

CODIFICATION

Section is comprised of section 6401 of Pub. L. 112-96. Subsec. (c) of section 6401 of Pub. L. 112-96 amended section 309 of this title.

§ 1452. Special requirements for incentive auction of broadcast TV spectrum

(a) Reverse auction to identify incentive amount

(1) In general

The Commission shall conduct a reverse auction to determine the amount of compensation that each broadcast television licensee would accept in return for voluntarily relinquishing some or all of its broadcast television spectrum usage rights in order to make spectrum available for assignment through a system of competitive bidding under subparagraph (G) of section 309(j)(8) of this title.

(2) Eligible relinquishments

A relinquishment of usage rights for purposes of paragraph (1) shall include the following:

(A) Relinquishing all usage rights with respect to a particular television channel without receiving in return any usage rights with respect to another television channel.

(B) Relinquishing all usage rights with respect to an ultra high frequency television channel in return for receiving usage rights with respect to a very high frequency television channel.

(C) Relinquishing usage rights in order to share a television channel with another licensee.

(3) Confidentiality

The Commission shall take all reasonable steps necessary to protect the confidentiality of Commission-held data of a licensee participating in the reverse auction under paragraph (1), including withholding the identity of such licensee until the reassignments and reallocations (if any) under subsection (b)(1)(B) become effective, as described in subsection (f)(2).

(4) Protection of carriage rights of licensees sharing a channel

A broadcast television station that voluntarily relinquishes spectrum usage rights under this subsection in order to share a television channel and that possessed carriage rights under section 338, 534, or 535 of this title on November 30, 2010, shall have, at its shared location, the carriage rights under such section that would apply to such station at such location if it were not sharing a channel.

(b) Reorganization of broadcast TV spectrum

(1) In general

For purposes of making available spectrum to carry out the forward auction under subsection (c)(1), the Commission—

(A) shall evaluate the broadcast television spectrum (including spectrum made available through the reverse auction under subsection (a)(1)); and

(B) may, subject to international coordination along the border with Mexico and Canada—

(i) make such reassignments of television channels as the Commission considers appropriate; and

(ii) reallocate such portions of such spectrum as the Commission determines are available for reallocation.

(2) Factors for consideration

In making any reassignments or reallocations under paragraph (1)(B), the Commission shall make all reasonable efforts to preserve, as of February 22, 2012, the coverage area and population served of each broadcast television licensee, as determined using the methodology described in OET Bulletin 69 of the Office of Engineering and Technology of the Commission.

(3) No involuntary relocation from UHF to VHF

In making any reassignments under paragraph (1)(B)(i), the Commission may not involuntarily reassign a broadcast television licensee—

(A) from an ultra high frequency television channel to a very high frequency television channel; or

(B) from a television channel between the frequencies from 174 megahertz to 216 megahertz to a television channel between the frequencies from 54 megahertz to 88 megahertz.

(4) Payment of relocation costs

(A) In general

Except as provided in subparagraph (B), from amounts made available under subsection (d)(2), the Commission shall reimburse costs reasonably incurred by—

(i) a broadcast television licensee that was reassigned under paragraph (1)(B)(i) from one ultra high frequency television channel to a different ultra high frequency television channel, from one very high frequency television channel to a different very high frequency television channel, or, in accordance with subsection (g)(1)(B), from a very high frequency television channel to an ultra high frequency television channel, in order for the licensee to relocate its television service from one channel to the other;

(ii) a multichannel video programming distributor in order to continue to carry the signal of a broadcast television licensee that—

(I) is described in clause (i);

(II) voluntarily relinquishes spectrum usage rights under subsection (a) with respect to an ultra high frequency television channel in return for receiving usage rights with respect to a very high frequency television channel; or

(III) voluntarily relinquishes spectrum usage rights under subsection (a) to share a television channel with another licensee; or

(iii) a channel 37 incumbent user, in order to relocate to other suitable spectrum, provided that all such users can be relocated and that the total relocation costs of such users do not exceed

\$300,000,000. For the purpose of this section, the spectrum made available through relocation of channel 37 incumbent users shall be deemed as spectrum reclaimed through a reverse auction under subsection (a).

