments at 3. NAB believes that “waiting until after the auction will allow the Commission and broadcast stakeholders time to assess the effects and set an appropriate transition date.” NAB Comments at 3. See also APTS/PBS/CPB Comments at 3 (the Commission should wait until after the auction to determine a new transition date “[t]o maximize efficiency and avoid wasting resources”).

<sup>30</sup> Sinclair points out that, after the completion of the auction, the Commission will have to complete all of the auction-related licensing of repacked stations, and that because “the full extent of displacement will not be known until six or more months after the conclusion of the auction,” it urges the Commission “to defer any decision on a new deadline until at least six months after the conclusion of the incentive auction . . . [and] after it is clear that LPTV and translator licensees that are displaced have reliable, final information on which to base applications for displacement channels.” Sinclair Comments at 1-2.

<sup>31</sup> See LPTV Coalition Comments at 3-5. These criteria would include whether a station is on a UHF or VHF channel, operating on a channel reassigned to new wireless uses in the incentive auction, displaced by a full power or Class A station in the auction, and other factors.

for stations, which might have a difficult time determining their specific deadline. To avoid confusion and to provide for a coordinated, seamless digital transition and consumer education, we adopt a uniform deadline by which all analog LPTV and TV translator stations must complete their digital transition.

## 2. Corresponding Rule Changes

12. Recognizing that analog LPTV and TV translator stations may face delays prior to the new digital transition date, we modify our rules to provide that analog LPTV and TV translator stations experiencing delays in completing their digital facilities may seek one last extension of time, of not more than six months, to be filed not later than four months prior to the new transition date.<sup>32</sup> We delegate authority to the Media Bureau to process these applications. We remind those stations seeking this “last-minute” extension that, in completing the Form 2100 – Schedule 337, they will be required to demonstrate that they meet the extension criteria set forth in section 74.788(c) of the rules.<sup>33</sup> Under that rule, stations that have not completed construction of their digital facilities must show that the delay was due to circumstances that were either unforeseeable or beyond their control or due to financial hardship. Further, stations will need to demonstrate that they have taken all reasonable steps to resolve the problem expeditiously and must provide detailed information, financial or otherwise, as to why they will be unable to meet the new transition deadline.

13. In addition, as we have required in the past,<sup>34</sup> after the four-month deadline for the submission of one last extension application, analog LPTV and TV translator stations seeking additional time to construct digital facilities will be able to obtain additional time to construct only through the tolling provisions in the rules.<sup>35</sup> Extension applications will no longer be accepted at that time. We agree with Flinn that the provision of “one last” extension of time prior to the digital transition date “should be sufficient in all but the most problematic transition situations.”<sup>36</sup>

14. We conclude that the new digital transition date must be a hard deadline. That is, all LPTV and TV translator stations must terminate all analog operations (including any analog companion channels) by 11:59 p.m. local time on the new transition date regardless of whether their digital facilities are operational. Those without operational digital facilities will be required to remain silent while they complete construction.<sup>37</sup> As we did in 2011 when we adopted the first hard transition date, we once again conclude that stations will have a stronger incentive to complete construction of their digital facilities by the new transition date if they are required to cease analog operations after that date.<sup>38</sup> Thus, we find this

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<sup>32</sup> See *Third Notice*, 29 FCC Rcd at 12541, para. 11. We note that, in 2011, the Commission provided that LPTV and TV translator stations that experience delays in completing their digital facilities could submit “one last” extension application not later than May 1, 2015, or four months before the September 1, 2015 transition date. See *LPTV DTV Second Report and Order*, 26 FCC Rcd at 10741-42, para. 15. The Commission adopted this rule because stations that diligently pursue completion of their digital facilities nevertheless might face unexpected delays in the months leading up to the September 1, 2015 transition date and need the opportunity for a “last-minute” extension to complete their digital facilities. *Id.*

<sup>33</sup> 47 C.F.R. § 74.788(c).

<sup>34</sup> See *LPTV DTV Second Report and Order*, 26 FCC Rcd at 10741-42, para. 15.

<sup>35</sup> See 47 C.F.R. § 73.3598(b).

<sup>36</sup> Flinn Comments at 2 and Reply at 2-3.

<sup>37</sup> We remind stations of the important provisions of section 312(g) of the Communications Act, 47 U.S.C. § 312(g), which provides that: “If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary . . . except that the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness.”

<sup>38</sup> See *LPTV DTV Second Report and Order*, 26 FCC Rcd at 10742, para. 16.

requirement is necessary in order to ensure that analog LPTV and TV translator stations take all steps necessary to complete their digital construction in a timely manner. In addition, fewer and fewer households rely on analog television service, and we conclude that the slight potential for the loss of analog service that may occur on the transition date is outweighed by the need to ensure that all analog LPTV and TV translator stations complete a timely digital conversion.<sup>39</sup>

15. For these reasons, we reject ATBA's claim that "the Commission should not decree, in advance of the auction, that it will not entertain more than one request for extension of a construction permit before it becomes subject to the tolling rule. . . ."<sup>40</sup> We also reject the premise of LPTV Coalition's assertion that the adoption of a hard deadline should not be used "as a mechanism to clear spectrum for other uses."<sup>41</sup> We are confident that neither the new digital transition date, set more than four years following the completion of the incentive auction, nor the provision of a single six-month extension of time, will deprive analog LPTV and TV translator stations of the opportunity to continue providing service.

### 3. Construction Deadline for New Digital LPTV and TV Translator Stations

16. We also adopt our proposal to extend the expiration dates of all valid construction permits for new digital LPTV and TV translator stations to the new digital transition date.<sup>42</sup> We agree with commenters that the justifications for extending the digital transition date for analog LPTV and TV translator stations – the threat of displacement in the incentive auction and the perils of the "double build" – apply equally to permittees for new digital LPTV and TV translator stations.<sup>43</sup> As noted by EICB East and EICB West, with the impending incentive auction, "[i]t has become perilous to invest in building new stations to serve the public at this time."<sup>44</sup> Therefore, by virtue of this extension, permittees for new digital LPTV and TV translator stations also will have more than four years after the completion of the incentive auction to determine its impact, make changes to their proposed new facilities, and complete construction.<sup>45</sup>

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<sup>39</sup> *Id.*

<sup>40</sup> ATBA Comments at 4; *see also* Syncom Reply at 1-2 (agreeing with ATBA).

<sup>41</sup> LPTV Coalition Comments at 4.

<sup>42</sup> *Third Notice*, 29 FCC Rcd at 12542, para. 12. All such construction permits are hereby extended to the new digital transition date. In addition, we dismiss as moot all pending applications for extension of time to construct such construction permits. We previously announced that, in order to treat permittees for new digital stations similarly to transitioning analog LPTV and TV translator stations with digital construction permits, we were suspending the expiration date and construction deadlines of construction permits for new digital LPTV and TV translator stations pending final action in this proceeding. *See Commission Suspends Expiration Dates and Construction Deadlines For New Digital Low Power and TV Translator Stations*, Public Notice, 29 FCC Rcd 1163 (2014) (*Suspension PN*).

<sup>43</sup> EICB Comments at 1; *see also* LPTV Coalition Comments at 5-6 and Reply at 3; NTA Comments at 6; *see also* ATBA Comments on ATBA Petition at 3 and Reply Comments at 4; NAB Comments on ATBA Petition at 2; Channel 51 Comments on ATBA Petition at 3; Cohen Comments on ATBA Petition at 1; CTB Comments on ATBA Petition at 1; EICB East Comments on ATBA Petition at 1; EICB West Comments on ATBA Petition at 1; Miriam Reply Comments on ATBA Petition at 1; One Ministries Comments on ATBA Petition at 1.

<sup>44</sup> EICB East Comments on ATBA Petition at 1; EICB West Comments on ATBA Petition at 1.

<sup>45</sup> On February 20, 2014, ATBA filed a petition requesting that we grant a "blanket extension or waiver" and extend the expiration date of all outstanding construction permits for new digital LPTV and TV translator stations to the September 1, 2015 digital transition deadline. *See* ATBA Petition for Blanket Extension or Waiver, MB Docket No. 03-185 (filed Feb. 20, 2014) (ATBA Petition). The Media Bureau sought comment on the ATBA Petition. *See Media Bureau Seeks Comment on Petition for Blanket Extensions or Waiver*, 29 FCC Rcd 8322 (MB 2014). In the *Third Notice*, we stated that we would address in this proceeding the comments filed in response to the ATBA Petition. *See Third Notice*, 29 FCC Rcd at 12542, para. 12 n.31. A list of the parties filing comments and reply

(continued...)

17. We reject WISPA's request that permittees of new digital LPTV and TV translator stations be required to continue to file individual extension applications every six months "in a manner consistent with Commission standards."<sup>46</sup> We conclude that the potential impact of the incentive auction and repacking process warrants extension of the construction deadlines of all valid construction permits for new digital LPTV and TV translator stations to the new digital transition date, without the need for individual extension requests. We agree with Cohen that the current expiration dates of the permits for new digital stations "were issued in a different and in a more certain regulatory climate."<sup>47</sup> As ATBA observes, "requiring permittees to file extension applications that the FCC has routinely granted does nothing more than impose unnecessary paperwork on both permittees and the FCC staff."<sup>48</sup>

18. Although WISPA is skeptical that the repacking process will actually pose a hardship to permittees of new digital LPTV and TV translator stations,<sup>49</sup> we find that these stations face a very real possibility of having their facilities displaced by the incentive auction and repacking process. In fact, permittees of unbuilt digital LPTV and TV translator stations face a greater displacement challenge following the auction than operating LPTV and TV translator stations due to the fact that permittees are not eligible to submit a displacement application in the special window that will occur following the completion of the incentive auction.<sup>50</sup> We find that this creates even greater uncertainty as to the future viability of these facilities and justifies special relief for this class of parties. Finally, we do not believe that WISPA members will be harmed by our extension of the construction deadline for new digital LPTV and TV translator stations because white space devices are permitted to operate on channels assigned to LPTV and TV translator stations that are not yet constructed, including during the extension period.<sup>51</sup>

19. Permittees of new digital LPTV and TV translator stations may seek one last extension of time to complete construction, of not more than six months, to be filed not later than four months prior to the new digital transition date, consistent with the extension procedures adopted above for stations transitioning from analog to digital.<sup>52</sup> In addition, as suggested by NTA, construction permits for new digital LPTV and TV translator stations granted after the release of this Third Report and Order will receive an expiration date of the later of the new digital transition date or three years from the date of grant.<sup>53</sup> As with analog LPTV and TV translator stations completing their transition, we urge permittees that are unaffected by the incentive auction and repacking process to complete construction and begin serving the public as soon as feasible.

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comments to the ATBA Petition is included in the Appendix. Given our action here extending the construction deadline for new digital stations, we dismiss as moot the ATBA Petition.

<sup>46</sup> WISPA Opposition to ATBA Petition at 3.

<sup>47</sup> Cohen Comments on ATBA Petition at 1.

<sup>48</sup> ATBA Comments on ATBA Petition at 2; *see also* NAB Comments on ATBA Petition at 2.

<sup>49</sup> WISPA Opposition to ATBA Petition at 6.

<sup>50</sup> *See Incentive Auction R&O*, 29 FCC Rcd at 6836, para. 659. Only "operating" stations may participate in the post-incentive auction displacement window. *See id.* Permittees of unbuilt digital LPTV and TV translators will have to wait for the completion of the special displacement window before being able to file a displacement application and propose a channel from the smaller universe of unused television channels. *See also infra* Section II. E. 3. - Grant LPTV and Translators a Priority in the Post-Auction Displacement Process.

<sup>51</sup> *See infra* para. 58.

<sup>52</sup> *See supra* paras. 12-13.

<sup>53</sup> *See* NTA Comments at 6. This should allay LPTV Coalition's concern that extending the construction deadlines for these permits to new digital transition date may "short-change" permits that are granted closer to the new date. *See* LPTV Coalition Comments on ATBA Petition at 5. Construction permits will receive an expiration date of the later of the new digital transition date or three years from the date of grant.

## B. LPTV and TV Translator Channel Sharing

### 1. Extending Channel Sharing to LPTV and TV Translator Stations

20. To provide LPTV and TV translator stations an additional means to respond to the impact of the incentive auction and repacking process as well as to offer a way for these stations to remain viable in the future, we adopt the proposal in the *Third Notice*<sup>54</sup> and extend the opportunity for channel sharing to LPTV and TV translator stations.<sup>55</sup> We adopt rules to ensure that stations will have the flexibility to enter into voluntary channel sharing arrangements (“CSAs”) based on their own unique business plans and operational needs. In addition, we adopt licensing procedures and channel sharing policies to govern channel sharing by and between LPTV and TV translator stations.<sup>56</sup> Furthermore, we adopt our tentative conclusion<sup>57</sup> and find that specific provisions of Title III of the Communications Act of 1934, as amended,<sup>58</sup> provides us ample authority to adopt rules for channel sharing between LPTV and TV translator stations, including Section 303(g), which authorizes the Commission to “generally encourage the larger and more effective use of radio in the public interest,” and Section 307(b), which directs the Commission to “provide a fair, efficient, and equitable distribution of radio service.”<sup>59</sup> Consistent with these provisions, adopting channel sharing rules will serve the public interest by promoting the efficient use of spectrum and facilitating the continued operation of LPTV and TV translator stations. No commenter opposes this conclusion.

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<sup>54</sup> *Third Notice*, 29 FCC Rcd at 12542-43, paras. 13-15.

<sup>55</sup> We emphasize that the channel sharing arrangements authorized by our action today will be entered into outside of the context of the incentive auction. LPTV and TV translator stations should not mistake our action today as sanctioning participation in the incentive auction. As set forth in the *Incentive Auction R&O* and affirmed in the *Incentive Auction Second Reconsideration Order*, LPTV and TV translator stations are not authorized to submit channel sharing bids or otherwise participate in the incentive auction. See *Incentive Auction R&O*, 29 FCC Rcd at 6716, para. 352; *Incentive Auction Second Order on Reconsideration*, 30 FCC Rcd at 6811-12, paras. 145-466. Further, our action today arises not from our authority in the Spectrum Act but rather from our general authority in the Communications Act. See 47 U.S.C. §§ 303(g), 303(r), 307(b); 309(a); compare 47 U.S.C. § 1452(a)(2)(C) (identifying channel sharing as an eligible relinquishment option in the broadcast incentive auction). In its comments, EOBC urges that we allow channel sharing by LPTV stations because it would increase the number of sharing partners available to license relinquishment bidders in the window we have allowed post-incentive auction. EOBC Comments at 2-4. However, relinquishment to share with an LPTV station is not an available option in the incentive auction. See *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, ET Docket No. 10-235, Report and Order, 27 FCC Rcd 4616, 4626, para. 19 (2012) (*Channel Sharing Report and Order*) (“we will permit only full power and Class A television stations to participate in channel sharing” in the incentive auction). The issue of license relinquishment bidders entering into post-auction channel sharing agreements was addressed in the *Incentive Auction First Order on Reconsideration* and is beyond the scope of this proceeding. See *Incentive Auction First Order on Reconsideration*, 30 FCC Rcd at 6673, para. 13.

<sup>56</sup> In the Fourth Notice, *infra* at Section III, we seek comment on additional issues relating to primary-secondary and secondary-secondary sharing outside of the auction context. First, we tentatively conclude to allow channel sharing between primary and secondary stations and we propose rules for primary-secondary sharing that are consistent with those adopted for secondary-secondary sharing in the Third Report and Order and proposed for primary-primary sharing outside of the auction context in the *Primary-Primary Channel Sharing NPRM*. Moreover, with respect to both primary-secondary and secondary-secondary sharing outside of the incentive auction context, we seek comment on issues pertaining to the term length of channel sharing agreements and issues pertaining to multichannel video programming distributors (MVPD) carriage, reimbursement, and notice.

<sup>57</sup> *Third Notice*, 29 FCC Rcd at 12542, para. 13.

<sup>58</sup> 47 U.S.C. §§ 301, *et seq.*

<sup>59</sup> See 47 U.S.C. §§ 303(g), 307(b). See also 47 U.S.C. § 303(r) (empowering the Commission, subject to the demands of the public interest, to “[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter”).

21. We find that permitting channel sharing has the potential to be greatly beneficial to the low power television community.<sup>60</sup> For example, stations that are displaced by the incentive auction and repacking process that have difficulty finding available channels may be able to use channel sharing to team with other such stations in the same predicament.<sup>61</sup> As we suggested in the *Third Notice*, two or more displaced LPTV or TV translator stations may file displacement applications proposing to share a single channel.<sup>62</sup> Alternatively, a displaced LPTV or TV translator station could agree to share the channel of a non-displaced station.<sup>63</sup> In this way, as Block notes, channel sharing may offer displaced LPTV and TV translator stations “valuable opportunities to continue broadcasting”<sup>64</sup> and “a sensible way for a greater amount of service to be preserved to local communities.”<sup>65</sup> CSAs could also minimize the number of mutually exclusive applications filed in the post-incentive auction displacement window and free up valuable channels for use by other displaced stations.<sup>66</sup> Displaced stations could thus use channel sharing as a means to prevent or settle the mutual exclusivity of their applications and avoid lengthy delays in the processing of their displacement applications.

22. In addition, we agree with OTI/PK that channel sharing could provide potential cost-saving benefits to LPTV and TV translator stations.<sup>67</sup> As we initially recognized in the *Incentive Auction R&O*, channel sharing offers means of cost saving through new programming and business arrangements.<sup>68</sup> In the future, LPTV and TV translator stations, many of whom are small entities that operate on limited budgets, could reduce costs (such as tower leases, infrastructure, and others) by sharing facilities, and sharing could provide a source of income for stations that agree to utilize their channels to host other stations.<sup>69</sup>

23. Moreover, channel sharing may also assist stations in meeting the digital transition deadline by allowing them to share the cost to construct a shared digital facility.<sup>70</sup> As noted by CTIA, the

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<sup>60</sup> See ATBA Comments at 5; Block Comments at 4; Joint Channel Sharing Commenters Comments at 4; Liberman Reply at 4; LPTV Coalition Comments at 10; NAB Comments at 5; OTI/PK Comments at 10-11; SWCOTV Reply at 7; WISPA Comments at 6; WISPA Reply at 7.

<sup>61</sup> See WISPA Comments at 6 (“channel sharing . . . may help to mitigate the impact of the auction and repacking process [and] free up valuable channels for use by other displaced stations”); LPTV Coalition Comments at 10 (“channel sharing . . . in some extreme cases may be needed”).

<sup>62</sup> See *Third Notice*, 29 FCC Rcd at 12543, para. 14.

<sup>63</sup> *Id.*

<sup>64</sup> Block Comments at 4.

<sup>65</sup> Joint Channel Sharing Commenters Comments at 4; see also SWOCTV Reply at 7 (“in dense urban operating environments the channel sharing concept may be . . . a valuable tool in providing channels to stations and networks that may otherwise be left with no carriage”).

<sup>66</sup> See *Third Notice*, 29 FCC Rcd at 12543, para. 14.

<sup>67</sup> OTI/PK Comments at 10-11.

<sup>68</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6839, para. 665. When the Commission adopted its general framework for channel sharing by full power and Class A stations in the incentive auction, it concluded that channel sharing will help broadcasters, including existing small, minority-owned, and niche stations, to reduce operating costs and provide broadcasters with a capital infusion to strengthen operations and improve programming services. See *Channel Sharing Report and Order*, 27 FCC Rcd at 4622, para. 12. In these ways, the Commission recognized that channel sharing “will help to preserve over-the-air television as a ‘healthy, viable medium going forward, in a way that would not harm consumers overall, while establishing mechanisms to make available additional spectrum for flexible broadband uses.’” *Id.*, citing Federal Communications Commission, *Connecting America: The National Broadband Plan* at 89 (2010).

<sup>69</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6839, para. 665.

<sup>70</sup> *Id.*

technical feasibility of channel sharing was demonstrated last year in a pilot project in which CTIA partnered with Los Angeles area television stations KLCS and KJLA to explore the technical details of channel sharing.<sup>71</sup> This pilot revealed that channel sharing on both a physical and virtual level is feasible; namely, that channel sharing is technically feasible with two 720p high definition (“HD”) program streams combined into a single channel, and two HD streams also combined with several variations of standard definition (“SD”) streams.<sup>72</sup> As CTIA notes, “[t]he successful results of the channel sharing pilot demonstrate that LPTV and TV translator stations concerned about their post-auction operations can and should explore channel sharing as a solution.”<sup>73</sup>

24. Although some commenters question the potential benefits of channel sharing for LPTV and TV translator stations, we believe that it may be a useful option for some LPTV and TV translator stations to pursue.<sup>74</sup> Channel sharing may not be right for all such stations, but the possibility that it may be a useful arrangement for some stations justifies our adoption of new rules today. The voluntary channel sharing rules we adopt in this proceeding will provide interested LPTV and TV translator stations “with the maximum flexibility possible to create channel-sharing arrangements that will allow as many . . . stations as possible to survive following the auction”<sup>75</sup> and “will promote more efficient use of spectrum.”<sup>76</sup>

## 2. Voluntary and Flexible Channel Sharing

25. Channel sharing by and between LPTV and TV translator stations will be “entirely voluntary.”<sup>77</sup> We do not intend to take a role in matching licensees interested in channel sharing with potential partners.<sup>78</sup> Rather, under the rules we adopt today, LPTV and TV translator stations will decide whether and with whom to enter into a channel sharing arrangement. We agree with ATBA that we “should not take any actions, or adopt any rules, policies or processing mandates that would have the direct or indirect effect of coercing LPTV and translator stations to share channels.”<sup>79</sup>

26. The rules we adopt today are also flexible and allow stations to structure their CSA in a manner that will allow a variety of different types of spectrum sharing to meet the individualized

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<sup>71</sup> CTIA Reply at 12-13.

