



Virginia Association of Broadcasters Legal Review



Brooks, Pierce, McLendon, Humphrey &
Leonard, LLP
Counsel to VAB • (919) 839-0300

250 West Main Street, Suite 100
Charlottesville, VA 22902 • (434)
977-3716

February 14, 2020

Legal Memorandum

In this issue, please find information about

Headlines: [FCC Will Consider Long-Anticipated C-Band Spectrum Order at February 28 Open Meeting](#)

[Commission Announces First Round of EEO Audits for 2020](#)

Long-Anticipated C-Band Spectrum Order to be Considered at FCC's February 28 Open Meeting

Chances are, you've heard quite a bit of mention in recent months, and even years, about the "C-band." But, you may still be wondering, just what exactly is it? Well, the C-band is a 500-megahertz swath of spectrum (the 3.7 to 4.2 GHz band, to be exact) that is currently used mostly by satellite companies to beam content to television and radio broadcasters, cable systems, and other content distributors. Many broadcast stations use C-band downlink earth stations to receive network and syndicated programming, and the C-band is used heavily for content distribution to television and radio broadcasters, including transportable antennas to cover live news and sports events. Just about every U.S. household relies on C-band satellite operations.

When it comes to spectrum, the C-band (which is part of what is known as "mid-band" spectrum) is prime real estate. As we've reported, the FCC released a Notice of Proposed Rulemaking back in mid-2018 that sought to figure out how to transition part of the C-band to wireless broadband services, with the stated goals of promoting 5G wireless connectivity, expanding high-speed broadband access across the U.S., and closing the "digital divide."

Now, after more than a year-and-a-half of comment, study, lobbying, and the like, the Commission has released a [Draft Order and Proposed Order of Modification](#) (the “Draft Order”) and accompanying [Draft Public Notice](#) (the “Draft Notice”) that seek to make a significant portion of the C-band available for new terrestrial wireless uses as quickly as possible, while also preserving the continued operation of existing fixed satellite services (“FSS”) during and after the C-band’s transition. The Draft Order, upon which the Commission is expected to vote at its February 28 Open Meeting, would make available through a public auction the lower 280 megahertz of the C-band. Incumbent users of the C-band would then be repacked into the upper 200 megahertz of the band, and the remaining 20 megahertz in the middle (the portion from 3.98–4.0 GHz) would serve as a guard band.

We’re still working our way through the meaty, 130-plus page Draft Order. That said, below please find some additional background information regarding the C-band (and why it’s so important to broadcasters!), along with a high-level summary of noteworthy takeaways from the Draft Order.

What is the “C-band?” and Why Does It Matter? As indicated, when you hear a broadcaster mention the C-band, it’s most likely in the context of the existing portion of the band that’s used for fixed satellite service and fixed service; i.e., the portion that is designated primarily for space-to-earth transmissions from satellites. For instance, many broadcasters use the C-band to receive satellite signals via satellite newsgathering vehicles or other so-called “earth stations” (i.e., facilities located on earth that receive and/or transmit from and/or to satellites). Broadcasters use the C-band to receive and distribute valuable programming, including weather information, network news and entertainment programming, and syndicated programming. Cable, satellite, and over-the-top providers also rely on the C-Band to deliver national and syndicated content to subscribers.

However, the primary reason you may recently have heard so much about the C-band is not because of the band’s current uses, but instead because of the band’s potential future uses. In particular, the band can support terrestrial fixed or wireless services—including 5G wireless telephone and data services—which many companies and consumers desire. Importantly, C-band satellite operators are hopeful that they can continue to provide their current level of service through a significantly smaller swath of spectrum.

The Basics of the Draft Order. After months of advocacy, deliberation and discussion between satellite providers, wireless service providers, broadcasters, the FCC, and others, we now have the Draft Order. To reiterate, if adopted as-is the Draft Order would make available through a public auction the lower 280 megahertz of the C-band. The C-band’s incumbent users (i.e., existing satellite operators, earth stations, etc.) would be repacked into a smaller swath of the remaining spectrum—the upper 200 megahertz of the band. The last, remaining 20 megahertz in the middle (from 3.98–4.0 GHz) would serve as a guard band.

The lower 280 megahertz of the band would be “cleared” through a public auction and made available for flexible use, including 5G service. Several satellite operators (and others) had proposed a *private* auction for the to-be-made-available spectrum on the band, but the Draft Order ultimately rejects that proposal in favor of a Commission-administered public auction to take place

as early as December 8, 2020. (According to the Draft Notice, the auction would provide up to 5,684 new flexible-use overlay licenses.)

Significantly, the Draft Order would also require successful auction bidders (i.e., wireless providers, most likely) to reimburse relocation costs incurred by displaced existing satellite operations. The Draft Order sets a deadline to clear the 280 MHz of C-band spectrum by September 2025, but it offers satellite operators the opportunity to vacate their incumbent positions on an accelerated timeline—in exchange for accelerated payments associated with having to relocate. Per the Draft Order, those accelerated payments to satellite operators could rise to up to \$9.7 billion (payable by the bidders in the public auction who are deemed winners). Effectively, incumbent satellite operators would receive from successful bidders certain additional payments (i.e., in addition to all reimbursement costs) *if* the incumbents clear the lower 100 megahertz of the C-band in 46 of the top 50 Partial Economic Areas (which are geographic divisions created by the FCC) by September 2021 and the remaining 180 megahertz of the C-band by September 2023.

* * * * *

Importantly, as noted above, neither the Draft Order nor the Draft Notice have yet been finalized; each is set to be considered at the Commission’s February 28 Open Meeting. Between now and then, we will be further digesting the Draft Order—and we expect to send out a further memorandum that focuses more narrowly on the Draft Order’s impacts on broadcaster and their C-band earth stations. In addition, we will, of course, provide a further update after the Commission’s Open Meeting later this month.

Commission Announces First EEO Audits of 2020; Responses Due by March 23, 2020

Approximately 240 radio stations, 80 TV stations, and their corresponding employment units will be part of the FCC’s first equal employment opportunity (“EEO”) audit of 2020, according to a recently issued [Public Notice](#) (the “Notice”). The Commission has already begun mailing audit letters to the selected stations, who must upload their audit responses by **March 23, 2020** to their online public inspection files (“OPIF”).

Per the Commission’s EEO Rules, each year approximately five percent of all radio and television stations are randomly selected for EEO Audits. This year marks the first in which all EEO audits will be conducted under the auspices of the Enforcement Bureau (you may recall that the FCC’s EEO team transitioned away from the Media Bureau last March).

While audit letters are issued to individual stations, it’s important to note that the audit applies to any and all stations in the identified station’s “employment unit.” Generally, any commonly owned stations in the same market that share at least one common employee are part of the same employment unit for FCC EEO reporting and audit purposes.

The form EEO audit letter describes the specific data requested by the Commission, procedures for responding, special circumstances for time-brokered stations, as well as limited

exceptions pursuant to which broadcasters may be relieved of the requirement to submit a full audit response. The data requested in the audit letter is extensive, and stations identified in the audit will need to act promptly to respond. As with any government audit, consultation with counsel is advisable.

Tim Nelson, Editor

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

Mark J. Prak
Marcus W. Trathen
David Kushner
Coe W. Ramsey
Stephen Hartzell
Julia C. Ambrose
Elizabeth E. Spainhour
J. Benjamin Davis
Timothy G. Nelson
Patrick Cross

This Legal Review should in no way be construed as legal advice or a legal opinion on any specific set of facts or circumstances. Therefore, you should consult with legal counsel concerning any specific set of facts or circumstances.

© 2020 Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.