

Congress Authorizes FCC Incentive Auctions to Clear Part of Broadcast TV Spectrum for Wireless Broadband Users - The Details of the Legislation

February 20, 2012 by [David Oxenford](#)

Congress finally has given to the FCC authority to **conduct spectrum auctions to reclaim parts of the TV spectrum for wireless users**, and most DC-based industry associations, including the NAB, have reacted favorably. For a process that was so controversial, this seems like a very favorable result. Television stations, in particular, will have much relief from concerns about the forced-reallocation of their operations to less favorable spectrum. While most trade press reports have reported on these statements and the very general outlines of the legislation, few have looked closely at the provisions that apply to the broadcaster auctions. Just what do they provide?

The auction provisions were adopted as part of [the legislation that just extended the Social Security payroll tax deduction rollbacks, extended unemployment benefits, and fixed certain limitations that had arisen on Medicare reimbursements to doctors](#). All these benefits needed offsetting revenues to avoid unduly increasing the Federal deficit, and the one seemingly easy place to “find” money, was through spectrum auctions. So Congress ordered the President to identify certain Federal spectrum that could be made available for wireless users, and also authorized the FCC to conduct auctions of broadcast spectrum, but under the very specific guidelines set out below.

The auction rules set by Congress provide limits on how the FCC can conduct the auction, putting in place limits that protect television stations from being forced to change to an undesirable channel without their consent. And it talks a broad view of what a station can get compensation for in a “reverse auction” that establishes how much stations will take to clear spectrum for wireless broadband. The provisions include the following:

- The FCC will need to conduct two sets of auctions – the reverse auction to determine how much a station will be willing to take to abandon spectrum that can be used for wireless, and a “forward auction” looking at how much the wireless carriers will pay for the spectrum
- The reverse auction will only be held if there is more than one broadcaster in a particular area looking to give up spectrum – presumably to see who would be willing to give it up for the least amount of money

- In the reverse auction, television broadcasters can get paid for any of the following:
 - Turning in their licenses
 - Turning in their channel to share spectrum with another station (e.g. to use part of their digital capacity). Where stations share a single channel in order to make another channel available for auction, both stations will retain their must-carry/retransmission consent rights
 - Abandoning a UHF channel to move to a VHF channel (less suitable for digital transmissions)
- In any reverse auction, the FCC is to do its best to protect the identity of the participating station until a decision has been made to take their channel (presumably to not let competitors know that they are open to getting out of the TV business)
- A fund of \$1,750,000,000 will be established to pay the costs of broadcasters incurred in repacking the spectrum to make any abandoned spectrum more interesting to wireless bidders. Cable systems will also be eligible for payments to cover the costs of channel changes of television stations that they carry.
- In lieu of cash payments, TV broadcasters can opt for relief from FCC regulations requiring that their channels be used for broadcast use, providing waivers for mixed use of the spectrum as long as at least one broadcast channel is retained.
- The following limitations on spectrum repacking will limit what the FCC can do:
 - The FCC will “make all reasonable efforts” to preserve the coverage area and population served by each television station
 - No station will be forced to move from a UHF to a VHF channel, or from a high VHF channel to a low VHF channel (which are even worse for digital broadcasting – especially mobile digital transmissions)
- Proceeds of the forward auction will be used for the following purposes:
 - To provide funds for the repacking
 - To provide funds for the payments required to pay the winners in the reverse auctions
 - To provide \$2,000,000,000 to fund the build out of a public safety network on part of the television spectrum already reclaimed as part of the original digital transition

- To provide \$300,000,000 to move users of channel 37 (currently used for radio astronomy)
- To fund all FCC administrative costs of the auctions
- Finally, after all of these costs are funded, the remaining proceeds would go to general Treasury obligations to help balance the Federal budget
- If there are insufficient funds raised from the forward auction to meet all the costs of the auction, there will be no reassignment of channels and repacking of the spectrum, and parties in the reverse auction will not give up their channels
- The statute specifically says that there is no status change for LPTV stations – which would seem to mean that they remain secondary services
- Nothing in the statute is to prevent the continued deployment of White Spaces devices (about which we last wrote [here](#))
- The FCC can only repack the TV spectrum once, and it can do only one reverse auction. All auctions must be done within 10 years

All in all, these restrictions seem to make television broadcasters secure from their fears that their spectrum would be pulled out from under them, or that their service areas would be undermined to force their participation in an auction. We will be interest to see how the FCC proceeds to implement this auction authority. Look for rulemaking proceeding to implement this legislation in the not too distant future.

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