<sup>72</sup> *Id.* at 12.

<sup>73</sup> *Id.* at 13. In light of this successful channel sharing pilot, we reject NAB’s claim that LPTV stations sharing a single channel may not be able to offer HD streams. *See* NAB Comments at 5.

<sup>74</sup> *See* NTA Comments at 6 (channel sharing “benefits are likely to be small”); Mako Comments at 9 (channel sharing “will not ensure the vitality of LPTV service, nor . . . will it free up available usable spectrum”); Block Comments at 4 (“Channel sharing is a less attractive option for network-affiliated low power stations because those stations must ensure that they can preserve adequate bandwidth to accommodate high-data sports and other programming”); Joint Channel Sharing Commenters Comments at 8 (“Requiring sharing choices to be made prior to adoption of the new (technical) standard may be shortsighted.”); Free Access Comments at 12 (“channel sharing offers few if any cognizable benefits” for LPTV stations, and channel sharing will only serve to “create little ghettos of entrepreneurs who, after most spectrum is sold out from under them, will somehow desperately try to find a place to go”); NAB Comments at 5 (allowing LPTV and TV translator stations “to enter into channel sharing arrangements will not avoid disruptions in service”); ATBA Comments at 5 (the Commission “should not consider channel sharing as mitigating loss of service”).

<sup>75</sup> Liberman Reply at 4.

<sup>76</sup> *See* WISPA Comments at 6; *see also* OTI/PK Comments at 10-11.

<sup>77</sup> *Third Notice*, 29 FCC Rcd at 12544, para. 16.

<sup>78</sup> *Id.*

<sup>79</sup> ATBA Comments at 5. *See also* CBC Reply at 6-7 (LPTV and TV translator stations “should be permitted to decide by themselves, taking into account their unique circumstances and bandwidth requirements, whether and how they choose to enter into channel sharing agreements, and with whom they choose to enter into such agreements”).

programming and economic needs of the parties involved.<sup>80</sup> As with full power and Class A television channel sharing, we will require each LPTV and TV translator station involved in a CSA to operate in digital on the shared channel and to retain spectrum usage rights sufficient to ensure at least enough capacity to operate one SD programming stream at all times.<sup>81</sup> We believe the latter requirement is necessary to ensure that each LPTV and TV translator station will have sufficient channel capacity to meet our requirement to “transmit at least one over-the-air video broadcast signal provided at no direct charge to viewers . . . .”<sup>82</sup> However, we will not prescribe a fixed split of the capacity of the six megahertz channel between the stations from a technological or licensing perspective. All LPTV and TV translator channel sharing stations will be licensed for the entire capacity of the six megahertz channel, and stations will be allowed to determine the manner in which that capacity will be divided among themselves subject only to the minimum capacity requirement.<sup>83</sup>

27. We also apply our existing framework for the licensing and operation of channel sharing between full power and Class A stations to LPTV and TV translator stations.<sup>84</sup> Under this framework, each sharing station will continue to be licensed separately, each will have its own call sign, and each licensee will separately be subject to all of the Commission’s obligations, rules, and policies.<sup>85</sup>

28. We reject OTI/PK’s proposal that we require LPTV and TV translator stations to channel share under certain circumstances.<sup>86</sup> OTI/PK asks that we “analyze the feasibility of such a requirement in the 30 largest [Designated Market Areas], if it appears technically feasible for a substantial number of stations and markets” to channel share, seek further comment on implementing it.<sup>87</sup> We find no record support for OTI/PK’s assertion that we should require stations to channel share because they are not using their spectrum efficiently.<sup>88</sup> Because of their lower power and secondary nature, LPTV and TV translator stations have always been allowed to choose their channels.<sup>89</sup> Changing course now and forcing LPTV and TV translator stations to share a channel would impede stations’ ability to engineer their facilities to

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<sup>80</sup> See *Channel Sharing Report and Order*, 27 FCC Rcd at 4624, para. 15.

<sup>81</sup> *Id.*

<sup>82</sup> See 47 C.F.R. § 74.790(g)(3) (imposing same requirement on channel sharing arrangements involving full power and Class A stations in the context of the incentive auction).

<sup>83</sup> See *Channel Sharing Report and Order*, 27 FCC Rcd at 4624, para. 15.

<sup>84</sup> *Id.* at 4624, paras. 15-16.

<sup>85</sup> *Id.*; see also *Incentive Auction R&O*, 29 FCC Rcd at 6854, para. 702; Joint Channel Sharing Commenters Comments at 4 (“the idea of granting rights as a licensee to each party to such private agreements is believed to be a good one, insofar as each licensee only will be responsible to the Commission for its own programming”).

<sup>86</sup> OTI/PK Comments at 11 (stating that the Commission should “require secondary broadcast licensees to co-locate and share a single 6 MHz channel where that is feasible without reducing their broadcast service to the community”).

<sup>87</sup> *Id.* OTI/PK argues that LPTV stations “serve fewer people over-the-air relative to full-power stations – and in most cases use only 1 or 2 MHz of actual capacity to broadcast a standard definition stream of content . . . .” *Id.* at 11-12. OTI/PK concludes that “where fallow capacity can be freed up – or where an operational LPTV station can be accommodated rather than left off the air – mandatory channel sharing, or at least strong incentives for channel sharing, should be an option.” *Id.* OTI/PK believes this “should be particularly true for unbuilt stations (CPs) that can far more easily arrange their construction on a shared basis – and quite possibly save operating expense in addition to saving the public lost low-band communications capacity.” *Id.*

<sup>88</sup> See also CBC Reply at 6-7.

<sup>89</sup> See *Inquiry into the Future Role of Low-Power Television Broadcasting and TV Translators*, BC Docket No. 78-253, Report and Order, 51 Rad. Reg. 2d (P&F) 476, 490-91 (1982) (concluding that, given their lower power and secondary status, LPTV applicants should be free to choose their proposed channels subject to the technical rules) (subsequent citations omitted)

meet the needs of their viewers.<sup>90</sup> Moreover, since adoption of our first channel sharing rules in 2012, we have held that channel sharers, as business partners, should “have the ability to choose partners that satisfy their own criteria.”<sup>91</sup>

### 3. Licensing Procedures

29. We adopt our proposed procedures for reviewing and licensing of LPTV and TV translator station CSAs, and we will apply the 30-mile and contour overlap rules to station moves resulting from channel sharing.<sup>92</sup> We agree with ATBA that “some licensing and operating rules are needed to address the unique situation of channel sharing.”<sup>93</sup> The channel sharing licensing rules we adopt today for LPTV and TV translator stations should be easy for stations to follow as they utilize existing licensing procedures and forms and are similar to those for the post-incentive auction licensing of full power and Class A television channel sharing arrangements. In addition, our licensing rules address the particularities of the low power television service while minimizing costs and burdens in order to encourage channel sharing among these stations.<sup>94</sup>

30. We adopt a two-step process for implementing channel sharing between LPTV and TV translator stations. As the first step, if no technical changes are necessary for sharing, a channel sharing station relinquishing its channel will file an application for a digital construction permit<sup>95</sup> for the same technical facilities as the sharer station, include a copy of the CSA as an exhibit,<sup>96</sup> and cross reference the other sharing station(s).<sup>97</sup> The sharer station will not need to seek Commission authorization at this time unless the CSA requires technical changes to the sharer station’s facilities. If the CSA requires technical changes to the sharer station’s facilities, each sharing station will be required to file an application for a construction permit for identical technical facilities proposing to share the channel, along with the CSA.<sup>98</sup>

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<sup>90</sup> Randall Weiss Reply at 1 (“We are operating and providing service today, and people rely on the service we provide”).

<sup>91</sup> *Incentive Auction First Order on Reconsideration* 30 FCC Rcd at 6677-78, para. 25 (“The Commission will not select a sharing partner”). See also *Channel Sharing Report and Order*, 27 FCC Rcd at 4622, para. 11 (“Nor will the rules we adopt authorize the Commission to choose channel sharing partners. Rather, under the rules we adopt, broadcasters themselves will decide whether to enter into a channel sharing arrangement . . .”).

<sup>92</sup> *Third Notice*, 29 FCC Rcd at 12544-46, paras. 19-22.

<sup>93</sup> ATBA Comments at 5.

<sup>94</sup> See *Third Notice*, 29 FCC Rcd at 12545, para. 19.

<sup>95</sup> As referred to in the *Third Notice*, the application for an LPTV or TV translator construction permit was formerly known as FCC Form 346 and the application for an LPTV or TV translator license was formerly known as FCC Form 347. See *Third Notice*, 29 FCC Rcd at 12545, para. 20. On February 13, 2015, the Media Bureau announced that, as part of its continuing roll out of its new Licensing and Management System (LMS) database, it was replacing Forms 346 and 347 with new Form 2100, Schedules C and D, respectively. See *Media Bureau Announces Completion of Second Phase of Licensing and Management System for Full Power, Class A, Low Power And TV Translator Stations*, Public Notice, 30 FCC Rcd 1235 (MB 2015). Therefore, all licensing of LPTV and TV translator channel sharing will be done on these Schedules to the new LMS Form 2100.

<sup>96</sup> As noted below, we will review CSAs to ensure compliance with our rules and policies. See *infra* para.36. We will allow the applicant to redact confidential or proprietary terms, consistent with our rules. See 47 C.F.R. § 0.459.

<sup>97</sup> We will treat applications for a construction permit in order to channel share as minor change applications, similar to the approach we adopted for auction-related channel sharing. See *Incentive Auction R&O*, 29 FCC Rcd at 6795-96, para. 558 n.1584, 6789-90, para. 544.

<sup>98</sup> In the event the sharing stations are all displaced as a result of the incentive auction or repacking process, each station will file an application for a construction permit for identical technical facilities during the post-incentive auction displacement window proposing to share the channel, including a copy of the CSA as an exhibit. If the sharer station’s channel is not displaced as a result of the incentive auction or repacking process, the displaced sharing station will not have to wait for the post-incentive auction displacement window to file its displacement

(continued...)

As a second step, after the sharing stations have obtained the necessary construction permits, implemented their shared facility, and initiated shared operations, a station relinquishing its channel will notify the Commission that it has terminated operation on its former channel.<sup>99</sup> At the same time, each sharing station will file an application for a license to complete the licensing process.

31. We will allow channel sharing LPTV and TV translator stations three years to implement their arrangements.<sup>100</sup> Although we will require that channel sharing arrangements involving full power and Class A stations resulting from the incentive auction be implemented within six months after the relinquishing station receives its reverse auction proceeds to expedite the transition to the reorganized UHF band,<sup>101</sup> these concerns do not apply to CSAs entered into outside the auction context. Some stations, such as those displaced by the repacking process, may be anxious to quickly implement their shared arrangement to avoid having to go silent. Such stations are free to begin channel sharing as soon as feasible. However, other stations, including those not facing this timing constraint, may want or need more time to implement a sharing agreement.

32. In cases where the sharer station has not been displaced, we will begin accepting applications for LPTV and TV translator channel sharing after completion of the incentive auction.<sup>102</sup> In cases where the sharing stations were all displaced, we will begin accepting applications for LPTV and TV translator channel sharing at the initiation of the post-incentive auction displacement window.<sup>103</sup> After that, applications may be submitted at any time on an ongoing basis. We agree with NTA that, “if channel sharing does make sense in particular circumstances, there is no reason to sunset the authority” and that “the option should be available on a permanent basis.”<sup>104</sup> As NTA noted, “TV translators that manage to survive the transition may find out later, or much later, that they can benefit from sharing.”<sup>105</sup>

33. We will apply our existing 30-mile and contour overlap restrictions to station relocations resulting from proposed CSAs.<sup>106</sup> Specifically, if requested in conjunction with a digital displacement (Continued from previous page) \_\_\_\_\_ application to propose sharing the sharer station’s facilities and may file its application for a digital construction permit for the same technical facilities as the sharer station at any time after the completion of the incentive auction.

<sup>99</sup> See 47 C.F.R. § 73.1750.

<sup>100</sup> See *Third Notice*, 29 FCC Rcd at 12545, para. 21.

<sup>101</sup> Initially we required such CSAs to be implemented within three months after the relinquishing station receives its reverse auction proceeds. See *Incentive Auction R&O*, 29 FCC Rcd at 6803, para. 577; see also *Incentive Auction First Order on Reconsideration*, 30 FCC Rcd at 6674, para. 16 (“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”). However, we subsequently extended that time to six months on reconsideration. See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Second Order on Reconsideration, FCC 15-139 (rel. Oct. 21, 2015) at paras. 10-11.

<sup>102</sup> See *supra* n.16 (explaining that a public notice will announce the completion of the reverse and forward auctions).

<sup>103</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6835-36, paras. 659-60 (announcing that, following the incentive auction, the Media Bureau will announce a limited application filing window for operating LPTV and TV translator stations displaced by the repacking and reallocation of the television bands).

<sup>104</sup> NTA Comments at 8.

<sup>105</sup> *Id.*

<sup>106</sup> See *Third Notice*, 29 FCC Rcd at 12546, para. 22. We sought comment on whether these restrictions could unduly limit channel sharing between LPTV and TV translator stations. See *id.* Alternatively, we asked whether these restrictions should be waived in certain cases to allow LPTV and TV translators more flexibility in their channel sharing arrangements, and if so, under what circumstances. *Id.* Most commenters opposed elimination of these licensing restrictions in the context of channel sharing. See ATBA Comments at 5 (“FCC should not grant any dispensations, preferences, waivers or any other advantage of any kind to channel sharing stations that are not

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application, a station relocation resulting from a proposed CSA may not be greater than 30 miles from the reference coordinates of the relocating station's community of license.<sup>107</sup> In all other cases, a station relocating as a result of a proposed CSA (i) must maintain overlap between the protected contour of its existing and proposed facilities; and (ii) may not relocate greater than 30 miles from the reference coordinates of the relocating station's antenna location.<sup>108</sup> In the *Third Notice*, we noted that LPTV and TV translator stations may need greater flexibility in their ability to move their facilities in order to take advantage of channel sharing.<sup>109</sup> On further reflection, however, we agree with Mako that eliminating these long-standing restrictions could "open the floodgates" to stations abusing our minor change rules.<sup>110</sup> Our current restrictions were adopted to curtail a serious abuse of the Commission's policies by stations that sought to relocate enormous distances in order to move to more populated markets under the cover of the Commission's displacement rules.<sup>111</sup> In redefining a minor change, the Commission wanted to ensure that stations continued to provide service to those viewers in the stations' markets who had come to rely upon their services.<sup>112</sup> Those concerns are no less relevant in the context of channel sharing.

34. Although we decline to eliminate the restrictions, we will consider waivers for LPTV and TV translator stations to allow channel sharing modifications that do not comply with these limits.<sup>113</sup> A displaced 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: (1) that there are no channels available that comply with section 74.787(a)(4) of the rules; and (2) 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. As for non-displacement, we will apply a stricter standard because the proposed modification would be voluntary and the station would not be faced with going off the air if not permitted to channel share. In such cases, we will consider a waiver if the station seeking to relocate through channel sharing demonstrates: (1) that there is no other 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 (2) 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.

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available equally to all stations."); Mako Comments at 13 ("opposes opening the floodgates by amending the FCC's rules and redefining minor change applications to permit LPTV stations to move over 30 miles as part of channel sharing agreements"); LPTV Coalition Comments at 11 (the Commission should "restrict channel-sharing agreements, which would require a move outside of the normal transmitter location change under current rules, i.e., the 30-mile modification, and overlapping contour move"). *But see* NTA Comments at 8 (advocating a repeal of the 30-mile rule altogether); Liberman Reply at 3 ("for those stations entering into channel-sharing arrangements, the FCC should relax the major change rule and allow moves by stations of more than 30 miles").

<sup>107</sup> See 47 C.F.R. § 74.787(a)(4).

<sup>108</sup> See 47 C.F.R. § 74.787(b)(1).

<sup>109</sup> See *Third Notice*, 29 FCC Rcd at 12546, para. 22.

<sup>110</sup> Mako Comments at 13.

<sup>111</sup> See *LPTV DTV Second Report and Order*, 26 FCC Rcd at 10760-62, paras. 58-62.

<sup>112</sup> *Id.*

<sup>113</sup> See Mako Comments at 13. We did not propose or seek comment on eliminating the 30-mile restriction altogether, as NTA suggests. See NTA Comments at 8 ("In the absence of new entry, repeal of the 30 mile limit may serve as a modest safety value, permitting existing service to adapt, even though they are barred from adding service"). We proposed only to eliminate the restrictions for minor change applications filed to implement channel sharing arrangements. See *Third Notice*, 29 FCC Rcd at 12546, para. 22 ("We also seek comment on whether to apply existing restrictions on relocation proposals to LPTV and TV translator channel sharing arrangements").

#### 4. Channel Sharing Operating Rules

35. We adopt our proposed channel sharing operating rules that cover the terms of CSAs, the transfer or assignment of channel sharing licenses, and what occurs when a channel sharing station's license is terminated due to voluntary relinquishment, revocation, or failure to renew.<sup>114</sup> We reject NTA's argument that it is premature to adopt such rules.<sup>115</sup> To the contrary, setting the ground rules now will prevent future disputes and facilitate channel sharing between these stations.

36. *CSAs.* We will require that LPTV and TV translator CSAs contain provisions outlining each licensee's rights and responsibilities in the following areas: (1) access to facilities, including whether each licensee will have unrestricted access to the shared transmission facilities; (2) allocation of bandwidth within the shared channel; (3) operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment, a description of each party's financial obligations, and any relevant notice provisions; (4) transfer/assignment of a shared license, including the ability of a new licensee to assume the existing CSA; and (5) termination of the license of a party to the CSA, including reversion of spectrum usage rights to the remaining parties to the CSA. While channel sharing partners will be required to address these matters in their CSAs, they may craft provisions as they choose, based on marketplace negotiations, subject to pertinent statutory requirements and the Commission's rules and regulations.<sup>116</sup> We adopted these provisions for full power and Class A television channel sharing arrangements entered into in conjunction with the incentive auction,<sup>117</sup> and we conclude that similar provisions should be required for LPTV and TV translator CSAs.<sup>118</sup> By requiring that such provisions be reduced to writing, we seek to avoid disputes that could lead to a disruption in service to the public and to ensure that each licensee will be able to fulfill its independent obligation to comply with all pertinent statutory requirements and our rules.<sup>119</sup>

37. As noted above, a station seeking approval to channel share will submit a copy of its CSA along with its application for a digital construction permit.<sup>120</sup> We will review the CSA to ensure compliance with our rules and policies. As we have explained previously, the Commission does not involve itself in private contractual agreements,<sup>121</sup> 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.<sup>122</sup> Thus, we will limit our 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

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<sup>114</sup> See *Third Notice*, 29 FCC Rcd at 12546-47, paras. 23-27.

<sup>115</sup> NTA Comments at 7-8.

<sup>116</sup> See *Incentive Auction R&O*, 29 FCC Rcd at 6852, para. 699.

<sup>117</sup> See *id.* at 6852-53, para. 699-700. See also *Incentive Auction First Order on Reconsideration*, 30 FCC Rcd at 6677-78, paras. 24-25.

<sup>118</sup> We note that there was no opposition in the record to this approach.

<sup>119</sup> See *Incentive Auction R&O*, 29 FCC Rcd at 6852-53, para. 700. As noted in the *Incentive Auction R&O*, we do not anticipate being involved in any disputes between channel sharing stations to the extent that such disputes are not directly related to compliance with the Communications Act or applicable Commission policies and rules. We expect that any disputes concerning the terms and conditions of the CSA, including those that are directly related to compliance with the Communications Act or our rules, would be handled in the first instance by the channel sharing stations as a private contractual enforcement matter and that we would independently determine if additional regulatory enforcement steps would be warranted. See *id.* at 6853-54, para. 699 n.1944.

<sup>120</sup> See *supra* para. 30.

