

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

In the Matter of )
Expanding the Economic and Innovation ) GN Docket No. 12-268
Opportunities of Spectrum Through Incentive )
Auctions )
Channel Sharing by Full Power and Class A ) MB Docket No. 15-137
Stations Outside the Broadcast Television )
Spectrum Incentive Auction Context )

SECOND ORDER ON RECONSIDERATION

Adopted: October 21, 2015

Released: October 21, 2015

By the Commission:

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I. INTRODUCTION

1. In the broadcast television incentive auction, full power and Class A television licensees will have the unique financial opportunity to voluntarily return some or all of their licensed spectrum usage rights in exchange for incentive payments. One of broadcasters’ options will be to relinquish rights in order to share a channel with another licensee, allowing them to continue broadcasting while receiving payments that can fund new content, services, and delivery mechanisms. In this Order, we provide more flexibility to broadcasters interested in the channel sharing option by clarifying that back-up channel sharing agreements (“CSAs”) are permitted under our rules and providing more time for successful bidders to transition to shared facilities after the auction. We also provide guidance regarding

1 Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6569-70, para. 1 (2014) (“Incentive Auction R&O”).

2 Id. at 6572, para. 9.

how the CSA exception to the prohibited communications rule applies with respect to back-up CSAs.<sup>3</sup> By providing greater flexibility and certainty in connection with CSAs, our objective is to encourage voluntary participation by broadcasters in the incentive auction.

## II. BACKGROUND

2. Congress authorized the Commission to conduct the incentive auction to help meet the Nation's growing spectrum needs.<sup>4</sup> Section 1452(a)(2) of the Spectrum Act provides for three relinquishment options that will be available to eligible full power and Class A broadcast television licensees in the auction, including relinquishment of "usage rights in order to share a television channel with another licensee" ("channel sharing bid").<sup>5</sup> The Commission established rules governing channel sharing agreements in the 2012 *Channel Sharing Report & Order* and the *Incentive Auction Report & Order* ("IA R&O"), and revised those rules in the *Channel Sharing Reconsideration Order*,<sup>6</sup> including adopting several measures aimed at increasing flexibility for parties interested in entering into a CSA.

3. Several broadcasters have asked that stations that are participating in the auction as channel sharing partners be permitted to enter into contingent, or back-up, channel sharing agreements. In particular, Fox, ION, Tribune, and Univision (the "Broadcaster Representatives") argue that "licensees should be permitted to enter into contingent multi-party CSAs across multiple markets, and to communicate during the auction, including with respect to bids or bidding strategy, in order to allocate spectrum usage rights most efficiently between or among them through their collocated station portfolios."<sup>7</sup>

4. In the *Incentive Auction R&O*, we also established a post-auction transition process for broadcasters, new 600 MHz licensees, and other spectrum users.<sup>8</sup> Under the procedures we adopted, all winning off-air bidders that plan to relinquish their licenses, as well as those that will share a channel with another licensee, must terminate operations on their pre-auction channels within three months of when they receive their share of auction proceeds.<sup>9</sup> The Broadcaster Representatives urge the Commission to extend the amount of time that winning channel sharing bidders will have to cease operations on their pre-auction channel and move to their shared facility.<sup>10</sup>

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<sup>3</sup> 47 C.F.R. § 1.2205(b) (2) (iii).

<sup>4</sup> See 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>5</sup> 47 U.S.C. § 1452(a)(2).

<sup>6</sup> *Incentive Auction R&O*, 29 FCC Rcd. at 6726-29, paras. 374-78; 6795-96, para. 558; *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 (2012); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, First Order on Reconsideration, 30 FCC Rcd 6668 (2015) ("*Channel Sharing Reconsideration Order*").

<sup>7</sup> Fox Television Stations Inc., ION Media Networks, Inc., Tribune Media Company, and Univision Communications Inc. Reply Comments at 5 (filed Mar. 13, 2015) ("Broadcaster Representatives Reply"). We noted this issue in the *Channel Sharing Reconsideration Order* and indicated that we would address it in a forthcoming decision. *Channel Sharing Reconsideration Order*, 30 FCC Rcd at 6678-6680.