(B) Regulatory relief

In lieu of reimbursement for relocation costs under subparagraph (A), a broadcast television licensee may accept, and the Commission may grant as it considers appropriate, a waiver of the service rules of the Commission to permit the licensee, subject to interference protections, to make flexible use of the spectrum assigned to the licensee to provide services other than broadcast television services. Such waiver shall only remain in effect while the licensee provides at least 1 broadcast television program stream on such spectrum at no charge to the public.

(C) Limitation

The Commission may not make reimbursements under subparagraph (A) for lost revenues.

(D) Deadline

The Commission shall make all reimbursements required by subparagraph (A) not later than the date that is 3 years after the completion of the forward auction under subsection (c)(1).

(5) Low-power television usage rights

Nothing in this subsection shall be construed to alter the spectrum usage rights of low-power television stations.

(c) Forward auction

(1) Auction required

The Commission shall conduct a forward auction in which—

(A) the Commission assigns licenses for the use of the spectrum that the Commission reallocates under subsection (b)(1)(B)(ii); and

(B) the amount of the proceeds that the Commission shares under clause (i) of section 309(j)(8)(G) of this title with each licensee whose bid the Commission accepts in the reverse auction under subsection (a)(1) is not less than the amount of such bid.

(2) Minimum proceeds

(A) In general

If the amount of the proceeds from the forward auction under paragraph (1) is not greater than the sum described in subparagraph (B), no licenses shall be assigned through such forward auction, no reassignments or reallocations under subsection (b)(1)(B) shall become effective, and the Commission may not revoke any spectrum usage rights by reason of a bid that the Commission accepts in the reverse auction under subsection (a)(1).

(B) Sum described

The sum described in this subparagraph is the sum of—

(i) the total amount of compensation that the Commission must pay successful

bidders in the reverse auction under subsection (a)(1);

(ii) the costs of conducting such forward auction that the salaries and expenses account of the Commission is required to retain under section 309(j)(8)(B) of this title; and

(iii) the estimated costs for which the Commission is required to make reimbursements under subsection (b)(4)(A).

(C) Administrative costs

The amount of the proceeds from the forward auction under paragraph (1) that the salaries and expenses account of the Commission is required to retain under section 309(j)(8)(B) of this title shall be sufficient to cover the costs incurred by the Commission in conducting the reverse auction under subsection (a)(1), conducting the evaluation of the broadcast television spectrum under subparagraph (A) of subsection (b)(1), and making any reassignments or reallocations under subparagraph (B) of such subsection, in addition to the costs incurred by the Commission in conducting such forward auction.

(3) Factor for consideration

In conducting the forward auction under paragraph (1), the Commission shall consider assigning licenses that cover geographic areas of a variety of different sizes.

(d) TV Broadcaster Relocation Fund

(1) Establishment

There is established in the Treasury of the United States a fund to be known as the TV Broadcaster Relocation Fund.

(2) Payment of relocation costs

Any amounts borrowed under paragraph (3)(A) and any amounts in the TV Broadcaster Relocation Fund that are not necessary for reimbursement of the general fund of the Treasury for such borrowed amounts shall be available to the Commission to make the payments required by subsection (b)(4)(A).

(3) Borrowing authority

(A) In general

Beginning on the date when any reassignments or reallocations under subsection (b)(1)(B) become effective, as provided in subsection (f)(2), and ending when \$1,000,000,000 has been deposited in the TV Broadcaster Relocation Fund, the Commission may borrow from the Treasury of the United States an amount not to exceed \$1,000,000,000 to use toward the payments required by subsection (b)(4)(A).

(B) Reimbursement

The Commission shall reimburse the general fund of the Treasury, without interest, for any amounts borrowed under subparagraph (A) as funds are deposited into the TV Broadcaster Relocation Fund.