<sup>121</sup> See *Incentive Auction First Order on Reconsideration*, 30 FCC Rcd at 6678-79, para. 28; *Incentive Auction R&O*, 29 FCC Rcd at 6852-53, para. 700.

<sup>122</sup> See *Incentive Auction First Order on Reconsideration*, 30 FCC Rcd at 6678-79, para. 28.

policies regarding licensee agreements.<sup>123</sup> We reserve the right to require modification of a CSA that does not comply with our rules and policies.

38. *Termination and Assignment/Transfer of Channel Sharing Licenses.* When an LPTV or TV translator 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 partners if the partners so agree. 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 C. Alternatively, the station may enter into a CSA with another LPTV or TV translator station or permittee and resume shared operations, subject to Commission approval.<sup>124</sup> We agree with ATBA that “[t]he remaining licensee should have a right to have the assignment redesignated as not shared, or to enter into a channel sharing agreement with another licensee and resume shared operations” and that “[u]nder no circumstances should any broadcaster ever be required to share facilities involuntarily with any party.”<sup>125</sup>

39. In addition, we will allow rights under a CSA to be assigned or transferred, subject to the requirements of Section 310 of the Communications Act,<sup>126</sup> our rules, and the requirement that the assignee or transferee comply with the applicable CSA.<sup>127</sup> Further, we agree with EOBC that secondary stations sharing with other secondary stations should have the flexibility to be able to determine the length of their CSAs.<sup>128</sup> For example, parties to a CSA may want to find a new sharing partner if they deem that their existing business arrangement is no longer desirable.<sup>129</sup> This was the approach adopted for channel sharing between full power and Class A television stations in the auction context, and we find no reason not to adopt a similar approach here.<sup>130</sup>

### **C. Assistance to LPTV and TV Translator Stations in Finding Displacement Channels After the Incentive Auction**

40. To assist LPTV and TV translator stations displaced by the auction and repacking process, we adopt our proposal to delegate to the Media Bureau authority to utilize the incentive auction optimization and repacking software to identify new channels for displaced stations. Our proposal garnered considerable support by commenters.<sup>131</sup> We conclude that use of the repacking and optimization

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<sup>123</sup> 47 C.F.R. § 73.3700(h)(4).

<sup>124</sup> We note that, on reconsideration, we adopted a similar approach for dealing with the loss of a channel sharing station in the context of full power and Class A channel sharing arrangements entered into in conjunction with the incentive auction. See *Incentive Auction First Order on Reconsideration*, 30 FCC Rcd at 6676-78, paras. 22-25.

<sup>125</sup> ATBA Comments at 8.

<sup>126</sup> 47 U.S.C. § 310.

<sup>127</sup> Consistent with the approach adopted in connection with the incentive auction, the assignee or transferee will have to agree to the terms of the CSA in existence at the time of the transfer or assignment, unless the assignee/transferee and the remaining sharing station(s) agree to amend the CSA and the amendment is approved by the Commission. See *Incentive Auction R&O*, 29 FCC Rcd at 6853-54, para. 701 n.1952.

<sup>128</sup> See EOBC Comments at 5

<sup>129</sup> *Id.*

<sup>130</sup> See *Incentive Auction First Order on Reconsideration*, 30 FCC Rcd at 6676, para. 20.

<sup>131</sup> See ATBA Comments at 9 (ATBA “strongly supports a robust effort by the FCC, using any and all tools . . . including the repacking and optimization software . . . to identify potential displacement channels”); Liberman Reply at 2 (“FCC optimization software would aid displaced LPTV stations”); LPTV Coalition Comments at 12 (“we agree that the use of a Public Notice and list of available channels is a good one, which could limit confusion and provide transparency for licensees”); NTA Comments at 12 (NTA “strongly supports an aggressive and imaginative response to” the post-auction displacement process); WISPA Comments at 3-4 (WISPA “supports the use of optimization software and other means to identify available channels for displaced LPTV and TV translator

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software for this purpose will expedite and ease the post-auction transition and help many low power stations find new channel homes.<sup>132</sup>

41. Specifically, we instruct the Media Bureau, prior to opening the post-auction LPTV and TV translator displacement window, to utilize the repacking and optimization software to identify channels that can be proposed by displaced LPTV and TV translator stations.<sup>133</sup> We direct the Media Bureau to issue a Public Notice listing potential channel assignments in all areas in which LPTV or TV translator stations are displaced. If there is more than one displaced station, we encourage the stations to file for those channels in the displacement window and coordinate their filings to avoid cases of mutual exclusivity. In cases where not all displaced LPTV and TV translator stations can be accommodated onto available channels using current operating parameters, the Media Bureau will identify possible arrangements based on other objectives, such as maximizing the number of stations assigned or minimizing the interference that stations might experience, to assist stations in examining engineering solutions to find channels. We agree with WVEBA that “stations should be provided with channel options derived from the Software with adequate time to evaluate the feasibility of all channel options, from a technical and cost perspective.”<sup>134</sup> Therefore, we instruct the Media Bureau to issue the public notice not less than 60 days in advance of the filing window for displacement applications.

42. We reject suggestions to use our repacking and optimization software to designate LPTV and TV translator channel assignments that optimize channels for TV white space devices.<sup>135</sup> Through use of the repacking and optimization software, the Media Bureau will identify potential channel assignments, but it will not “repack” LPTV and TV translator stations by requiring that they adhere to these assignments.<sup>136</sup> Rather, we emphasize that the decision whether to seek the specific channel

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stations”); WVEBA Comments at 8-9 (“[b]y using the Software to identify channels available for NCE translator stations, the Commission likely can ease at least some of the challenges of the displacement process for NCE translators”); *compare* Mako Comments at 11-12 (Commission’s effort “may be of assistance to LPTV stations in a few isolated cases”); NAB Comments at 5 (“Providing stations with a list of available channels is not objectionable; it just is not particularly helpful when the list will likely contain no available channels”).

<sup>132</sup> See *Third Notice*, 29 FCC Rcd at 12553, para. 45. We note, however, we also are seeking comment on whether to preserve television channels for use by unlicensed white space devices and wireless microphones in all areas of the country. See *In the Matter of Amendment of Parts 15, 73 and 74 of the Commission’s Rules to Provide for the Preservation of One Vacant Channel in the UHF Television Band For Use By White Space Devices and Wireless Microphones*, Notice of Proposed Rulemaking, MB Docket No. 15-146, 30 FCC Rcd 6711 (2015) (*Vacant Channel NPRM*). It is proposed in that proceeding that applications filed in the displacement window would have to demonstrate that they do not eliminate the last remaining vacant channel in their proposed service area. *Id.* at 6719, para. 17.

<sup>133</sup> See WVEBA Comments at 9.

<sup>134</sup> *Id.*

<sup>135</sup> OTI/PK Comments at 12-13 (urging the Commission “to include the availability of unlicensed spectrum among the ‘other objectives’ that factor into this optimization analysis. . . . [W]e urge the Commission to use its repacking and optimization software analysis throughout the entire process to at least recommend (*if not require*) channel relocation assignments that optimize the remaining unoccupied channels for fixed wireless broadband service, which currently require three consecutive channels”) (emphasis added); WISPA Comments at 4-5 (“The Commission should go beyond merely identifying and encouraging channels for displacement, and should instead *designate* available channels based on optimization software that considers the operating and interference protection rules for TV white space devices, as well as the interests of LPTV and TV translator stations”) (emphasis added); LPTV Coalition Comments at 15 (begin licensing LPTV and translators by determining their channel assignments and by grouping them into “neighborhoods” to free up vacant channels).

<sup>136</sup> See Pacific Network Comments at 2 (urging the Commission to “make certain that spectrum space for translators is provided for in the proposed spectrum repacking”).

assignments identified by the Media Bureau will be voluntary.<sup>137</sup> Stations will not be required to apply for possible channel assignments identified by the Media Bureau and will retain the flexibility to seek displacement channels that work best for their particular circumstances, so long as the channel selections comply with our licensing and technical rules.<sup>138</sup> Although stations will have the ultimate decision on new channel destinations, we agree with Liberman that identifying possible channel assignments will significantly reduce the possibility of mutually exclusive displacement applications and greatly facilitate the post-incentive auction displacement and band clearing processes.<sup>139</sup>

43. We decline ATBA's and Liberman's suggestion that we make the repacking and optimization software available for outside use.<sup>140</sup> First, the repacking software is not available at this time; the TVStudy software which will be used in the incentive auction and the repacking process, and which the Commission has made publicly available,<sup>141</sup> will have to be modified to identify potential channels for displaced LPTV and TV translator stations. In addition, the optimization software incorporates proprietary software that is subject to restrictions against its release to the public, but is commercially available. We also reject LPTV Coalition's and Syncom's suggestion that we conduct a "mock" auction to see the effects on LPTV and translators. The effects on LPTV and translators depend in large part on broadcaster participation levels in the incentive auction and the amount of spectrum that the auction clears, and the individual channel reassignments made to repacked broadcasters. In light of Congress's decision that LPTV and translators are not to be protected in the repack, we are not persuaded that the time and staff resources that would be required to study the potential effects are warranted in light of the hypothetical nature of any such analysis prior to the auction.

#### **D. Elimination of Analog Tuner Requirement**

44. In the *Third Notice*, we sought comment on a proposal to modify Section 15.117(b) of our rules to allow the manufacture and importation of broadcast television ("TV") receivers without analog tuners.<sup>142</sup> At the time we made this proposal, the LPTV and TV translator digital transition was scheduled for September 1, 2015, though we sought comment on whether to extend that date.<sup>143</sup> Given our decision above to extend the digital transition date for analog LPTV and TV translator stations for one

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<sup>137</sup> We agree with those commenters that urge that any effort we undertake be voluntary and that we "should not mandate that displaced stations seek any particular assignment." See ATBA Comments at 9; see also NTA Comments at 12; WVEBA Comments at 9; Liberman Reply at 2.

<sup>138</sup> See *Inquiry into the Future Role of Low-Power Television Broadcasting and TV Translators*, BC Docket No. 78-253, Report and Order, 51 Rad. Reg. 2d (P&F) 476, 490-91 (1982) (concluding that, given their lower power and secondary status, LPTV applicants should be free to choose their proposed channels subject to the technical rules) (subsequent citations omitted).

<sup>139</sup> Liberman Reply at 3 ("A non-binding Public Notice would help the efficiency of the displacement process, while at the same time maintaining station flexibility in choosing new channel destinations").

<sup>140</sup> ATBA Comments at 8; Liberman Reply at 2.

<sup>141</sup> See *Office of Engineering and Technology Releases Final Version of TVStudy*, 30 FCC Rcd 6964 (OET 2015). See also TVSTUDY – Installation and Upgrade Guide, October 14, 2015, available here: [http://data.fcc.gov/download/incentive-auctions/OET-69/2015Oct\\_TVStudyInstallationGuide.pdf](http://data.fcc.gov/download/incentive-auctions/OET-69/2015Oct_TVStudyInstallationGuide.pdf). [http://data.fcc.gov/download/incentive-auctions/OET-69/2015Oct\\_TVStudyInstallationGuide.pdf](http://data.fcc.gov/download/incentive-auctions/OET-69/2015Oct_TVStudyInstallationGuide.pdf)

<sup>142</sup> Section 15.117(b) of the Commission's rules provides that "TV broadcast receivers shall be capable of adequately receiving all channels allocated by the Commission to the television broadcast service. 47 C.F.R. § 15.117(b). This requirement applies to "[a]ll TV broadcast receivers shipped in interstate commerce or imported into the United States, for sale or resale to the public." *Id.* at § 15.117(a). The purpose of Section 15.117(b) is to safeguard the reception of all of the channels allocated by the Commission to the television broadcast service, by all TV broadcast receivers.

<sup>143</sup> *Third Notice*, 29 FCC Rcd at 12539-42, paras. 5-12.

year after the post-auction transition period (51 months after the conclusion of the auction),<sup>144</sup> we have concluded it is appropriate to retain the analog tuner requirement for a limited period. Specifically, we conclude that it will sunset on August 31, 2017. We believe that retaining the analog tuner requirement until that date will minimize disruption to viewers of analog LPTV and TV translator stations while at the same time providing certainty to manufacturers that choose to phase out analog tuners.<sup>145</sup>

45. Commenters generally agreed with our proposal to eliminate the analog tuner requirement. We agree with public broadcasters that it is still currently necessary for consumer equipment to include both analog and digital tuners to receive all signals,<sup>146</sup> but the requirement will become less necessary as the new digital transition date for LPTV and TV translator stations approaches.<sup>147</sup> Analog broadcasting is likely to continue until the new transition date because LPTV and TV translator stations do not want to “double build” their facilities: once for a digital transition and again for the repack.<sup>148</sup> Although we seek to minimize disruption to consumers, we also recognize that the analog tuner requirement imposes costs on television manufacturers that may be passed through to consumers.<sup>149</sup> Significantly, sixty-two percent of low-power stations and seventy-eight percent of TV translator stations have already transitioned to digital, and these stations continue to make the transition. Therefore the vast majority of consumers no longer need to rely on devices with analog tuners and the number of consumers that still do will steadily decline as this percentage continues to grow. Given this, and the fact that devices with analog tuners will continue to be available in remaining retail inventory and on the secondary market, we believe that it is appropriate to phase out the obligation of manufacturers prior to the transition date. We find that relieving manufacturers of the analog tuner obligation on August

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<sup>144</sup> See *id.*, paras. 7-11.

<sup>145</sup> As we explained in the *Third Notice*, the analog tuner requirement is not mandated by statute, and therefore, we have the authority to sunset the requirement before the transition date. *Third Notice*, 29 FCC Rcd at 12557, n.131. No commenters disputed our authority to sunset the analog tuner requirement.

<sup>146</sup> See APTS/PBS/CPB Comments at 2, 9 (arguing that many noncommercial translator stations broadcast in analog and continue to provide a valuable service by delivering television programming to locations where the signals of full-power TV broadcast stations cannot be received directly). Cohen, Dippell and Everist, P.C. also supports this argument, stating that “there are still many analog translators, LPTV stations, and Class A stations operating.” See Cohen Reply at 2. One Ministries Inc. requested that we condition changing the rule on a requirement that TV broadcast receivers include ATSC 3.0 tuners—that is, tuners compliant with a next-generation digital television broadcast standard—but that request is beyond the scope of this proceeding. See One Ministries Comments at 1.

<sup>147</sup> See Letter from Lonna Thompson, Executive Vice President, Chief Operating Officer and General Counsel, APTS, to Marlene H. Dortch, Secretary, FCC, ET Docket 14-175 (filed June 30, 2015) (APTS June 30, 2015 *Ex Parte* Letter).

<sup>148</sup> *Id.* The repack is the process of “reorganizing television stations in the broadcast television bands so that the stations that remain on the air after the incentive auction occupy a smaller portion of the UHF band, thereby freeing up a portion of that band for new wireless uses.” *Incentive Auction R&O*, 29 FCC Rcd at 6617, para. 109.

<sup>149</sup> See CEA Comments at 6. See also Vizio Comments at 3-4 (“the cost of the analog tuner is quite significant and outweighs any limited remaining benefit from the requirement.”). Further, as the Media Bureau found in the context of waiver requests, including an analog tuner in a device increases its weight, size, and energy consumption. See, e.g., *EchoStar Technologies L.L.C. Petition for Waiver of Section 15.117(b) of the Commission’s Rules*, MB Docket No. 13-177, Memorandum Opinion and Order, 28 FCC Rcd 14000, 14004, para. 7 (MB 2013); *TiVo, Inc. Petition for Waiver of Sections 15.117(b), 15.118(b), 15.123(b)(1), 15.123(c), and 15.123(d) of the Commission’s Rules*, MB Docket No. 11-105, Memorandum Opinion and Order, 28 FCC Rcd 12181, 12181, para. 1 (MB 2013). And as CEA highlights in its comments, digital-only tuners have several significant advantages over equipment using both analog and digital tuners: the digital-only models involve less design complexity and avoid substantial operating costs that are generally associated with additional hardware, software, and licensing fees. See CEA Comments at 6-7.

31, 2017 reasonably balances our goals of reducing costs for manufacturers and consumers,<sup>150</sup> while minimizing disruption to viewers of analog low power television.<sup>151</sup>

46. We will not require manufacturers or retailers to label devices, after the rule sunsets, to alert consumers that devices do not include analog tuners.<sup>152</sup> Although we recognize the importance of providing education to consumers about the capability of their devices, we believe that imposing a universal requirement that manufacturers notify consumers about the limitations of digital-only devices would be counterproductive after the sunset. Specifically, we agree with CEA that consumer education or labeling requirements could be confusing to consumers because “most consumers understand that all full-power TV stations transitioned to digital more than five years ago” – in a digital transition that was highly publicized – and most consumers expect to receive only digital television transmissions.<sup>153</sup> A label that indicates that a device cannot receive analog signals could confuse consumers, the vast majority of whom do not receive analog signals. In addition, no comments were filed in favor of imposing such requirements. We believe that manufacturers and retailers have an incentive to notify and educate consumers who rely on over-the-air signals in local areas that are served by analog LPTV and TV translator stations.<sup>154</sup> In addition, because the majority of broadcast viewers currently view only digital broadcast signals, we are concerned that a mandated label or other consumer education requirements about receiving analog broadcasts could place undue stigma on devices that cannot receive such signals.<sup>155</sup> Therefore, we will not impose such requirements.

#### **E. Additional Measures to Preserve LPTV and TV Translator Services**

47. In the *Third Notice*, we sought comment on “additional measures we should consider in order to mitigate the impact of the incentive auction on LPTV and TV translator stations and to help preserve the important services they provide.”<sup>156</sup> We asked that “[c]ommenters proposing other measures for consideration should identify our legal authority to take the proposed measures and describe in detail any perceived benefits and disadvantages of the measures advocated.”<sup>157</sup> We now consider the various measures proposed by commenters.

<sup>150</sup> See CEA Comments at 7.

<sup>151</sup> See APTS June 20, 2015 *Ex Parte* Letter.

<sup>152</sup> See *Third Notice*, 29 FCC Rcd at 12558, para. 58 (seeking comment on whether we should impose labeling or consumer education requirements if we eliminate the analog tuner requirement).

<sup>153</sup> CEA Reply at 5.

<sup>154</sup> See CEA Comments at 8. See also Vizio Comments at 4-5.

<sup>155</sup> That is, the vast majority of consumers will not need an analog tuner, but a label notifying them that a particular device does not include one might incorrectly lead them to believe that the device is inadequate for their needs. See CEA Comments at 8 (“In addition to imposing unnecessary compliance costs on manufacturers, a mandatory labeling requirement could cause an unwarranted stigma to attach to new, innovative services and devices, creating unnecessary confusion that is counterproductive”).

<sup>156</sup> *Third Notice*, 29 FCC Rcd at 12558, para. 59.

<sup>157</sup> *Id.* Free Access requests that we release data and analysis outputs underlying and giving rise to the First Greenhill Report that pertain to the magnitude of displacement impacts on LPTV stations. See Free Access Comments at 3-7. We have acknowledged that LPTV stations are likely to be displaced as a result of the repacking process, [R&O, para. 657,] but explained previously, that “neither the Greenhill Report nor any other data or analysis developed by the staff in connection with the incentive auction includes data or assumptions regarding the potential displacement impact on LPTV stations.” See *Incentive Auction Second Order on Reconsideration*, 30 FCC Rcd at 6811-12, para. 146 n.548; see also *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, GN Docket No. 12-268, ET Docket No. 14-175, Order, 30 FCC Rcd 116, 118, para. 6 (MB 2015). For the same reason, we deny FAB’s Motion to reopen the record in the *Third Notice* to allow comment on the “assumptions and ... models... underlying the ... First Greenhill Report.” See Free Access and Broadcast Telemedia, LLC, Motion to

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## 1. Allow LPTV and TV Translator Stations to Operate with Alternative Technical Standards

48. We decline to adopt the various proposals to permit LPTV and TV translator stations to operate using alternative technical standards.<sup>158</sup> For the success of the post-incentive auction displacement process and to ensure continued service to the public, we conclude that it is imperative that all LPTV and TV translator stations continue to operate within the current technical rules and standards. Consideration of whether to adopt new or alternative technical standards or network architectures, such as ATSC 3.0, is premature as such standards have not yet been adopted by standard setting groups. Even if such standards were to be adopted in the near future, a plan for implementation would have to be considered and developed by the Commission through notice and comment rulemaking proceedings. We agree with CTIA and WISPA that such matters are outside of the scope of this proceeding and are better left for future proceedings.<sup>159</sup>

## 2. Provide LPTV and TV Translator Stations an Opportunity to Obtain Primary Interference Protection Status

49. A number of commenters urge the Commission to allow LPTV and/or TV translators to obtain primary interference protection status so that they may avoid future displacement by primary users.<sup>160</sup> For the reasons set forth below, we decline to adopt these proposals at this time. However, we may revisit the question of allowing additional LPTV and/or TV translators to obtain primary interference protection status in the future.