<sup>8</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6788-6812, paras. 539-597.

<sup>9</sup> 47 C.F.R. 3700(b)(4)(ii).

<sup>10</sup> Letter from Mace Rosenstein, Counsel to the Broadcaster Representatives, Covington and Burling LLP, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, AU Docket No. 14-252, at 2 (filed July 22, 2015) (Broadcaster Representatives *Ex Parte* Letter).

### III. DISCUSSION

#### A. Back-Up Channel Sharing Agreements

5. We recently modified our channel sharing rules to provide greater flexibility to stations considering that option.<sup>11</sup> The availability of back-up channel sharing arrangements would provide additional flexibility for stations considering channel sharing. In particular, it would enable both parties to a CSA to participate in the auction while mitigating the risk that the auction system could freeze both stations in the same round and thus deprive both stations of a post-auction host or “sharer” station.<sup>12</sup> For some, the risk of being left without any spectrum on which to share may be too great and foreclose that kind of participation.<sup>13</sup> A back-up CSA could mitigate that risk and encourage greater participation.

6. Accordingly, we clarify that, if both parties to a CSA participate in the auction, our rules allow either or both parties to also enter into a back-up CSA with one other station in the same DMA to act as the back-up host or sharer station.<sup>14</sup> By allowing the parties to secure a fallback arrangement in the event that both parties relinquish their spectrum usage rights in the auction, this clarification will help promote wider participation in the auction by broadcasters that require assurance that they will remain on the air in the DMA. We remind parties that all of their auction-related activity and communications, including with respect to back-up CSAs, must adhere to the antitrust laws as well as our rules.<sup>15</sup>

7. We reject the Broadcaster Representatives’ request to allow “contingent multi-party CSAs across multiple markets.”<sup>16</sup> Multi-market back-up CSAs are not necessary to address the uncertainty created if multiple parties to a particular CSA participate in the auction. The Broadcaster Representatives apparently seek this flexibility at least in part to take advantage of our exception for parties to a CSA from our general prohibition on communications among broadcasters regarding bids and bidding strategies. (the “CSA exception”).<sup>17</sup> As the Broadcaster Representatives’ request suggests, multi-

<sup>11</sup> See generally, *Channel Sharing Reconsideration Order*, 30 FCC Rcd 6671-80.-

<sup>12</sup> For example, in the situation in which both parties to a CSA participate in the auction, the two channel sharing partners could agree to: (1) both exit the auction if prices are below XX; (2) relinquish spectrum on one channel and share the second channel if prices are above XX but below YY; (3) and sell both stations and use a back-up CSA pursuant to which both stations share with a third station if prices are above YY. The channel sharing partners may be commonly owned or controlled stations, or separately owned or controlled.

Given our decisions in the *Bidding Procedures PN* regarding the price decrement round by round, we note that, for owners with two UHF stations located in the same area that are sure they want to relinquish only one of the two stations, the following strategy may be simpler. The ratio of prices for those stations will be based on the ratio of volumes, which are fixed and which will be known in advance of the auction application deadline. Thus, the owners can simply select one station for which to submit a go off-air bid in the auction, knowing that the price ratios between the two stations will not change. The analysis is different for VHF stations, because relative prices for VHF stations (other than the opening price) will not be known in advance. A back-up CSA could play a useful role in that case.

<sup>13</sup> Broadcaster Representatives *Ex Parte* Letter at 2.

<sup>14</sup> Both parties to the original agreement could have a back-up agreement with the same station. For example, in addition to an original CSA between XX and YY, XX could have a back-up CSA with ZZ and YY could have a back-up arrangement with AA, or both XX and YY could have a back-up arrangement with ZZ.

