

***FCC SPECTRUM INCENTIVE AUCTION:
THE DETAILS TV STATIONS NEED TO KNOW***

A State Broadcast Association Webcast
presented by
Wilkinson Barker Knauer, LLP

August 25, 2015

Topics

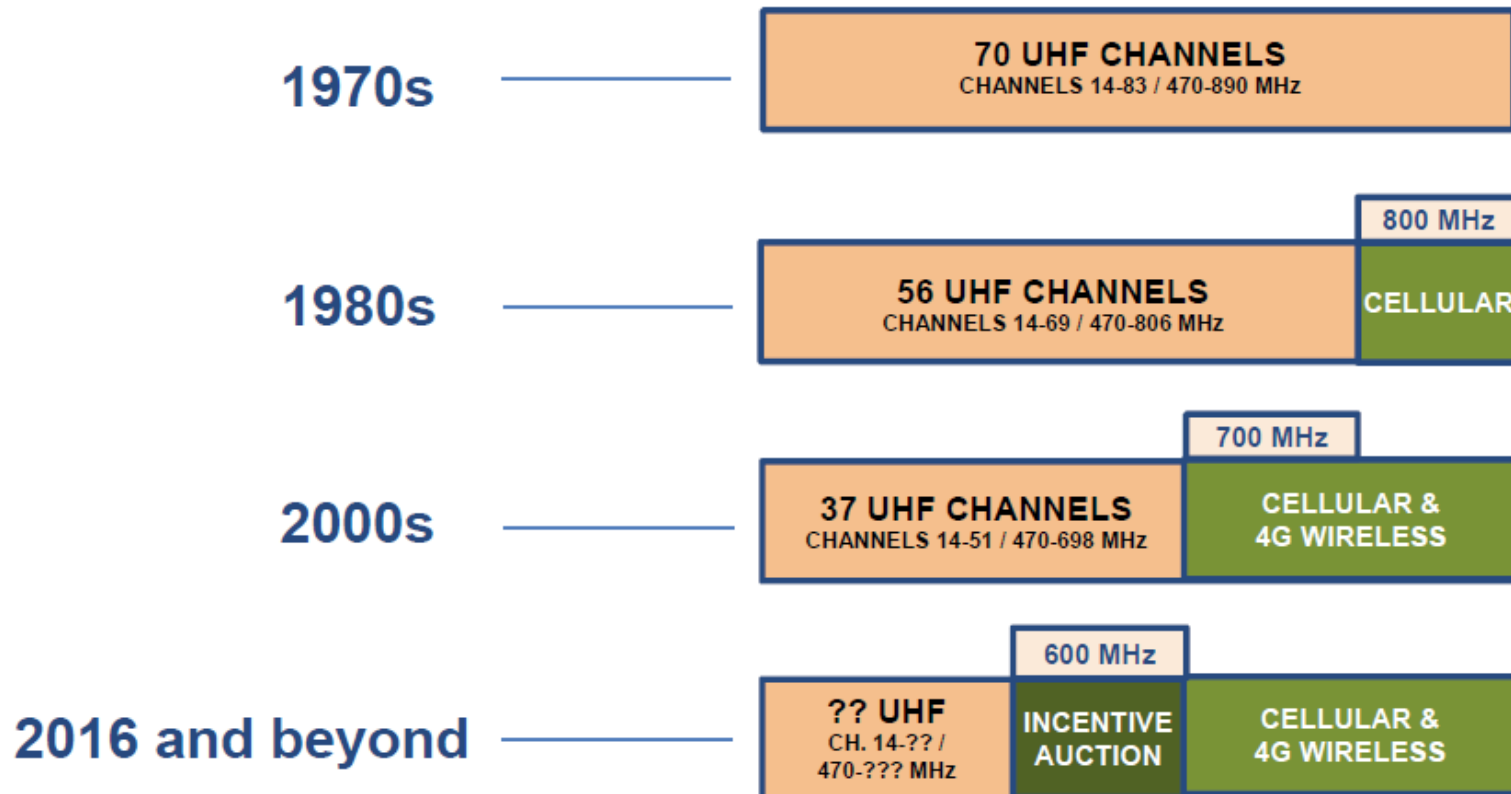
- Background
- Some Key Terms
- Auction Timing / Key Decisions / Hurdles Cleared
- Band Plan
- Reverse Auction Options
- Reverse Auction Process
- Repacking
- Forward Auction
- Tax Implications of Auction Participation
- Prohibited Communications

