

## FCC Issues Groundbreaking Incentive Auction Notice

In an ambitious effort to repurpose 120 MHz of spectrum for new wireless broadband services, the Federal Communications Commission released its proposals to conduct an Incentive Auction. The proposed rules will permit television licensees to relinquish all or some of their spectrum usage rights, and the FCC will reallocate that spectrum for wireless broadband use. According to the FCC, the Incentive Auction is a “first of its kind” in the world. Drinker Biddle’s Telecommunications and Mass Media Team has reviewed the proposals and provides the following summary of the proposed rules.

### Introduction and Background

On October 2, 2012, the FCC released a Notice of Proposed Rulemaking to establish the rules and procedures for a future Incentive Auction involving potentially all U.S. television broadcast spectrum. An Incentive Auction is a method of repurposing spectrum by encouraging current licensees to voluntarily relinquish spectrum rights in exchange for a portion of the proceeds of auctioning new licenses to use the repurposed spectrum. The FCC’s 2010 National Broadband Plan initially proposed Incentive Auctions as a method of meeting the growing need for spectrum in the United States, particularly for mobile broadband.

In February 2012, Congress passed legislation (the “Spectrum Act”) that directed the Commission to conduct an Incentive Auction of broadcast television spectrum, which is planned for 2014. This legislation contained a number of ambitious programs, including one to use Incentive Auction revenues of \$7 billion to support the build out of a broadband public safety network. Thus, the FCC is cognizant that its auction rules should encourage participation in all facets of the auction process.

The Incentive Auction is envisioned to consist of three separate parts. First, the FCC will conduct a reverse auction in which broadcast television licensees will submit bids to voluntarily relinquish spectrum usage rights in exchange for payment. Licensees would indicate their choice of (i) relinquishing all usage rights with respect to a particular television channel without receiving any usage rights in return, (ii) relinquishing all rights with respect to a UHF channel in return for receiving usage rights to a VHF channel, or

(iii) relinquishing usage rights in order to share a television channel with another licensee. Second, the FCC will “repack” the broadcast television bands in order to make a portion of the UHF band available for mobile broadband uses. Finally, the FCC will conduct a forward auction to award initial licenses for flexible use of the newly available spectrum.

All three parts of the Incentive Auction are interdependent. The outcome of the reverse auction and repacking process will directly affect the amount of spectrum available in the forward auction and the forward auction proceeds will be used to pay the winning reverse auction bidders. Further, the repacking methodology adopted by the Commission will determine which reverse auction bids the Commission accepts and what channels are assigned to the broadcast stations that remain on the air. Under the Spectrum Act, no licenses may be assigned and no reassignments or reallocations of broadcast television spectrum become effective unless the proceeds of the forward auction exceed the sum of the total amount of compensation the FCC must pay successful reverse auction bidders, the estimated relocation costs the FCC must reimburse television broadcast spectrum licensees and the costs of conducting the broadcast television spectrum Incentive Auction. The Spectrum Act states that all three parts of the Incentive Auction may occur at the same time and that, to the extent practicable, all reassignments and reallocations of spectrum should become effective simultaneously.

The Notice of Proposed Rulemaking seeks comment on the structure of Incentive Auctions, including the processes for the reverse and forward portions of the auction, the eligibility of parties to participate in the Incentive Auctions, the methods for repacking of the spectrum, and the affect that these steps will have on parties that also use the spectrum in question.

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## Reverse Auction

The reverse auction will establish the supply of spectrum available for bid in the “forward auction.” As noted above, in the reverse auction, a television broadcaster would either not participate in the auction, or choose to relinquish all rights to its existing six MHz channel allotment through one of the following Spectrum Relinquishment Options: (a) exiting its channel entirely, (b) sharing a channel with another broadcaster in the market or (c) moving to a vacant VHF channel. In exchange, the broadcaster would receive monetary compensation consistent with the scope of the rights it chooses to relinquish. The FCC is encouraging all broadcasters to participate in the reverse auction because, under the proposed rules, any participant may exit the auction at any time and continue its present broadcasting business subject only to future repacking actions.

