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In a Public Notice approved in a 3–2 partisan vote, the Federal Communications Commission is asking for comment on the procedures that will govern the Broadcast Incentive Auction, currently scheduled for early 2016. The auction is the last anticipated spectrum auction of coveted low-band "beachfront" spectrum, and interest in the auction is expected to be high. In this first-of-its-kind auction, the FCC hopes to buy back a minimum of 84 MHz of spectrum across the country from television broadcasters that currently use that spectrum and then, assuming 84 MHz is returned, re-auction 70 MHz of that spectrum to wireless broadband providers. The rest of the spectrum will become unlicensed spectrum and will provide a buffer zone between wireless and broadcast uses. While pricing will be set by the auction, in comparison, the AWS-3 auction of 65 MHz of higher band spectrum is winding down and has generated total bids of over $44 billion.

The FCC proposes a complex, multi-stage auction with concurrent bidding by television broadcasters and wireless providers. Television station owners will bid in a "reverse auction" to return spectrum to the FCC. At the same time, wireless providers will bid in a traditional forward auction to obtain repackaged blocks of spectrum that will be cleared of incumbent television stations. After the auction, the spectrum will be moved around or "repacked" so that broadcasters that do not return their spectrum as part of the auction remain in the lower part of the spectrum band, while wireless carriers can use the reclaimed broadcast spectrum to provide wireless broadband services.

The auction will set aside some of the best spectrum for smaller wireless carriers and new market entrants. This reservation of spectrum, in combination with expected rules that will give small businesses significant bidding credits, could create significant opportunities for new entrants in the wireless space. This is likely the last opportunity for new entrants to purchase high-quality, low-band spectrum, and the FCC is proposing rules that will allow them to buy that spectrum at a discount against incumbent competitors.

While the bulk of the proposed procedures are likely to be adopted, three of the five FCC Commissioners expressed concern about the complexity of some of the proposals. This leaves open the possibility that commenters could affect the final rules. Comments are due on January 30, 2015 and reply comments on February 27, 2015. We have detailed below some of the major rules that will be subject to debate at the FCC.

Wireless spectrum blocks and impairment

While the FCC has a goal of auctioning at least 70 MHz of spectrum, based on the number of television broadcasters that register to participate in the auction, the FCC proposes to define a "near nationwide" target of the amount of spectrum that will be made available for wireless services. In setting the target, the FCC proposes that the spectrum covering at least 80% of the U.S. population on a weighted basis will be fully cleared of TV broadcasters. The remaining spectrum may suffer some degree of "impairment" because some TV stations will remain on the air and possibly interfere with wireless services.

The FCC also proposes to split the wireless spectrum blocks into two categories: Category 1 spectrum, which will have a 0–15% level of impairment (a level of interference), and Category 2 spectrum, which will have a 15–50% level of impairment. During the auction, carriers will have the option to place different types of bids depending on whether they are interested in only one category of spectrum or both. After the initial bidding for amounts of spectrum in each category is completed, the FCC will conduct an additional bidding round just for the winning bidders to determine which specific blocks of spectrum they will receive in each market. Prices for both categories of blocks will receive a one percent discount for each percentage of impairment.

The FCC will reserve spectrum for carriers that do not currently have significant amounts of low-band wireless spectrum, and that spectrum will come from the Category 1 spectrum. As a result, smaller carriers and new market entrants will have a considerable auction advantage.

TV station auction pricing

The FCC proposes to set opening prices for broadcasters willing to vacate spectrum based on a TV station's impact on the repacking process and on the population served by the station. This will result in stations in metropolitan areas receiving higher prices than stations in more rural areas, even if the smaller market stations are more central to the repacking process. The FCC also proposes to use "dynamic reserve pricing," which will allow the FCC to reduce the price paid to a station even if a station is needed for repacking and the station has accepted a specific price (the station will have the ability to reject the lower price and leave the auction). The FCC stated that the FCC's ability to drop prices during the auction will allow the FCC to offer higher prices at the start of the auction.

TV spectrum repacking process

Once the auction is complete, the FCC proposes to assign post-auction channels to remaining TV stations through an optimization process. The FCC does not propose to use the optimization process during the auction. The optimization process will attempt to (1) maximize the number of stations that will not have to move; (2) minimize relocation expenses; and (3) limit projected interference between stations. After the repacking is complete, consumers receiving television signals over the air will find many of their local stations have moved to different channels.

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