



Virginia Association of Broadcasters Legal Review



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FCC ADOPTS NEW RULES FOR CHANNEL SHARING FOR TELEVISION STATIONS

The FCC recently released a Report and Order (“*Order*”) adopting new rules for voluntary channel sharing arrangements for television stations operating in U/V bands. Specifically, the Commission has amended its rules to allow, for the first time, television stations to share a 6 MHz channel with one or more other stations, but only in connection with spectrum incentive auctions. The sharing arrangements will be permitted when a station volunteers to relinquish spectrum in an incentive auction. Although incentive auctions have not yet begun, these new rules will be an important option for some stations as the FCC acts to reallocate spectrum for wireless broadband. The rules took effect on June 22, 2012.

The FCC recently held a public workshop to give a broad overview of the new rules. The video is archived and available online at <http://www.fcc.gov/events/channel-sharing-workshop>.

Here are the highlights of the new rules.

* *Rules Apply To Channel Sharing In The Context Of Voluntary Spectrum Auctions Only.* Licensees will not be required to operate on a shared channel under any circumstances. Rather, the new rules will permit television stations voluntarily to seek FCC approval to share a single 6 MHz channel in conjunction with a government spectrum auction. The rules do not permit channel sharing outside of an auction proceeding. Under the new rules, each station sharing a single channel will continue to have its own license, call sign, and operation and be individually subject to other applicable rules, just as it normally would. In other words, sharing a channel will not change any of a station’s public interest or other legal obligations. And, accordingly, a channel sharing licensee will not be held responsible for the programming content or rules violations of any other licensee sharing the channel.

* *Rules Apply To Full Power And Class A Television Stations Only.* The new rules apply only to full power television stations and Class A television stations. The FCC will permit channel sharing in various combinations of these stations: between full power television stations, between Class A television stations, and between full power and Class A television stations. Although there are very few currently pending, applicants for an original construction permit may also execute a channel sharing agreement to be considered in conjunction with the spectrum auction so long as the station completes construction and holds a license prior to the commencement of the auction. At this time, the Commission will not permit low power television and TV translators to participate in channel sharing arrangements. According to the Order, the FCC may reconsider allowing low power television stations to share channels in a future proceeding.

* *Channel Sharing Arrangements Must Ensure Capacity For Each Station To Provide One Standard Definition Program Stream At All Times.* The FCC will require that channel sharing agreements contain a provision requiring that each station shall retain adequate 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. Otherwise, stations will have some flexibility to tailor the terms of sharing arrangements with other stations. Specifically, the FCC will not require that the capacity of the 6 MHz channel be split equally between sharing stations; rather, sharing stations will have flexibility to determine how to divide the capacity of the channel, so long as each station has the “minimum capacity” to provide an SD program stream at all times.

* *Commercial And Noncommercial Educational Television Stations May Share Channels.* The rules will permit channel sharing between commercial and noncommercial educational television stations. Each station must continue to comply with all other applicable FCC rules and obligations, i.e., such a channel sharing arrangement would not “convert” a noncommercial station to commercial operation or vice versa. The new rules will also require that a reserved channel noncommercial educational television licensee that moves to a non-reserved channel as part of a channel sharing arrangement continue to operate as a noncommercial educational television station.

* *Preservation Of Must Carry Rights.* Under the new rules, stations will not lose their must carry rights when they enter into a sharing arrangement. The mandatory carriage provisions that require, under certain conditions, cable and satellite operators to carry local broadcast stations that serve the same market will still apply to stations who relinquish spectrum in order to share a channel with other stations. Consistent with existing rules, must carry rights extend only to one programming stream per station. Moreover, stations sharing the same channel may still make individual elections: one sharing station may elect retransmission consent, and the other may elect must carry. The effect of the new rules, when read together, is that each separately licensed television station sharing a single 6 MHz channel will have at least one—but only one—primary programming stream entitled to must carry rights, assuming it otherwise meets the technical requirements of the carriage rules (for example, must carry stations must deliver a good quality signal to the MVPD headend). Stations will qualify for carriage in a particular DMA so long as its channel sharing arrangement provides for operation on a channel assigned to a community within the same DMA as the cable or satellite operator. It will be very important, however, for stations considering relinquishing spectrum and entering channel sharing arrangements to anticipate and carefully evaluate any changes in the station’s coverage area that may affect their must carry rights, or the applicability of other FCC rules.

The FCC stated in the *Order* that it may conduct future proceedings regarding channel sharing outside the context of spectrum auctions. In other words, channel

sharing may be permitted more liberally in the future for television broadcasters, but the rules are limited at this stage to the spectrum auction context. Stations may recall that channel sharing was first proposed by the FCC in a proceeding where the FCC also proposed certain rules to improve VHF service and to make wireless broadband service co-primary in the TV bands with television broadcasting. For now, the FCC has postponed consideration of its proposals to establish fixed and mobile allocations in the U/V bands or to improve TV service on VHF channels. According to the *Order*, the Commission intends to launch a broader rulemaking regarding spectrum incentive auctions that will address these and other important issues.