The NPRM addresses four major issues associated with the reverse auction: (1) Bid Collection: how a licensee will inform the FCC of the lowest amount it will accept in exchange for its chosen Spectrum Relinquishment Option; (2) Assignment Procedures: how the FCC will determine which bids are accepted; (3) Payment Options: how much each broadcaster will receive for its winning bid; and (4) Eligibility to Participate.

**Bid Collection.** The FCC seeks comment on two options for collecting bids in the reverse auction. Option 1 would be a single round sealed bid process, where a broadcaster would specify just one time the lowest amount it would accept for its Spectrum Relinquishment Option. Option 2 would be a dynamic, multiple-round process, which

would be similar to a standard, forward auction. But instead of increasing upward in each round, the prices would decrease as a licensee/bidder determines its price for an accepted Spectrum Relinquishment Option. The outside consultant hired by the FCC for its expertise on auctions favors Option 2. Under Option 2, before the auction begins, the FCC would set a reserve price or maximum payment for either going off the air entirely or for changing channels. A broadcaster seeking to participate in the auction would have to choose at least one Spectrum Relinquishment Option at the established reserve price. During Option 2, the auction would continue until a sufficient number of bidders exit the auction and all excess spectrum supply is eliminated. The FCC then would accept the bids of all remaining participants in order to meet the FCC's target for clearing spectrum in a given area so that the forward auction for that cleared spectrum could proceed. A broadcaster would be permitted to change its Spectrum Relinquishment Option after tracking and evaluating multiple price offers during the auction and determining its best price.

**Assignment Procedures.** The FCC's ability to determine which bids ultimately will be accepted is complicated because of the three Spectrum Relinquishment Options. Accordingly, the FCC must determine auction rules for evaluating which bid is best when not all bids would be for the same election. For example, a bid for a Spectrum Relinquishment Option involving a move to a low VHF channel may be less preferable to a bidder in the forward auction than a broadcaster's bid in the reverse auction to share spectrum with a UHF station. The FCC asked for comment on ways to "score" these competing bids. The FCC also asked for comment on the best way of determining whether a given situation calls for repacking the television spectrum instead of having the broadcaster exit entirely, including how the FCC should take into account the loss of over-the-air television service in particular areas and how to apply its signal interference rules. Finally, the FCC asked for comment on which "algorithm" should be taken into account to determine the spectrum that would be available to bidders in the forward auction.

**Payment Options.** A determination of how much a winning bidder will receive will depend on whether the auction will consist of a single round (Option 1) or multiple rounds (Option 2). If Option 1, the FCC proposes allocating to the winning bidder either its actual bid amount or the "threshold price," which is a price based on supply and demand as determined during the early rounds of the auction. If the FCC moves forward with Option 2, it would pay to a broadcaster either an initial reserve price (which may be based on the station's population served or service area) or the threshold price. The FCC asks for comments on these proposals. In either event, the Spectrum Act provides that a broadcaster will not be eligible to receive any proceeds unless at least two competing licensees "participate" in the auction in each market. The NPRM asks for comment on at what point in the auction process the FCC should consider a licensee as having "participated," for example, at the time the FCC determines that a licensee is qualified to bid or, at the time that the licensee actually makes a bid.

**Eligibility to Participate in the Auction.** The Spectrum Act limits eligibility to licensees of full power (commercial and noncommercial) and Class A low power television stations. The NPRM proposes also to:

- > Make eligible any entity that held an original construction permit for a full power station as of February 22, 2012, if a license is obtained by the time the auction commences.

- > Prohibit full power or Class A stations whose licenses have been canceled, expired or revoked from participating in the reverse auction. However, stations with pending license renewal applications would be eligible to participate.
- > Calculate the spectrum rights of all full power stations by examining each station's licensed service area as of February 22, 2012.
- > Evaluate the reverse auction bid of a Class A station licensed after February 22, 2012 based on the station's licensed facility on the date that the auction begins.