Background

- Repurposing up to 500 MHz of Spectrum for Mobile Broadband Use
 - National Broadband Plan 2010 targeted 120 MHz of TV spectrum
- Spectrum Act of 2012
 - Authorizes 1-time only broadcast incentive auction (to be completed by 2022)
 - TV stations volunteer to relinquish spectrum for payment in a “reverse auction,” with remaining stations “repacked” in a smaller TV band
 - To succeed, Forward Auction Revenue \geq Payments to Cleared Stations + Repacking Costs (\$1.75 Billion) + FCC Admin. Costs (\$226 Million)
- AWS-3 Auction – \$39.5 Billion for 50 MHz of paired spectrum
 - \$2.53 per MHz-pop
- UHF TV Band viewed as premium spectrum
- Some reverse auction estimates higher than AWS-3, but uncertainties remain
 - Carrier participation, broadcaster participation, spectrum demands, etc.

Background

THE HISTORY OF THE UHF BAND



Some Key Terms

- **Reverse Auction**
 - Mechanism through which TV stations may be able to relinquish current spectrum usage rights in exchange for payment
 - “Reverse” in that, unlike in a traditional auction, prices will descend round-by-round
 - Bid acceptance not guaranteed
- **Forward Auction**
 - Mechanism for assigning new mobile broadband licenses to operate on former TV spectrum
- **Opening Price Offers**
 - The starting prices set by the FCC for each of the bid options available to a station
- **Spectrum Clearing Target**
 - Number of MHz the FCC hopes to clear in the incentive auction for mobile broadband use
- **Repacking Feasibility**
 - The ability for the FCC to repack a station in its pre-auction band (UHF, High-VHF, Low-VHF)
- **Channel Sharing**
 - A voluntary arrangement between two stations in the same DMA to share facilities and divide the digital bitstream of a single 6 MHz channel between them

Auction Timing / Key Decisions

- FCC Timing:
 - Early fall 2015: FCC to issue *Application Procedures Public Notice*
 - At least 60 days before reverse auction applications are due: Provide opening prices
 - By the end of 2015: Reverse auction applications due
 - March 29, 2016: Auction commencement / stations make commitment to accept opening price
- Key Decisions
 - Only Full-Power and Class A TV stations are eligible to participate in auction
 - LPTV & TV Translators ineligible and also not protected in the repacking
 - Exiting stations must cease transmissions ≤ 90 days after being paid (one extension possible)
 - Stations not participating in the auction could be reassigned to a post-auction channel in the wireless portion of the new 600 MHz Band
 - Remaining stations post-auction may be assigned new channels
 - If so, must file applications and move within 39 months of end of auction
 - Repacking to be coordinated with Canada and Mexico
- ATSC 3.0 Deployment: FCC says auction independent of ATSC 3.0 rollout
 - ATSC officials say it's on a "fast track"

Hurdles Cleared

- Appeal of Repacking Rules by NAB & Sinclair
- Reconsideration of Auction Rules
- Channel Sharing Rules
- Bidding Procedures
- Rules for Unlicensed Device Use in 600 MHz Band
- Reform of “Designated Entity” Rules (for forward auction)
- New appeals?

