
FCC Begins Proposed Reallocation of Television Broadcast Spectrum

by Scott R. Flick and Lauren Lynch Flick

Comments are due 45 days from Federal Register publication with reply comments due 75 days from Federal Register publication.

Yesterday, the FCC released two Notices of Proposed Rulemaking (“NPRM”) and one Notice of Inquiry designed to further the goals set out in the National Broadband Plan of securing additional spectrum for use by wireless broadband services, and fostering the development of new devices and technologies operating in flexible ways designed to maximize use of the recovered spectrum. In its NPRM on *Innovation in the Broadcast Television Bands*, the FCC proposes to open television broadcast spectrum to sharing on a co-equal basis with fixed and mobile wireless services, to allow two or more television broadcast stations to voluntarily share a single 6 MHz channel, and to investigate ways to improve reception of VHF television signals so that television broadcasters can be better accommodated in the VHF bands, freeing more UHF spectrum for use by wireless broadband.

Reallocation of Television Broadcast Spectrum

In the NPRM, the FCC states that it will make “a significant portion” of the television spectrum available for new flexible uses, including wireless broadband. To that end, it proposes to add a co-primary allocation of “FIXED MOBILE” on each channel in the Table of Frequency Allocations that is currently used by television broadcasters (Channels 2 to 51, except for Channel 37, which is used for radio astronomy). Adding this allocation will allow the FCC flexibility to choose at a later date which specific frequencies will be assigned to particular services, but clearly none of the channels currently used for television broadcasting is free from potential reallocation. The FCC notes that these allocations would also expand television stations’ channel sharing with Public Land Mobile and Commercial Mobile Radio systems that currently exists in 13 large television markets. The FCC states that making the new flexible uses co-primary with broadcasting comports with its “strong intention” to create an orderly transition, minimize the impact on broadcasters and viewers, and protect broadcasters from interference from new broadband services for as long as broadcasters are operating on those channels.

Broadcast Channel Sharing

The FCC proposes to modify its rules to allow two or more broadcasters to voluntarily choose to share a single 6 MHz channel. The FCC states that it believes two broadcasters could both transmit an HD stream of programming on a single channel, while three or more broadcasters sharing a single channel would transmit in Standard Definition. The FCC states that such sharing might strengthen small or niche market broadcasters, as these broadcasters would be able to reduce their operating costs and “investment in spectrum,” possibly suggesting the FCC intends to seek annual spectrum fees (as opposed to the current annual regulatory fees) from broadcasters in the future.

The FCC acknowledges that engineers participating in the Broadcast Engineering Forum expressed concerns that sharing would limit broadcasters’ ability to provide the highest quality HD programming or other services made possible by the DTV transition such as mobile television service, and is requesting comments on these concerns.

The FCC proposes to allow all *existing* full-power television broadcasters (including permittees and current applicants), commercial and noncommercial, and potentially Class A, LPTV and TV translator stations, to share channels. While spectrum repacking may already preclude any new television allotments in the future, the fact that a new broadcaster would not be eligible to share a channel seems to indicate that the FCC does not anticipate the need for additional allotments/channel sharing. The FCC also states that it expects broadcasters to work out among themselves exactly how the spectrum will be shared, and encourages dynamic arrangements that would allow one broadcaster to use more of the channel when its programming demands it. While the FCC specifically states that it does not envision a strict 3 MHz split between two broadcasters, it does not hint at how it would split between sharing broadcasters the proceeds of any incentive auctions made possible by uneven channel sharing.

The FCC does ask a number of questions regarding the practical impact of channel sharing. The FCC notes that noncommercial stations currently operate on channels specifically reserved for noncommercial use and asks for comment on the impact of shared operations between commercial and noncommercial stations on this reservation of spectrum for noncommercial use. The FCC also seeks comment on the criteria it should use in evaluating proposals to share channels. It notes that station relocations to accommodate channel sharing might result in service losses (or gains) to some viewers. Historically, the FCC has taken a very dim view of any station modification resulting in loss of service, and it asks what factors it should consider and how to balance that service loss against the benefit of spectrum recovery.

Interestingly, while the FCC states that it is considering allowing Class A, LPTV and TV Translator stations to share channels with other stations in those services, *or with full-power stations*, it does not ask how it should address the different power limitations that currently apply to the full-power and low power services. At least in theory, channel sharing with a full-power television station could allow an LPTV station to substantially increase its coverage area, assuming it is able to find a full-power partner with which to share a channel.