50. All of the various proposals have one common element – a means for allowing LPTV and/or TV translators to avoid future attempts at displacement by primary users. The commenters, however, disagree on whether both LPTV and TV translator stations should be able to qualify, the timing of when stations would apply, and the criteria that should be evaluated to obtain primary interference protection status.<sup>161</sup>

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Reopen the Record, MB Docket No. 03-185 (Nov. 11, 2015). We also deny FAB's Motion to reopen the record to allow comment on a report the Government Accountability Office ("GAO") has not yet prepared regarding the effects of the incentive auction on LPTV and TV translator stations. *See id.* We have not yet received GAO's report. Postponing action in this proceeding until after we receive GAO's report would unnecessarily delay the measures we adopt in this Third Report and Order to mitigate the potential impact of the incentive auction on LPTV and TV translator stations. FAB's motion also refers to a recent letter from several Members of Congress. We will, of course, respond to inquiries from Members of Congress on this issue.

<sup>158</sup> *See* ATBA Comments at 6-8 (allow stations to "employ advanced technology to provide better broadcast service and to reach consumers where they need, want and expect to be served" including using a "modern transmission standard and modern deployment architectures (such as single frequency networks)"); Sinclair Comments at 4-5 (all stations should be permitted to "deploy different network architectures . . . for example, deploying their own 'fill-in translators' or a small network of co-frequency lower power transmitters using advanced transmission standards"); SEI and Watch TV Comments at 2 ("at a minimum implement a technology-neutral scheme of regulation for Class A and LPTV stations").

<sup>159</sup> *See* CTIA Reply at 9-10 and n.21 (SEI and Watch TV proposal "is plainly outside the scope of the Third NPRM"); WISPA Reply at 8 ("the Commission should initiate a separate rulemaking proceeding that identifies the relevant technical and policy issues and affords the public proper notice of the opportunity to comment on the record").

<sup>160</sup> Lotus Comments at 6; Cohen Comments at 2; DTV America Comments at 4; ICN Comments at 4; ATBA Comments at 9-10; Liberman Reply at 6; Venture Reply at 7-8.

<sup>161</sup> *See* Lotus Comments at 6 (provide LPTV stations an opportunity to convert to Class A before the auction); DTV America Comments at 4 and ICN Comments at 4 (LPTV stations "that provide a specified level of service should be allowed to declare their eligibility for permanent status prior to the incentive auction" and then "[a]fter the auction and re-pack, those that made a timely declaration should be permitted to apply for permanent status"); Weigel

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51. Without reaching the legal issues, we decline as a policy matter any proposal that would allow LPTV and/or TV translator stations to obtain primary status before the completion of the Post-Auction Transition Period. If LPTV or TV translators obtained primary status during this period, reassigned full power and Class A stations would have to take into account these additional protected stations when proposing expanded facilities and alternate channels, thereby impeding our goal of facilitating the post-auction transition.<sup>162</sup> In addition, allowing LPTV and/or TV translator stations to become primary before the post-auction LPTV and TV translator displacement window would amount to granting these stations a priority in the displacement window – an action that would run counter to our decision in the *Incentive Auction R&O* to grant a priority to the displacement applications for existing DRTs and our decision below to grant a priority to applications for new DTDRTs.<sup>163</sup> We may consider at a later date whether to allow LPTV and/or TV translator stations to obtain primary status after the completion of the Post-Auction Transition Period.

### 3. Grant LPTV and TV Translator Stations a Priority in the Post-Auction Displacement Process

52. We reject proposals to provide displacement priorities in the post-auction LPTV and TV translator displacement window beyond those established in the *Incentive Auction R&O*. In the *Incentive Auction R&O*, in order to help preserve the existing services of full power stations, we determined that applications filed by full power television stations seeking new channels for their displaced DRTs would receive a displacement priority.<sup>164</sup> A number of commenters suggest that displacement applications filed by other types of stations also be given a priority.<sup>165</sup> As an initial matter, these arguments constitute late-

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Comments at 5-7 (focusing on eligibility criteria for stations seeking primary status); Letter from Kevin P. Latek, Senior Vice President for Business Affairs, Gray Television, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 03-185 at 2 (filed Mar. 11, 2015); Letter from Jennifer Venable, Vice President and General Counsel, Capitol Broadcasting Company, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 03-185 at 2 (filed March 18, 2015) (*CBC* Mar. 18, 2015 *Ex Parte* Letter) (stations that apply for Class A status should “be given priority in applying for a displacement channel following the spectrum auction”); ATBA Comments at 9-10 (allow stations to obtain Class A status “for a reasonable period following the construction deadline for displaced LPTV and translator stations”); Liberman Reply at 6 (“open a new Class A eligibility window after the auction completes”); Venture Reply at 7-8 (“stations lucky enough to endure their looming displacement should be afforded an opportunity to apply for Class A status after the auction concludes”); *cf.* LPTV Coalition Comments at 13 (supporting proposals to create “new primary” stations but opposing “any proposals to ‘pre-qualify’ LPTV stations for Class-A based on what stations have already been doing or not”); Cohen Comments at 2 (make changes to the rules to begin protecting LPTV and TV translators against primary stations).

<sup>162</sup> See *Incentive Auction R&O*, 29 FCC Rcd at 6791, paras. 547-48 (stations reassigned to channels within their existing band may slightly extend their coverage contour as defined by the technical parameters specified in the *Channel Reassignment PN*); *id.* at 6792-95, paras. 552-56 (reassigned stations may apply for alternate channels and expanded facilities).

<sup>163</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6836-37, para. 661; *infra* at Section II.F.1.b.

<sup>164</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6836-37, para. 661.

<sup>165</sup> See Block Comments at 2 (urging that FCC grant LPTV and TV translator stations “that provide important local services priority access to displacement channels in the post-auction repack” as defined as “local-market, network-affiliated service or broadcast substantial amounts of local news or public affairs programming”); ICN Comments at 4 (“priority should be afforded to independently-owned and –programmed LPTV stations”); Joint Additional Measures Commenters Comments at 7 (“stations that provide local programming service to their service areas should be given preferences over stations that currently are not on the air; have provided service only sporadically; or do not provide local community service”); Media Vista Reply at 5-6 (prioritize the displacement applications of stations that meet certain criteria including . . . broadcasting a minimum of 18 hours a day, 3 hours of local news and information produced locally by the station, operating in digital and having a main studio); APTS/PBS/CPB Comments at 5-6 (give priority to NCE translators other than applications for DRTs and give a third-level priority to translators that operate as an integral part of extended distribution chains after DRTs and NCE translators); *see also*

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filed petitions for reconsideration of the *Incentive Auction R&O* and are entitled to no consideration.<sup>166</sup> As an alternative and independent ground, we reject them on the merits.

53. In the *Incentive Auction R&O*, we thoroughly considered the issue of whether to grant additional priorities during the post-auction LPTV and TV translator displacement window and decided against such action.<sup>167</sup> We affirmed that decision in the *Incentive Auction Second Order on Reconsideration*.<sup>168</sup> We are not persuaded to reverse course and add additional displacement priorities at this time.<sup>169</sup>

54. As for those commenters that suggest that we grant priorities based on programming content, we previously found that such action would conflict with the Commission's longstanding policy based on First Amendment concerns to avoid involvement in the format and other content choices of licensees or distinguish between licensees based upon such content choices.<sup>170</sup>

55. We also decline to adopt APTS/PBS/CPB's proposal that we (1) grant displacement applications filed by "NCE translators" a processing priority over those filed by any other translators or LPTV applications, other than displacement applications for DRTs, and (2) "give translators that operate as an integral part of extended distribution chains third-level priority (after DRTs and NCE translators)."<sup>171</sup> We do not license translators on an NCE basis, as APTS/PBS/CPB suggest, thus we have no reliable means to distinguish such translators in determining when to apply the priority. Further, as we found previously, stations could change their designation from LPTV to translator to gain the selection priority.<sup>172</sup> As for APTS/PBS/CPB's second suggestion, we have no basis to determine which translators are "an integral part of an extended distribution chain" in order to implement the proposed processing priority. Moreover, other than to preserve the service provided by DRTs for the reasons discussed in the

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Letters from Lonna Thompson, Executive Vice President, Chief Operating Officer and General Counsel, APTS, Cindy Campbell, Vice President, Operations, CPB, and Thomas Rosen, Senior Counsel, PBS, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 03-185 at 2 (filed Mar. 18, 2015, Mar. 31, 2015 and Apr. 22, 2015) (*APTS/CPB/PBS Ex Parte Letters*); WVEBA Comments at 7 (provide NCE translators a priority over all other displacement applications excepting applications for DRTs); ATBA Comments at 10 and CBC Reply at 3 (existing stations displacement applications should receive a priority over applications filed for new facilities); *cf.* LPTV Coalition Reply at 3 ("before supporting such a priority, which could in some markets dramatically reduce the number of available displacement channels to commercial and other non-com LPTV broadcasters would like to see a DMA-by-DMA analysis of just where PTV believes this harm to their systems may occur").

<sup>166</sup> See 47 U.S.C. § 405(a) (petitions for reconsideration must be filed no later than 30 days after public notice of Commission decision); 47 C.F.R. § 1.429(d) (same). The Commission may not waive the deadline for seeking reconsideration absent extraordinary circumstances. See *Reuters Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986).

<sup>167</sup> See *Incentive Auction R&O*, 29 FCC Rcd at 6836-37, para. 661.

<sup>168</sup> See *Incentive Auction Second Order on Reconsideration*, 30 FCC Rcd at 6781, para. 75.

<sup>169</sup> In our decision today, we decide above to afford applications for new DTDRTs co-equal processing priority with DRT displacement applications, consistent with our goal of helping preserve the existing services of full power stations. See *supra* para. 45.

<sup>170</sup> See *Incentive Auction R&O*, 29 FCC Rcd at 6837-38, para. 663 (citing *FCC v. WNCN Listener's Guild*, 450 U.S. 582 (1981)).

<sup>171</sup> APTS/PBS/CPB Comments at 5.

<sup>172</sup> See *Incentive Auction R&O*, 29 FCC Rcd at 6837-38, para. 663. APTS/PBS/CPB argue that we could eliminate that risk by limiting the priority to stations operating as "NCE translators" as of the date of the *Third Notice* or as of enactment of the Spectrum Act. APTS/PBS/CPB Comments at 5 n.18. However, because we do not license translators on an NCE basis, we have no reliable means to determine which translators were operating on an NCE basis at these times in order to qualify for the priority.

*Incentive Auction R&O*,<sup>173</sup> we will not distinguish between the service of various LPTV and TV translator stations, many of which are “an integral part” of providing unique and valuable services to over-the-air viewers.

56. We decline LPTV Coalition’s proposal to extend the post-auction displacement window filing opportunity to holders of construction permits for new digital LPTV and TV translator stations.<sup>174</sup> As decided in the *Incentive Auction R&O*, only *operating* LPTV and TV translator stations may file displacement applications during the post-auction LPTV and TV translator displacement window.<sup>175</sup> Unlike operating stations that have completed construction and are providing service to the public, permittees have not completed construction and do not have existing viewers that will be impacted by displacement.<sup>176</sup> We note that permittees of unbuilt stations will be permitted to file for displacement channels after the conclusion of the LPTV and TV translator displacement window.<sup>177</sup>

#### 4. Issues Involving Must Carry Rights

57. We reject proposals that would afford LPTV and TV translator stations more expansive cable carriage rights than those provided in the Communications Act.<sup>178</sup> Commenters do not explain how such action would be within the Commission’s statutory authority and, even assuming we had such authority, we decline to grant must carry rights beyond those required by statute.<sup>179</sup>

#### 5. Other Changes to Commission Rules

58. For the reasons set forth below, we deny requests for rule changes from OTI/PK, NTA, SEI, and Watch TV as unworkable or because of their potential to negatively affect the incentive auction or fall subject to other impracticalities. We will not adopt OTI/PK’s proposal to permit white space devices to use the channels of licensed LPTV and TV translator stations when those stations are not

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<sup>173</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6836-37, para. 661.

<sup>174</sup> LPTV Coalition Comments at 12; *compare* Capitol Comments at 4 and *CBC* Mar. 18, 2012 *Ex Parte* Letter at 2 (recommending that the Commission prioritize access to the channels available post-auction to LPTV and TV translator stations that are operational as opposed to unbuilt permit holders).

<sup>175</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6835, para. 657 (“[A]fter primary stations relocating to new channels have submitted their construction permit applications and have had an opportunity to request alternate channels or expanded facilities, the Media Bureau will open a special filing window to offer *operating* LPTV and TV translator stations, including DRTs, that are displaced an opportunity to select a new channel.”) (emphasis added).

<sup>176</sup> LPTV Coalition Comments at 12 (recognizing that operating stations should have a priority in obtaining displacement channels over permittees for new stations).

<sup>177</sup> We note that the filing of LPTV and TV translator displacement applications is frozen. *See Freeze on the Filing of Applications for Digital Replacement Translator Stations and Displacement Applications*, Public Notice, 29 FCC Rcd 6063 (MB 2014). The Media Bureau will announce the lifting of the freeze as well as the dates and filing procedures for the special post-incentive auction displacement window and any procedures for the resumption of filing displacement applications after the window.

<sup>178</sup> *See* LPTV Coalition Comments at 2 (proposing that we encourage LPTV and TV translator channel sharing with expanded MVPD must-carry rights); NRB Comments at 6 (displaced LPTV stations should be automatically granted mandatory carriage status at their new location/channel upon constructing their new facilities and those rights “should not be restricted by the standard criteria to be a ‘qualified low power television station’ under Section 76 of the Commission’s rules”).

<sup>179</sup> *See Incentive Auction R&O*, 29 FCC Rcd at 6839, para. 667, citing 47 U.S.C. § 534(c) (low power station carriage obligations); *see also* NCTA Reply at 3 (“The Cable Act provides highly limited carriage rights for low power stations, which must satisfy numerous different criteria to be ‘qualified’ for mandatory cable carriage . . . [a]nd the Spectrum Act does nothing to expand the cable carriage rights of low power stations that may choose to channel share after completion of the spectrum auction”).

broadcasting.<sup>180</sup> The white space databases would have to collect additional information on the operating times of LPTV and TV translator stations on a real-time basis in order to implement OTI/PK's proposal. Because the databases are not currently designed to do so, it would not be feasible to adopt OTI/PK's proposal at this time.<sup>181</sup>

59. We reject NTA's proposal to relax the limits on interference that LPTV and TV translator stations may cause to other LPTV and TV translator stations and to full-power and Class A stations.<sup>182</sup> With the upcoming post-incentive auction transition process and the ongoing low power digital transition, we conclude that this is not the appropriate time to allow additional interference. The costs resulting from the potential increase in interference and loss of service to viewers would outweigh the potential benefit of the slight increase in flexibility for LPTV and TV translator stations to engineer their displacement facilities. Once these transitions are complete, we may consider whether to modify our rules to allow such additional flexibility.<sup>183</sup>

60. Finally, we reject SEI's and Watch TV's request that we establish a general policy allowing any LPTV and TV translator station facing financial challenges to remain off the air until full power and Class A stations have been assigned new channels, even if that period exceeds 12 consecutive months.<sup>184</sup> Section 312(g) of the Communications Act provides that the license of a station that is dark for any consecutive 12-month period expires automatically at the end of that period, except that the Commission can extend or reinstate such license "to promote equity and fairness."<sup>185</sup> We will continue to consider individual requests from stations that remain dark for any consecutive 12-month period for reinstatement of their license and a waiver of the pertinent Commission rules, taking into account the individual circumstances of each case.<sup>186</sup> Consideration of a blanket exception to Section 312(g) at this

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<sup>180</sup> OTI/PK Comments at 7-10. OTI/PK also asks that white space devices be permitted to operate on channels assigned to LPTV and TV translator stations that are not yet constructed. *Id.* We note that the Part 15 rules and the information in the white space databases already permit this—unbuilt new or modified stations under construction permits are not entitled to protection. *See* 47 C.F.R. §§ 15.712(b) and 15.713(h)(7) (requiring that translator and LPTV receive sites be protected based on a separation distance from their service contours for those channels received over the air and used as part of the station's service area). The white space databases identify licensees based on the Commission's Consolidated Database System (CDBS) data files. The extraction logic used with CDBS identifies only licensed stations, meaning they do not pull information for holders of construction permits. Once the stations are built and operating pursuant to a license, those licensees are identified and protected.

<sup>181</sup> We note that in the recently adopted order in the 3.5 GHz proceeding we envisioned the creation of such a real-time database for sharing between wireless broadband licensees and Federal Government operations. *See Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, GN Docket No. 12-354, Report and Order and Second Notice of Proposed Rulemaking, 30 FCC Rcd 3959 (2015).

<sup>182</sup> NTA Comments at 11-12 (citing 47 C.F.R. § 74.793; requesting an increase from two to three percent in permissible interference from LPTV and TV translator stations to other LPTV and TV translator stations; requesting an increase from 0.5 percent to two percent in permissible interference from LPTV and TV translator stations to full power and Class A stations); *see also* NTA Comments at 4.

<sup>183</sup> We note that flexibility already exists in our rules where stations are permitted to enter into agreements to accept interference in excess of that allowed in the rules. *See* 47 C.F.R. § 74.703.

<sup>184</sup> SEI and Watch TV Comments at 7, citing 47 U.S.C. § 312(g).

<sup>185</sup> *See* 47 U.S.C. § 312(g) ("If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness."). *See also* SEI Comments at 7 (arguing that "it certainly would be 'fair and equitable' to allow a licensee to conserve resources until it knows whether or not it has a future").

<sup>186</sup> *See* 47 C.F.R. §§ 74.15(f); 74.763(c).

time would be premature as the impact of the auction and repacking process on LPTV and TV translator stations is not yet known. We believe the decisions adopted in the *Incentive Auction R&O* and this proceeding will provide displaced LPTV and TV translator stations with the means to continue operating and to quickly obtain and transition to a new channel without the need for extended periods of silence that would trigger section 312(g).

#### **6. Seek Federal Funding For Displaced LPTV and Translator Stations**

61. We decline St. Clair's request that we ask Congress to provide for reimbursement of costs incurred by displaced LPTV and TV translator stations.<sup>187</sup> The decision whether to authorize such funding is Congress's prerogative. Congress in the Spectrum Act limited reimbursement from the TV Broadcaster Relocation Fund to only full power and Class A stations.<sup>188</sup> While NTA recommends that we "cooperate with NTIA" to help make funding available for displaced LPTV and TV translator stations,<sup>189</sup> we are not aware of any funding available from other agencies that could be used by displaced LPTV and TV translator stations. We will cooperate as needed if LPTV and TV translator stations identify any funding opportunities.

#### **7. Streamline International Coordination Process**

62. ICN and Liberman recommend that we "develop a streamlined approach to interference and application approval coordination with the government of Mexico."<sup>190</sup> We appreciate these commenters' suggestions. As we stated in the *Incentive Auction R&O*, the cross-border coordination process is continual and we have used our existing processes to keep Canada and Mexico fully informed on broadcast television spectrum incentive auction coordination issues.<sup>191</sup> As part of this process, we intend to make efforts to streamline the cross-border coordination processes so it will not delay the post-auction displacement application process for LPTV and TV translator stations.

#### **8. Conduct a Study of the Future of LPTV**

63. LPTV Coalition requests that we study the LPTV industry and "what is possible to both preserving the unique services and networks it currently provides, and all of the new ones in the digital future pipeline."<sup>192</sup> We believe that we have satisfied this request by conducting this proceeding

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<sup>187</sup> St. Clair Comments at 3.

<sup>188</sup> We have previously explained that the Spectrum Act does not provide for the reimbursement of the costs of LPTV and TV translator stations that are displaced as a result of the auction and repacking process. See *Incentive Auction R&O*, 29 FCC Rcd at 6829, para. 642 n.1788 (explaining that Section 1452(b)(4)(A) expressly limits eligibility for reimbursement to "broadcast television licensees," defined in 47 U.S.C. § 1401(6) as limited to full power and Class A television stations); *Incentive Auction Second Order on Reconsideration*, 30 FCC Rcd at 6824-25, para. 178. We previously elected not to reimburse such costs as a matter of discretion. *Incentive Auction Second Order on Reconsideration*, 30 FCC Rcd at 6826, para. 182.

<sup>189</sup> NTA Comments at 4 (stating that "funding could be in the form of grants, low-interest loans or similar vehicles"). In addition, LPTV Coalition recommends that the Commission conduct a study similar to the Widely Report to estimate the reimbursement costs to displaced LPTV and TV translator stations. LPTV Coalition Reply at 5. LPTV Coalition is free to examine the record in this proceeding, which includes data on the costs associated with completing construction of displacement facilities. See § II.A.1. – Extending the Digital Transition Deadline.

