

## FCC Issues Rules for First-Ever Incentive Auction of TV Broadcast Spectrum

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On June 2, 2014, the Federal Communications Commission (FCC, or Commission) released rules designed to implement the first-ever incentive auction in which spectrum will be recovered from television broadcasters, who voluntarily choose to give up some or all of their spectrum usage rights in exchange for incentive payments, and subsequently auctioned for wireless broadband services through a forward auction process. Release of the rules follows last month's FCC 3-2 vote along party lines to adopt a framework for the auctions as authorized by the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act).

The complex auctions and subsequent transition of the remaining broadcast stations, scheduled to occur in late 2015, could free up sizable portions of spectrum — the lifeblood of wireless companies — in an effort to alleviate a spectrum capacity shortage as mobile broadband usage puts increasing demands on U.S. wireless networks. The FCC has optimistically targeted clearing as much as 80 MHz of spectrum, though broadcaster participation (which is entirely voluntary) is highly uncertain at this point. If FCC expectations are met, current estimates are that the auction could raise \$20 billion to \$25 billion from wireless carriers. Out of these proceeds, the Commission must pay for its own administrative expenses, compensate broadcasters for relinquished spectrum rights, pay the costs of transitioning broadcasters to new channels and fund the nationwide public safety network, FirstNet.

While many questions remain, the issued rules should commence a flurry of activity in the broadcast, wireless and financial communities. Broadcasters are likely to begin deciding whether to participate in the incentive auction, though they may await further FCC orders before conclusively deciding. Wireless carriers will review the auction framework to begin planning their level of participation in the forward auction. Financial players also will decide whether to acquire broadcast properties in certain areas in hopes of auctioning off the acquired spectrum for a profit. Finally, potential new entrants will need to determine whether to participate in the auction to acquire spectrum to offer new mobile broadband services in the future.

### Background and Overview

The Spectrum Act authorized the FCC to conduct incentive auctions, including an auction of spectrum now used for television broadcasting. Through the incentive auction, the FCC anticipates that local television broadcasters will relinquish their spectrum rights to the FCC in return for compensation paid from the financial proceeds from the subsequent forward auction of that spectrum to wireless carriers. The spectrum intended to be auctioned for wireless broadband service is currently licensed for television service on channels 38-51 and is the 614-698 MHz spectrum band (600 MHz band). Lower frequencies, like the 600 MHz band, are highly valued by wireless carriers because they cover large distances and penetrate buildings much better than higher frequencies.

The FCC's order spans nearly 500 pages and attempts to resolve a number of technical, operational and financial issues that have divided the FCC and the wireless and

broadcast industries since enactment of the Spectrum Act. The rules address three primary areas: 1) the reverse auction by which television broadcasters will relinquish some or all of their spectrum rights in return for payments from the FCC; 2) the forward auction for those entities bidding on the newly available spectrum; and 3) the repacking of the remaining television broadcast spectrum into a smaller swath of spectrum.

### Reverse Auction

All full-power and Class A low-power stations will have the ability to voluntarily participate in the reverse auction by choosing one or more of these options: 1) relinquish the station's broadcast spectrum and shut down broadcast service; 2) relinquish the station's spectrum and continue service by sharing spectrum with another licensed station; 3) exchange spectrum by moving from a UHF frequency (channels 14-51) to a VHF frequency (channels 2-13)<sup>1</sup>; or 4) exchange spectrum by moving from a High VHF frequency (channels 7-13) to a Low VHF frequency (channels 2-6).

At the start of the reverse auction, the FCC will establish an opening price for each of these options for each station.<sup>2</sup> Broadcasters then will indicate their willingness to accept the opening prices and, based on broadcaster interest, the FCC will set a target for the amount of spectrum it would like to clear in a geographic area. The opening price will be the maximum that the FCC will pay for the respective option.

If enough broadcasters remain in the auction in a geographic area, the FCC will offer lower bids in successive rounds until the spectrum meets the geographic area's spectrum clearing target. The Commission then will acquire the spectrum rights at the current offer price as long as certain requirements are met. Stations that accept winning bids in the reverse auction will receive their auction proceeds "as soon as practicable" following conclusion of the auction. The FCC will keep broadcast station identities and bid acceptances confidential during the auction and for a two-year period after its conclusion, except in the case of winning bidders.

So far, few broadcasters have stated publicly which alternative they will pursue or even if they will participate in the auction at all. In fact, a number of broadcasters, including CBS and Sinclair, have stated that they will not relinquish spectrum rights.

