

President Signs Spectrum Reform Legislation

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On February 22, 2012, President Obama signed into law the Middle Class Tax Relief and Job Creation Act of 2012. In addition to extending the payroll tax and unemployment benefits, the Act addresses numerous spectrum reform issues. Significant to our television clients, the proposed legislation reallocates the so-called "D Block" for public safety use. The D Block and the public safety broadband spectrum will be licensed to a new government authority inside the National Telecommunications and Information Association (NTIA), which bears the responsibility for securing deployment of a nationwide interoperable public safety mobile broadband network. To help fund that effort, Section 6403 grants the Federal Communications Commission (FCC or Commission) the authority to conduct voluntary incentive auctions of broadcast television spectrum.

Broadcast TV Spectrum Incentive Auction Procedures

The FCC must use a reverse auction system to solicit from interested broadcasters (defined as full-power and Class A TV stations) the price at which they would be incentivized to "relinquish" their licenses. "Relinquishment" is defined as: (1) turning over the station license to the Commission; (2) moving from a UHF to a VHF channel; or (3) channel sharing. The FCC would then conduct a forward auction of the relinquished spectrum to new users. If proceeds from this auction are not sufficient to cover the incentive payments and relocation costs, then the auction fails.

The Commission may conduct only one reverse auction of broadcast spectrum and broadcast band repacking, and both the reverse auction and forward auction must be completed by September 30, 2022.

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Repacking

For purposes of moving ahead with the forward auction, the Commission must evaluate the broadcast bands and may, subject to international coordination along the border with Mexico and Canada, repack stations (the term of art is "make reassignments of television channels").

The legislation prescribes that the FCC "make all reasonable efforts" to preserve a station's coverage area and population served when repacking. The FCC cannot relocate a station involuntarily from the UHF band to the VHF band, or from high VHF to low VHF.

Relocation Costs

Payment of relocation costs is capped at \$1.75 billion.

In lieu of reimbursement for relocation costs, a broadcast television licensee may ask for a waiver of the Commission's service rules to allow the licensee, subject to interference protections, to make flexible use of its spectrum. The waiver shall remain in effect only for such time as the licensee provides at least one free, over-the-air television program stream.

The FCC may not make reimbursements for lost revenues, and payments must be made within three years of the completion of the forward auction of the broadcast spectrum.

Other Issues

Until the incentive auction is completed or fails, or September 30, 2022 (whichever is earlier), the FCC is prohibited from modifying a broadcast television licensee's license involuntarily except as otherwise provided in Section 6403 of the legislation; or if the licensee has violated the terms of the license; or the license must otherwise be modified so as to comply with an existing statute or regulation.

The FCC may not grant a move by a station from the VHF band to the UHF band, unless such move would not decrease the total amount of UHF spectrum available for an incentive auction or the request was pending as of May 31, 2011.

The bill does not affect the current spectrum usage rights of low power television (LPTV) stations. However, LPTV stations may not participate in the incentive auction or benefit from contour protections/repacking.

The legislation does not prohibit implementation of the White Spaces Order in the broadcast TV spectrum that remains after repacking.