(4) Transfer of unused funds

If any amounts remain in the TV Broadcaster Relocation Fund after the date that is 3 years after the completion of the forward auction under subsection (c)(1), the Secretary of the Treasury shall—

(A) prior to the end of fiscal year 2022, transfer such amounts to the Public Safety Trust Fund established by section 1457(a)(1) of this title; and

(B) after the end of fiscal year 2022, transfer such amounts to the general fund of the Treasury, where such amounts shall be dedicated for the sole purpose of deficit reduction.

(e) Numerical limitation on auctions and reorganization

The Commission may not complete more than one reverse auction under subsection (a)(1) or more than one reorganization of the broadcast television spectrum under subsection (b).

(f) Timing

(1) Contemporaneous auctions and reorganization permitted

The Commission may conduct the reverse auction under subsection (a)(1), any reassignments or reallocations under subsection (b)(1)(B), and the forward auction under subsection (c)(1) on a contemporaneous basis.

(2) Effectiveness of reassignments and reallocations

Notwithstanding paragraph (1), no reassignments or reallocations under subsection (b)(1)(B) shall become effective until the completion of the reverse auction under subsection (a)(1) and the forward auction under subsection (c)(1), and, to the extent practicable, all such reassignments and reallocations shall become effective simultaneously.

(3) Deadline

The Commission may not conduct the reverse auction under subsection (a)(1) or the forward auction under subsection (c)(1) after the end of fiscal year 2022.

(4) Limit on discretion regarding auction timing

Section 309(j)(15)(A) of this title shall not apply in the case of an auction conducted under this section.

(g) Limitation on reorganization authority

(1) In general

During the period described in paragraph (2), the Commission may not—

(A) involuntarily modify the spectrum usage rights of a broadcast television licensee or reassign such a licensee to another television channel except—

- (i) in accordance with this section; or
- (ii) in the case of a violation by such licensee of the terms of its license or a specific provision of a statute administered by the Commission, or a regulation of the Commission promulgated under any such provision; or

(B) reassign a broadcast television licensee from a very high frequency television channel to an ultra high frequency television channel, unless—

- (i) such a reassignment will not decrease the total amount of ultra high frequency spectrum made available for reallocation under this section; or

(ii) a request from such licensee for the reassignment was pending at the Commission on May 31, 2011.

(2) Period described

The period described in this paragraph is the period beginning on February 22, 2012, and ending on the earliest of—

(A) the first date when the reverse auction under subsection (a)(1), the reassignments and reallocations (if any) under subsection (b)(1)(B), and the forward auction under subsection (c)(1) have been completed;

(B) the date of a determination by the Commission that the amount of the proceeds from the forward auction under subsection (c)(1) is not greater than the sum described in subsection (c)(2)(B); or

(C) September 30, 2022.

(h) Protest right inapplicable

The right of a licensee to protest a proposed order of modification of its license under section 316 of this title shall not apply in the case of a modification made under this section.

(i) Commission authority

Nothing in subsection (b) shall be construed to—

(1) expand or contract the authority of the Commission, except as otherwise expressly provided; or

(2) prevent the implementation of the Commission's "White Spaces" Second Report and Order and Memorandum Opinion and Order (FCC 08-260, adopted November 4, 2008) in the spectrum that remains allocated for broadcast television use after the reorganization required by such subsection.

(Pub. L. 112-96, title VI, §6403, Feb. 22, 2012, 126 Stat. 225.)

§ 1453. Unlicensed use in the 5 GHz band

(a) Modification of Commission regulations to allow certain unlicensed use

(1) In general

Subject to paragraph (2), not later than 1 year after February 22, 2012, the Commission shall begin a proceeding to modify part 15 of title 47, Code of Federal Regulations, to allow unlicensed U-NII devices to operate in the 5350-5470 MHz band.

(2) Required determinations

The Commission may make the modification described in paragraph (1) only if the Commission, in consultation with the Assistant Secretary, determines that—

(A) licensed users will be protected by technical solutions, including use of existing, modified, or new spectrum-sharing technologies and solutions, such as dynamic frequency selection; and

(B) the primary mission of Federal spectrum users in the 5350-5470 MHz band will not be compromised by the introduction of unlicensed devices.

(b) Study by NTIA

(1) In general

The Assistant Secretary, in consultation with the Department of Defense and other im-