The NPRM also asks for comment on how to deal with stations that are the subject of pending enforcement proceedings as of the date of the auction, including whether such stations should enter into escrow agreements with the FCC so that, for example, a licensee would not escape liability for its prior FCC rules infractions by relinquishing the station's spectrum.

**Other Spectrum Relinquishment Options.** The NPRM also asks for comment on whether to allow:

- > UHF to VHF bidders to sub-select whether their bids could be limited to "high" VHF channels 7-13 and whether to allow a bidder to relinquish a high VHF channel for a low VHF channel.
- > Broadcasters to accept additional interference from other stations or to reduce their service areas or populations.
- > Channel sharing bids that involve a change in one station's community of license.

**Auction Rules.** The rules that will govern the auction, as proposed by the NPRM, are similar to the auction rules familiar to many broadcasters. However, some proposed rules unique to this auction, for which the NPRM invites comment, include:

- > Requiring the auction applicant to be the station's licensee, rather than the licensee's parent.
- > In a channel sharing situation, requiring only the station seeking to change channels (the "sharer") to submit an application seeking to participate in the auction.
- > Mandating that the applicant make a series of certifications, including that a Class A television applicant remain in compliance with the rules necessary to maintain Class A eligibility and that a channel sharing arrangement (if any) is consistent with all FCC rules and policies.
- > Disallowing major amendments to a pending auction application (which would include changes in control of the licensee, changes to any certifications and additions or removals to the list of licenses subject to the auction).

**Other Matters to be Addressed.** Finally, the NPRM addresses a few miscellaneous matters that affect the process:

- > The information about a bidder that should be withheld from disclosure in order to protect the identity of a broadcaster that may not wish outside parties to be aware of its spectrum relinquishment plans. The FCC also

seeks comment on how the confidentiality components of the Spectrum Act interplay with SEC regulations requiring disclosure by publicly-held companies of certain events and agreements.

- > The extent of the prohibition on the ability of competitors to communicate information regarding their bids (also known as the anti-collusion rule). In particular, whether to permit auction-related communications between parties that have certain pre-existing arrangements, such as local marketing agreements, joint sales agreements and shared services agreements. In addition, whether to prohibit reverse auction applicants from communicating with forward auction applicants regarding the substance of their bids or bidding strategies.
- > The timing of payments to be made to the winning bidders in the reverse auction and whether such payments may be made to a licensee's parent company.

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## Repacking

After the reverse auction, television stations remaining on the air will need to be “repacked” into consolidated blocks of spectrum to clear spectrum for the forward auction. In completing this reassignment, the Spectrum Act requires the FCC to “make all reasonable efforts to preserve, as of the date of the enactment of this Act, the coverage area and population served of each broadcast television licensee,” as determined in accordance with current FCC engineering guidelines.

Repacking will be an intricate, technically complicated process. It will pose technical challenges similar to the recent full-power DTV transition but will need to occur over a more compressed time period. Repacking feasibility will directly impact the treatment of broadcasters' bids in the reverse auction, and therefore will need to be considered before and during, as opposed to only after, the reverse auction. The FCC proposes to accomplish repacking assignments either through use of integer programming algorithm software, which would determine and attempt to replicate the most efficient manner of clearing spectrum, or through sequential algorithm software, which would more individually determine stations' post-auction assignments. The first option might achieve more spectrum efficiency, but would be less transparent. The second would account for more variables and provide more transparency, but might not produce the most efficient assignments possible.

The technical requirement to preserve stations' populations served and coverage areas guides and constrains the FCC's ability to move stations to different channels. Assigning a television station to a different channel requires modifications to that station's facilities that may, in turn, impact the station's coverage area and/or population served. Likewise, stations moving channels or going off the air entirely may change the levels of interference that stations cause to one another, affecting these two metrics. To address these constraints, FCC seeks comment on several proposals to define and preserve population served and coverage area in the repacking process.