<sup>15</sup> Where specific instances of collusion in the competitive bidding process are alleged, the Commission may conduct an investigation or refer such complaints to the DOJ for investigation. *Cf. Incentive Auction R&O*, 29 FCC Rcd at 6741, para. 410; *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, AU Docket No. 14-252, GN Docket No. 12-268, WT Docket No. 12-269, Public Notice, DA 15-1129, para. 43 (rel. Oct. 6, 2015) (“*Prohibited Comm’ns PN*”).

<sup>16</sup> Broadcaster Representatives Reply at 5.

<sup>17</sup> See Broadcaster Representatives Reply at 5 (requesting ability “to communicate during the auction, including with respect to bids or bidding strategy, in order to allocate spectrum usage rights most efficiently between or

(continued....)

market, multi-party CSAs could easily become a vehicle for the exchange of information that could facilitate undesirable strategic bidding behavior, intentionally or not. Such a result would undermine the general goal of our rules prohibiting certain communications, which are intended to reinforce existing antitrust laws, facilitate the detection of collusive conduct, and assure incentive auction participants that the auction process will be fair and objective.<sup>18</sup> We crafted the CSA exception to apply on an agreement-by-agreement basis in order to encourage channel sharing relationships without undermining these objectives.<sup>19</sup>

8. Consistent with the foregoing, the CSA exception to the reverse auction rule prohibiting certain communications applies only to communications between parties to a single CSA at any given time. Further, the CSA exception only applies to a CSA, including back-up CSAs, if the CSA was entered into and filed with the Commission by the application deadline.<sup>20</sup> If both stations pursuant to the primary CSA have a bidding status of “frozen—provisional winner,” *i.e.*, the auction system determines that the station can never be assigned a feasible channel in its pre-auction band in the current stage,<sup>21</sup> then parties to a back-up CSA may communicate regarding bids and bidding strategy and must cease communication of this type with the party to the original CSA.<sup>22</sup> Prior to that point, the rationale for the CSA exception – that parties to a CSA should be able to “fully engage as various options are presented during the auction process”<sup>23</sup> – is inapplicable with respect to the back-up CSA. Once the relinquishment bid of the prospective host of the CSA is provisionally accepted by the auction system in a given stage of the auction, the CSA exception may be utilized for otherwise prohibited communications involving the parties to the back-up agreement, and can no longer be utilized for parties to the primary agreement in that stage.

9. We note that under the reverse auction bidding procedures, the bidding status of a “frozen—provisional winner” may change to “bidding in the current round” if the auction enters a

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among[licensees] throughout their collocated station portfolios”). The CSA exception is found at 47 C.F.R. § 1.2205(b)(2)(iii).

<sup>18</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6737, para. 399.

<sup>19</sup> *Prohibited Comm’ns PN*, DA 15-1129, para. 18. The guidance in the *Prohibited Communications PN* regarding the CSA exception in general also applies with respect to back-up CSAs.

<sup>20</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6740, para. 406; 47 C.F.R. §§ 1.2204(c)(5)(ii); 1.2205(b)(2)(iii). An applicant that intends to channel share with a commonly-owned or controlled sharer station does not need to enter into or file a CSA. A CSA must (1) be executed by the parties prior to filing; (2) be expressly binding on the parties; and (3) expressly include all of the provisions required in a CSA by our rules. See 47 C.F.R. § 73.3700(h)(4). The parties may add or revise other provisions to the CSA after it is filed, provided that none of the revisions or additions change the parties to the CSA or otherwise constitute major amendments to the agreement under our rules. See 47 C.F.R. § 1.2204(d)(3).

<sup>21</sup> *Procedures for Competitive Bidding in Auction 1000, Including Initial Clearing Target Determination, Qualifying to Bid, and Bidding in Auctions 1001 (Reverse) and 1002 (Forward)*, GN Docket No. 12-268, AU Docket No. 14-252, Public Notice, FCC 15-78, para. 125 (rel. Aug. 11, 2015) (“*Auction 1000 Bidding Procedures PN*”).