600 MHz Band Plan

- Current UHF TV Band = channels 14-51
- Broadcaster participation in reverse auction will determine amount of repurposed spectrum
- New mobile broadband licenses (in blue) will be 5x5 MHz paired - FCC is seeking “near nationwide” uniformity across 417 “Partial Economic Areas” (“PEAs”)

of MHz Cleared

UHF TV Channels

42	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	11	A	B	11	A	B	700 MHz UL					
48	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	7	A	B	C	11	A	B	C	700 MHz UL				
60	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	9	A	B	C	D	11	A	B	C	D	700 MHz UL				
72	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	11	A	B	C	D	E	11	A	B	C	D	E	700 MHz UL				
78	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	7	A	B	C	D	E	F	11	A	B	C	D	E	F	700 MHz UL			
84	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	3	A	B	C	D	E	F	G	11	A	B	C	D	E	F	G	700 MHz UL		
108	21	22	23	24	25	26	27	28	29	30	31	32	11	A	B	3	37	3	C	D	F	F	G	H	11	A	B	C	D	E	F	G	H	700 MHz UL		
114	21	22	23	24	25	26	27	28	29	30	31	7	A	B	C	D	3	37	3	E	F	G	H	I	11	A	B	C	D	E	F	G	H	I	700 MHz UL	
126	21	22	23	24	25	26	27	28	29	9	A	B	C	D	E	F	3	37	3	G	H	I	J	11	A	B	C	D	E	F	G	H	I	J	700 MHz UL	
138	21	22	23	24	25	26	27	11	A	B	C	D	E	F	G	H	3	37	3	I	J	K	11	A	B	C	D	E	F	G	H	I	J	K	700 MHz UL	
144	21	22	23	24	25	26	7	A	B	C	D	E	F	G	H	I	J	3	37	3	K	L	11	A	B	C	D	E	F	G	H	I	J	K	L	700 MHz UL

Key: Blue = New 600 MHz Band licenses
 Grey = Duplex Gap/Guard Bands
 White = Post-Auction UHF TV Band
 Orange = Channel 37 (protected)

Reverse Auction Options / Pricing

- Options for Full Power & Class A Television Stations
 - Exit the Business (Relinquish current channel assignment and end broadcast operations)
 - Channel Share (Relinquish current channel assignment and share another channel)
 - Move from UHF to VHF and Keep 6 MHz
 - Do Nothing / Drop Out of Auction
 - FCC must find a channel in your pre-auction band
- FCC to disclose opening price offers ≥ 60 days prior to application deadline
 - Determined by a formula factoring in each station's effect on the repacking and its interference-free population
 - Prices will be lower for UHF moves to VHF and for VHF exits:
 - UHF Move to Low-VHF = 75% of UHF Go Off-Air
 - UHF Move to High-VHF = 40% of UHF Go Off-Air
 - High-VHF Go Off-Air = 60% of UHF Go Off-Air
 - Low-VHF Go Off-Air = 25% of UHF Go Off-Air
 - Opening prices represent the *maximum* a station could receive – descending clock

Reverse Auction Options – Channel Sharing

- Channel sharing deals can be reached either before or after the auction
 - If before, agreement must be filed with pre-auction application
 - If after, applicant must indicate in its pre-auction application that it intends to find a channel-sharing partner
- Most elements of agreements (incl. facility control and division of auction revenues) are between the parties and not dictated by the FCC
- Channel sharing arrangements must be implemented by the date the “sharee” station must relinquish its current spectrum usage rights (i.e., within 3 months of receipt of auction payment)
- Each station in a channel sharing arrangement will hold a separate license post-auction with must-carry rights
- Each partner can hold an option to buy out the other and terminate the arrangement; other normal contractual rights permitted

Reverse Auction Process

- Pre-auction application to be filed by end of 2015
 - Station specifies the bid options for which it wants to see offers
- 1Q2016: FCC will process applications and determine acceptability
- March 29, 2016: station must commit to accept opening offer for a “preferred bid option”
 - If no preferred bid option selected, station will be repacked
- Based on broadcaster participation, FCC auction system will determine “spectrum clearing target” for the initial “stage” of the auction
- FCC will conduct repacking feasibility check in each round
- Additional “stages” of the incentive auction are possible, with progressively lower spectrum clearing targets