**Facilities.** First, it is important to note *which* facilities the FCC proposes to preserve. The FCC proposes to protect:

- > A channel for each eligible full-power and Class A station remaining on-air after the Incentive Auction (meaning those that do not participate in the reverse auction, participate but do not submit a winning bid, or participate and submit a winning bid to move to another band);
- > Facilities for those full-power and Class A stations that were licensed, or for which a license to cover application was pending, as of February 22, 2012 (the date the Spectrum Act was enacted);
- > Certain unbuilt digital construction permits for Class A stations, in connection with the ongoing Class A digital transition; and
- > Facilities authorized in the very few unbuilt construction permits for new full-power television stations as of February 22, 2012.

The FCC *does not* propose to protect:

- > Facilities specified in modification applications pending as of February 22, 2012;
- > Full-power facilities proposed in pending petitions for rulemaking for which no notice of proposed rulemaking has been issued; or
- > Any low power television or television translator station facilities, due to their secondary status. Where these facilities would interfere with repacked full-power or Class A stations, the FCC's proposals would require them to relocate to a new channel or cease operations.

The FCC seeks comment on whether it should protect any other authorized full-power or Class A facilities. For instance, it specifically seeks comment on treatment of facilities in construction permits issued for channel changes following completed rulemaking proceedings. Although the FCC "recogniz[es]" that stations may have "applications or construction permits to modify their authorized facilities," its proposals do not include protection for such facilities, unless they were licensed or license applications were pending for them as of February 22, 2012.

**Coverage Area.** The FCC interprets the coverage area to be preserved as:

- > A full-power station's "service area," as currently defined in the FCC's rules; or
- > A Class-A station's "protected contour," the area within which it is currently entitled to interference protection.

The FCC proposes to use engineering software to replicate a station's coverage area at its new assigned channel. It would allow a station assigned to a new channel to continue using its existing antenna pattern with adjustments to its power level to replicate its prior coverage area in square kilometers, though not necessarily specific territory covered. Alternatively, the proposal would allow stations to propose alternate new transmitting facilities, so long any resulting population or coverage losses would be less than two percent.

**Population Served.** The FCC proposes three different approaches to defining a station's "population served" in connection with the repacking process:

- > Allow No New Interference (by percentage). The first proposal would allow no new interference to a station's population served as of February 22, 2012. Under this proposal, the *location* of viewers affected by interference could change, but the *aggregate* interference-free population served by a station could not be reduced by more than 0.5 percent (a standard margin of error in interference calculations). This calculation would not account for which station was causing interference to another, so long as a station's overall interference-free population was not reduced by more than that margin.
- > Allow No New Interference (to specific viewers). The second proposal would require preservation of service to a station's *specific* population served as of February 22, 2012. No individual channel reassignment, on its own, could cause more than a 0.5 percent reduction in another station's specific population served. This option would permit so-called "replacement interference" only where interference existed on February 22, 2012, and is proposed to be calculated on a station-to-station, rather than aggregate basis. This option, while causing fewer disruptions to viewers, would be more difficult for the FCC to implement than Option 1.
- > Allow Only Interference Currently Existing Between Two Stations. The third proposal would allow any interference between two individual stations that existed on February 22, 2012, no matter which channels the stations receive in the repacking process. Unlike the second option, this proposal would allow "replacement interference" only from the *specific station* that previously caused such interference. However, because this option would allow less flexibility than the other two, the FCC proposes also allowing a higher interference threshold, of up to two percent, between stations that did not previously interfere with one another.

In connection with these proposals, the FCC also seeks comment on whether it should allow higher interference standards under *any* of the three proposals and invites suggestions for alternative overall approaches. It also seeks comment on how these approaches might be implemented in connection with a reverse auction option that would allow television licensees to voluntarily accept additional interference.

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## Forward Auction

The forward auction will present more challenges than a typical Commission spectrum auction because the quantity and geographic location of available spectrum, as well as the particular frequencies, will be unknown until the reverse auction is completed.

**Forward Auction Design:** The NPRM includes an example of a particular structure for the forward auction, and the Commission seeks comment on this proposal and on the design of the forward auction generally. The auction would offer generic licenses in particular geographic areas – that is, bidders would be bidding on a specific amount of spectrum in a specific geographic area, but not on specific frequencies.

