



# Virginia Association of Broadcasters Legal Review



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## **FCC CONTINUES MARCH TOWARDS BROADCAST INCENTIVE AUCTION— ISSUES PUBLIC NOTICE SEEKING COMMENT ON BIDDING PROCEDURES**

The Commission has released the [text](#) of its recently-adopted Public Notice (the “Notice”) seeking comment on competitive bidding procedures in the broadcast incentive auction. The 167-page Notice is highly technical in nature and includes eight appendices describing, in detail, the modeling underlying various aspects of the proposed auction procedures. The Notice was issued by a partisan 3-2 vote (the two Republican Commissioners dissenting)—signaling that there may be choppy waters ahead internally for the Commission as it continues to deal with fundamental issues concerning how the auction will be conducted. The issues raised in the Notice will be resolved in a further Incentive Auction Procedures Public Notice.

As broadcasters weigh their options for participating in the auction, they will want to become conversant in the mechanics of how the auction will be conducted. Even broadcasters that do not plan to participate may well be impacted, as they may be forced to make operational changes in connection with the spectrum repacking.

Attached is a Fact Sheet issued by the Commission that summarizes the Notice. Several aspects of the proposed bidding procedures are potentially troubling for television broadcasters. In particular:

- **Dynamic reserve pricing.** The Notice proposes to implement a complex pricing mechanism called “dynamic reserve pricing,” at least in the opening stages of the reverse auction. Dynamic reserve pricing has the effect of reducing compensation to participating broadcasters—and potentially reducing the amount of returned spectrum—by continuing to lower prices even in situations where the station cannot be assigned a channel in the remaining TV portions of the UHF band (meaning that the station would need to be assigned a channel in the 600 MHz band).

- Opening pricing methodology. The Notice proposes a pricing formula that relies heavily on the population of the station's interference-free service area, which could undervalue the spectrum for stations adjacent to large markets that, if they stay put, may block other stations from being repacked. In response to the Notice, the Expanding Opportunities for Broadcasters Coalition has released a [list](#) of 1,110 television stations that they say are undervalued by the Commission's proposal.
- Repacking. The Notice makes clear that broadcast stations could be repacked within the 600 MHz band (the band being cleared for wireless operations), including the duplex gap or the guard bands. The Notice attempts to alleviate interference concerns, however, by stating that any station repacked into the wireless spectrum will be entitled to the same protection as other TV stations and will be protected from inter-service interference.

Comments in response to the Notice are due January 30, 2015, and reply comments are due February 27, 2015.

To facilitate public input on the proposals set forth in the Notice, the FCC will host three webinars about the proposed auction process:

- Forward Auction Webinar: Monday, January 12 at 10:30 a.m.
- Reverse Auction Webinar: Thursday, January 15 at 10:30 a.m.
- Integration Webinar: Tuesday, January 20 at 10:30 a.m.

According to the FCC, additional details about the webinars, including how interested parties can attend, will be released closer to the event dates.

Overall, the broadcast incentive auction is an enormous undertaking for the Commission. While the latest Notice focuses on fleshing out the auction bidding procedures articulated in the Commission's Report and Order adopted in May, the Commission is also moving forward on several other related fronts, including:

- Broadcaster outreach. FCC officials are planning to conduct more than a dozen field visits from January to mid-April 2015 to brief broadcasters on the auction process and to encourage participation. This effort is scheduled to cover approximately 50 television markets.
- Pending appeal. In response to the FCC's May 2014 Report and Order, NAB has filed a lawsuit in the D.C. Circuit Court of Appeals challenging certain aspects of the new rules, including the FCC's use of the new "TV Study" software program to determine station coverage areas for stations that will be repacked after the auction. Other parties have also filed lawsuits raising other issues with the Report and Order. Oral arguments in the D.C. Circuit have been scheduled for March 12, 2015. As a result of the litigation, the Commission informally announced, via a

blog post, that the television spectrum auction is likely to occur in 2016 instead of 2015.

- Compensation for repacking expenses. The FCC has sought comment on its draft Broadcaster Relocation Fund Reimbursement Form. This will be the form filed by broadcasters seeking reimbursement for relocation expenses incurred in the repacking process. The issue of reimbursement continues to be controversial for the broadcast industry, as NAB's calculations show that, contrary to Congressional intent, there are likely to be insufficient funds to cover all relocation expenses under the Commission's current approach to the auction.
- Wireless microphones. The FCC issued, in September 2014, a Notice of Proposed Rulemaking to address the long-term needs of wireless microphone users who have been relying on unused TV broadcast channels. With the loss of currently-used spectrum, there remain serious concerns by users such as sports leagues, theater/entertainment entities and broadcasters to whether there will be sufficient unimpaired spectrum allocated for wireless microphones after repacking.
- White spaces. The FCC issued, in September 2014, a Notice of Proposed Rulemaking to develop rules for unlicensed operation of white space devices and wireless microphones in the reconstituted TV bands and the repurposed 600 MHz band after the incentive auction.
- LPTV and translators. The FCC issued, in October 2014, a Notice of Proposed Rulemaking seeking comment on measures to facilitate the final conversion of LPTV and TV translator stations to digital service and consider additional means to mitigate the potential impact of the incentive auction and the repacking process on LPTV and TV translator stations.