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**REMINDER: DEADLINE FOR MANDATORY NARROWBANDING
OF CERTAIN PART 90 LICENSES IS JANUARY 1, 2013**

The FCC has imposed a January 1, 2013, deadline for certain Part 90 licensees in the private land mobile radio services to modify their operations and FCC licenses to meet certain “narrowband” (12.5 kHz or narrower) requirements in the 150-174 MHz and 421-512 MHz (VHF/UHF) frequency bands. The narrowbanding requirements apply only to Part 90 licenses that operate in these frequency bands. Neither the January 1, 2013, deadline nor these narrowbanding requirements apply to any broadcast auxiliary services (BAS) license nor to any Part 90 license operating in other frequency bands.

For licenses and operations that are subject to the narrowbanding requirements, affected parties must take three actions between now and January 1, 2013. *First*, affected licensees should identify which of their licenses and gear need to be modified. Stations would be well-advised to consult with their engineers and review their licenses. Station engineers should be looking for any licenses that say “IG - Industrial/Business Pool” or “IG” or “Industrial/Business Pool” or that have a radio service code of YG, IK, or YK. If you identify such licenses, please contact your communications counsel for assistance determining whether they are subject to the narrowbanding requirements and the January 1, 2013, deadline.

Second, compliant gear (or components) must be procured or upgraded. Given the timing of the deadline, all affected licensees will need to obtain any new hardware as soon as possible.

Third, an FCC license modification application must be filed. With respect to the filing of the FCC application, it should be noted that a “straight” narrowbanding modification application requires neither frequency coordination nor payment of the normal FCC filing fee. A “straight” narrowbanding modification application is an application to modify a license by deleting a wideband emission designator, and, if necessary, adding one or more narrowband emission designators—but not changing the

existing frequencies, emission types (the last three characters of the emission designator), locations, or other technical parameters of the license. By way of illustration, an application that reduces the occupied bandwidth to meet the narrowbanding requirements but also alters other technical parameters, such as changing from analog to digital emissions, is *not* a “straight” narrowbanding modification application; such an application would likely require both frequency coordination and payment of the FCC filing fee. If a licensee needs to file a modification application to change other technical parameters in addition to the bandwidth, it would be well-advised to start the process by contacting a frequency coordinator.

Failure to timely acquire and begin operating compliant facilities or to modify a land mobile radio license constitutes unauthorized operation, which, the FCC has warned, may subject licensees to enforcement action, including admonishments, license revocation, and/or monetary forfeitures of up to \$16,000 for each violation or each day of a continuing violation.

As a result, stations that have not already done so should begin the review process as soon as possible to determine if narrowbanding modifications will be required.

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FCC ANNOUNCES PROPOSED FISCAL YEAR 2012 REGULATORY FEES

The FCC has released its proposed regulatory fees for fiscal year (“FY”) 2012. This year, the FCC has proposed to collect \$339,844,000 in regulatory fees, an increase of about \$4 million from last year. Many broadcasters, and especially radio stations, will pay higher regulatory fees this year. A few broadcasters, including low-power TV stations and VHF commercial TV stations in markets 51-100, will pay slightly less than last year.

The charts attached to this *Legal Memorandum* as Attachment A contain a breakdown of the proposed broadcast fees and also show the fees from FY 2011. Overall, regulatory fees have increased substantially over the years (for example, a VHF commercial TV station serving a top 10 market will pay in excess of \$20,000 more than it paid in 2006, and certain radio stations will pay nearly \$3,000 more than they paid in 2006).

Although the deadline for completing the DTV transition for full-power television stations was nearly three years ago, the digital transition for low-power, Class A, and TV translator and booster stations is still underway at this stage, and a hard deadline of September 15, 2015, has been set for termination of analog broadcasting by such stations. Because the digital transition for these facilities is still in progress and will occur over

time at each station's convenience, it is possible that some low-power, Class A, or TV translator and booster stations may convert from analog to digital more quickly than others. During this interim transition period, licensees of these facilities could be operating in analog mode, in digital mode, or in an analog and digital simulcast mode. Therefore, for regulatory fees purposes, the Commission will assess a fee for each low-power, Class A, or TV translator and booster facility operating either in an analog or digital mode. In cases where a licensee is operating in both an analog and digital mode as a simulcast, the FCC will assess a single regulatory fee for the analog facility that has a digital companion channel. (As more of these facilities transition to digital, the Commission will provide new instructions on how it will assess regulatory fees. Other issues related to the low-power DTV transition are being considered in an ongoing FCC proceeding.)