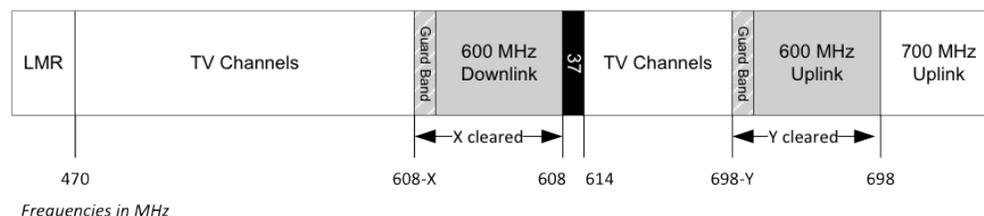
The Commission proposes an “ascending clock” auction, where it would announce the prices for generic licenses in different geographic areas, with prices increasing every round, and bidders indicating the number of licenses they seek at those prices. Bidders would drop out when the prices for spectrum exceed their desired price, and the auction would continue until there were no remaining excess bidders for generic licenses in a particular area. Winning bidders would be assigned specific frequencies after the auction.

To speed the process and minimize the chance that the supply of spectrum ends up exceeding demand (if too many bidders dropped out following an incremental price increase, for example), the Commission proposes intra-round bidding. Under this approach, bidders could specify how their demand would change if the price increased by less than the next round price increment. For example, a bidder could specify that the amount of spectrum it sought would decrease by a certain amount if the price increased by 50 percent of the next round’s incremental price increase.

**The 600 MHz Band Plan:** The Commission acknowledges the difficulty of establishing a band plan for relinquished television broadcast spectrum when it is not yet known how much, or where, such spectrum will be made available. Wireless service providers potentially interested in bidding during the forward auction will want as much information and certainty regarding the available spectrum as possible – and the ability to make informed business decisions will likely lead to more and higher bids in the forward auction. However, the Commission can not have a complete picture of how much spectrum will be made available, and where, until the reverse auction and repacking are complete.

In an effort to maintain flexibility while providing some degree of predictability for potential bidders to allow them to make intelligent business decisions, the Commission proposes an unusual band plan that is based on flexible blocks of spectrum rather than specifically identified frequencies in geographic license areas. The Commission proposes to establish a band plan where the uplink band begins at channel 51 (698 MHz) and extends downward towards channel 37, with the amount of spectrum available depending on the number of broadcast channels relinquished in the reverse auction. Channel 37 is reserved for its current use by radio astronomy and wireless medical telemetry devices. The downlink band would begin at channel 36 (608 MHz) and extend downward – again with the amount of spectrum available depending on the number of broadcast channels relinquished:

The Commission proposes to establish a uniform nationwide downlink band, with varying amounts of uplink spectrum in any particular geographic area. The Commission refers to groups of possible band plans with uniform nationwide downlink spectrum and market-by-market differences in the amount of uplink spectrum as band plan “families.”



The idea behind establishing a uniform downlink band is that it will allow wireless service providers to offer mobile devices with uniform receive filters and to configure base stations to accommodate the local uplink band. Of course, the idea of a uniform downlink band would seem to establish a lowest common denominator ceiling on the amount of spectrum that ultimately will be made available based on whatever market has the fewest broadcasters relinquish their channels. The Commission suggests that it could avoid this problem by choosing not to clear any broadcast spectrum in a market where the reverse auction yielded very few channels.

The Commission proposes a band plan based on 5 MHz spectrum blocks, paired wherever possible. Each returned television broadcast channel will be in a 6 MHz block of spectrum, but the Commission notes that 5 MHz blocks are consistent with a number of wireless technologies likely to be used in the band and will potentially result in a greater number of blocks being available. Because the amount of spectrum from returned broadcast television channels will not always divide evenly into paired 5 MHz blocks, the Commission proposes to offer unpaired wireless downlink spectrum that can serve as supplemental downlink expansion. The Commission notes that wireless traffic tends to be asymmetrical, with more downlink traffic because users typically download more than they upload, and suggests that extra downlink spectrum could be useful to support wireless operations.

