

FCC Announces Auction Results and Sets TV Repack Deadlines

By Scott R. Flick, Lauren Lynch Flick and Joseph A. Cohen

April 13, 2017 | www.commlawcenter.com

To use a metaphor those headed to Vegas for the NAB Show will appreciate, two of the three wheels on the Spectrum Repack slot machine had stopped spinning, and all eyes have since been anxiously watching that third and final wheel. The first stopped spinning on January 13, 2017 when the Reverse Auction concluded. The second stopped on March 30, 2017 when the Assignment Phase of the Forward Auction came to an end. The third wheel stopped this afternoon with the release of the FCC's long-awaited [Incentive Auction Closing and Channel Reassignment Public Notice](#). That *Public Notice* formally marks the end of the Incentive Auction, and publicly reveals which stations got cherries and which stations got lemons in the auction and repack.

According to the FCC, there were 175 TV stations that sold spectrum in the auction for just over \$10 Billion in total. Of these 175, 30 are moving to a VHF channel and 133 have indicated that they will be channel sharing with a station that did not sell spectrum in the auction. That suggests only twelve stations nationwide sold their spectrum with the intent to go dark permanently.

For those stations that did not sell spectrum in the auction, the FCC indicates that **957** of them are being involuntarily moved to new channels. As a result, the Spectrum Repack looks like it will be every bit as complex and all-encompassing as many had feared.

In that regard, the *Public Notice* also locks in the deadlines broadcasters must meet for the 39-month Spectrum Repack, officially launching the rush to secure equipment and services needed by each repacked TV station to build out new transmitting facilities. The FCC had addressed in general terms many of the repack deadlines in various notices and webinars, but nearly all were geared to the release date of the *Public Notice*. As a result, while we generally knew how long the FCC was allotting for various steps of the repack, they all remained moving targets until today's release of the *Public Notice*.

With the *Public Notice* now in hand, we have assembled below the key deadlines.

- **May 11, 2017: Auction Payment Instructions Due** – Deadline for reverse auction winners to provide the FCC with a hard-copy of their payment instructions for auction proceeds on Form 1875. This is the first step in the FCC's gathering of bank account information to facilitate the disbursement of auction payments.
- **May 15, 2017: Service Rule Waivers Due** – Deadline for stations eligible for repack reimbursement to request a service rule waiver in lieu of repacking reimbursement to allow use of the station's spectrum for services other than broadcast TV.
- **June 12, 2017: Construction Permit Deadline Waivers Due** – Deadline for stations that are unable to construct facilities that meet the technical parameters specified in the *Public Notice* to request waivers of the Construction Permit Application deadline (*see below*).

- **July 12, 2017: Construction Permit Applications Due** – Deadline for stations to file applications to build the repack facilities specified in the *Public Notice*.
- **July 12, 2017: Reimbursement Estimates Due** – Deadline for stations to submit reimbursement estimates for their repacking costs. Reimbursable expenses include engineering, legal, equipment, installation, and other costs reasonably incurred to accomplish a required channel change. A non-exhaustive list of costs that are eligible for reimbursement can be found in the [FCC's Catalog of Potential Expenses and Estimated Costs](#).
- **Approximately August 11, 2017: Priority Construction Permit Application Window Opens** – 30-day filing window opens for a station to request an alternate channel or expanded facilities, but only if it is: (1) a reassigned or band-changing station unable to construct the *Public Notice* facilities; (2) a station predicted to experience greater than 1% population loss as a result of repacking; or (3) a displaced Class A station.
- **Approximately September 11, 2017: Priority Construction Permit Application Window Closes**
- **Approximately September 25, 2017: Construction Permit Modification Filing Window Opens** – 30-day filing window opens for (1) amendments to pending construction permit applications and (2) applications to modify an already-granted repack construction permit to expand facilities or seek an alternate channel. These amendments/applications will need to protect the facilities stations applied for in the two earlier windows.
- **Approximately October 25, 2017: Construction Permit Modification Filing Window Closes**
- **Approximately November – December 2017:** Shortly after the close of the Construction Permit Modification Filing Window, the FCC will release a public notice announcing the availability of channels for displaced LPTV and TV Translator stations.
- **Approximately January – February 2018:** At least 60 days after it announces the availability of LPTV/TV Translator channels, the FCC will open a filing window for those stations to file displacement applications.