With all of these issues in play, we know there will be more to come. Stay tuned.

*by Marcus Trathen and Julia Ambrose*

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If you should have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

*Stephen Hartzell, Editor*

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## FACT SHEET: INCENTIVE AUCTION COMMENT PN

December 11, 2014

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The Comment PN seeks public input on detailed proposals for how the incentive auction will be conducted and provides a detailed roadmap of the incentive auction process. It fleshes out the decisions that the Commission made in the *Incentive Auction Report and Order* and *Mobile Spectrum Holdings Order* last May. After considering comments responding to the proposals, the Commission will finalize auction design and procedural details in an Incentive Auction Procedures Public Notice.

In the Comment PN, the Commission seeks comment on a number of specific detailed proposals and crucial auction design issues, including:

- **Methodology for establishing opening bids for the reverse auction:**
  - The opening prices a broadcaster would be offered in the reverse auction must be high enough to encourage robust participation, but not so high that the auction requires hundreds of rounds to close or prevents some of the auction proceeds to be used for Congress' directive to promote the interests of taxpayers in getting a portion of the value of the spectrum sold at the forward auction.
  - To balance these objectives, the Comment PN proposes that a station's opening price will equally weight the station's impact on the repacking process due to the interference it produces and the amount of population it serves.
  - The Comment PN proposes that a UHF station's opening price for moving to a low VHF station should be 67-80 percent of the opening price for fully relinquishing its license, and the opening price for moving to a high VHF station should be 33-50 percent of the full relinquishment amount, and seeks comment on where in these ranges the discount should be set.
  - The Comment PN also proposes to use a dynamic reserve price (DRP) procedure, which will facilitate price competition in all markets by offering high opening prices to every broadcaster, and letting the auction process determine the final prices.
  
- **Methodology for establishing opening bids for the forward auction:**
  - The Comment PN proposes to establish minimum opening bids for each license by assigning a number of "bidding units" to each license. The number of bidding units for a given license will be based on its weighted population using an index of relative prices from previous auctions. The Commission used this methodology for the AWS-3 auction.
  - Determining an initial clearing target and defining impaired markets:
    - The Comment PN proposes to define the "near nationwide" clearing target as one in which impairments (caused by the need to locate TV stations in the wireless portion of the 600 MHz band), on an aggregate nationwide basis, affect less than 20 percent of U.S. population, weighted to reflect geographic variation in license prices as determined in prior auctions.
  - The forward auction will offer two categories of generic blocks
    - Category 1 blocks with zero to 15 percent impaired -pops.
    - Category 2 blocks with more than 15 but not more than 50 percent impairments.
  - Prices for both categories of blocks will receive a one percent discount for each percentage of impaired pops.
  - Blocks with more than 50 percent impaired pops would not be offered.

- **The components of the final stage rule:**
  - The *Incentive Auction Report and Order* established the rule for determining the final stage of the incentive auction.
  - The first component of the final stage rule is designed to ensure that taxpayers receive fair value for licenses offered in the forward auction, as required by the Communications Act.
    - For this component, the Comment PN proposes an average price per MHz-pop benchmark of \$1.25 for Category 1 licenses in the 40 largest license areas by population, and a spectrum benchmark of 70 megahertz, which corresponds to a clearing target of 84 megahertz of spectrum.
    - The first component would be satisfied:
      - At clearing targets at or below the spectrum benchmark, if forward auction proceeds meet or exceed the average price per MHz-pop benchmark of \$1.25 for Category 1 licenses in the 40 largest license areas.
      - At clearing targets above the spectrum benchmark, if forward auction proceeds for all licenses offered meet or exceed the product of the average price per MHz-pop benchmark of \$1.25 for Category 1 licenses in the top 40 license areas at the spectrum benchmark of 70 megahertz.
  - The second component of the final stage rule requires that the proceeds of the forward auction meet certain mandatory expenses set forth in the Spectrum Act and any additional amount needed by the Public Safety Trust Fund for FirstNet.
  
- **Application of the Commission’s Mobile Spectrum Holdings policies and the implementation of the spectrum reserve:**
  - The Comment PN seeks comment on determining the amount and type of spectrum that will be available to reserve-eligible bidders, which may be more reliant on 600 MHz Band spectrum to expand service and compete in the mobile wireless marketplace.
    - The Comment PN proposes that the maximum number of reserved blocks will be based on the total number of spectrum blocks –Category 1 blocks plus Category 2 blocks – offered in a given service area.
    - The reserved blocks will consist only of Category 1 blocks.
  
- **Factors to consider in making provisional and final channel assignments and the priority in which they should be considered:**
  - At the end of each reverse auction stage, all channel assignments will be provisional. The Comment PN proposes to determine the final channel assignment based on factors that minimize the impact of repacking on broadcasters.
    - The factors include:
      - Maximizing the number of stations assigned to their pre-auction channel;
      - Minimizing the number of stations predicted to receive aggregate new interference above one percent; and
      - Avoiding reassignments of stations with high anticipated relocation costs in order to minimize total relocation costs.