### The Forward Auction

The forward auction is the process by which the FCC will auction the reclaimed broadcast spectrum to wireless carriers and other bidders looking to use that spectrum for mobile broadband use. Other than the fact that it will be conducted simultaneously with the reverse auction, the forward auction will operate much like a traditional FCC spectrum auction. Participants will bid on interchangeable, paired 5 MHz blocks. Uplink and downlink 5 MHz blocks will be auctioned as a unit, with the number of pairs varying by geographic area, based on the amount of spectrum recoverable through the reverse auction and repacking. The paired blocks are designed to be technically and functionally interchangeable, so bidders will not be selecting particular blocks.

The Commission will auction the spectrum blocks in geographic areas called Partial Economic Areas (PEAs). PEAs are newly created geographic areas designed to separate high-population urban areas from rural areas to provide opportunities for smaller carriers to acquire spectrum and improve service to rural areas that are currently underserved. The Commission did not attempt to match the service areas of television stations that may be surrendering spectrum.

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1 References are to the frequency on which the television station actually broadcasts.

2 The mechanism for determining opening prices will be established in a future FCC order.

The FCC adopted a number of other rules that encourage smaller carriers to participate in the auction. For instance, in a companion order on mobile spectrum holdings, the FCC decided to reserve up to 30 MHz of spectrum in each market exclusively for non-nationwide carriers or nationwide carriers that currently hold less than one-third of the available spectrum below 1 GHz in a given market. However, the FCC will establish the spectrum reserve only after the auction raises a specific (and yet-to-be-determined) amount of money. Thus, any nationwide carrier (*e.g.*, AT&T or Verizon Wireless) with 45 MHz or more of low-band spectrum in a market would be prohibited from bidding on the reserved spectrum. Because the FCC believes that regional and local service providers are more likely than nationwide carriers to serve rural areas, they will be permitted to bid on all auctioned spectrum, regardless of the amount of spectrum under 1 GHz they control.

### **Broadcaster Repacking**

Repacking is the process by which the FCC will consolidate the operations of the broadcasters remaining after conclusion of the reverse auction. This process involves relocating television broadcast operations into a much smaller swath of the 600 MHz band, leaving a large contiguous band of spectrum available for the forward auction. Recognizing the potential impact that spectrum relocation could have on a broadcaster's operations (and in an effort to spur broadcasters to participate in the reverse auction), the Spectrum Act requires the FCC to undertake "all reasonable efforts" to protect broadcasters' previous "coverage area" and "population served."

Many broadcasters viewed the Spectrum Act's requirements as a "hold harmless" provision that would permit the FCC to modify a station's coverage area or population served only in exceptional circumstances. The FCC, however, specifically rejected this argument and determined that the Spectrum Act provided it with the flexibility to decide how best to repack broadcasters. In particular, the FCC concluded that the "all reasonable efforts" standard does not require it to protect a broadcaster's operations at the expense of freeing up the necessary spectrum.

The released rules include fairly tight timeframes for how long participating broadcasters will have to transition to their new channels. The rules specifically require broadcasters to clear auctioned spectrum no later than 39 months after the release of a post-auction public notice listing new broadcast channel assignments. Stations electing to give up their licenses or move to channel-sharing arrangements must cease operations on pre-auction channels within three months after receiving proceeds from the auction.

### **Other Services**

The broadcast television spectrum band also is shared by unlicensed operations in so-called television "white spaces," wireless microphones, and cue-and-control devices used in broadcasts, motion picture production and live events. The FCC hopes to encourage widespread development of devices using television white spaces much like WiFi-enabled devices and recognizes the importance of wireless microphones to the public and the current lack of any substitutable technology. Thus, the rules will permit these devices to continue operation in the television spectrum band throughout the 39-month transition period. After that, they may continue operation where possible within the repacked television spectrum, including on one channel in each market that the Commission plans to reserve for them. The Commission also will make licenses available for the first time to the largest users of wireless microphones and associated devices.

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### Next Steps

Issuance of the rules should help to bring some certainty to the debate surrounding the upcoming auctions, which the FCC has tentatively scheduled for late 2015. Now that the FCC has established the auction framework, broadcast and wireless carriers will be busy reviewing its implications. Wireless carriers will review the forward auction rules to determine the level of their participation in the auction of the last large swath of low-band spectrum available for some time. Broadcasters may not make any final decisions on participating in the reverse auction until they have initial price information, which will be included in a future FCC notice open to additional comment from the industry and the public. Lastly, investors and new entrants will decide whether to acquire broadcast properties and/or bid on newly available spectrum to offer new mobile services in the future.