We also now know for certain the **Phase Transition** dates for the repack, which are:

- **Transition Phase 1: Testing Begins: 9/14/2018 Phase Ends: 11/30/2018**
- **Transition Phase 2: Testing Begins: 12/1/2018 Phase Ends: 4/12/2019**
- **Transition Phase 3: Testing Begins: 4/13/2019 Phase Ends: 6/21/2019**
- **Transition Phase 4: Testing Begins: 6/22/2019 Phase Ends: 8/2/2019**
- **Transition Phase 5: Testing Begins: 8/3/2019 Phase Ends: 9/6/2019**
- **Transition Phase 6: Testing Begins: 9/7/2019 Phase Ends: 10/18/2019**
- **Transition Phase 7: Testing Begins: 10/19/2019 Phase Ends: 1/17/2020**
- **Transition Phase 8: Testing Begins: 1/18/2020 Phase Ends: 3/13/2020**
- **Transition Phase 9: Testing Begins: 3/14/2020 Phase Ends: 5/1/2020**
- **Transition Phase 10: Testing Begins: 5/2/2020 Phase Ends: 7/3/2020**

Finally, other deadlines that broadcasters will want to know include:

- **Transition Progress Reports** must be filed:
 - By the tenth day following each quarter, with the first report due on October 10, 2017 (followed by January 10, April 10, July 10, etc.). A station must continue filing the quarterly reports until it files the reports (described below) confirming that it (i) has completed

- construction of its post-repack facilities *and* (ii) has ceased operating on its pre-auction channel.
 - Ten weeks before the end of a station's assigned construction deadline.
 - Ten days after completion of all work related to constructing a station's post-repack facilities.
 - Five days after a station ceases operation on its pre-auction channel.
- **MVPD Transition Notices** must be sent at least 90 days before commencing operation on a station's post-repack channel.
- **On-Air Viewer Notifications** consisting of at least sixty seconds daily of either public service announcements or crawls must be aired every day for the 30 days preceding termination of operations on a station's pre-auction channel. A certification of compliance with the viewer notification requirements must be placed in the station's public file within 30 days after operations on the post-repack channel commence.
- **License Applications** must be filed within ten days after a station commences operation on its post-repack channel.
- **Stations Relinquishing Their License But Which Are Not Channel Sharing** must:
 - Cease operating on their pre-auction channel within 90 days of receiving auction proceeds.
 - Notify MVPDs at least 30 days prior to discontinuing operations.
 - Air at least one public service announcement and at least one 60-second crawl in each quarter of every day (including one of each in prime time daily) for 30 days prior to the date operations are discontinued. A certification of compliance with the viewer notification requirements must be filed with the FCC at the time the station notifies the FCC that it will be discontinuing operations.
 - Notify the FCC at least two days prior to discontinuing operations.
 - Submit a request to the FCC to cancel the station license as soon as possible after discontinuing operations.
- **Stations Relinquishing Their License and Then Channel Sharing** must:
 - Cease operating on their pre-auction channel and transition to their shared channel within 180 days of receiving auction proceeds.
 - File an application to implement channel sharing within 120 days of receiving auction proceeds.
 - Provide notice to MVPDs at least 30 days prior to beginning shared operations (the station sharing its channel with the station relinquishing spectrum must also provide these notices).
 - Provide notice to MVPDs at least 30 days prior to discontinuing operations on the pre-auction channel.
 - Air at least sixty seconds daily of either public service announcements or crawls every day for 30 days prior to the date operations on the pre-auction channel are discontinued. A certification of compliance with the viewer notification requirements must be placed in the station's public file within 30 days after operations on the shared channel commence.
 - Notify the FCC at least two days prior to discontinuing operations.

Given the FCC's announcement that 957 stations will be involuntarily changing channels and that 30 more will be voluntarily moving to a VHF channel in return for an auction payment, the TV industry and its viewers are about to see a level of technical disruption that may be unprecedented. During the transition to digital TV, the far longer time frame, awarding of simulcast channels (from a larger TV band), and ability to ultimately operate a station's final digital facilities on its original analog channel made for a transition that was complex and difficult, but orderly. With the stated 39-month

repack time frame, the numerous deadlines listed above, and the number of stations squeezing into a now much smaller TV band, the repack has the potential to be a much more frenzied affair.

It's going to be a crazy time for TV stations, many of whom are now hoping that ATSC 3.0 will allow them to turn some bitter repack lemons into sweet post-repack cherries.