The Commission will also continue to require broadcasters to begin the filing process using the FCC's online filing system known as Fee Filer (<http://www.fcc.gov/fees/feefiler.html>), even if they do not use Fee Filer to pay their regulatory fees for FY 2012. (The FCC instituted this requirement in 2009.) In order to use the system, licensees must have a current and valid FCC Registration Number and password on file with the Commission's registration system (CORES). *Note:* It is very important that licensees *initiate* their FY 2012 regulatory fees payment process using Fee Filer, even if they choose to send payment by mail. We are aware of instances in past years in which the FCC initially failed to recognize payment of regulatory fees for licensees that did not use Fee Filer even though the licensees timely mailed their regulatory fees payment and received cancelled checks showing the FCC deposited the money. While these situations may typically be rectified, the FCC's failure to recognize regulatory fees payment may cause an affected station to receive collection letters and experience delays in the processing of its FCC application(s) while the error is investigated and corrected. The FCC has also suggested that, in the future, it may consider requiring payment (not just initiation of the filing process) of regulatory fees online using Fee Filer.

The FCC has discontinued its past program in which it mails hard copy fee-assessment notifications to a select group of broadcasters. The FCC will now rely on electronic outlets to provide information on regulatory fees, through the Commission's website and the Commission-authorized website at www.fccfees.com. *Broadcasters who received fee-assessment notifications by mail in years past should not expect to receive these reminders for any stations for FY 2012*, so broadcasters should be especially diligent this year in planning payments for both their main and any auxiliary stations.

Continuing the Commission's trend toward electronic filing, this year, the FCC has also proposed to require licensees to use an online filing system for requests for refunds, waivers, fee reductions, or deferments of payments. The FCC sought comment on this proposal.

Public notices and fact sheets relating to regulatory fees, including due dates and regulatory fee payment procedures, are available on the FCC's website at <http://www.fcc.gov/fees/regfees.html>. The due date for payment of regulatory fees this year has not yet been set, but the FCC has stated that it intends to collect the fees during a September 2012 filing window, which is consistent with its past practice. We will notify you once the FCC finalizes the amount of the fees and the due date.

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If you should have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

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This Legal Review should in no way be construed as legal advice or a legal opinion on any specific set of facts or circumstances. Therefore, you should consult with legal counsel concerning any specific set of facts or circumstances.

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**PROPOSED REGULATORY FEES
FOR FISCAL YEAR 2012**

Fee Category	Annual Regulatory Fee FY 2011 (In U.S. Dollars)	Proposed Annual Regulatory Fee FY 2012 (In U.S. Dollars)
Microwave (per license) (47 CFR part 101)	25	20
AM Construction Permits	490	550
FM Construction Permits	675	700
TV (47 CFR part 73) VHF Commercial		
Markets 1-10	84,625	87,425
Markets 11-25	68,175	72,925
Markets 26-50	40,475	41,675
Markets 51-100	22,750	20,725
Remaining Markets	6,100	5,800
Construction Permits	6,100	5,800
TV (47 CFR part 73) UHF Commercial		
Markets 1-10	34,650	34,650
Markets 11-25	32,950	31,950
Markets 26-50	20,950	21,875
Markets 51-100	12,325	12,625
Remaining Markets	3,275	3,425
Construction Permits	3,275	3,425
Satellite Television Stations (All Markets)	1,250	1,350
Construction Permits – Satellite Television Stations	675	890
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	395	385
Broadcast Auxiliary (47 CFR part 74)	10	10
Earth Stations (47 CFR part 25)	245	275

PROPOSED FY 2012 RADIO STATION REGULATORY FEES (IN U.S. DOLLARS)						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000	725	600	625	625	700	875
25,001 – 75,000	1,475	1,225	850	950	1,425	1,550
75,001 – 150,000	2,200	1,525	1,125	1,600	1,950	2,875
150,001 – 500,000	3,300	2,600	1,675	1,900	3,025	3,750
500,001 – 1,200,000	4,775	3,975	2,800	3,175	4,800	5,525
1,200,001 – 3,000,00	7,350	6,100	4,2000	5,075	7,800	8,850
>3,000,000	8,400	6,900	5,000	6,000	9,450	11,500

FY 2011 RADIO STATION REGULATORY FEES (IN U.S. DOLLARS)						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000	700	575	525	600	675	850
25,001 – 75,000	1,400	1,150	800	900	1,350	1,500
75,001 – 150,000	2,100	1,450	1,050	1,500	1,850	2,750
150,001 – 500,000	3,150	2,450	1,575	1,800	2,875	3,600
500,001 – 1,200,000	4,550	3,750	2,625	3,000	4,550	5,300
1,200,001 – 3,000,00	7,000	5,750	3,950	4,800	7,425	8,500
>3,000,000	8,400	6,900	5,000	6,000	9,450	11,050