

Public Law 107-195
107th Congress

An Act

To eliminate the deadlines for spectrum auctions of spectrum previously allocated to television broadcasting.

June 19, 2002

[H.R. 4560]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Auction Reform Act of 2002”.

Auction Reform
Act of 2002.
47 USC 609 note.

SEC. 2. FINDINGS.

47 USC 309 note.

Congress finds the following:

(1) Circumstances in the telecommunications market have changed dramatically since the auctioning of spectrum in the 700 megahertz band was originally mandated by Congress in 1997, raising serious questions as to whether the original deadlines, or the subsequent revision of the deadlines, are consistent with sound telecommunications policy and spectrum management principles.

(2) No comprehensive plan yet exists for allocating additional spectrum for third-generation wireless and other advanced communications services. The Federal Communications Commission should have the flexibility to auction frequencies in the 700 megahertz band for such purposes.

(3) The study being conducted by the National Telecommunications and Information Administration in consultation with the Department of Defense to determine whether the Department of Defense can share or relinquish additional spectrum for third generation wireless and other advanced communications services will not be completed until after the June 19th auction date for the upper 700 megahertz band, and long after the applications must be filed to participate in the auction, thereby creating further uncertainty as to whether the frequencies in the 700 megahertz band will be put to their highest and best use for the benefit of consumers.

(4) The Federal Communications Commission is also in the process of determining how to resolve the interference problems that exist in the 800 megahertz band, especially for public safety. One option being considered for the 800 megahertz band would involve the 700 megahertz band. The Commission should not hold the 700 megahertz auction before the 800 megahertz interference issues are resolved or a tenable plan has been conceived.

(5) The 700 megahertz band is currently occupied by television broadcasters, and will be so until the transfer to digital television is completed. This situation creates a tremendous

amount of uncertainty concerning when the spectrum will be available and reduces the value placed on the spectrum by potential bidders. The encumbrance of the 700 megahertz band reduces both the amount of money that the auction would be likely to produce and the probability that the spectrum would be purchased by the entities that valued the spectrum the most and would put the spectrum to its most productive use.

(6) The Commission's rules governing voluntary mechanisms for vacating the 700 megahertz band by broadcast stations—

(A) produced no certainty that the band would be available for advanced mobile communications services, public safety operations, or other wireless services any earlier than the existing statutory framework provides; and

(B) should advance the transition of digital television and must not result in the unjust enrichment of any incumbent licensee.

SEC. 3. ELIMINATION OF STATUTORY DEADLINES FOR SPECTRUM AUCTIONS.

(a) FCC TO DETERMINE TIMING OF AUCTIONS.—Section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) is amended by adding at the end the following new paragraph:

“(15) COMMISSION TO DETERMINE TIMING OF AUCTIONS.—

“(A) COMMISSION AUTHORITY.—Subject to the provisions of this subsection (including paragraph (11)), but notwithstanding any other provision of law, the Commission shall determine the timing of and deadlines for the conduct of competitive bidding under this subsection, including the timing of and deadlines for qualifying for bidding; conducting auctions; collecting, depositing, and reporting revenues; and completing licensing processes and assigning licenses.

“(B) TERMINATION OF PORTIONS OF AUCTIONS 31 AND 44.—Except as provided in subparagraph (C), the Commission shall not commence or conduct auctions 31 and 44 on June 19, 2002, as specified in the public notices of March 19, 2002, and March 20, 2002 (DA 02-659 and DA 02-563).

“(C) EXCEPTION.—

“(i) BLOCKS EXCEPTED.—Subparagraph (B) shall not apply to the auction of—

“(I) the C-block of licenses on the bands of frequencies located at 710–716 megahertz, and 740–746 megahertz; or

“(II) the D-block of licenses on the bands of frequencies located at 716–722 megahertz.

“(ii) ELIGIBLE BIDDERS.—The entities that shall be eligible to bid in the auction of the C-block and D-block licenses described in clause (i) shall be those entities that were qualified entities, and that submitted applications to participate in auction 44, by May 8, 2002, as part of the original auction 44 short form filing deadline.