<sup>190</sup> ICN Comments at 3 (recommending that the Commission should "at the very least, negotiate and establish with Mexico a simplified coordination procedure that presumes that an application may be granted after notice and a short wait, absent affirmative intervention by the other government, if it meets a rational interference threshold with respect to existing stations on both sides of the border"); see also Liberman Reply at 5; LPTV Coalition Reply at 8; Venture Reply at 8.

<sup>191</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6677-78, paras. 248-49; see also *Incentive Auction Second Order on Reconsideration*, 30 FCC Rcd at 6786-89, paras. 88-93 (outlining more recent steps taken to improve the international coordination process).

<sup>192</sup> LPTV Coalition Comments at 18 and Reply at 5.

considering ways to preserve the low power television service and the valuable programming and services they offer. We will continue to assist LPTV and TV translator stations with the post-incentive auction displacement process and transition to digital operation and to reach out to the community for their valuable input.

## 9. Reconsider Various Aspects of the Incentive Auction R&O

64. A number of commenters ask that we revisit matters that were resolved in the *Incentive Auction R&O* and, in some cases, affirmed in the *Incentive Auction Second Order on Reconsideration*.<sup>193</sup> We deny these requests as each of these matters was fully considered in the incentive auction rulemaking proceeding and subsequent orders on reconsideration.<sup>194</sup>

### F. Creation of a New Digital-to-Digital Replacement Translator Service

65. We adopt our proposal and establish a new digital-to-digital replacement translator service (DTDRT) to allow eligible full power television stations to recover lost digital “service area”<sup>195</sup> that results from the reverse auction and repacking process.<sup>196</sup> We previously created a similar analog-to-digital replacement translator service (DRT) in 2009, as full power stations were transitioning from analog to digital operation, to assist full power stations to restore service to any loss areas that may have occurred as a result of the transition and to maintain “broadcast service that the public has come to depend upon and enjoy [in analog].”<sup>197</sup> We conclude that a similar replacement service may be needed for full power stations that are reassigned to new channels, either in the repacking process or through a winning UHF-to-VHF or high-VHF-to-low-VHF bid, if those full power stations discover that a portion of their

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<sup>193</sup> Adrienne Weiss asks that we reconsider our decisions to not protect LPTV and TV translators in repacking or to allow these stations to be reimbursed for their displacement expenses. Adrienne Weiss Comments at 6. Free Access, LPTV Coalition, and NTA ask that we study the costs of our decisions to deny reverse auction eligibility and repacking protection to LPTV and TV translator stations. Free Access Comments at 3, 6, 9-10; LPTV Coalition Comments at 14; NTA Comments at 4. Channel 5 requests that we make certain that spectrum space for broadcast translators is provided for in the proposed spectrum repacking. Channel 5 Comments at 1; *cf.* NTA Comments at 4 (urging the Commission to define “coverage area” to include households served by translators). Joint Additional Measures Commenters request that consideration be given to limiting the amount of bandwidth being reclaimed by the Commission in border regions to 82 MHz. Joint Additional Measures Commenters Comments at 8. USTV and Lotus ask that we reconsider not granting Digital Data Services Act (DDSA) stations a priority in the post-incentive auction special displacement window. USTV Comments at 2 and Lotus Reply at 2, citing Public Law No. 106-554, 114 Stat. 4577 (Dec. 21, 2000). NAB asks that we reconsider certain aspects of the Commission’s reimbursement plan. NAB Comments at 4-5.

<sup>194</sup> See *Incentive Auction R&O*, 29 FCC Rcd at 6605-8, paras. 82-87; 6672-74, paras. 237-41; 6813, para. 601; 6831, para. 648; *Incentive Auction Second Order on Reconsideration*, 30 FCC Rcd at 6748-49, paras. 6-8; 6777-80, paras. 67-71; 6811, paras. 145-46; 6822, para. 173; 6824, para. 178; 6826, paras. 182-83.

<sup>195</sup> See *Third Notice*, 29 FCC Rcd at 12548-49, paras. 29-31. A full-power station’s “service area” is defined in the Commission’s rules as the area within its noise-limited F(50,90) contour where the signal strength is predicted to exceed the noise-limited service level. 47 C.F.R. § 73.622(e).

<sup>196</sup> See Sinclair Comments at 3 (supporting replacement translators). See also LeSea Comments at 2 (supporting the creation of this service which LeSea says it may have to use); St. Clair Comments at 2 (recognizing the logic of the use of replacement translators to allow full power stations to maintain full coverage).

<sup>197</sup> See *Third Notice*, 29 FCC Rcd at 12548, para. 29, citing *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations*, MB Docket No. 08-253, Report and Order, 24 FCC Rcd 5931, 5932, para. 3 (2009) (*DRT R&O*). Some of these “loss” areas were a result of “unavoidable engineering changes that stations were required to implement in order to avoid interference or other problems on their post-transition digital channel.” *Id.* In other cases, “the analog service area of certain full-service stations could not be fully replicated because of technical complexities, and, in some cases, relocation of the facility was mandated by environmental and zoning issues.” *Id.*

existing pre-auction digital service area is lost after the station transitions to its new channel.<sup>198</sup> As we recognized in the *Incentive Auction R&O*, there may be some instances in which a station may not be able to fully replicate its pre-auction digital service area. For example, a loss in pre-auction digital service area may occur as a result of a change in frequency.<sup>199</sup> Moreover, like some stations transitioning to digital during the DTV transition, a station may be unable to build facilities to operate on its assigned channel at its current tower site as a result of technical or legal issues.<sup>200</sup> In addition, broadcasters that voluntarily relocate to a different band may have difficulty maintaining their antenna pattern on the new channel<sup>201</sup> and may experience unusual coverage problems.<sup>202</sup>

66. We disagree with Venture that this new service will be unnecessary.<sup>203</sup> Venture argues that, because the Spectrum Act mandates that the Commission make “all reasonable efforts to preserve . . . the coverage area and population served of each broadcast television licensee” in the repacking process, “a station’s new channel assignment should moot the need for DRTs.”<sup>204</sup> The circumstances we outline above and in the *Third Notice*,<sup>205</sup> however, could arise and result in full power television stations experiencing a loss of reception within their pre-auction digital service areas on initiation of their new channel facilities, despite Commission efforts to preserve coverage area and population served during the repacking process.<sup>206</sup> To assist stations to overcome these potential challenges and to replace lost pre-auction digital service area resulting from new channel assignments, we create a new DTDRT service.

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<sup>198</sup> *Third Notice*, 29 FCC Rcd at 12548, para. 30.

<sup>199</sup> As explained in the *Incentive Auction R&O*, because radio signals propagate differently on different frequencies, the signal of a station reassigned to a different channel will generally not be receivable in precisely the same locations within a station’s contour as it was on its original channel. *Incentive Auction R&O*, 29 FCC Rcd at 6646, para. 170; *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Third Report and Order and First Order on Reconsideration, FCC 15-141 (rel. Oct. 26, 2015) at para. 85 (*Third Report and Order and First Order on Reconsideration*). Instead, there may be signal losses due to terrain in different areas within the contour. *Id.* However, because we will be repurposing UHF spectrum contiguously from channel 51 down, stations generally will be assigned to channels lower in the band, which is likely to result in decreases rather than increases in coverage lost to terrain because of the superior propagation characteristics on lower frequencies. *Id.* at 6648, para. 174.

<sup>200</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6794, para. 554 n.1571.

<sup>201</sup> *Id.* at 6645, para. 168.

<sup>202</sup> *Id.* at 6725-26, paras. 369-71 (affording favorable consideration to post-auction requests by these winning bidders for waiver of VHF power and height restrictions).

<sup>203</sup> Venture Reply at 8.

<sup>204</sup> *Id.*

<sup>205</sup> *Third Notice*, 29 FCC Rcd at 12548-49, para. 30.

<sup>206</sup> The Commission does not interpret the Spectrum Act requirement that it make “all reasonable efforts” to prohibit anything greater than a *de minimis* change in a station’s coverage area. *Incentive Auction R&O*, 29 FCC Rcd at 6646, para. 171. *See also Nat’l Assoc. of Broadcasters*, 789 F.3d at 178 (“Congress’s instruction to make ‘all reasonable efforts’ to preserve the service of existing stations did not constrain the Commission to accept nothing more than a *de minimis* change in coverage area or population served in the repacking process.”). We have acknowledged that some stations may experience a loss of coverage area as a result of the repacking process and have adopted measures to address these cases. *See Incentive Auction R&O*, 29 FCC Rcd at 6648, para. 175; Third Report and Order and First Order on Reconsideration at para. 85.

## 1. Licensing of Digital-to-Digital Replacement Translators

### a. Eligibility/Service Area

67. As we proposed in the *Third Notice*,<sup>207</sup> we will limit eligibility for DTDRTs to full power television stations reassigned in the repacking process<sup>208</sup> that can demonstrate: (1) a loss of a portion of their pre-auction digital service area; and (2) that the proposed DTDRT will be used solely to fill in such loss areas, subject to an allowance for a *de minimis* expansion of the station's pre-auction digital service area.<sup>209</sup> We believe these requirements are consistent with the limited scope of our objective in proposing this new service: to assist full power television stations to maintain their pre-auction digital service areas following the completion of the repacking process and auction,<sup>210</sup> but not to expand such service areas. We decline to extend eligibility for DTDRTs, as suggested by Sinclair, to “[a]ny station that suffers loss of service as a result of repacking – from channel changes, power changes, site changes, or any other factors beyond the station’s control.”<sup>211</sup> We decide to limit eligibility for new DTDRTs to only stations reassigned in the repacking process in order to preserve channels for use by other broadcasters, especially displaced LPTV and TV translators.

68. To implement this eligibility restriction, applicants for DTDRTs will be required to demonstrate a digital loss area through an engineering study that depicts the stations’ pre- and post-incentive auction digital service areas and will be required to demonstrate that the loss resulted from the station’s being repacked in conjunction with the incentive auction.<sup>212</sup> We will define the “pre-auction digital service area” as the geographic area within the full power station’s noise-limited contour of its facility as set forth in the *Auction Procedures PN*.<sup>213</sup>

69. In the *Third Notice*, we recognized that it may be impossible to locate a translator that replaces digital loss areas without also slightly expanding the station’s pre-auction digital service areas. To accommodate such situations, we will allow applicants to propose *de minimis* expansions of pre-auction digital service areas based on the showing described below. We will define *de minimis* on a case-by-case basis, consistent with the approach we took for processing DRT applications.<sup>214</sup> Therefore, we will require stations to show the need to site their DTDRT with a *de minimis* expansion of the station’s pre-auction digital service area. We decline Sinclair’s suggestion that we adopt a more flexible approach and allow applicants to demonstrate that the site specified for their DTDRT is the most practical or cost-efficient option, that the *de minimis* expansion offsets other loss of service by the broadcaster that cannot be remedied by a DTDRT, or that the site better facilitates preservation of service by another reassigned

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<sup>207</sup> *Third Notice*, 29 FCC Rcd at 12549, para. 32.

<sup>208</sup> This would include winning UHF-to-VHF and high-VHF-to-low-VHF bidders in the reverse auction, as well as non-participating stations that are assigned new channels in repacking. *Id.* at n.79.

<sup>209</sup> The Commission adopted a similar restriction for DRTs. *See DRT R&O*, 24 FCC Rcd at 5938-39, paras. 14-17.

<sup>210</sup> *Incentive Auction Report and Order*, 29 FCC Rcd at 6839, para. 666.

<sup>211</sup> Sinclair Comments at 2-3.

<sup>212</sup> Because it may unduly limit stations’ ability to demonstrate their loss areas, we decline NTA’s suggestion that we prohibit stations from submitting solely a “simple contour drawing” and that all applicants be required to use the Longley-Rice methodology “for the evidence of the coverage claims.” NTA Comments at 9. We believe that applicants should have flexibility in engineering their showings, provided they give an accurate assessment of the loss in the pre-auction digital service area.

<sup>213</sup> *See Incentive Auction Task Force Releases Revised Baseline Data and Prices For Reverse Auction*, AU Docket No. 14-252, GN Docket No. 12-268, WT Docket No. 12-269, Public Notice, DA 15-1296 (rel. Nov. 12, 2015) (*Baseline PN*). In the *Baseline PN*, the Commission established the final baseline facility for each full power and Class A television station that will be used in the incentive auction and repacking. *Id.*

<sup>214</sup> *Id.*

broadcaster.<sup>215</sup> Because there will be a more tightly packed broadcast band post-auction, we agree with St. Clair that we must “strictly limit [DTDRT’s] coverage to just what is needed . . . .”<sup>216</sup> Limiting the service area of DTDRTs in such a manner should also allay the concerns of some commenters that the new DTDRT service could be used by full power stations to improperly expand their service areas.<sup>217</sup>

70. As we proposed,<sup>218</sup> we will allow eligible stations to file for DTDRTs beginning with the opening of the post-auction LPTV and TV translator displacement window and ending one year after the completion of the 39-month Post-Auction Transition Period.<sup>219</sup> Pursuant to this plan, stations may begin applying for DTDRTs during the LPTV and TV translator displacement window and will then have one year beyond the completion of the Post-Auction Transition Period to identify the need and apply for a DTDRT.<sup>220</sup> Full power television stations must have the flexibility to file for a DTDRT throughout the post-auction transition and for a brief period thereafter. A full power television station may identify the need for a DTDRT early in the post-auction transition or may not realize that it needs one until it completes construction of its new facilities and begins operating. Some stations may not identify the need for a DTDRT until a short time later when they begin receiving reports of loss of service from viewers. Accordingly, we conclude that allowing full power stations to file for a DTDRT for one year after the completion of the Post-Auction Transition Period will provide sufficient time to identify any possible loss areas while also helping to limit this service to its proposed objective of recovering lost service area that results from the auction and repacking process.

#### **b. Processing Priority**

71. In the *Incentive Auction R&O*, we adopted a processing priority for displacement applications filed by full power television stations seeking to replace an existing DRT that was displaced as a result of the auction and repacking process.<sup>221</sup> As we proposed in the *Third Notice*,<sup>222</sup> we will afford

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<sup>215</sup> Sinclair Comments at 3.

<sup>216</sup> St. Clair Comments at 2; *see also* Syncom Reply at 2-3.

<sup>217</sup> *See* LPTV Coalition Comments at 11 (applicant should have to prove with engineering studies that it is indeed replacing coverage within its contour); NTA Comments at 9 (the process could be used to extend a station’s coverage); Syncom Reply at 2-3 (opposes DTDRTs if they are “intended to provide the primaries with new channels or to extend the licensed contour of the station”).

<sup>218</sup> *Third Notice*, 29 FCC Rcd at 12550, para. 34.

<sup>219</sup> In the *Incentive Auction R&O*, we adopted a 39-month Post-Auction Transition Period. *See Incentive Auction R&O*, 29 FCC Rcd at 6796, para. 559. At the close of the incentive auction, stations that are assigned new channels in the repacking process, as well as winning reverse auction bidders changing channels, will be announced in the *Channel Reassignment Public Notice*. Those stations will then have a three-month period to examine their new channel assignment and submit an application for construction permit. This period will be followed by a construction period that may be up to 36 months, during which stations must complete their construction on a phased schedule.

<sup>220</sup> *See* NTA Comments at 9-10 (supporting a similar approach).

<sup>221</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6836-37, para. 661. In the *Incentive Auction R&O*, we declined to extend discretionary protection to DRTs because, *inter alia*, protecting existing DRT facilities would significantly affect repacking flexibility in markets where they are licensed. *Id.* at 6675, paras. 242-43. *See also Nat’l Assoc. of Broadcasters*, 789 F.3d at 179-80 (affirming decision declining to extend discretionary protection to DRTs). We also noted that, if a station is reassigned to a new channel in the repacking process, its need for a DRT may no longer exist or may be significantly different based on the signal propagation characteristics of its new channel assignment. *Incentive Auction R&O*, 29 FCC Rcd at 6675, para. 242 n.748. However, in order to mitigate the potential impact of the repacking process, we stated that we would afford DRT displacement applications priority over other displacement applications in cases of mutual exclusivity. *Id.* at 6836-37, para. 661.

<sup>222</sup> *Third Notice*, 29 FCC Rcd at 12550, para. 35.

DTDRT applications co-equal processing priority with DRT displacement applications.<sup>223</sup> Therefore, applications for new DTDRTs and displacement applications for existing DRTs will have processing priority over all other LPTV and TV translator applications including new, minor change, and displacement applications. Under our approach, as noted above, we will begin accepting applications for new DTDRTs commencing with the opening of the post-auction LPTV and TV translator displacement window. All applications for new DTDRTs and displacement applications for existing DRTs filed during the post-auction displacement window will be considered filed on the last day of the window, will have priority over all other displacement applications filed during the window by LPTV and TV translator stations, and will be considered co-equal if mutually exclusive. Following the close of the displacement window, applications for new DTDRTs will be accepted on a first-come, first-served basis, will continue to have priority over all LPTV and TV translator new, minor change, or displacement applications, even if first-filed, and co-equal priority with displacement applications for existing DRTs filed on the same day.

72. We conclude that adoption of this processing priority is necessary to assist those full power stations that identify the need to implement a new DTDRT to quickly obtain an authorization and schedule construction of the DTDRT to coincide with the completion of their modified full-power facilities and thereby avoid disruption of service.<sup>224</sup> Were we to not afford these applications a priority, they could become mutually exclusive with LPTV and TV translator applications filed in the post-incentive auction displacement window, greatly delaying their processing. This, in turn, could prevent full power television stations from completing construction of their DTDRTs until after the post-incentive auction transition, thus resulting in a loss of service. At the same time, we establish co-equal processing priority with displaced DRTs to ensure that full power stations with existing DRTs can construct on their new channel expeditiously to help preserve their existing service.<sup>225</sup> We have authority to afford DTDRTs a co-equal processing priority under specific provisions of Title III of the Communications Act of 1934, as amended,<sup>226</sup> including Section 303(c), which empowers the Commission to “assign frequencies for each individual station” in the public interest; Section 303(g), which authorizes the Commission to “generally encourage the larger and more effective use of radio in the public interest”; and Section 307(b), which directs the Commission to “provide a fair, efficient, and equitable distribution of radio service.”<sup>227</sup> Consistent with these provisions, the processing priority will serve the public interest by assisting full power television stations to maintain their pre-auction digital service areas and help prevent loss of service following the completion of the repacking process and auction.

73. We reject Mako’s claim that our grant of a processing priority to DTDRTs is contrary to Section 1452(b), which provides for the UHF band reorganization.<sup>228</sup> While Section 1452(b)(5) provides that “[n]othing in [section 1452(b)] shall be construed to alter the spectrum usage rights of low-power

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<sup>223</sup> Sinclair supports giving replacement translator applications priority processing. See Sinclair Comments at 4.

<sup>224</sup> The Commission cited the same reason for granting a similar priority for DRTs in 2009. See *DRT R&O*, 24 FCC Rcd at 5938, para. 12 (“applications for replacement translators must be given processing priority to ensure that stations are quickly able to obtain the necessary authorization to begin constructing their replacement facility”).

<sup>225</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6836-37, para.661.

<sup>226</sup> 47 U.S.C. §§ 301, *et seq.* Determinations with respect to spectrum management policy (including allocation and assignment policies) have long been recognized to be precisely the sort that Congress intended to leave to the broad discretion of the Commission under Section 303 of the Communications Act. See *Nat’l Ass’n of Regulatory Util. Comm’rs v. FCC*, 525 F.2d 630, 635-36 (D.C. Cir. 1976) (initial allocation of spectrum for land mobile radio service).

<sup>227</sup> See 47 U.S.C. §§ 303(c), 303(g), 307(b). See also 47 U.S.C § 303(r) (empowering the Commission, subject to the demands of the public interest, to “[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter”).

<sup>228</sup> Mako Reply at 3-4.

television stations,”<sup>229</sup> it does not affect the Commission’s broad authority outside of Section 1452(b) to manage spectrum in the public interest,<sup>230</sup> which provides the legal basis for the actions we take today. To the contrary, Section 1452(i)(1) specifically preserves that authority by stating that nothing in Section 1452(b) “shall be construed to . . . expand or contract the authority of the Commission, except as otherwise expressly provided.”<sup>231</sup> There is no express provision in Section 1452(b) prohibiting the Commission from granting DTDRT applications a processing priority. Further, our adoption of a processing priority for applications for new DTDRTs is consistent with our 2009 decision to grant a similar priority for applications for DRTs.<sup>232</sup>

74. We also disagree with those commenters that oppose adoption of a priority for DTDRT applications, claiming it could negatively affect the ability of displaced LPTV and TV translator stations to find a new channel post-auction and force some stations off the air.<sup>233</sup> While we recognize that many LPTV and TV translator stations will also be struggling to deal with the impact of the incentive auction and repacking process while constructing their digital facilities to meet the newly established digital transition date, we conclude that the need to help full power stations prevent or restore lost service area outweighs the limited impact that the licensing of new DTDRTs will have on the availability of channels for displaced LPTV and TV translator stations.

