



September 5, 2017

TO: Members, Subcommittee on Communications and Technology

FROM: Committee Majority Staff

RE: Hearing entitled “The Broadcast Incentive Auction: Update on Repacking Opportunities and Challenges.”

I. INTRODUCTION

The Subcommittee on Communications and Technology will hold a hearing on Thursday, September 7, 2017, at 10:00 a.m. in 2123 Rayburn House Office Building. The hearing is entitled “The Broadcast Incentive Auction: Update on Repacking Opportunities and Challenges.”

II. WITNESSES

- Scott Bergmann, Vice President, Regulatory Affairs, CTIA;
- Rick Kaplan, General Counsel and Executive Vice President, National Association of Broadcasters;
- Rebecca Murphy Thompson, General Counsel and Executive Vice President, Competitive Carriers Association
- Lyn Plantinga, Vice President and General Manager, NewsChannel 5 Network; and
- Jim Tracy, CEO, Legacy Telecommunications, Inc.; National Association of Tower Erectors Chairman
- Patrick Butler, CEO, America’s Public Television Stations

III. BACKGROUND

The Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”) granted the FCC authority to carry out the broadcast television spectrum incentive auction.¹ The goal of the incentive auction was to reclaim spectrum from broadcasters and repurpose it for new licenses suitable for mobile broadband in an effort to meet the nation’s growing demand for mobile services. The incentive auction was comprised of three major pieces: 1) a “reverse auction” in

¹ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 125 Stat. 156 (2012) (Spectrum Act).

which broadcasters voluntarily relinquish spectrum usage rights in exchange for incentive payments; 2) a “forward auction” of new licenses made available by the recovered spectrum; and 3) a reorganization or “repacking” of the broadcast licensees into the remaining spectrum bands. The auction provided broadcasters a financial opportunity to sell unused or underutilized spectrum licenses and gave wireless licensees an opportunity to purchase additional spectrum for mobile broadband services. Proceeds from the forward auction would be used to compensate broadcasters for returned spectrum, cover the costs of the repacking process, and fund a national first responder network. The balance of the proceeds would be used for deficit reduction.

Following passage of the Spectrum Act, the FCC established the Incentive Auction Task Force and in October 2012 released a Notice of Proposed Rulemaking (“NPRM”) seeking comment on a variety of auction design issues.² In June 2014, the FCC released an order adopting rules to implement the auction.³

The reverse auction concluded in January 2017 yielding 84 MHz of spectrum.⁴ 175 broadcasters sold some or all of their spectrum rights for a total of \$10 billion in incentive payments.⁵ The forward auction concluded in March 2017, raising \$19.8 billion.⁶ The repacking process began in April 2017 and will conclude in July 2020.

IV. ISSUES

The following issues may be examined at the hearing:

A. Repack Cost Estimates and Timeline

In April 2017, the FCC announced the results of the reverse and forward auctions and revealed that 957 broadcast stations that did not participate in the auction will be relocated in the repacking process.⁷ The Spectrum Act established a \$1.75 billion Broadcast Relocation Fund for the Commission to reimburse costs incurred by broadcasters who are relocated. Stakeholders have expressed concern that this fund will be inadequate to cover all costs associated with the repacking process. As an initial step in the reimbursement process, broadcasters slated to move were required to submit cost estimates to the Commission by July 12, 2017. Based on these estimates, the repack cost will total \$2.1 billion.⁸ An audit of these estimates is ongoing, with

² See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Notice of Proposed Rulemaking, 27 FCC Rcd 12357 (2012)

³ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567 (2014)

⁴ Broadcast Incentive Auction and Post-Auction Transition, Auction Results <https://www.fcc.gov/about-fcc/fcc-initiatives/incentive-auctions>

⁵ See *Incentive Auction Closing and Channel Reassignment Public Notice*, Public Notice, 32 FCC Rcd 2786 (2017)

⁶ *Id.*

⁷ *Id.*

⁸ Incentive Auction Task Force Releases Preliminary Repack Cost Estimate, Statement, (July 14, 2017) <https://www.fcc.gov/document/incentive-auction-task-force-releases-preliminary-repack-cost-estimate>

results expected in October 2017.

The Spectrum Act provided a 39-month post-auction transition period during which the repacking process must be completed.⁹ To repack the 957 stations that did not participate in the auction, in addition to stations who received payment for relocating, the FCC developed a transition scheduling plan to determine the order and schedule for stations to transition to new channel assignments.¹⁰ The plan assigns stations to one of ten phases during which a station will be required to move to their new assigned channel.

There are a number of variables involved in modifying broadcast facilities including availability of tower crews, weather, equipment availability, and building and zoning permits. Thus, some stakeholders have expressed significant concern with the adequacy of the 39-month timeline to move all stations implicated in the repack plan. Conversely, others have strongly advocated for completing the repack process within the existing deadline. Bidders in the forward auction have invested significant resources to acquire spectrum that will be inaccessible until the repacking process is complete. Further, participants in the forward auction based bid amounts and subsequent investment plans on the 39-month deadline. Adjusting the repack timeline would not only negatively affect winning bidders in this auction, but would inject uncertainty into future auction proceedings.

In July 2017, Energy and Commerce Ranking Member Pallone introduced the Viewer Protection Act. The bill establishes a \$1 billion Viewer Protection Fund to provide additional repacking resources to broadcasters, and gives the FCC's Media Bureau authority to modify the repacking transition periods.

B. Low Power and Translator Stations

The Spectrum Act specified that of the broadcast stations that may be reassigned to new channels in the repacking process, only full power and Class A licensees are eligible for reimbursement for relocation costs.¹¹ Low power television (LPTV), and television translator (TV translator) stations (collectively "LPTV/translator stations") were not eligible to participate in the incentive auction and were not entitled to protection in the repacking process. As a result, some LPTV/translator stations will be displaced.

The Commission has taken several steps to mitigate the impact to these stations.¹² LPTV/translator stations may file a displacement application to move to another channel or to

⁹ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 125 Stat. 156 (2012) (Spectrum Act).

¹⁰ See *Incentive Auction Task Force and Media Bureau Adopt Post-Incentive Auction Transition Scheduling Plan*, Public Notice, DA 17-107 (2017)

¹¹ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 125 Stat. 156 (2012) (Spectrum Act).

¹² *The Incentive Auction Task Force and Media Bureau Announce Procedures for Low Power Television, Television Translator and Replacement Translator Stations During the Post-Incentive Auction Transition*, Public Notice, DA 17-442 (2017)

channel share. The Commission is also working to help identify potential new channel assignments for displaced stations. In addition, the Commission has permitted LPTV/translator stations to remain on existing channels until they are notified of likely interference with a new licensee, enabling stations to continue operations on their current channels as long as possible.

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Robin Colwell or Lauren McCarty of the Committee staff at (202) 225-2927.