The Commission proposes geographic license areas based on the 177 Economic Areas (EAs), which the Commission describes as a medium-sized geographic area. The Commission states that it is concerned that significantly larger regional or nationwide license areas may limit the amount of spectrum the Commission can offer because there may be some markets where fewer broadcast television channels are reclaimed – thus, for example, nationwide licensing would only allow the Commission to offer the smallest amount of spectrum made available in any individual market.

The Spectrum Act directs that interference guard bands should be as small as technically reasonable. Based on the band configuration it proposes, with uplink spectrum starting at 698 MHz and expanding downward towards channel 37, and downlink spectrum starting at 608 MHz and expanding downward, the Commission proposes no guard band between the 600 MHz uplink band and the lower 700 MHz A block, which is also used for uplink services, and no guard band between the 600 MHz downlink band and channel 37. However, the Commission proposes guard bands separating both the uplink and downlink bands from adjacent channels used for broadcast television.

In particular, the Commission proposes 6 MHz guard bands for these purposes, with additional “remainder” spectrum from the auction (due to the fact that returned 6 MHz television channels will not divide evenly into 5 MHz spectrum blocks) used to supplement the guard bands. Generally, the Commission states that its goal is to make the 5 MHz spectrum blocks as interchangeable as possible to allow flexibility during the forward auction – guard bands of sufficient size to protect against interference from or with adjacent operations are a part of that approach. The Commission also proposes to make the guard bands available for unlicensed use.

The Commission seeks comments on its band plan proposals, including alternative configurations of the band, different geographic licensing areas, ways to address

potential issues along the Canadian and Mexican borders, and the maximum band pass size that mobile device filters can accommodate – which may be relevant if the large contiguous blocks of spectrum the Commission seeks to clear exceed the band pass capability of current filter technology.

**Regulatory Issues and Technical Rules:** The reorganization of the broadcast television spectrum and the availability of the 600 MHz band for flexible use will have a number of regulatory implications. With respect to new wireless operations in the 600 MHz band following the auction, generally speaking, the Commission seeks to provide winning bidders with a flexible regulatory framework and seeks comment on its proposals for licensing rules.

The Commission proposes to license such operations under Part 27 of its rules, which provides licensing and operating rules for each covered frequency band rather than a comprehensive set of rules. The Commission proposes to allow parties operating in the 600 MHz band to request common carrier, non-common carrier, or both common carrier and non-common carrier status under a single license and, apart from this designation, not to require parties to describe the services they seek to provide as part of a winning auction application.

The Commission proposes a ten-year licensing term, with a renewal expectancy for licensees that meet their performance obligations. Those performance obligations would include construction requirements, with build-out requirements based on the percentage of the population served within a given geographic area. The Commission seeks comment on possible interim build-out benchmarks and appropriate sanctions, such as reduced license terms or automatic termination, for failure to meet any applicable construction requirements.

The Commission also seeks comment on whether it should adopt a “keep what you use” approach, where a party failing to meet its construction requirements would lose its authorization for spectrum use in unserved portions of its geographic license area, and on variations of this approach, where a licensee would only lose its authorization if a third party requested access to the spectrum in the unserved area, or where licensees should be required to lease or share unused spectrum. The Commission proposes to allow spectrum partitioning and disaggregation, as well as spectrum leasing.

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## Effect On Other Licensees

The repacking of the television broadcast spectrum will affect more than just the full-power and Class A television stations that decide to remain broadcasting. While many licensees will have to change channels, and/or make technical changes to their facilities, there are thousands of other operators currently utilizing the same spectrum that may face displacement to other television channels, or may be forced to change to completely different spectral bands.