<sup>22</sup> Thus, if A and B are in a CSA and B has a back-up CSA with C, communications between B and C regarding B’s bids and bidding strategy will be permissible under the CSA exception only if A’s bidding status becomes frozen—provisional winner, at which point the CSA between B and C becomes operative. At that point, the CSA exception for communications between A and B regarding their bids or bidding strategies is no longer applicable. The only trigger that can change a CSA’s status from back-up for purposes of the CSA exception is that the host station to the primary CSA is designated by the auction system as frozen—provisional winner. The CSA exception would be too easily manipulated, multiplying the risk of anti-competitive behavior, if the parties to the CSA could provide for other triggers, *e.g.*, prices at a certain level, exercise of options by one party, etc.

<sup>23</sup> *Incentive Auction R&O*, 29 FCC Rcd at 6740, para. 406.

subsequent stage.<sup>24</sup> Accordingly, if the host in the primary CSA, which was no longer operative because its bidding status became “frozen—provisional winner” in the previous stage, is designated as “bidding in the current round” in a subsequent stage of the auction, and that CSA expressly provides that it becomes the operative sharing agreement under such circumstances, the host may notify the sharee in the primary CSA of that change in status and the CSA exception will again apply to communications between the parties to the primary agreement rather than with the back-up host.<sup>25</sup>

## **B. Transition Period for Winning Channel Sharing Bidders**

10. The Broadcaster Representatives also urged the Commission to extend the amount of time that channel sharing bidders that are successful in the auction have to cease operations on their pre-auction channel and move to their shared facility.<sup>26</sup> We agree that the attractiveness of the channel sharing option would be enhanced if sharees were given additional time to plan and execute their transition to the host’s facilities. Currently, our rules require that all winning go off-air bidders in the reverse auction, including winning channel sharees, must terminate operations on their pre-auction channels within three months of when they receive auction proceeds.<sup>27</sup> While three months for termination of operations is sufficient for go off-air winners who intend to relinquish their licenses and cease broadcasting altogether, we recognize that winning bidders that plan to share a channel will remain in operation and may therefore need more time to implement the move to the sharer’s facility. For instance, a channel sharee may need time to deal with technical issues associated with transitioning to its shared location. If it is changing its community of license, it may also need to negotiate modifications to carriage agreements or finalize new must-carry arrangements with multichannel video programming distributors.

11. For these reasons, we modify section 73.3700(b)(4)(ii) of the Commission’s rules to extend the amount of time a sharee in a pre- or post-auction CSA will have to relinquish its pre-auction channel to six months after receipt of its reverse auction proceeds.<sup>28</sup> As we decided in the *Incentive Auction R&O*, winning channel sharing bidders may request a waiver of up to an additional three months to cease operations on their pre-auction channel, pursuant to section 1.3 of the rules, and we will view these requests most favorably.<sup>29</sup> Further, winning channel sharing bidders may request an additional three-months, and we will view the additional requests favorably as well so long as we determine that grant of the extension will not delay the post-auction transition. We agree with the Broadcaster Representatives that this extension of the transition period to six months, and the availability of waivers of up to an additional six months, is unlikely to adversely affect the Commission’s post-auction transition timeline.<sup>30</sup>

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<sup>24</sup> *Auction 1000 Bidding Procedures PN*, FCC 15-78, para. 125.

<sup>25</sup> We note that there may be other circumstances in which broadcasters may find a back-up CSA to be useful. For example, if under the terms of the primary CSA the host can drop out of the arrangement if the sharee’s price goes too low, the sharee may wish to enter into a back-up CSA with a different host. Such a back-up arrangement would provide broadcasters with greater flexibility in securing a mutually agreeable channel sharing arrangement. However, only back-up CSAs that are triggered when both CSA partners become “frozen-provisionally winning” will be eligible for the CSA exception. We find that tying the exception to price- or other contract-based terms creates an unacceptable risk of a back-up CSA becoming a vehicle for undesirable strategic bidding behavior. If the back-up agreement becomes the operative CSA, the sharee can notify the host of that fact once the auction ends and the ban on prohibited communications expires.

<sup>26</sup> Broadcaster Representatives *Ex Parte* Letter at 2.