Reverse Auction Process

- Repacking Feasibility Checking
 - In each round, FCC will check the feasibility of repacking all TV stations
 - If a participating station can be repacked in its pre-auction band, FCC will reduce its price offers
 - Stations can drop out of the auction in any round and be repacked
 - As stations drop out, repacking other stations becomes more difficult
 - When a participating station can no longer be repacked, its price is “frozen”
- Information Available to Stations During Auction
 - To the public:
 - current state of the auction and whether reverse or forward auction bidding is open
 - To reverse auction bidders only:
 - bidding status, price offers, and vacancy index information
 - FCC to keep participating station identities confidential through the auction
 - losing bidders’ identities remain confidential for two years after the auction

Reverse Auction Process

- Payments to Clearing Stations
 - Timing of payments tied to issuance of new mobile broadband licenses (dates are uncertain)
 - FCC can prioritize payments to certain stations to facilitate repacking
 - A station relinquishing spectrum must cease operations on its pre-auction channel within 3 months of receiving payment (additional 3 months likely to be granted for cause)
- Stations Should Review Current Agreements
 - Commercial arrangements (e.g., tower leases)
 - Network affiliation / retrans agreements
 - Programming contracts

Repacking

- FCC may not involuntarily move a UHF station to the VHF band
- Stations that do not participate will be at some risk of being assigned channels in the new wireless band
 - Participating stations will not face this risk, even if they drop out later
 - FCC will provide information on wireless band channel assignments only to forward auction bidders
- Final in-band channels to be decided after the auction. FCC Priorities:
 - Maximize number of stations remaining on their current channels;
 - Minimize aggregate new interference; and
 - Avoid reassignments for stations with high relocation costs
- Stations now on channels 50 and 51 definitely will be reassigned

Repacking

- Station assigned new channel must file modification application within 3 months; may have up to 39 months to move
 - FCC likely to establish earlier construction deadlines for “many” stations
 - Stations can seek a single 6-month extension
- \$1.75 billion Broadcaster Relocation Fund available for 3 years
 - Reimbursement goes only to stations that are involuntarily moved to another channel (no funds for voluntary UHF to VHF auction moves)
 - Allocations to be based on estimates
 - Stations can forego relocation funds in exchange for waiver to more flexibly use spectrum – unclear what will be allowed (ATSC 3.0 early use?)

Forward Auction

- Auction Design
 - Generic 5x5 MHz blocks auctioned in a “clock phase,” followed by an “assignment phase”
 - Forward auction must raise sufficient revenue to cover reverse auction winning bids, as well as relocation and administrative costs
 - If revenue is sufficient, reverse auction bids will be effectuated
 - If revenue is insufficient, FCC will reduce spectrum clearing target and restart the entire auction cycle in a new “stage”
- Reserve Spectrum
 - After sufficient revenue is raised, bidding will continue but certain blocks (up to 30 MHz) will be unavailable to top 2 carriers

Tax Implications of Auction Participation

- IRS letters to FCC regarding how federal income tax laws may apply to Incentive Auction participants
 - July 2014 (General Guidance)
 - July 2015 (Tax-Exempt Organizations)
 - <http://wireless.fcc.gov/incentiveauctions/learn-program/broadcaster.html>
- Seek guidance from a tax advisor on these issues

Prohibited Communications

- FCC has adopted a rule prohibiting certain auction-related communications between television licensees
 - Rule applies to ***all stations***, regardless of whether participating in auction
 - Exception for commonly-owned stations and stations in pre-auction channel sharing deals
- In effect from deadline for registering for auction until auction close (the “quiet period” – likely at least 4-6 months)
- Strict interpretation could affect discussions regarding routine business matters with auction-related implications
 - Affiliation, retransmission consent, programming agreements
 - NCE-TV fundraising and open meeting/open records requirements
- FCC plans to issue further guidance before applications are due

Contact Information

Jonathan V. Cohen

202.383.3416

joncohen@wbklaw.com

David D. Oxenford

202.383.3337

doxenford@wbklaw.com

WILKINSON BARKER KNAUER, LLP
2300 N STREET, N.W., SUITE 700
WASHINGTON, D.C. 20037
202.783.4141

www.wbklaw.com