As noted above, the FCC will not be protecting current low power television stations through the repacking process. The Spectrum Act stated that nothing in the legislation would alter the current interference protection rights of low power television stations. As such, the retention of the current interference protection obligations vis-à-vis full power

and Class A television stations results in low power television stations being forced to find new channels after the repacking process has been completed, and full-power and Class A stations have had an opportunity to designate their preferred channels after the Forward Auction. The Commission seeks comment on whether it should adopt “selection priorities” to compare mutually-exclusive applications. Other low power broadcast users, including Broadcast Auxiliary licensees, also will face displacement based on their secondary status following the repacking process.

In addition, it is possible that the current operators on Channel 37 may be relocated. The Spectrum Act directed the FCC to set aside \$300 million for the costs associated with clearing Wireless Medical Telemetry Systems and radio astronomy users of the spectrum. In the NPRM, the Commission is seeking information on the current use of the spectrum, and asked for estimates as to the cost for retuning or relocating. One possible roadblock to the reclamation of Channel 37 is that radio astronomy facilities also have specific needs to operate within the 600 MHz bands to ensure accurate research results.

Wireless microphones also will be affected through the repacking process. While the Commission set aside spectrum for these devices during the TV White Spaces proceeding, and established a registration process by which these devices could be protected, the inevitable reshuffling of the television channels likely will result in many wireless microphone users looking for new spectrum. The Commission proposes the reduction of the 113 kilometer separation requirement as one possible adjustment.

One possible beneficiary from the Incentive Auction may be the unlicensed services, such as Wi-Fi, which are permitted to operate within the unused portions of the television spectrum. There had been concerns in the industry that the repacking of the television channels for wireless broadband use would reduce or eliminate the opportunity for new unlicensed services. However, the Commission proposes to permit unlicensed devices to operate in the 6 MHz guard bands that separate the wireless broadband and television bands. Moreover, the Commission proposes to permit unlicensed use of the spectrum in other portions of the television spectrum not otherwise set aside for the Forward Auction.

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## Post-Auction Implementation

Finally, the Commission also proposes several steps to implement the results of the auction. In the NPRM, the Commission refers to the 2009 DTV Transition as a useful model, but also notes that there are significant differences between the two overhauls of U.S. TV spectrum.

The Commission proposes to create a “checklist” minor change application processing guideline, similar to the DTV Transition, which would issue new construction permit authorizations on an expedited basis if the licensee did not seek to make technical changes other than the operating channel to their facilities. Once this first wave of applications has been processed, the Commission proposes to permit licensees to propose new operating channels and/or make technical changes if there are available channels.

On the other hand, those that propose to share channels merely need to file license to cover applications (302-TV, 302-CA) to specify the new channel sharing arrangement.

The Commission proposes to create a new call sign identifier for these services, and, if necessary, to require sharing parties to being operating on the pre-auction channel of the “sharee” until the post-auction facility can be constructed on the facilities’ new channel.

The Commission proposes to require that post-auction facilities be constructed within 18 months after the auction. Since many stations will be forced to change channels even if they did not participate in the auction, the Commission proposes to permit these parties to request an advance payment for the reimbursement of their expenses. Alternatively, the Commission proposes to accept requests for reimbursement after the repacking process has been completed. Under either scenario, the Commission seeks comment on the expenses that should be eligible for reimbursement, and what steps should be taken to prevent waste, fraud and abuse.<sup>1</sup>

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Comments on the FCC’s proposals set forth in the NPRM are due no later than December 21, 2012, and reply comments are due by February 13, 2013. Because the Commission intends to move forward with an auction in 2014, the Commission likely will try to move quickly once it has received comments on its proposed rules.

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1. Commissioner Pai inserted into his Separate Statement several questions that apparently were not included in the final NPRM: (a) How the proposed auction design could be amended to maximize net revenues instead of ending the forward auction as soon as it has raised all funds necessary to meet the statutory closing conditions; (b) Whether the Spectrum Act requires the Commission to include the \$1.75 billion limitation on compensating broadcasters for relocation as a closing condition; (c) Whether 6 MHz is the appropriate size for the guard bands; (d) Whether the guard bands should also be licensed and auctioned; (e) Potential alternative approaches to channel sharing; and (f) How, within the constraints of the Spectrum Act, the Commission can protect translators and the link they provide for rural America.

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