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Could the US spectrum incentive auction fail without LPTV bidders?

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Jan 02, 2014
by Dugie Standeford

While US broadcasters eligible to take part in the spectrum incentive auction aren't exactly beating down the door to participate, ineligible low power TV (LPTV) stations are definitely interested. Without LPTV bidders, could the auction fail?

Under the Spectrum Act authorising the incentive auction, broadcasters can opt to relinquish their licences in a "reverse auction" or be "repacked" with other stations. But this reverse auction is available only to commercial and non-commercial full power and Class AQ licensees.

The LPTV Spectrum Rights Coalition was formed to represent the interests of low power TV and TV translator FCC licensees in the incentive auction and channel repacking. It claims a membership of almost 570 licensed and built stations, construction permits and industry partners.

"Major unintended consequences"

The Spectrum Act was passed almost two years ago "and we can now see major unintended consequences with it," the coalition's director Mike Gravino told *PolicyTracker*.

The first is that there aren't enough eligible broadcasters who want to participate, he said. The pool of eligible broadcasters is drawn from only 26 per cent of licences. That's not due to insufficient education or incentives, but because of a "real lack of interest from an economic standpoint," he said. "Why give up strong ad sales and guaranteed retransmission fees for a one-time payment?"

The only way to remedy the situation is to increase the pool of eligible broadcasters, and that can only be done by allowing the LPTV community to bid. With LPTV in the auction, the opening bids the government accepts for buying back broadcast spectrum will be much lower, Gravino said.

The coalition estimates it will be as much as \$5-7 billion less, which means the government can make much more when it sells the spectrum rights to mobile broadband bidders. By including LPTV, the

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government could guarantee that all designated market areas will have at least two eligible bidders, he said.

The second unintended consequence of the legislation in its current form is that if LPTV licensees aren't auction-eligible, they retain all their current spectrum rights - key among which is the right to file for a displacement channel. That means that in the LPTV repack, all 6,400-plus LPTV and TV translators will move into the remaining spectrum in each designated market area and there won't be anything left for TV white spaces or a large (20-30 MHz) contiguous band for unlicensed use, Gravino said.

The Act specifically states that an unlicensed band can only be as large as is technically needed to prevent interference from two licensed services, such as TV and mobile broadband or TV and radioastronomy.

Proponents of unlicensed spectrum such as Google, Microsoft, Apple and others represented by advocacy groups such as the Public Interest Spectrum Coalition are in favour of the 20-30 MHz concept, but it doesn't work within the Act, Gravino said. "If they want this big unlicensed band they need to support LPTV in the auction so that there will be room."

Several members of Congress have asked the LPTV coalition to draft a "what if LPTV were auction-eligible" scenario, Gravino said. It is due to be published this month. LPTV "is the key for a successful and profitable auction," he said. "Without us in the auction the government runs the risk of a failed auction."

Legislative amendments unlikely?

"Congress decided that non-Class A low power stations are not guaranteed a channel in the repacked TV band," said Preston Padden, executive director of the Expanding Opportunities for Broadcasters Coalition. "I don't think that will change."

There's not much chance Congress will enact legislation that changes the scope of the auction, unless the FCC reports that it fears a failed auction due to broadcaster non-participation and that it would make a big difference to the amount of paired spectrum available for the core band plan, said Michael Calabrese, director of the New America Foundation's wireless future project. The foundation is a member of the Public Interest Spectrum Coalition.

"We still aren't hearing the hooves"

Asked how much appetite there is among broadcasters to take part in the reverse auction, Padden said interest is coming mainly from small stations in large markets. The FCC won't need to buy stations in small markets, he said.

The National Association of Broadcasters is aware that Padden has lined up 70 stations interested in taking part in the auction, but "that seems to be the exception rather than the rule," said its executive vice president of communications Dennis Wharton. "If there is a stampede of stations preparing to go

"We're hopeful that the FCC will do all that it can to preserve LPTV"

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out of business, we still aren't hearing the hooves," he said. The NAB believes most stations will decline to participate in the auction, because broadcasting is a "very healthy business with a vibrant future".

The NAB is "very sympathetic to the plight of LPTV stations," Wharton said. LPTV provides a vital service to many communities across the country and is often the only voice for niche foreign language and independent programming, he said. Many NAB members, including several board members, have LPTV properties that complement their full power TV stations, he said. "We're hopeful that the FCC will do all that it can to preserve LPTV and also translators that serve millions of people with free and local programming."

There is a good argument that the FCC would have more flexibility, and could buy out stations less expensively on average, if LPTVs were eligible to participate, said Calabrese. The agency won't need to pay any broadcaster in 80 per cent of the markets, but where they do have to pay, the participation of an LPTV or two "could be consequential," he said. •

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