Finally, while it is the FCC’s intention that channel-sharing broadcasters retain their existing cable and satellite carriage rights with respect to one, but only one, primary stream, it notes that channel sharing raises a number of practical issues. For example, stations that move away from some cable headends in order to co-locate with another station may no longer qualify for carriage because they no longer provide the required strength signal at those headends. Similarly, noncommercial stations are entitled to carriage within their Grade B contour and certain qualified LPTV stations are entitled to carriage in a 35-mile zone if they can deliver an adequate quality signal over the air to that particular cable system. Station moves may affect these stations differently than a commercial full-power station with which they will share a channel.

The FCC states that it expects sharing stations to arrange themselves so as to preserve existing carriage. The FCC expects that multichannel video programming distributors (“MVPDs”) will not face technical difficulties in carrying two programming streams from a single channel, but asks for comments on issues that might arise from the MVPDs’ perspective, including whether broadcasters need to identify which stream is their primary stream.

The language of the NPRM takes pains to note that the FCC would make only those changes, primarily to its technical rules, that are necessary to bring about channel sharing. However, the FCC does seek comment with respect to the potential impact of channel sharing on its multiple ownership rules for broadcast stations. The FCC therefore does not appear ready to entertain proposals to relax or alter the public interest and other regulatory obligations under which broadcasters currently operate, and the FCC specifically states that each broadcaster sharing a channel would remain responsible for compliance with its EAS, children’s television programming, and other content obligations. Indeed, Commissioner Copps in his statement upon the release of the NPRM chides broadcasters for not more fully embracing local public service as the successful business model for the industry and points out that had broadcasters done more on this front, especially since the digital transition, he for one would have less appetite for reclaiming spectrum from them. Against this backdrop, Commissioner Attwell Baker argues that truly innovative and flexible approaches would focus on finding ways for broadcasters and broadband to co-exist, and that the new flexibility that is to be the hallmark of licensing in these bands should at least consider whether existing restrictions on broadcast service remain valid. Commissioner McDowell specifically asks commenters to bring forward alternatives to channel sharing, stating that “now is the time to dig into th[e] concept seriously” of allowing broadcasters to lease some of their spectrum for wireless broadband purposes.

Improving Reception of VHF Signals

The FCC asserts that UHF channels are much more desirable for the new flexible and wireless broadband services it is promoting, and as a result, it must find ways to make the VHF channels more useful to television broadcasters so that broadcasters can relinquish the more desirable UHF spectrum to these new uses. The FCC, particularly Commissioners Copps and McDowell, who each reference their experience with the issue in the DTV transition, acknowledges that engineers have found very limited solutions to reception problems in the VHF band. Nevertheless, because some benefit may be achieved, particularly close to stations’ transmitter sites, the FCC proposes allowing stations to increase power in the VHF band. The NPRM proposes that, at least in Zone I, the maximum effective radiated power (“ERP”) permitted stations operating on low-VHF channels be increased to 40 kW and the maximum ERP permitted stations operating on high-VHF channels be increased to 120 kW, as long as their antenna Height Above Average Terrain does not exceed 305 meters. The FCC notes that a likely side effect of this action is an expansion of such stations’ service areas, but believes the benefits of increasing reception in the VHF band outweigh any harms from this unintended consequence. The FCC proposes to maintain the same minimum distance separations that currently apply to television stations so as to avoid limiting new allotments in the bands. It asks any commenters who disagree with this approach to suggest alternative minimum distance separations.

The FCC notes that the greatest reception difficulties have been found among those who rely on indoor antennae. As a result, it proposes to require indoor antennae to meet the ANSI/CEA-2032-A, “Indoor TV Receiving Antenna Performance Standard,” which specifies levels of measured gain the antenna must achieve for each band using the CEA-744-B antenna performance measurement standard. Antennae that are built into specific devices or which are specifically for use with devices such as portable TVs and laptops would be exempt. The FCC believes it has the authority to adopt these requirements under the All

Channel Receiver Act and asks for comments on this standard and the FCC's authority to adopt it. The FCC would also require that antennae be subject to the FCC's equipment "verification" process to ensure compliance. Finally, the FCC encourages VHF stations to utilize circular polarization, which has been shown to increase signal levels at indoor locations, and asks for any other suggestions commenters may have to improve VHF reception.

Because the documents were released just yesterday, the filing dates for comments and reply comments are not yet established. Comments on the NPRM will be due 45 days after it is published in the Federal Register, with reply comments due 75 days after Federal Register publication of the NPRM.

If you have any questions about the content of this Advisory, please contact the Pillsbury attorney with whom you regularly work, or the authors of this Advisory.

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