<sup>27</sup> 47 C.F.R. 3700(b)(4)(i) and (ii). 73.3700(b)(3) will likewise be revised to reflect this change.

<sup>28</sup> See *Incentive Auction R&O*, 29 FCC Rcd. at 6802, para. 575.

<sup>29</sup> See *id.* at 6803, para. 578.

<sup>30</sup> Broadcaster Representatives *Ex Parte* Letter at 2.

#### IV. PROCEDURAL MATTERS

12. *Final Regulatory Flexibility Act Analysis.* The Commission has prepared a Final Regulatory Flexibility Certification in Appendix B.

13. *Final Paperwork Reduction Act Analysis.* This Second Order on Reconsideration does not contain any additional new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (“PRA”), Public Law 104-13, beyond those that were already in the *Incentive Auction R&O*. In addition, therefore, it does not contain any additional new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, beyond those that were already in the *Incentive Auction R&O*.<sup>31</sup>

14. *Congressional Review Act.* The Commission will send a copy of this Second Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

#### V. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in Sections 1, 4, 301, 303, 307, 308, 309, 310, 316, 319, and 405 of the Communications Act of 1934, as amended, and sections 6402 and 6403 of Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, 47 U.S.C. §§ 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, 405, 1404, and 1452, this **SECOND ORDER ON RECONSIDERATION** is **ADOPTED** and Part 73 of Commission’s rules is **AMENDED** as set forth in the Appendix A.

16. **IT IS FURTHER ORDERED** that the clarifications adopted **WILL BECOME EFFECTIVE** after the Commission publishes a notice in the *Federal Register* announcing approval by the OMB under the PRA for the underlying previously adopted rules<sup>32</sup> and the relevant effective dates.

17. **IT IS FURTHER ORDERED** that the rules adopted herein and in Appendix A below **WILL BECOME EFFECTIVE** thirty days after the date of publication in the *Federal Register*.

18. **IT IS FURTHER ORDERED** that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Second Order on Reconsideration, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

19. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this Second Order on Reconsideration in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>33</sup>

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>31</sup> See 44 U.S.C. § 3506(c)(4).

<sup>32</sup> See *Expanding the Economic and Innovation Opportunities Through Incentive Auctions*, 79 FR 48442 (Aug. 15, 2014); *Channel Sharing Reconsideration Order*, 30 FCC Rcd at 6692, para. 72.

<sup>33</sup> See 5 U.S.C. §801(a)(1)(A).

**APPENDIX A****Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends Part 73 of Title 47 of the Code of Federal Regulations as follows:

**PART 73—RADIO BROADCAST SERVICES**

1. Section 73.3700 is amended by revising paragraphs (b)(3) and (b)(4)(ii) to read as follows:

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(b) \*\*\*

(1) \*\*\*

(vii) Channel sharee stations must file a minor change application for a construction permit for the channel on which the channel sharer operates at least sixty (60) days prior to the date by which it must terminate operations on its pre-auction channel pursuant to § 73.3700(b)(4)(ii) of this rule. The application must include a copy of the executed channel sharing agreement.

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(3) License applications for channel sharing stations. The licensee of each channel sharee station and channel sharer station must file an application for a license for the shared channel using FCC Form 2100 Schedule B (for a full power station) or F (for a Class A station) within six months of the date that the channel sharee station licensee receives its incentive payment pursuant to section 6403(a)(1) of the Spectrum Act.

(4) Deadlines to terminate operations on pre-auction channels.

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(ii) The licensee of a channel sharee station and a licensee of a license relinquishment station that has indicated in its Form 177 an intent to enter into a post-auction channel sharing agreement must comply with the notification and cancellation procedures in § 73.1750 and terminate operations on its pre-auction channel within six months of the date that the licensee receives its incentive payment pursuant to section 6403(a)(1) of the Spectrum Act.

