

Opening Statement of the Honorable Fred Upton
Subcommittee on Communications and Technology
Hearing on “Keeping the New Broadband Spectrum Law on Track”
December 12, 2012
(As Prepared for Delivery)

More than a decade has passed since the September 11th attacks, and we still have not met the 9/11 Commission recommendation to create a nationwide public safety network. So when faced with the opportunity to help fund construction of the network by freeing spectrum to meet soaring demand for mobile broadband services, we leapt at the chance. The result? The broadcast incentive auction provisions of the Middle Class Tax Relief and Job Creation Act.

I will not pretend it is an easy piece of legislation for the FCC to implement. Designing a reverse auction that encourages television stations to relinquish spectrum, reorganizing the stations that choose to remain on air, and repackaging and selling the cleared spectrum in a way that generates \$7 billion for First Responders certainly presents the agency with some challenges. To meet those complex challenges, the FCC should focus on maximizing the spectrum it clears and the revenue it generates.

The agency should not complicate matters by artificially enlarging guard bands or giving away blocks of reclaimed broadcast spectrum for unlicensed use. Doing so would violate the act, which states that guard bands shall be no larger than technically reasonable to prevent interference and requires the FCC to auction all the spectrum it makes available by repurposing spectrum that stations relinquish or reorganizing stations that remain. It would also jeopardize the funding for public safety in a fiscal climate that is unlikely to provide alternate sources for the foreseeable future.

Doing so is also unnecessary. The Middle Class Tax Relief and Job Creation Act is a balanced piece of legislation. It provides the proverbial garage entrepreneur plenty of other unlicensed opportunities to generate economic benefit. First, as the FCC’s NPRM acknowledges, it preserves a “substantial amount” of unlicensed “white space” spectrum. Second, it allows, but does not require, unlicensed use in guard bands. Third, it identifies an additional 195 megahertz of other spectrum for unlicensed use. That is in addition to more than 670 MHz of spectrum below 6 GHz already available for unlicensed use, which is more than the 580 MHz currently available below 6 GHz for licensed wireless use.

The FCC must also refrain from picking winners and losers and excluding certain parties from the auction. This, too, would not just reduce revenues but also violate the statute. While the act does preserve any authority the FCC has to impose generally applicable rules on spectrum aggregation, it does not allow the FCC to prevent parties from competing for spectrum through auctions.

Let’s not squander this unprecedented and long overdue opportunity by trying to do too much. Neither First Responders nor the nation can afford it.

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