

FCC Initiates Incentive Auction Process With Rules for Broadcast Channel Sharing

April 27, 2012

The Federal Communications Commission (FCC or Commission) has taken the first step toward conducting incentive auctions for television broadcast spectrum, adopting a Report and Order that includes a framework for two or more stations to share a single 6 MHz channel without any change in their cable or satellite carriage rights.

The proposal adopted unanimously at the FCC's April 27, 2012 open meeting largely follows the Notice of Proposed Rulemaking (NPRM) issued in November. Broadcasters will have flexibility in the structuring of channel sharing agreements, provided that each station retains the capacity to broadcast at least one standard definition broadcast stream and continues to provide minimal service to its community of license. As adopted, the proposal does not require broadcasters to file channel sharing agreements with the Commission. By allowing stations to benefit from auctions while continuing to broadcast, FCC Chairman Julius Genachowski said the channel sharing plan represents "an unprecedented opportunity for capital infusion" to broadcast stations.

The option to channel share will be available to full power and Class A licensees and to both commercial and noncommercial educational broadcasters. The rules expressly permit the sharing of a single station by commercial and noncommercial operators. Each participant in a channel sharing agreement will maintain its own license and call sign; accordingly, stations that currently have cable and satellite carriage rights will continue to have such rights for one program stream. Each licensee will also be separately subject to the Commission's television rules and policies.

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On May 22, 2012, the FCC will conduct a channel sharing workshop, which will include information about the channel sharing process and at which the Commission will seek feedback regarding the practical aspects of channel sharing.

Meanwhile, the Commission deferred action on two additional items proposed in the NPRM: adding new allocations for fixed and mobile broadcast service in the existing television bands and improving television service on VHF channels. Fixed and mobile allocations will be addressed in the rulemaking establishing the incentive auctions. As to improving VHF reception, FCC staff indicated that the record contained no clear path for action, but that it will address the issue in a subsequent rulemaking.

We are in the process of preparing a more detailed memo summarizing the Report and Order that we will make available to our clients. If you have questions regarding channel sharing or any other aspect of the forthcoming television spectrum incentive auctions, please contact one of the attorneys listed below or the Wiley Rein attorney who regularly handles your FCC matters.