

## [While Few Vie for New VHF TV Stations in NJ and Delaware, FCC Sets Comment Date on Improving VHF Digital Reception and TV Channel Sharing With Must Carry Rights As Ways to Help Clear TV Band for Broadband Users](#)

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The FCC's **auction of new VHF TV channels in New Jersey and Delaware** (about which we have written many times including [here](#)) has resulted in only [three qualified bidders](#). Despite his lack of interest in these VHF channels, the FCC seems to be looking at VHF as a way to facilitate its [announced plans for the clearing of significant portions of the television spectrum for wireless broadband use](#). The Commission this week [set the comment date](#) - March 18, 2011 - on ways to overcome the issues that have been posed to TV stations that have remained in **VHF channels after the digital transition**. In the same proceeding, the FCC also seeks comments on allowing TV stations to share the same 6 MHz channel, with both stations retaining their cable and satellite must-carry rights. That same proceeding implies that we may well have seen the last new over-the-air television stations. This crucial proceeding on the future of the television band requires careful attention by all parties who may be affected by the many proposals contained in this relatively compact Notice of Proposed Rulemaking.

The first part of the [FCC's proposal](#) (about which we previously wrote [here](#)), is to look at ways to get some of the television stations to give up their current channel to allow the FCC to use it for broadband, and having that station share another station's channel to continue to provide its program service on what is the equivalent of a digital subchannel. The proposal to encourage **multiple TV stations to share the same 6 MHz channel** raises many issues. First, the FCC recognizes that the proposal may result in some television stations giving up their ability to broadcast in High Definition (one of the principal reasons for the initial transition to digital), but suggests that stations sharing the same channel could work out "dynamic arrangements" to allow sharing the spectrum flexibly, increasing the portion digital bandwidth allocated to one station when it has programming that would benefit from higher definition, while switching some of the bandwidth allocation to the other station at other times.

While the Commission assumes that each station will continue to exist as an independent station even when sharing a channel with another station, many of its questions in this proceeding seem to signal uncertainty about this conclusion. Issues on which the Commission seeks comment include:

- What effect will channel sharing have on the deployment of HD programming and mobile television? The Commission does not ask about 3-D television, which some broadcasters have begun to experiment with, and might be worth a comment if there are those who expect that to be part of the television future that could be affected by channel sharing arrangements.
- In channel sharing, would each station be able to maintain a Standard Definition signal at all times?
- The Commission assumes that each station sharing a single channel (and thus a single transmission facility) would retain a separate license, and be individually responsible for FCC-rule compliance (e.g. EAS, indecency, children's television, political broadcasting, etc). How would responsibility over the technical compliance be apportioned?
- Should commercial and non-commercial stations be allowed to share the same channel? Could commercial stations share channels that have, to this point, been reserved for noncommercial educational uses?
- Will there be a loss in service to the public from such combinations? Will there be television "white" and "gray" areas created, i.e. areas where there will be no over-the-air television service or only a single service?
- Should cable and satellite service be included when evaluating questions of loss of service?
- What impact should channel sharing have on other FCC rules, like the media ownership rules?

Perhaps the biggest issue with channel sharing is the cable and satellite carriage issue, which raised a number of issues for the Commission. The issues, summarized below, also demonstrate the Commission's tentativeness in its conclusion that two stations sharing the same channel are really independent stations.

The Commission suggests that television broadcasters who elect to share channels would both be entitled to full must-carry rights on cable and satellite, even though these rights are currently accorded only to the primary video stream on any television station. Thus, if two stations, who each currently operate on a 6 MHz channel were to combine their operations, then each would continue to have full must carry rights, even though one of those 6 MHz channels has been returned to the FCC for other uses. This obviously raises issues. Questions raised by the FCC include:

- Are both of such stations "licensed and operating on a channel regularly assigned to its community", which is what is required by the statute covering mandatory cable carriage for commercial stations.?
- For noncommercial stations, are both stations licensed to a specific principal community that has a Noise Limited Signal Contour over the cable headend, again the standard for carriage?
- Are both stations still located in the DMA of the cable system?
- What if one station on a shared channel elects must-carry, while the other elects retransmission consent. Does that make any difference since the FCC proposes to recognize each as a primary station?

- Are there any technical issues that would make mandatory carriage of such stations problematic?

The Commission also suggests that the ability of a station to elect channel sharing would be limited to those stations that currently (as of the date of the NPRM) have "existing applications, construction permits, or licenses." Does this imply that future stations have no ability to later decide to combine their operations with another station in their area? Or does this imply that there will be no future stations? What will happen to those in the current VHF auction referenced in the first paragraph?

In opening television spectrum for wireless, the FCC has one significant problem, especially in congested areas like the Northeast. Even if some stations choose to combine their operations, to open broad swaths of spectrum for wireless uses, the FCC will have to repack television stations into a smaller part of the band. But that would require using the VHF channels which, in the experience of television broadcasters all around the country, is problematic for digital operations. Noise from other electronic devices and other coverage issues simply make that spectrum inferior for digital television operations. So what is the FCC to do? The Commission seeks comments on proposals to make VHF stations more digital friendly. Questions include:

- Will increasing the power permitted for VHF digital operations overcome interference issues? How would this affect interference to other stations? Would it overcome interference? (Some engineers at a recent FCC forum on the issue were skeptical)
- To overcome potential interference that could arise from increased power, the FCC states that some have suggested that required distance between co-channel stations be increased, but also states that it finds it desirable to not increase such spacings. Will spacings have to be increased?
- Will vertical polarization of stations decrease their susceptibility to interference?
- Could the Commission establish mandatory performance standards for indoor antennas, and would that have an effect on the performance of VHF digital television stations? Does the FCC have authority to do so?
- Are there other ways to increase digital television operations on VHF channels?

The FCC also asks for comments on whether the current television spectrum should be redesignated in the FCC rules as shared-use spectrum, shared between television stations and wireless users.

Comments on these important issues are due on March 18, 2011, and replies on April 18, 2011.

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