75. We also reject LeSea’s proposal that full power stations be required to identify the need for a DTDRT earlier, such as during the three-month period following the release of the *Channel Reassignment PN* when stations will submit applications for construction permits for their newly assigned channels.<sup>234</sup> After the three-month period closes, LeSea suggests that applications for DTDRTs be accepted without the priority over other earlier-filed LPTV and TV translator applications.<sup>235</sup> Some full power television stations, however, may not identify the need for a DTDRT until later in the transition when, for example, they begin testing or operating their completed modified facilities. Therefore, full power stations in such situations may need to obtain a DTDRT later in the transition. In these circumstances, priority processing will ensure that the application for DTDRT is quickly processed.

76. Finally, we reject Venture’s proposal that applications for DTDRTs “be accepted only after existing licensed LPTV stations are successfully displaced to other channels.”<sup>236</sup> Adoption of

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<sup>229</sup> 47 U.S.C. § 1452(b)(5).

<sup>230</sup> See *Incentive Auction R&O*, 29 FCC Rcd at 6673, para. 239 (“This provision simply clarifies the meaning and scope of section [1452]; it does not limit the Commission’s spectrum management authority.”). Cf. *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378 (1999) (statutory provision specifying that “nothing . . . shall be construed” to apply to certain subject matters did not limit general rulemaking authority).

<sup>231</sup> 47 U.S.C. § 1452(i)(1).

<sup>232</sup> See *DRT R&O*, 24 FCC Rcd at 5938, para. 11. As to DTV America’s and ICN’s claims that DTDRTs will not enhance diversity of ownership and programming (DTV America Comments at 8; ICN Comments at 4), translators do not originate programming and, by themselves, are not intended to be a means to enhance diversity of ownership or programming.

<sup>233</sup> See DTV America Comments at 8-9; Free Access Comments at 13 (granting applications for DTDRTs a priority in the post-incentive auction displacement window will cause displaced “LPTV licensees even greater likelihood of finding no future home”); ICN Comments at 4; LeSea Comments at 4-5 (“It is clear that the Commission is seeking to provide full-power stations every opportunity to get fill in translators to maintain the coverage areas of full power television stations, but it must not do so at the expense of existing LPTV and TV translator stations who may be displaced or forced off the air entirely.”); Liberman Reply at 2, 4-5 (the Commission’s proposal “actually runs contrary to the FCC’s established goal to ‘help preserve the important services’ of LPTV and translator stations”); NTA Comments at 10.

<sup>234</sup> LeSea Comments at 4.

<sup>235</sup> *Id.*

<sup>236</sup> Venture Reply at 9.

Venture's proposal could prevent full power television stations that identify the need to implement a new DTDRT early in the transition process to quickly obtain an authorization and schedule construction to coincide with the completion of their modified facilities.

**c. Licensing and Operating Rules**

77. In order to implement the new DTDRT service, we adopt the following licensing and operating rules.<sup>237</sup>

78. *Association with Main Station License.* We will associate DTDRTs with the full power television station's main license. This is the same approach we adopted for licensing DRTs.<sup>238</sup> DTDRTs, therefore, may not be separately assigned or transferred and will be renewed, transferred, or assigned along with the main license. We conclude that these limitations are necessary to ensure that DTDRT licenses are used only to restore service to a loss area as a result of the incentive auction and repacking process. We also conclude that this measure will prevent a DTDRT from being converted to an LPTV station in contravention of our freeze on the filing of applications for new digital LPTV stations.<sup>239</sup> Applications for DTDRTs will be filed on FCC Form 2100 – Schedule C,<sup>240</sup> will be treated as minor change applications, and will be exempt from filing fees.

79. *Secondary Frequency Use Status.* As proposed,<sup>241</sup> DTDRTs will be licensed with "secondary" frequency use status. Under this approach, DTDRTs, like DRTs before them, will not be permitted to cause interference to, and must accept interference from, full power television stations, certain land mobile radio operations, and other primary services, and will be subject to the interference protections to land mobile station operations in the 470-512 MHz band set forth in our rules.<sup>242</sup>

80. *Application of Other TV Translator Rules.* As proposed,<sup>243</sup> in order to facilitate the ability of stations to apply for and license DTDRTs, we will apply the existing rules associated with TV translator stations to DTDRTs, including the rules concerning power limits,<sup>244</sup> out-of-channel emission limits,<sup>245</sup> unattended operation,<sup>246</sup> time of operation,<sup>247</sup> and resolution of mutual exclusivity.<sup>248</sup>

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<sup>237</sup> See *Third Notice*, 29 FCC Rcd at 12551-52, paras. 37-42. We received no comments on these particular rules.

<sup>238</sup> *DRT R&O*, 24 FCC Rcd at 5942-43, paras. 23-24.

<sup>239</sup> See *Freeze on the Filing of Applications for New Digital Low Power Television and TV Translator Stations*, Public Notice, 25 FCC Rcd 15120 (MB 2010); see also *Initiation of Nationwide First-Come, First-Served Digital Licensing for Low Power Television and TV Translators Postponed Until Further Notice*, Public Notice, 25 FCC Rcd 8179 (MB 2010).

<sup>240</sup> This is a slight change from our original proposal for DTDRT applications to be filed on FCC Form 346. See *Third Notice*, 29 FCC Rcd at 12551, para. 38. On February 13, 2015, the Media Bureau announced that, as part of its continuing roll out of its new Licensing and Management System (LMS), it was replacing Form 346 with new Form 2100 Schedule C. See *Media Bureau Announces Completion of Second Phase of Licensing and Management System for Full Power, Class A, Low Power And TV Translator Stations*, Public Notice, DA 15-212 (rel. February 13, 2015). Therefore, all licensing of DTDRTs will be done on Schedule C to the new LMS Form 2100.

<sup>241</sup> See *Third Notice*, 29 FCC Rcd at 12551, para. 39.

<sup>242</sup> See 47 C.F.R. § 74.709.

<sup>243</sup> See *Third Notice*, 29 FCC Rcd at 12551-52, para. 40.

<sup>244</sup> See 47 C.F.R. § 74.735.

<sup>245</sup> See 47 C.F.R. § 74.736.

<sup>246</sup> See 47 C.F.R. § 74.734.

<sup>247</sup> See 47 C.F.R. § 74.763.

<sup>248</sup> See 47 C.F.R. §§ 1.2100 *et seq.* & 73.5000 *et seq.*

81. *Call Signs.* We will assign DTDRTs the same call sign as their associated full power television station.<sup>249</sup> As the Commission previously concluded for DRTs, we conclude that “use of a unique call sign for replacement translators serves little or no purpose and will only cause confusion,” would be more costly to stations, and could cause technical problems.<sup>250</sup>

82. *Construction Period.* As proposed,<sup>251</sup> we provide a full three-year construction period for full power television stations to build their DTDRTs. We conclude that a full three-year period for completion of replacement translator facilities will help to ensure the successful implementation of this new service. Among other things, we believe it will allow stations that are reassigned to new channels in the repacking process, some of which will have 39 months to complete construction of their post-auction facilities, to schedule construction of their replacement translator to coincide with the completion of their full power facilities.

## 2. Discontinuation of Applications for New DRTs

83. As proposed,<sup>252</sup> we permanently discontinue the acceptance of applications for new DRTs. In August 2014, following adoption of rules for the incentive auction, the Media Bureau placed a freeze on the filing of applications for DRTs<sup>253</sup> because full power stations had more than five years to apply for this type of replacement translator following the 2009 full-power digital transition. We agree with NTA that the DRT filing opportunity period should be terminated.<sup>254</sup> We conclude that future DRT applications are no longer necessary for stations to replace an analog loss area that occurred as a result of the digital transition over six years ago. As noted above, however, we will continue to accept displacement applications for existing DRTs.<sup>255</sup>

## III. FOURTH NOTICE OF PROPOSED RULEMAKING

84. In the *Third Notice*, we sought comment on whether to allow secondary stations to channel share with primary stations, as well as the feasibility of primary-secondary sharing.<sup>256</sup> Primary-secondary sharing raises a number of issues similar to those we are considering in the *Primary-Primary Channel Sharing NPRM*. We therefore tentatively conclude to allow channel sharing between primary and secondary stations and, in the event that we decide to allow such channel sharing, we propose rules for primary-secondary sharing that are consistent with those adopted for secondary-secondary sharing in the companion Third Report and Order and proposed for primary-primary sharing outside of the auction context in the *Primary-Primary Channel Sharing NPRM*. This includes licensing rules, operating rules, and rules regarding termination, assignment/transfer, and relinquishment of channel sharing rights.<sup>257</sup>

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<sup>249</sup> See *Third Notice*, 29 FCC Rcd at 12552, para. 41.

<sup>250</sup> See *DRT R&O*, 24 FCC Rcd at 5944, paras. 27-29 (internal quotation marks omitted).

<sup>251</sup> See *Third Notice*, 29 FCC Rcd at 12552, para. 42, citing *DRT R&O*, 24 FCC Rcd at 5945, paras. 30-31.

<sup>252</sup> See *Third Notice*, 29 FCC Rcd at 12552, para. 43.

<sup>253</sup> See *Freeze on the Filing of Applications for Digital Replacement Translator Stations and Displacement Applications*, Public Notice, 29 FCC Rcd 6063 (MB 2014).

<sup>254</sup> NTA Comments at 10.

<sup>255</sup> We note that all applications pending at the time of the freeze were processed and there are no pending applications for new DRTs. In addition, we note that we do not intend to discontinue allowing a station to file a displacement application if its DRT is displaced as a result of the incentive auction and repacking process or later by a full power television station modification. Our action today only discontinues the acceptance of applications for new DRTs.

<sup>256</sup> See *Third Notice*, 29 FCC Rcd at 12547-48, para. 28.

<sup>257</sup> See *Third Report and Order*, supra at § II.B; *Primary-Primary Channel Sharing NPRM*, 30 FCC Rcd at 6685, paras. 46-47; 6686-87, paras. 49-52; 6688, paras. 55-56.

85. We seek comment on whether it would be appropriate for a secondary station to be permitted to obtain “de facto” interference protection by sharing with a primary station. We also seek comment on whether it would be appropriate to allow a secondary station to obtain the coverage area of a primary station through channel sharing. In addition, we seek comment on whether the benefits of channel sharing between a primary station and a secondary station could be obtained alternatively by the primary station entering into a commercial agreement to air the secondary station’s programming as a multicast stream. We intend to resolve all of the outstanding issues regarding channel sharing outside the incentive auction context in a single decision, based on the record developed in both proceedings. This approach will also ensure consistency and promote efficient decision-making regarding these issues, without unduly delaying their final resolution.

86. For both primary-secondary and secondary-secondary sharing, we propose to adopt rules pertaining to the term length of CSAs and MVPD notice consistent with what we have proposed in the *Primary-Primary Channel Sharing NPRM*.<sup>258</sup> We also propose to not reimburse the costs imposed on MVPDs as a result of CSAs between secondary stations or between primary and secondary stations.<sup>259</sup> We also seek comment on issues pertaining to MVPD carriage in the context of both primary-secondary and secondary-secondary sharing. We tentatively conclude that a secondary station that shares with a primary or secondary sharer station, and a primary station that shares with a secondary sharer station, has the same satellite and cable carriage rights under the Communications Act on their new shared channels that the station would have at the shared location if it was not channel sharing.<sup>260</sup> We propose to adopt the same approach to MVPD carriage for both primary-secondary and secondary-secondary sharing as we proposed in the *Primary-Primary Channel Sharing NPRM* to fulfill the objectives underlying Section 1452(a)(4),<sup>261</sup> with one modification. Given the relatively small number of unbuilt LPTV stations that would meet the criteria for obtaining cable carriage, we propose to permit secondary stations to become sharees regardless of whether they possessed carriage rights or were operating on a non-shared channel prior to entering into a sharing agreement.

#### IV. PROCEDURAL MATTERS – THIRD REPORT AND ORDER

##### A. Final Regulatory Flexibility Analysis

87. Pursuant to the Regulatory Flexibility Act of 1980, as amended,<sup>262</sup> the Commission’s Final Regulatory Flexibility Analysis (“FRFA”) relating to this Third Report and Order is attached as Appendix C.

##### B. Final Paperwork Reduction Act of 1995 Analysis

88. 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

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<sup>258</sup> See *Primary-Primary Channel Sharing NPRM*, 30 FCC Rcd at 6685-86, para. 48 (proposing to permit term-limited CSAs and seeking comment on whether to establish a minimum term for CSAs and, if so, what minimum term would be appropriate); *id.* at 6689-90, para. 60 (proposing that sharee stations provide notice to MVPDs).

<sup>259</sup> See *id.* at 6689, paras. 58-59.

<sup>260</sup> We set forth our proposed statutory analysis in the *Primary-Primary Channel Sharing NPRM* and need not repeat it here. See *id.* at 6681-85, paras. 33-45.

<sup>261</sup> See *id.* at 6684, para. 43 (explaining that Section 1452(a)(4) does not extend carriage rights to a sharee station in connection with the incentive auction if it was not licensed as of November 30, 2010, thereby avoiding artificially creating new stations that can demand MVPD carriage); *id.* at 6684-85, para. 44 (proposing that a station will be eligible to become a sharee station outside of the auction context only if it possessed carriage rights under sections 338, 614, or 615 of the Communications Act through an auction-related channel sharing agreement, pursuant to Section 1452(a)(4), or because it was operating on its own non-shared channel immediately prior to entering into a channel sharing agreement).

<sup>262</sup> See 5 U.S.C. § 604.

Management and Budget (“OMB”) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

89. We have assessed the effects of the policies adopted in this Third Report and Order 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 mitigating the potential impact of the broadcast television spectrum incentive auction and the repacking process on LPTV and TV translator stations and helping preserve the important services they provide. In addition, we have described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA attached to this Third Report and Order as Appendix C.

### **C. Congressional Review Act**

90. The Commission will send a copy of this Third Report and Order to Congress and the Government Accountability Office (“GAO”) pursuant to the Congressional Review Act.<sup>263</sup>

### **D. Further Information**

91. For further information about this Third Report and Order, please contact Shaun Maher at (202) 418-2324, [Shaun.Maher@fcc.gov](mailto:Shaun.Maher@fcc.gov).

## **V. PROCEDURAL MATTERS – FOURTH NPRM**

### **A. Ex Parte Presentations**

92. The proceeding this Fourth NPRM initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>264</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies).<sup>265</sup> Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the rules. In proceedings governed by § 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

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<sup>263</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>264</sup> 47 C.F.R. §§ 1.1200 *et seq.*

<sup>265</sup> See 47 C.F.R. § 1.1203.

**B. Initial Regulatory Flexibility Act Analysis.**

93. The Regulatory Flexibility Act of 1980, as amended (“RFA”),<sup>266</sup> requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>267</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>268</sup> A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

94. With respect to this Fourth NPRM, an Initial Regulatory Flexibility Analysis (“IRFA”) under the Regulatory Flexibility Act<sup>269</sup> is contained in Appendix E. Written public comments are requested on the IFRA, and must be filed in accordance with the same filing deadlines as comments on the Fourth NPRM, with a distinct heading designating them as responses to the IRFA. The Commission will send a copy of this Fourth NPRM, including the IRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, a copy of this Fourth NPRM and the IRFA will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the *Federal Register*.

**C. Paperwork Reduction Act Analysis.**

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

**D. Comment Filing Procedures**

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

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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

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<sup>266</sup> *See* 5 U.S.C. § 603.

<sup>267</sup> *See* 5 U.S.C. § 601(6).

<sup>268</sup> *See* 5 U.S.C. § 601(3).

<sup>269</sup> *See* 5 U.S.C. § 603.

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

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

## VI. ORDERING CLAUSES

98. **IT IS ORDERED** that pursuant to sections 1, 4, 301, 303, 307, 308, 309, 310, 316, 319, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, and 403, this Third Report and Order **IS ADOPTED**.

99. **IT IS FURTHER ORDERED** that the Commission's rules **ARE HEREBY AMENDED** as set forth in Appendix B.

100. **IT IS FURTHER ORDERED** that the Petition for Blanket Extension or Waiver of Advance Television Broadcasting Alliance **IS DISMISSED AS MOOT**.

101. **IT IS FURTHER ORDERED** that the Motion to Reopen the Record of Free Access & Broadcast Telemedia, LLC **IS DENIED**.

102. **IT IS FURTHER ORDERED** that the rules adopted herein **WILL BECOME EFFECTIVE** 30 days after the date of publication in the *Federal Register*, except for sections 74.787 and 74.800 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.

103. **IT IS FURTHER ORDERED** that, pursuant to the authority contained in sections 1, 4, 301, 303, 307, 308, 309, 310, 316, 319, 338, 403, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, 338, 403, 614 and 615, this Fourth Notice of Proposed Rulemaking **IS ADOPTED**.

104. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Third Report and Order and Fourth Notice of Proposed Rulemaking including the Initial and Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

105. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this Third Report and Order and Fourth Notice of Proposed Rulemaking in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A**  
**List of Commenters**

**Commenters**

Abraham Telecasting Company, LLC (Abraham) \*#%@  
Advanced Television Broadcasting Alliance (ATBA)  
Block Communications, Inc. (Block)  
Byron W. St. Clair (St. Clair)  
Central Park Church of God, Inc. (Central Park) \*#%@  
Centro Cristiano de Vida Eterna (Centro Cristiano) \*#%@  
Channel 5 Public Broadcasting, Inc. (Channel 5)  
Cohen, Dippell and Everist, P.C. (Cohen)  
Consumer Electronics Association (CEA)  
CTV Broadcasting, LLC (CTV) \*#%@  
Daniel Gomez (Daniel Gomez) \*%@  
De Mujer a Mujer International (De Mujer) \*#%@  
DTV America Corporation (DTV America)  
EchoStar Technologies L.L.C. (EchoStar)  
Eduardo Gallagos (Gallagos) \*%@  
Educational Media Foundation (EMF)  
Elva and Moises Gomez (Elva and Moises Gomez) \*@  
Expanding Opportunities for Broadcasters Coalition (EOBC)  
Free Access & Broadcast Telemedia, LLC (Free Access)  
Gary White (White) \*%@  
George S. Flinn, Jr. (Flinn)  
Hispanic Family Christian Network, Inc. (Hispanic Family) \*#%@  
Hosanna Apostolic Ministries Broadcasting Corporation (Honsanna) \*#%@  
Iglesia Jesucristo es mi Refugio, Inc. (Iglesia Jesucristo) \*#%@  
International Communications Network, Inc. (ICN)  
Island Broadcasting LLC and Richard D. Bogner (Island)  
Jenifer Juarez (Juarez) \*#%@  
Jose Salas (Salas) \*#%@  
Juan Carlos Matos Barreto (Barreto)  
La Mega Mundial, LLC (La Mega) \*#%@  
La Palabra Viviente Ministries (La Palabra) \*@  
LeSEA Broadcasting Corporation (LeSEa)  
Linley Gumm (Gumm)  
LMO Christian Media, Inc. (LMO) \*#%@  
Lotus Communications Corp. (Lotus)  
LPTV Spectrum Rights Coalition (LPTV Coalition)  
Mako Communications, LLC (Mako)  
Metro TV, Inc. (Metro TV)  
Murray Hill Broadcasting, LLC and WLFM, LLC (Murray Hill)  
National Association of Broadcasters (NAB)  
National Public Radio, Inc. (NPR)  
National Religious Broadcasters (NRB)  
National Translator Association (NTA)  
Nickolaus E. Leggett (Leggett)  
One Ministries, Inc. (One Ministries)  
Open Technology Institute & Public Knowledge (OTI/PK)  
Pacific Mountain Network (PMN)

PBS, CPB, and APTS (APTS/CPB/PBS)  
Roy William Mayhugh (Mayhugh)  
Signal Above, LLC (Signal)  
Sinclair Broadcast Group, Inc. (Sinclair)  
Spectrum Evolution, Inc. (SEI)  
The Wireless Internet Service Providers Association (WISPA)  
U.S. Television, LLC (USTV)  
Venture Technologies Group, LLC (Venture)  
VIZIO, Inc. (Vizio)  
WatchTV, Inc. (WatchTV)  
Weigel Broadcasting Co. (Weigel)  
WVEBA (WVEBA)

\*: Indicates Joint Channel Sharing Commenters  
#: Indicates Joint Transition Date Commenters  
%: Indicates Joint Channel 6 LPTV Commenters  
@: Indicates Joint Additional Measures Commenters

### **Reply Commenters**

ABC, Inc. (ABC)  
Adrienne J. Weiss (Adrienne Weiss)  
Advanced Television Broadcasting Alliance  
Capitol Broadcasting Company, Inc. (CBC)  
Central Park  
Centro Cristiano  
Cohen  
CEA  
CTIA-The Wireless Association (CTIA)  
DC Broadcasting, Inc. (DC Broadcasting)  
White  
Flinn  
Island (late)  
La Mega  
Lieberman Broadcasting, Inc. (Lieberman)  
Lotus  
LPTV Coalition (late)  
Mako  
Media Vista Group, LLC (Media Vista)  
Multicultural Media, Telecom and Internet Council (MMTIC) (late)  
NAB  
National Cable & Telecommunications Association (NCTA)  
NPR  
NTA  
One Ministries  
Prism Broadcasting Network, Inc. (Prism)  
Randall A. Weiss (Randall Weiss)  
Rec Networks (Rec Networks)  
Roderick A. Payne (Payne)  
Signal  
Southwest Colorado Television Translator Association (SWCOTV)  
Syncom Media Group, Inc. (Syncom)  
WISPA

Venture

**Ex Parte Filings**

APTS/CPB/PBS, March 18, 2015, March 31, 2015, April 22, 2015 and June 30, 2015  
Brian Fortman, January 21, 2015 (Fortman)  
Capitol Broadcasting Company, Inc., March 18, 2015  
CTIA, July 24, 2015 and July 31, 2015  
Free Access, May 22, 2015, May 29, 2015, June 3, 2015, June 17, 2015, July 2, 2015, July 17, 2015,  
September 17, 2015, November 13, 2015 and November 25, 2015  
Funai Electric Company, Ltd., January 23, 2015 (Funai)  
Gray Television, Inc., March 11, 2015 and December 3, 2015 (Gray)  
LPTV Coalition, May 20, 2015 and October 24, 2015.  
NCTA, November 16, 2015  
Roger Fraser, January 23, 2015 (Fraser)  
Small Business Administration, Office of Advocacy, June 15, 2015  
WISPA, December 4, 2014  
USTV, March 12, 2015

**List of Commenters  
In Response to ATBA's Petition for Blanket Extension or Waiver  
Public Notice, 29 FCC Rcd 8322 (MB 2014)  
(Referenced as "Comments to ATBA Petition")**

**Commenters**

ATBA  
Channel 51 of San Diego, Inc. (Channel 51)  
Cohen  
CTB Spectrum Services, LLC (CTB)  
EICB-TV East, LLC (EICB East)  
EICB-TV West, LLC (EICB West)  
LPTV Coalition  
NAB  
One Ministries  
Roger Doering (Doering)  
WISPA

**Reply Commenters**

ATBA  
CTB  
Miriam Media, Inc. (Miriam)

**APPENDIX B  
FINAL RULES**

**PART 15 – RADIO FREQUENCY DEVICES**

1. The authority citation for Part 15 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 302, 303, 304, 307, 336, and 544A.

