

**ALERT**

# FCC Allows Channel Sharing Outside Auction Context, But With Limits

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The Federal Communications Commission (FCC or Commission) has adopted a Report and Order permitting channel sharing between certain full power, Class A, and LPTV/TV translator stations outside of the Incentive Auction. The new rules are subject to several restrictions, however, that not only could reduce their utility in the post-auction context, but also could create challenges for stations entering into auction-related channel sharing agreements.

## ***Channel Sharing Background***

When the FCC originally adopted rules for channel sharing in the Incentive Auction Report and Order, it only permitted channel sharing between full power and Class A stations, and then only subject to channel sharing agreements filed prior to the commencement of the Incentive Auction. In two subsequent orders on reconsideration, the Commission clarified that: (1) a television station selling its spectrum in the Incentive Auction can enter into a channel sharing agreement after the auction as long as it expressed an “intent to channel share” on its pre-auction application; and (2) channel sharing agreements can either be in perpetuity or for a specific term. The FCC indicated that these changes were intended to make channel sharing more attractive for potential auction participants. In a separate proceeding, the Commission also permitted channel sharing outside the auction between LPTV and TV translator stations.

Thus, under the old rules, a full power or Class A station selling its spectrum in the Incentive Auction was permitted to channel share with another full power or Class A station. And a LPTV or TV translator station was permitted to channel share with another LPTV or TV translator station. But these two classes of stations were not permitted

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to share with each other.

### ***Channel Sharing Under the New Rules***

The new Order expands channel sharing both between two or more primary (full power or Class A) stations and between one or more primary stations and one or more secondary (LPTV or TV translator) stations.

Below, we explain the scope of channel sharing for several classes of stations.

- Full power and Class A stations that sold spectrum rights in the Incentive Auction: As under the prior rules, a full power station or Class A station that sold its spectrum-usage rights in the Incentive Auction (and expressed its “intent to channel share” on its pre-auction application) can enter into an “auction-related CSA” with one or more other full power or Class A stations within six months of the “sharee” station receiving its auction proceeds (with the possibility of up to two three-month extensions). The new rules resolve the uncertainty over what would happen if an auction-related CSA expired or otherwise terminated, clarifying that a full power or Class A station that entered into an auction-related CSA can enter into a new CSA outside the auction context. In that situation, the sharee station will continue to have the same carriage rights from its new site that it had as of the release date of the FCC’s Closing and Channel Reassignment Public Notice.
- Full power stations that did not sell spectrum rights in the Incentive Auction: A full power station that did not its sell spectrum-usage rights in the Incentive Auction can serve as a “host” or “sharer” for both auction-related and non-auction related CSAs. Under the new rules, a full power station can serve as a sharer not only for a full power or Class A station, but also for a LPTV or TV translator station. However, the FCC declined to permit a full power television station that did not relinquish its spectrum-usage rights in the auction to serve as a sharee (explaining that there would be little incentive to do so).
- Class A stations that did not sell spectrum rights in the Incentive Auction: A Class A station that did not sell its spectrum-usage rights in the Incentive Auction can serve as either a sharer or a sharee in a CSA outside the auction context. The Commission recognized that, unlike a full power station, a Class A station may have an incentive to voluntarily relinquish its spectrum-usage rights to avail itself of a full power station’s larger coverage area. Additionally, the new rules allow a Class A station to serve as a sharer not only for a full power or Class A station, but also for a LPTV or TV translator station.
- Secondary stations (LPTVs and TV translators): Under the new rules, secondary stations can serve as either the sharer or the sharee in a non-auction-related CSA. However, there are several important restrictions on a secondary station serving as the sharer. First, the station remains subject to displacement—even if the sharee is a full power station that otherwise would be entitled to interference protection. Thus, a full power or Class A station would be relinquishing its interference protection by sharing with a secondary station. Second, a secondary station cannot serve as a sharer for an auction-related CSA. A secondary station can, however, serve as the sharer for a “second-generation CSA” (a CSA entered into by a station that sold its spectrum-usage rights in the Incentive Auction after its auction-related CSA expires or is terminated).

### ***Limits on Channel Sharing Outside the Auction Context***

As mentioned above, the FCC has imposed several restrictions on channel sharing outside the auction context that could reduce its utility.

First, unlike the flexible approach that the Commission has adopted for station relocation and community of license changes in auction-related CSAs, for sharing outside the auction context, the Commission will apply its general rules applicable to station moves. Thus, for non-auction related CSAs, a full power sharee must continue to provide city-grade service to its community of license from the shared facility. Changes to a station's community of license will require a rulemaking to amend the DTV table of allotments. This is true even for stations that previously participated in an auction-related CSA. As a result, stations entering into auction-related CSAs with fixed terms or that allow the sharer to terminate the CSA should consider the availability of sharers that can provide a city grade contour over the station's community of license. Class A stations seeking to channel share, meanwhile, will be limited by the FCC's 30-mile and contour overlap restrictions, while displaced LPTV and TV translator stations will be limited by the 30-mile restriction. For full power stations, the Commission will also consider service loss when evaluating any application to relocate to a new shared facility.

Second, the FCC is limiting mandatory carriage rights to those held as of the release date of the *Closing and Channel Reassignment Public Notice*. Thus, an unbuilt LPTV station cannot obtain mandatory carriage rights through channel sharing.

Finally, the FCC has not specifically addressed how long a station can be off the air while looking for a new channel sharing partner. While stations will have three years from the grant of their channel sharing construction permit to implement channel sharing, this does not mean a station can be off the air for three years. Presumably, stations will be subject to the statutory limit of one year off the air pursuant to Section 312 (g) of the Communications Act, but the Commission did not specifically address this in its Report and Order.

The new Report and Order increases the importance of properly structuring both auction-related and non-auction-related CSAs. If you have questions about channel sharing, please contact the Wiley Rein attorney who regularly handles your FCC matters or one of the attorneys listed on this client alert.