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## APPENDIX B

## Final Regulatory Flexibility Certification for Second Order on Reconsideration

1. The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</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.”<sup>2</sup> 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>3</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>4</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 U.S. Small Business Administration (SBA).<sup>5</sup>

2. In 2012, Congress mandated that the Commission conduct an incentive auction of broadcast television spectrum as set forth in the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”).<sup>6</sup> The incentive auction will have three major pieces: (1) a “reverse auction” in which full power and Class A broadcast television licensees submit bids to voluntarily relinquish certain broadcast rights in exchange for payments; (2) a reorganization or “repacking” of the broadcast television bands in order to free up a portion of the ultra-high frequency (“UHF”) band for other uses; and (3) a “forward auction” of licenses for flexible use of the newly available spectrum.<sup>7</sup> In the *Incentive Auction R&O*, the Commission adopted rules to implement the broadcast television spectrum incentive auction.<sup>8</sup> Among other things, the Commission adopted rules for broadcast stations that choose to channel share. Pursuant to the RFA, a Final Regulatory Flexibility Analysis (“FRFA”) was incorporated into the *Incentive Auction R&O*.<sup>9</sup>

3. This *Second Order on Reconsideration* reflects clarifications and modifications to the Commission’s rules arising in response to comments filed by Fox, ION, Tribune, and Univision (the “Broadcaster Representatives”).<sup>10</sup> The Commission generally responds favorably to the Broadcaster

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<sup>1</sup> 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> 5 U.S.C. § 605(b).

<sup>3</sup> 5 U.S.C. § 601(6).

<sup>4</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 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.”

<sup>5</sup> 15 U.S.C. § 632.

<sup>6</sup> Pub. L. No. 112-96, §§ 6402, 6403, 126 Stat. 156 (2012).

<sup>7</sup> 47 U.S.C. §§ 1452(a)-(c). *See also id.* §§ 1401(16), (30) (defining “forward auction” and “reverse auction,” respectively).

<sup>8</sup> *See 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 Action R&O*”).

<sup>9</sup> *See id.* at 6947-66 Appendix B.

<sup>10</sup> Fox Television Stations Inc., ION Media Networks, Inc., Tribune Media Company, and Univision Communications Inc. Reply Comments at 5 (filed Mar. 13, 2015) (“Broadcaster Representatives Reply”). We noted (continued....)



Representatives' requests, finding that providing these clarifications will increase broadcasters' flexibility to use the channel sharing bid option and will make the option more attractive. Specifically, this *Second Order on Reconsideration* clarifies the Commission's rules to permit broadcasters to enter into back-up channel sharing agreements ("CSAs") with an additional partner to mitigate the risk that stations that intend to channel share could be left without spectrum after the auction, if both partners receive a status of "frozen-provisionally winning" in the same round of the reverse auction. The Commission also clarified that the CSA exception to the general prohibition on communications regarding bids and bidding strategy will apply to that back-up CSA, so long as the back-up CSA was filed before the application deadline, is the requirement for all CSAs. This *Second Order on Reconsideration* also permits back-up agreements based on price or other contingencies, but declines to extend the CSA exception to them as introducing unacceptable risk of becoming a vehicle for collusion. Finally, this *Second Order on Reconsideration* extends the transition period for channel sharing winning bidders from three months to six months, and extends the possibility for additional waivers from three months to six months, barring any delay this would cause other transitioning broadcasters.

4. Neither of these changes adopted in this *Second Order on Reconsideration* will impose additional costs. The changes provide greater flexibility for both stations that wish to pursue channel sharing agreements pre-auction and those that become channel sharing stations post-auction. Therefore, we certify that the changes adopted in this *Order on Reconsideration* will not have a significant economic impact on a substantial number of small entities.

5. The Commission will send a copy of the *Second Order on Reconsideration*, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.<sup>11</sup> In addition, the *Second Order on Reconsideration* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the *Federal Register*.<sup>12</sup>

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this issue in the *Channel Sharing Reconsideration Order* and indicated that we would address it in a forthcoming decision. *Channel Sharing Reconsideration Order*, 30 FCC Rcd at 6678-6680.

<sup>11</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>12</sup> See 5 U.S.C. § 605(b)