2. Amend Section 15.117 to read as follows:

§ 15.117 TV broadcast receivers.

\* \* \* \* \*

(b) Until August 31, 2017, TV broadcast receivers shall be capable of adequately receiving all channels allocated by the Commission to the television broadcast service. After August 31, 2017, TV broadcast receivers shall be capable of adequately receiving all channels allocated by the Commission to the television broadcast service that broadcast digital signals, but they need not be capable of receiving analog signals.

\* \* \* \* \*

**PART 74 – EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES**

2. The authority citation for Part 74 is amended to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 309, 336 and 554

3. Amend Section 74.731 to read as follows:

§ 74.731 Purpose and permissible service.

\* \* \* \* \*

(l) After 11:59 pm local time on September 1, 2015, Class A television stations may no longer operate any facility in analog (NTSC) mode.

(m) After 11:59 pm local time, 51 months following the release of the Channel Reassignment Public Notice announcing completion of the incentive auction conducted under Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. No. 112-96)), low power television and TV translator stations may no longer operate any facility in analog (NTSC) mode and all licenses for such analog operations shall automatically cancel at that time without any affirmative action by the Commission.

4. Amend Section 74.787 to read as follows:

Section 74.787 Digital Licensing

(a) Applications for digital low power television and television translator stations.

\* \* \* \* \*

(5) *Applications for analog-to-digital and digital-to-digital replacement television translators.*

(i) Applications for new analog-to-digital replacement translators will not be accepted. Displacement applications for analog-to-digital replacement translators will continue to be accepted. An application for a new digital-to-digital replacement translator may be filed beginning the first day of the low power television and TV translator displacement window set forth in § 73.3700(g)(1) of this part to one year after the completion of the 39-month post-auction transition period as defined in § 27.4 of this chapter. Applications for digital-to-digital replacement translators filed during the displacement window will be considered filed on the last day of the window. Following the completion of the displacement window, applications for digital-to-digital replacement translators will be accepted on a first-come, first-served basis.

(ii) Each original construction permit for the construction of a displacement analog-to-digital or new or displacement digital-to-digital replacement television translator station shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. The provisions of § 74.788(c) of this chapter shall apply for stations seeking additional time to complete construction of their displacement analog-to-digital or new or displacement digital-to-digital replacement television translator station.

(iii) Displacement applications for analog-to-digital replacement television translators shall be given processing priority over all other low power television and TV translator new, minor change, or displacement applications except applications for digital-to-digital replacement television translators with which they shall have co-equal priority. Applications for digital-to-digital replacement television translators shall be given processing priority over all low power television and TV translator new, minor change, or displacement applications, except displacement applications for analog-to-digital replacement translators with which they shall have co-equal priority.

(iv) Applications for new digital-to-digital replacement television translators and displacement applications for analog-to-digital and digital-to-digital replacement television translators shall be treated as an application for minor change. Mutually exclusive applications shall be resolved via the Commission's part 1 and broadcast competitive bidding rules, § 1.2100 et seq. and § 73.5000 et seq. of this chapter.

(v) A license for a digital-to-digital replacement television translator will be issued only to a full-power television broadcast station licensee that demonstrates in its application a loss in the station's pre-auction digital service area as a result of the broadcast television spectrum incentive auction, including the repacking process, conducted under section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. No. 112-96). "Pre-auction digital service area" is defined as the geographic area within the full power station's noise-limited contour (as set forth in Public Notice, DA 15-1296, released November 12, 2015). The service area of the digital-to-digital replacement translator shall be limited to only the demonstrated loss area within the full power station's pre-auction digital service area, provided that an applicant for a digital-to-digital replacement television translator may propose a *de minimis* expansion of its full power pre-auction digital service area upon demonstrating that the expansion is necessary to replace a loss in its pre-auction digital service area.

(vi) The license for the analog-to-digital and digital-to-digital replacement television translator will be associated with the full power station's main license, will be assigned the same call sign, may not be separately assigned or transferred, and will be renewed with the full power station's main license.

(vii) Analog-to-digital and digital-to-digital replacement television translators may operate only on those television channels designated for broadcast television use following completion of the broadcast

television spectrum incentive auction conducted under section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. No. 112-96).

(viii) The following sections are applicable to analog-to-digital and digital-to-digital replacement television translator stations:

- § 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.
- § 74.703 Interference
- § 74.709 Land mobile station protection.
- § 74.734 Attended and unattended operation
- § 74.735 Power Limitations
- § 74.751 Modification of transmission systems.
- § 74.763 Time of Operation
- § 74.765 Posting of station and operator licenses.
- § 74.769 Copies of rules.
- § 74.780 Broadcast regulations applicable to translators, low power, and booster stations (except §73.653 – Operation of TV aural and visual transmitters and §73.1201 – Station identification).
- §74.781 Station records.
- §74.784 Rebroadcasts.

\* \* \* \* \*

(b) Definitions of “major” and “minor” changes to digital low power television and television translator stations.

\* \* \* \*

(2) Other facilities changes will be considered minor including changes made to implement a channel sharing arrangement provided they comply with the other provisions of this section.

\* \* \* \* \*

5. Amend Section 74.788 to read as follows:

Section 74.788 - Digital construction period.

(a) Except as indicated below, each original construction permit for the construction of a new digital low power television or television translator station shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. Construction permits for the construction of a new digital low power television or television translator station granted after the release of the LPTV DTV Third Report and Order, MB Docket No. 03-185 (FCC 15-175) shall specify the later of either the digital transition deadline or three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed.

\* \* \* \*

(c) Authority delegated. (1) For the September 1, 2015 Class A television digital construction deadline, authority is delegated to the Chief, Media Bureau to grant an extension of time of up to six months beyond September 1, 2015 upon demonstration by the Class A station that failure to meet the construction deadline is due to circumstances that are either unforeseeable or beyond the licensee’s control where the

licensee has taken all reasonable steps to resolve the problem expeditiously. For the low power television and TV translator station digital transition deadline set forth in § 74.731(l) of this subpart, authority is delegated to the Chief, Media Bureau to grant an extension of time of up to six months beyond the digital transition deadline set forth in § 74.731(l) upon demonstration that failure to meet the construction deadline is due to circumstances that are either unforeseeable or beyond the station's control where the station has taken all reasonable steps to resolve the problem expeditiously.

\* \* \* \*

(3) Applications for extension of time filed by Class A television stations shall be filed not later than May 1, 2015 absent a showing of sufficient reasons for late filing. Applications for extension of time filed by low power television and TV translator stations shall be filed not later than four months before the digital transition deadline set forth in § 74.731(l) of this subpart absent a showing of sufficient reasons for late filing.

(d) For Class A television digital construction deadlines occurring after September 1, 2015, the tolling provisions of § 73.3598 shall apply. For low power television and TV translator digital construction deadlines occurring after the digital transition deadline set forth in § 74.731(l) of this subpart, the tolling provisions of § 73.3598 shall apply.

\* \* \* \* \*

#### 6. Add new Section 74.800 – Low Power Television and TV Translator Channel Sharing

(a) Channel sharing generally.

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

(2) Each station sharing a single channel pursuant to this section shall continue to be licensed and operated separately, have its own call sign and be separately subject to all of the Commission's obligations, rules, and policies.

(b) Licensing of Channel Sharing Stations. The low power television or TV translator channel sharing station relinquishing its channel must file an application for the initial channel sharing construction permit, include a copy of the channel sharing agreement as an exhibit, and cross reference the other sharing station(s). Any engineering changes necessitated by the channel sharing arrangement may be included in the station's application. Upon initiation of shared operations, the station relinquishing its channel must notify the Commission that it has terminated operation pursuant to § 73.1750 of this part and each sharing station must file an application for license.

(c) Deadline For Implementing Channel Sharing Arrangements. Channel sharing arrangements submitted pursuant to this section must be implemented within three years of the grant of the initial channel sharing construction permit.

(d) Channel Sharing Agreements.

(1) Channel sharing agreements (CSAs) submitted under this section must contain provisions outlining each licensee's rights and responsibilities regarding:

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

- 
- (ii) 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.
- (2) CSAs must include provisions:
- (i) Affirming compliance with the channel sharing requirements in paragraph (d)(1) of this section and all relevant Commission rules and policies; and
  - (ii) 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 program stream at all times.
- (e) Upon termination of the license of a party to a CSA, the spectrum usage rights covered by that license may revert to the remaining parties to the CSA. Such reversion shall be governed by the terms of the CSA in accordance with paragraph (d)(1)(v) 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 D.
- (f) If the rights under a CSA are transferred or assigned, the assignee or the transferee must comply with the terms of the CSA in accordance with paragraph (d)(1)(iv) of this section. If the transferee or assignee and the licensees of the remaining channel sharing station or stations agree to amend the terms of the existing CSA, the agreement may be amended, subject to Commission approval.

## APPENDIX C

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (“IRFA”) was incorporated in the *Third Notice of Proposed Rule Making* (“*Third Notice*”). The Commission sought written public comment on the proposals in the *Third Notice*, including comment on the IRFA. Because we amend the rules in this *Third Report and Order*, we have included this Final Regulatory Flexibility Analysis (“FRFA”) which conforms to the RFA.<sup>2</sup> We note that no formal comments were filed on the IRFA but many of the commenters raised issues concerning the impact of the various proposals in this proceeding on small entities. These comments were considered in the *Third Report and Order* and in the FRFA.

**A. Need for and Objectives of the Rules**

2. On June 2, 2014, the Federal Communications Commission (Commission) released its Incentive Auction Report and Order, 29 FCC Rcd 657 (2014), adopting rules to implement the broadcast television spectrum incentive auction authorized by the Middle Class Tax Relief and Job Creation Act (Spectrum Act). The Commission recognized in the Incentive Auction Report and Order that the incentive auction will have a significant impact on low power television stations and TV translator stations. As part of the incentive auction, the Commission will (1) conduct a “reverse auction,” whereby full power and Class A television stations may opt to relinquish some or all of their spectrum usage rights in exchange for incentive payments, and (2) reorganize or “repack” the broadcast television bands in order to free up a portion of the ultra high frequency (UHF) band for new flexible uses. The Commission concluded in the Incentive Auction Report and Order that the Spectrum Act does not mandate the protection of LPTV and TV translator stations because the scope of mandatory protection under section 6403(b)(2) is limited to full power and Class A television stations. The Commission also declined to extend discretionary protection to these stations because of the detrimental impact such protection would have on the repacking process and the success of the incentive auction. Accordingly, some LPTV and TV translator stations will be displaced as a result of the repacking process and required to either find a new channel or discontinue operations.

3. In order to mitigate the impact of the auction and repacking process on LPTV and TV translator stations, the Commission stated that it intended to initiate an LPTV/TV Translator rulemaking proceeding “to consider additional measures that may help alleviate the consequences of LPTV and TV translator station displacements resulting from the auction and repacking process.”<sup>3</sup>

4. In the *Third Report and Order*, the Commission: (1) extended the September 1, 2015 digital transition deadline for LPTV and TV translator stations; and (2) adopted rules to allow channel sharing by and between LPTV and TV translator stations. The Commission also announced that it would use the incentive auction optimization software to assist LPTV and TV translator stations displaced by the auction and repacking process to identify new channels. The Commission considered and rejected other measures proposed by commenters to further mitigate the impact of the auction and repacking process on LPTV and TV translator stations. In the *Third Report and Order*, the Commission also created a “digital-to-digital replacement translator” service for full power stations that experience losses in their pre-auction digital service areas. The Commission also eliminated the requirement in section 15.117(b) of the rules that TV receivers include analog tuners.

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 604.

<sup>3</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6576, para. 21.

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

5. 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 proposed rules, if adopted.<sup>4</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”<sup>5</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>6</sup> 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.<sup>7</sup>

6. *Television Broadcasting.* This economic census category “comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.”<sup>8</sup> The SBA has created the following small business size standard for Television Broadcasting firms: those having \$14 million or less in annual receipts.<sup>9</sup> The Commission has estimated the number of licensed commercial television stations to be 1,390.<sup>10</sup> In addition, according to Commission staff review of the BIA Advisory Services, LLC’s *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of \$14 million or less.<sup>11</sup> We therefore estimate that the majority of commercial television broadcasters are small entities.

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

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<sup>4</sup> *Id.* at § 603(b)(3).

<sup>5</sup> 5 U.S.C. § 601(6).

<sup>6</sup> *Id.* at § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

<sup>7</sup> 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

<sup>8</sup> U.S. Census Bureau, *2012 NAICS Definitions: 515120 Television Broadcasting*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515120&search=2012> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515120&search=2012> (last visited Mar. 6, 2014). U.S. Census Bureau, *2012 NAICS Definitions: 515120 Television Broadcasting*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515120&search=2012> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515120&search=2012> (last visited Mar. 6, 2014).

<sup>9</sup> 13 C.F.R. § 121.201 (NAICS code 515120) (updated for inflation in 2010).

<sup>10</sup> See FCC News Release, *Broadcast Station Totals as of March 31, 2015* (rel. April 9, 2015).

<sup>11</sup> We recognize that BIA’s estimate differs slightly from the FCC total given the information provided above.

<sup>12</sup> “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.” 13 C.F.R. § 121.103(a)(1).

which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

8. In addition, the Commission has estimated the number of licensed noncommercial educational (“NCE”) television stations to be 395.<sup>13</sup> These stations are non-profit, and therefore considered to be small entities.<sup>14</sup>

9. There are also 2,344 LPTV stations, including Class A stations, and 3689 TV translator stations.<sup>15</sup> Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

10. *Electronics Equipment Manufacturers.* Rules adopted in this proceeding could apply to manufacturers of television receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment<sup>16</sup> as well as radio and television broadcasting and wireless communications equipment.<sup>17</sup> These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.<sup>18</sup> Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities.<sup>19</sup> The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern.<sup>20</sup> Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities.<sup>21</sup>

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<sup>13</sup> See FCC News Release, Broadcast Station Totals as of March 31, 2015 (rel. April 8, 2015).

<sup>14</sup> See generally 5 U.S.C. §§ 601(4), (6).

<sup>15</sup> See FCC News Release, Broadcast Station Totals as of March 31, 2015 (rel. April 8, 2015)

<sup>16</sup> 13 C.F.R. § 121.201, NAICS Code 334310.

<sup>17</sup> 13 C.F.R. § 121.201, NAICS Code 334220.

<sup>18</sup> 13 C.F.R. § 121.201, NAICS Code 334310.

<sup>19</sup> Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series - Manufacturing, Audio and Video Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

<sup>20</sup> 13 C.F.R § 121.201, NAICS Code 334220.

<sup>21</sup> Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series - Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees.

(continued...)

The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

**D. Description of Projected Reporting, Recordkeeping and other Compliance Requirements**

11. The *Third Report and Order* adopted the following new reporting requirements. To implement channel sharing between LPTV and TV translator stations, the Commission will follow a two-step process – stations will first filing an application for construction permit and then application for license. Stations terminating operations to share a channel will be required to submit a termination notice pursuant to the existing Commission rule. These existing forms and collections will be revised to accommodate these new channel-sharing related filings and to expand the burden estimates. In addition, channel sharing stations will be required to submit their channel sharing agreements (CSAs) with the Commission and be required to include certain provisions in their CSAs. In addition, 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. The existing collection concerning the execution and filing of CSAs will be revised.

12. To implement its proposed new digital-to-digital replacement translator service, the Commission will revise its existing replacement translator form, rules and collections and to expand the burden estimates.

13. These new reporting requirements will not differently affect small entities.

**E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered**

14. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>22</sup>

15. Digital Transition Date. The Commission's decision to extend the September 1, 2015 LPTV and TV Translator digital transition date will greatly minimize the impact on small entities having to complete their transition to digital. Instead of having to possibly endure the expense of having to construct a digital facility only to be displaced by the incentive auction reorganization of spectrum and having to finance the construction of a second digital facility, the Commission's extension of the transition deadline will allow small entities to wait until the incentive auction is complete and to determine the impact on their digital transition plan.

16. Channel Sharing. The Commission's decision to allow LPTV and TV Translator to share channels between themselves will greatly minimize the impact on small entities. Many stations will be displaced by the incentive auction reorganization of spectrum and allowing these stations to channel share will reduce the cost of having to build a new facility to replace the one that was displaced. Stations can share in the cost of building a shared channel facility and will experience cost savings by operating a

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No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

<sup>22</sup> 5 U.S.C. § 603(c)(1)-(c)(4).

shared transmission facility. In addition, channel sharing is voluntary and only those stations that determine that channel sharing will be advantageous will enter into this arrangement.

17. The Commission's licensing and operating rules for channel sharing between LPTV and TV translator stations were designed to minimize impact on small entities. The rules provide a streamlined method for reviewing and licensing channel sharing for these stations as well as a streamlined method for resolving cases where a channel sharing station loses its license on the shared channel. These rules were designed to reduce the burden and cost on small entities.

18. Assistance to Displaced Stations. The Commission's efforts to assist LPTV and TV translator stations in finding displacement channels after the incentive auction will greatly benefit small entities. By helping stations find new channels from a smaller universe of channels that will remain after the incentive auction reorganization of channels, the Commission will save small entities time and money by not having to consult with an engineer to make such determinations. Such savings can then be used to construct and operate the displacement facility. The Commission rejected calls to "repack" all displaced LPTV and TV translator stations by assigning their frequencies finding that such a plan would interfere with stations ability to engineer their facilities as they see fit and 30 years of licensing history.

19. Digital to Digital Replacement Translators. The Commission is aware that some full service television stations operate with limited budgets. Accordingly, every effort was taken to adopt rules for the new digital-to-digital replacement translator service that impose the least possible burden on all licensees, including small entities. Existing forms will be used to implement this new service thereby reducing the burden on small entities.

20. The Commission concluded that applications for digital-to-digital replacement translators should be given licensing priority over all other low power television and TV translator applications, except displacement applications for analog-to-digital replacement translators (for which they would have co-equal priority). The Commission could have adopted no such priority, but this would have resulted in many more mutually exclusive filings and delayed the implementation of this valuable service.

21. The Commission also decided to limit the eligibility for such service to any station that can demonstrate that it experienced a loss of digital service area as a result of the incentive auction or repacking process. Alternatively, the Commission could have allowed all interested parties to file for new translators, however such approach would also result in numerous mutually exclusive filings and would greatly delay implementation of this needed service.