“(iii) AUCTION DEADLINES FOR EXCEPTED BLOCKS.—Notwithstanding subparagraph (B), the auction of the

C-block and D-block licenses described in clause (i) shall be commenced no earlier than August 19, 2002, and no later than September 19, 2002, and the proceeds of such auction shall be deposited in accordance with paragraph (8) not later than December 31, 2002.

“(iv) REPORT.—Within one year after the date of enactment of this paragraph, the Commission shall submit a report to Congress—

“(I) specifying when the Commission intends to reschedule auctions 31 and 44 (other than the blocks excepted by clause (i)); and

“(II) describing the progress made by the Commission in the digital television transition and in the assignment and allocation of additional spectrum for advanced mobile communications services that warrants the scheduling of such auctions.

“(D) RETURN OF PAYMENTS.—Within one month after the date of enactment of this paragraph, the Commission shall return to the bidders for licenses in the A-block, B-block, and E-block of auction 44 the full amount of all upfront payments made by such bidders for such licenses.”.

(b) CONFORMING AMENDMENTS.—

(1) COMMUNICATIONS ACT OF 1934.—Section 309(j)(14)(C)(ii) of the Communications Act of 1934 (47 U.S.C. 309(j)(14)(C)(ii)) is amended by striking the second sentence.

(2) BALANCED BUDGET ACT OF 1997.—Section 3007 of the Balanced Budget Act of 1997 (111 Stat. 269) is repealed.

(3) CONSOLIDATED APPROPRIATIONS ACT.—Paragraphs (2) and (3) of section 213(a) of H.R. 3425 of the 106th Congress, as enacted into law by section 1000(a)(5) of An Act making consolidated appropriations for the fiscal year ending September 30, 2000, and for other purposes (Public Law 106-113; 113 Stat. 1501A-295), are repealed.

47 USC 309 note.

47 USC 337 note.

47 USC 309 note.

SEC. 4. COMPLIANCE WITH AUCTION AUTHORITY.

The Federal Communications Commission shall conduct rescheduled auctions 31 and 44 prior to the expiration of the auction authority under section 309(j)(11) of the Communications Act of 1934 (47 U.S.C. 309(j)(11)).

SEC. 5. PRESERVATION OF BROADCASTER OBLIGATIONS.

47 USC 309 note.

Nothing in this Act shall be construed to relieve television broadcast station licensees of the obligation to complete the digital television service conversion as required by section 309(j)(14) of the Communications Act of 1934 (47 U.S.C. 309(j)(14)).

SEC. 6. INTERFERENCE PROTECTION.

47 USC 337 note.

(a) INTERFERENCE WAIVERS.—In granting a request by a television broadcast station licensee assigned to any of channels 52-69 to utilize any channel of channels 2-51 that is assigned for digital broadcasting in order to continue analog broadcasting during the transition to digital broadcasting, the Federal Communications Commission may not, either at the time of the grant or thereafter, waive or otherwise reduce—

(1) the spacing requirements provided for analog broadcasting licensees within channels 2-51 as required by section 73.610 of the Commission's rules (and the table contained therein) (47 CFR 73.610), or

(2) the interference standards provided for digital broadcasting licensees within channels 2-51 as required by sections 73.622 and 73.623 of such rules (47 CFR 73.622, 73.623), if such waiver or reduction will result in any degradation in or loss of service, or an increased level of interference, to any television household except as the Commission's rules would otherwise expressly permit, exclusive of any waivers previously granted.

(b) EXCEPTION FOR PUBLIC SAFETY CHANNEL CLEARING.—The restrictions in subsection (a) shall not apply to a station licensee that is seeking authority (either by waiver or otherwise) to vacate the frequencies that constitute television channel 63, 64, 68, or 69 in order to make such frequencies available for public safety purposes pursuant to the provisions of section 337 of the Communications Act of 1934 (47 U.S.C. 337).

Approved June 19, 2002.

LEGISLATIVE HISTORY—H.R. 4560:

HOUSE REPORTS: No. 107-443 (Comm. on Energy and Commerce).

CONGRESSIONAL RECORD, Vol. 148 (2002):

May 7, considered and passed House.

June 18, considered and passed Senate, amended. House concurred in Senate amendment.