22. The Commission further concluded that the service area of the replacement translator should be limited to only a demonstrated loss area and permitted stations to expand slightly its pre-incentive auction service area. Once again, the Commission could have allowed stations to file for expansion of their existing service areas but such an alternative could result in the use of valuable spectrum that the Commission seeks to preserve for other uses.

23. The Commission concluded that replacement digital television translator stations should be licensed with "secondary" frequency use status. The Commission could have decided that replacement translators be licensed on a primary frequency use basis, but this alternative was not adopted because it would result in numerous interference and licensing problems.

24. The Commission determined that, unlike other television translator licenses, the license for the replacement translator should be associated with the full power station's main license. Therefore, the replacement translator license may not be separately assigned or transferred and will be renewed or assigned along with the full-service station's main license. Alternatively, the Commission could have decided that the replacement translator license be separate from the main station's license, however this approach could result in licenses being sold or modified to serve areas outside of the loss area, and thus would undermine the purpose of this new service.

25. The Commission also concluded that the other rules associated with television translator stations will apply to the new replacement translator service, including those rules concerning the filing of

applications, payment of filing fees, processing of applications, power limits, out-of-channel emission limits, call signs, unattended operation, and time of operation. The alternative could have been to design all new rules for this service, but that alternative was not adopted as it would adversely impact stations ability to quickly implement these new translators.

26. The Commission's conclusion to discontinue accepting applications for analog-to-digital replacement translators may impact small entities. However, the Commission determined that future analog-to-digital replacement translator applications are no longer necessary for stations to replace an analog loss area that occurred as a result of the digital transition over six years ago.

27. Elimination of Analog Tuner Mandate. The Commission decided to permit equipment manufacturers to forego having to include an analog tuner in their television sets determining that it would benefit small entity equipment manufacturers. Having to include an analog tuner increases the cost of a television sets and equipment manufacturers, some of whom may be small entities, would enjoy a cost savings as a result of the Commission's proposal. The Commission determined that any impact that not including an analog tuner in new television sets may have upon consumers should be minimal now that the full power digital transition has been complete for over five years and would be outweighed by the benefit of less expensive digital television sets.

**F. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals**

28. None.

**APPENDIX D  
PROPOSED RULES**

PART 73 – RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

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

2. Section 73.3572 is revised as follows:

§ 73.3572 Processing of TV broadcast, Class A TV broadcast, low power TV, TV translators, and TV booster applications.

(a) Applications for TV stations are divided into two groups:

\* \* \* \*

(3) Other changes will be considered minor including changes made to implement a channel sharing arrangement provided they comply with the other provisions of this section and provided, until October 1, 2000, proposed changes to the facilities of Class A TV, low power TV, TV translator and TV booster stations, other than a change in frequency, will be considered minor only if the change(s) will not increase the signal range of the Class A TV, low power TV or TV booster in any horizontal direction.

2. Section 73.3800 is revised as follows:

§ 73.3800 Full Power Television Channel Sharing Outside the Auction Context

(a) Channel sharing generally.

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

(2) Each station sharing a single channel pursuant to this section shall continue to be licensed and operated separately, have its own call sign, and be separately subject to all applicable Commission obligations, rules, and policies.

(b) Licensing of Channel Sharing Stations. A full power television channel sharing station relinquishing its channel must file an application for the initial channel sharing construction permit (FCC Form 2100), include a copy of the channel sharing agreement as an exhibit, and cross reference the other sharing station(s). Any engineering changes necessitated by the channel sharing agreement may be included in the station's application. Upon initiation of shared operations, the station relinquishing its channel must notify the Commission that it has terminated operation pursuant to 47 C.F.R. 73.1750 and each sharing station must file an application for license (FCC Form 2100).

(c) Deadline For Implementing Channel Sharing Agreements. Channel sharing agreements submitted pursuant to this section must be implemented within three years of the grant of the initial channel sharing construction permit.

(d) Channel Sharing Agreements (CSAs).

(1) Channel sharing agreements submitted under this section must contain provisions outlining each licensee's rights and responsibilities regarding:

- (i) Access to facilities, including whether each licensee will have unrestrained access to the shared transmission facilities;
  - (ii) Operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment, a description of each party's financial obligations, and any relevant notice provisions; and
  - (iii) Transfer/assignment of a shared license, including the ability of a new licensee to assume the existing CSA; and
  - (iv) Termination of the license of a party to the CSA, including reversion of spectrum usage rights to the remaining parties to the CSA.
- (2) Channel sharing agreements submitted under this section must include a provision affirming compliance with the channel sharing requirements in this section including a provision requiring that each channel sharing licensee shall retain spectrum usage rights adequate to ensure a sufficient amount of the shared channel capacity to allow it to provide at least one Standard Definition (SD) program stream at all times.
- (e) Termination and Assignment/Transfer of Shared Channel. Upon termination of the license of a party to a CSA, the spectrum usage rights covered by that license may revert to the remaining parties to the CSA. Such reversion shall be governed by the terms of the CSA in accordance with paragraph (d)(1)(iv) of this section. If upon termination of the license of a party to a CSA only one party to the CSA remains, the remaining licensee may file an application to change its license to non-shared status using FCC Form 2100, Schedule B (for a full power licensee) or F (for a Class A licensee).
- (f) Notice to MVPDs.
- (1) Stations participating in channel sharing agreements must provide notice to MVPDs that:
- (i) no longer will be required to carry the station because of the relocation of the station;
  - (ii) currently carry and will continue to be obligated to carry a station that will change channels; or
  - (iii) will become obligated to carry the station due to a channel sharing relocation.
- (2) The notice required by this section must contain the following information:
- (i) date and time of any channel changes;
  - (ii) the channel occupied by the station before and after implementation of the CSA;
  - (iii) modification, if any, to antenna position, location, or power levels;
  - (iv) stream identification information; and
  - (v) engineering staff contact information.
- (3) Sharee stations (those relinquishing a channel in order to share) must provide notice as required by this section at least 30 days prior to terminating operations on the sharee's channel. Sharer stations (those hosting a sharee as part of a channel sharing agreement) and sharee stations must provide notice as required by this section at least 30 days prior to initiation of operations on the sharer channel. Should the anticipated date to either cease operations or commence channel sharing operations change, the stations must send a further notice to affected MVPDs informing them of the new anticipated date(s).

(4) Notifications provided to cable systems pursuant to this section must be either mailed to the system's official address of record provided in the cable system's most recent filing in the FCC's Cable Operations and Licensing System (COALS) Form 322, or emailed to the system if the system has provided an email address. For all other MVPDs, the letter must be addressed to the official corporate address registered with their State of incorporation.

4. Section 73.6028 is amended as follows:

§ 73.6028 Class A Television Channel Sharing Outside the Auction Context

(a) Channel sharing generally.

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

(2) Each station sharing a single channel pursuant to this section shall continue to be licensed and operated separately, have its own call sign, and be separately subject to all of the Commission's obligations, rules, and policies.

(b) Licensing of Channel Sharing Stations. A station relinquishing its channel must file an application for the initial channel sharing construction permit, include a copy of the channel sharing agreement as an exhibit, and cross reference the other sharing station(s). Any engineering changes necessitated by the channel sharing agreement may be included in the station's application. Upon initiation of shared operations, the station relinquishing its channel must notify the Commission that it has terminated operation pursuant to 47 C.F.R. 73.1750 and each sharing station must file an application for license.

(c) Deadline For Implementing Channel Sharing Agreements. Channel sharing agreements submitted pursuant to this section must be implemented within three years of the grant of the initial channel sharing construction permit.

(d) Channel Sharing Agreements (CSAs).

(1) Channel sharing agreements submitted under this section must contain provisions outlining each licensee's rights and responsibilities regarding:

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

(ii) Operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment, a description of each party's financial obligations, and any relevant notice provisions; and

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

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

(e) Termination and Assignment/Transfer of Shared Channel. Upon termination of the license of a party to a CSA, the spectrum usage rights covered by that license may revert to the remaining parties to the CSA. Such reversion shall be governed by the terms of the CSA in accordance with paragraph (d)(1)(iv) of this section. If upon termination of the license of a party to a CSA only one party to the CSA remains, the remaining licensee may file an application for license to change its status to “non-shared.”

(f) Notice to MVPDs.

(1) Stations participating in channel sharing agreements must provide notice to MVPDs that:

- (i) no longer will be required to carry the station because of the relocation of the station;
- (ii) currently carry and will continue to be obligated to carry a station that will change channels; or
- (iii) will become obligated to carry the station due to a channel sharing relocation.

(2) The notice required by this section must contain the following information:

- (i) date and time of any channel changes;
- (ii) the channel occupied by the station before and after implementation of the CSA;
- (iii) modification, if any, to antenna position, location, or power levels;
- (iv) stream identification information; and
- (v) engineering staff contact information.

(3) Sharee stations (those relinquishing a channel in order to share) must provide notice as required by this section at least 30 days prior to terminating operations on the sharee’s channel. Sharer stations (those hosting a sharee as part of a channel sharing agreement) and sharee stations must provide notice as required by this section at least 30 days prior to initiation of operations on the sharer channel. Should the anticipated date to either cease operations or commence channel sharing operations change, the station(s) must send a further notice to affected MVPDs informing them of the new anticipated date(s).

(4) Notifications provided to cable systems pursuant to this section must be either mailed to the system’s official address of record provided in the cable system’s most recent filing in the FCC’s Cable Operations and Licensing System (COALS) Form 322, or emailed to the system if the system has provided an email address. For all other MVPDs, the letter must be addressed to the official corporate address registered with their State of incorporation.

## APPENDIX E

## Initial Regulatory Flexibility Analysis

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

**A. Need for and Objectives of the Proposed Rules**

2. In the Notice, the Commission seeks comment on additional issues relating to channel sharing between primary (full power and Class A) and secondary (LPTV and TV translator) stations ("primary-secondary sharing"), as well as between secondary stations ("secondary-secondary sharing"), outside of the auction context. First, the Commission tentatively concludes to permit channel sharing between primary and secondary stations and proposes rules for primary-secondary sharing that are consistent with those adopted for secondary-secondary sharing in the Third Report and Order, FCC 15-175, released December 17, 2015, and proposed for primary-primary sharing outside of the auction context in the Primary-Primary Channel Sharing NPRM, 30 FCC Rcd 6668 (2015). Moreover, with respect to both primary-secondary and secondary-secondary sharing outside of the incentive auction context, the Commission seeks comment on issues pertaining to the term length of channel sharing agreements and issues pertaining to multichannel video programming distributors (MVPD) carriage, reimbursement, and notice.

**B. Legal Basis**

3. The authority for the action proposed in this rulemaking is contained in sections 1, 4, 301, 303, 307, 308, 309, 310, 316, 319, 338, 403, 614 and 615 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, 338, 403, 614 and 615.

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

4. 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 proposed rules, if adopted.<sup>4</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small government jurisdiction."<sup>5</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>6</sup> A small business concern

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 et. seq., has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 ("CWAAA").

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at § 603(b)(3).

<sup>5</sup> 5 U.S.C. § 601(6).

<sup>6</sup> *Id.* at § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after

(continued....)

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.<sup>7</sup>

5. *Television Broadcasting.* This economic census category “comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.”<sup>8</sup> The SBA has created the following small business size standard for Television Broadcasting firms: those having \$14 million or less in annual receipts.<sup>9</sup> The Commission has estimated the number of licensed commercial television stations to be 1,390.<sup>10</sup> In addition, according to Commission staff review of the BIA Advisory Services, LLC’s *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of \$14 million or less.<sup>11</sup> We therefore estimate that the majority of commercial television broadcasters are small entities.

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

7. In addition, the Commission has estimated the number of licensed noncommercial educational (“NCE”) television stations to be 395.<sup>13</sup> These stations are non-profit, and therefore considered to be small entities.<sup>14</sup>

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consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

<sup>7</sup> 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

<sup>8</sup> U.S. Census Bureau, *2012 NAICS Definitions: 515120 Television Broadcasting*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515120&search=2012> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515120&search=2012> (last visited Mar. 6, 2014). U.S. Census Bureau, *2012 NAICS Definitions: 515120 Television Broadcasting*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515120&search=2012> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515120&search=2012> (last visited Mar. 6, 2014).

<sup>9</sup> 13 C.F.R. § 121.201 (NAICS code 515120) (updated for inflation in 2010).

<sup>10</sup> See FCC News Release, Broadcast Station Totals as of March 31, 2015 (rel. April 8, 2015).

<sup>11</sup> We recognize that BIA’s estimate differs slightly from the FCC total given the information provided above.

<sup>12</sup> “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.” 13 C.F.R. § 121.103(a)(1).

<sup>13</sup> See FCC News Release, Broadcast Station Totals as of March 31, 2015 (rel. April 8, 2015).

<sup>14</sup> See generally 5 U.S.C. §§ 601(4), (6).

8. There are also 2,344 LPTV stations, including Class A stations, and 3689 TV translator stations.<sup>15</sup> Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

9. *Wired Telecommunications Carriers.* The North American Industry Classification System ("NAICS") defines "Wired Telecommunications Carriers" as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry."<sup>16</sup> The SBA has developed a small business size standard for wireline firms for the broad economic census category of "Wired Telecommunications Carriers." Under this category, a wireline business is small if it has 1,500 or fewer employees.<sup>17</sup> Census data for 2007 shows that there were 3,188 firms that operated for the entire year.<sup>18</sup> Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.<sup>19</sup> Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

10. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which category is defined above.<sup>20</sup> The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees.<sup>21</sup> Census data for 2007 shows that there were 3,188 firms that operated for the entire year.<sup>22</sup> Of this total, 3,144 firms had fewer than 1,000 employees, and

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<sup>15</sup> See FCC News Release, Broadcast Station Totals as of March 31, 2015 (rel. April 8, 2015)

<sup>16</sup> U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.<http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. Examples of this category are: broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television ("CCTV") services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system ("DTH") services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services ("MMDS").

<sup>17</sup> 13 C.F.R. § 121.201; NAICS code 517110.

<sup>18</sup> U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census," NAICS code 517110, Table EC0751SSSZ5; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml><http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

<sup>19</sup> *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

<sup>20</sup> See also U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch><http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>21</sup> 13 C.F.R. § 121.201; NAICS code 517110.

<sup>22</sup> U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census," NAICS code 517110, Table EC0751SSSZ5; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml><http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

44 firms had 1,000 or more employees.<sup>23</sup> Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

11. *Cable Companies and Systems.* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.<sup>24</sup> Industry data shows that there are currently 660 cable operators.<sup>25</sup> Of this total, all but ten cable operators nationwide are small under this size standard.<sup>26</sup> In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>27</sup> Current Commission records show 4,629 cable systems nationwide.<sup>28</sup> Of this total, 4,057 cable systems have less than 20,000 subscribers, and 572 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, we estimate that most cable systems are small entities.

12. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>29</sup> There are approximately 54 million cable video subscribers in the United States today.<sup>30</sup> Accordingly, an operator serving fewer than 540,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>31</sup> Based on available data, we find that all but ten incumbent cable operators are small entities under this size standard.<sup>32</sup> We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual

<sup>23</sup> *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

<sup>24</sup> 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the Cable Television Consumer Protection And Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, MM Docket No. 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408, ¶ 28 (1995).

<sup>25</sup> NCTA, Industry Data, Number of Cable Operators and Systems, <http://www.ncta.com/Statistics.aspx> (visited October 13, 2014). Depending upon the number of homes and the size of the geographic area served, cable operators use one or more cable systems to provide video service. See *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 12-203, Fifteenth Report, 28 FCC Rcd 10496, 10505-6, ¶ 24 (2013) ("15<sup>th</sup> Annual Competition Report").

<sup>26</sup> See SNL Kagan, "Top Cable MSOs – 12/12 Q"; available at <http://www.snl.com/InteractiveX/TopCableMSOs.aspx?period=2012Q4&sortcol=subscribersbasic&sortorder=desc> <http://www.snl.com/InteractiveX/TopCableMSOs.aspx?period=2012Q4&sortcol=subscribersbasic&sortorder=desc>.

<sup>27</sup> 47 C.F.R. § 76.901(c).

<sup>28</sup> The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on October 10, 2014. A cable system is a physical system integrated to a principal headend.

<sup>29</sup> 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

<sup>30</sup> See NCTA, Industry Data, Cable's Customer Base, <http://www.ncta.com/industry-data> (visited October 13, 2014).

<sup>31</sup> 47 C.F.R. § 76.901(f); see *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

<sup>32</sup> See NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013).

revenues exceed \$250 million.<sup>33</sup> Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

13. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS, by exception, is now included in the SBA’s broad economic census category, Wired Telecommunications Carriers,<sup>34</sup> which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.<sup>35</sup> Census data for 2007 shows that there were 3,188 firms that operated for that entire year.<sup>36</sup> Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees.<sup>37</sup> Therefore, under this size standard, the majority of such businesses can be considered small entities. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled “Cable and Other Program Distribution.” As of 2002, the SBA defined a small Cable and Other Program Distribution provider as one with \$12.5 million or less in annual receipts.<sup>38</sup> Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network.<sup>39</sup> Each currently offers subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined under the superseded SBA size standard would have the financial wherewithal to become a DBS service provider.

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<sup>33</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules. *See* 47 C.F.R. § 76.901(f).

<sup>34</sup> *See* 13 C.F.R. § 121.201, 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. *By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.*” (*Emphasis added to text relevant to satellite services.*) U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers,” at [http://www.census.gov/cgi-bin/sssd/naics/naicsrch](http://www.census.gov/cgi-bin/sssd/naics/naicsrchhttp://www.census.gov/cgi-bin/sssd/naics/naicsrch).

<sup>35</sup> 13 C.F.R. § 121.201; 2012 NAICS code 517110.

<sup>36</sup> U.S. Census Bureau, 2007 Economic Census. *See* U.S. Census Bureau, American FactFinder, “Information: Subject Series – Estab and Firm Size: Employment Size of Establishments for the United States: 2007 – 2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ5; available at [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_51SSSZ5&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table).

<sup>37</sup> *Id.*

<sup>38</sup> *See* 13 C.F.R. § 121.201, NAICS code 517510 (2002).

<sup>39</sup> *See 15<sup>th</sup> Annual Competition Report*, 28 FCC Rcd at 10507, ¶ 27. As of June 2012, DIRECTV is the largest DBS operator and the second largest MVPD in the United States, serving approximately 19.9 million subscribers. DISH Network is the second largest DBS operator and the third largest MVPD, serving approximately 14.1 million subscribers. *Id.* at 10507, 10546, ¶¶ 27, 110-11.

**D. Description of Projected Reporting, Recordkeeping and other Compliance Requirements**

14. The *Notice* proposes the following new or revised reporting or recordkeeping requirements.

15. To implement channel sharing between primary and secondary stations, stations will follow a two-step process proposed by the Commission – first filing an application for construction permit and then application for license. Stations terminating operations to share a channel would be required to submit a termination notice pursuant to the existing Commission rule. These existing forms and collections will need to be revised to accommodate these new channel-sharing related filings and to expand the burden estimates. In addition, the Commission proposes that channel sharing stations submit their channel sharing agreements (CSAs) with the Commission and be required to include certain provisions in their CSAs. In addition, 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. The existing collection concerning the execution and filing of CSAs will need to be revised.

16. Finally, the Commission proposes to require channel sharing stations to notify affected MVPDs.

**E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered**

17. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>40</sup>

18. The Fourth Notice proposes rules pertaining to primary and secondary station channel sharing outside the context of the incentive auction. The Commission has previously concluded that channel sharing can help broadcasters, including existing small, minority-owned, and niche stations, to reduce operating costs and provide broadcasters with additional net income to strengthen operations and improve programming services. Thus, the proposals in the Fourth Notice may help smaller broadcasters conserve resources. In addition, channel sharing is voluntary and only those stations that determine that channel sharing will be advantageous will enter into this arrangement. With respect to LPTV and TV translator stations specifically, channel sharing will allow such stations that are displaced by the incentive auction reorganization of spectrum to reduce the cost of having to build a new facility to replace the one that was displaced; could minimize the number of mutually exclusive applications filed in the post-incentive auction displacement window, thereby freeing up valuable channels for use by other displaced stations; and could be used as a means to prevent or settle the mutual exclusivity of applications and avoid lengthy delays in the processing of their displacement applications. In addition, the Fourth Notice proposes licensing and operating rules for channel sharing that are designed to minimize the burden and cost on small entities. The Commission will consider all comments submitted in connection with the Fourth Notice, including any suggested alternative approaches to channel sharing that would reduce the burden and costs on smaller entities.

19. The rules to provide notice to MVPDs were also designed to minimize impact on small entities. Very few stations will be impacted because very few LPTV and TV translator stations have carriage rights and will be subject to the notice requirement.

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<sup>40</sup> 5 U.S.C. § 603(c)(1)-(c)(4)

**F. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals**

20. None.