
FCC Gives Television Broadcast Industry Little Time to Defend Its Spectrum Allocation; Comment Deadline Is Set at December 21, 2009

Earlier this week, the FCC released a Public Notice seeking “specific data on the use of spectrum currently licensed to broadcast television stations.” According to the Public Notice, in other proceedings related to the FCC’s development of a National Broadband Plan some commenters “have expressed concern that the United States will not have spectrum sufficient to meet the demand for wireless broadband services in the near future and have urged the Commission to make available more spectrum for commercial uses.” In response, the Public Notice states that “the FCC is reviewing various spectrum bands to understand if all or a portion of the spectrum within these bands could be repurposed for wireless broadband services.”

The Public Notice assumes that existing allocations are insufficient to meet the growing mobile broadband market, and that spectrum must be reallocated to meet this demand. The questions and issues posed in the Public Notice (re-printed below) are probing and complex, questioning whether broadcast television should be “diminished,” whether multiple broadcasters can “share” a 6 MHz channel, whether the FCC can reduce the amount of spectrum assigned to advanced television licensees and what actions, including adoption of receiver standards, the FCC might take to enable broadcasters to make more efficient use of their spectrum.

Fully responsive answers to many of these questions will require the extensive collection and compilation of data and detailed reporting of results. A serious question is raised whether a deadline of December 21, 2009 will permit the development of an adequate record.

Nonetheless, the Public Notice presents an important opportunity for the television broadcast industry, individually and collectively, to make their case in order to protect and preserve the broadcast service to all

residents of the United States. The deadline for filing comments on December 21, 2009. It should not be assumed that the deadline will be extended given that the FCC has a deadline of February 17, 2010 to provide the Congress with its "Broadband Report."

It is expected that the NAB, MSTV, the State Broadcasters Associations and groups of television broadcasters will file comments. Individual television station licensees are encouraged to contact their trade associations, as well as advisors in Washington, D.C., to determine how best to make their views known on this important subject.

Questions Asked in the Television Spectrum Public Notice

A. General Approach to Spectrum Assessment

1. What factors should the Commission consider when examining and comparing the benefits of spectrum used for over-the-air television broadcasting and those of spectrum used for wireless broadband services?
2. What would be the impact to the U.S. economy if insufficient additional spectrum were made available for wireless broadband deployment, in terms of investments, jobs, consumer welfare, innovation, and other indicators of global leadership?
3. What would be the impact to the U.S. economy and public welfare if the coverage of free over-the-air broadcast television was diminished to accommodate a repacking of stations to recover spectrum?
4. How do television broadcasters use the capabilities of digital television today? Please provide information on data rate allocations to HD, SD, multicast streams, bandwidth leasing arrangements, etc. and the business rationale behind these choices.
5. How do broadcasters plan to use licensed spectrum in the future?
 - a. What innovations in applications, services, or business models will create synergies between broadband and broadcast services, or other new value from currently licensed spectrum?
 - b. How should the Commission evaluate the future economic value of over-the-air digital television and new capabilities to offer mobile TV broadcasting? How does the financial community in general view that future value?
6. Consumers are migrating away from mass-market "appointment" viewing to more fragmented and time-shifted viewing. What impact will this trend have on the television broadcasting industry? What can the Commission do to help broadcasters participate in this evolution?
7. In the Telecommunications Act of 1996, Congress instructed the Commission to conduct an evaluation of the advanced television services program within 10 years after the date the Commission first issued licenses for such services. Subsection (1), which requires an assessment of the willingness of consumers to purchase the television receivers necessary to receive broadcasts of advanced television services may no longer be pertinent in light of the completion of the digital transition. Please comment on subsections (2) and (3) of Section 336(g) that require the Commission to conduct:

- a. an assessment of alternative uses, including public safety use, of the spectrum used for advanced television broadcasts; and
- b. an evaluation of the extent to which the Commission may be able to reduce the amount of spectrum assigned to advanced television broadcast licensees.

B. Potential Approaches to Increase Spectrum Availability and Efficiency

There may be opportunities for broadcasters to share 6 MHz channels in a market without significantly disrupting the free over-the-air television service that consumers enjoy today. Stations sharing channels may be able to trade capacity (in Mbps) between or among themselves. We note that the number of broadcasting stations sharing a single 6 MHz channel would affect the number and type of signals that each can broadcast. Spectrum sharing arrangements may also entail geographic consolidation, if broadcasters who previously used different transmitting sites share spectrum at a single transmitter closer to the center of densely populated areas.

1. What are the advantages of a channel-sharing approach to broadcasters' business? What are the disadvantages of this approach? What are the technical and business requirements to enable successful channel sharing?
2. What opportunities exist to free up broadcast spectrum through greater collocation of transmission facilities closer to the center of densely populated areas? There are numerous examples of broadcasters collocating facilities already. What are the financial and other benefits of collocation? What are the tradeoffs for broadcast TV stations and consumers in terms of signal coverage and local programming efforts?
3. How will video capabilities improve over time using current MPEG-2 and 8-VSB technologies? What improvements could be gained by deployment of next generation technologies over that currently achieved under the ATSC standard? What would be required for broadcasters and consumers to transition to more advanced technologies?
4. To what extent would establishing antenna and receiver standards facilitate spectral efficiency and improved reception in broadcasting? What other actions could the FCC take to enable broadcasters to make more efficient use of their spectrum?
5. What percentages of broadcast programming streams are transmitted to MVPDs by over-the-air broadcast? What percentage of MVPD subscribers receive their broadcast TV stations via an over-the-air broadcast link (either directly or through the MVPD)? What would be the costs to replace over-the-air delivery to MVPDs and consumers with other means (fiber, microwave)?

C. Broadcasting and the Public Interest

Broadcasters have historically played an important role in advancing public interests through free over-the-air broadcast TV. What are the benefits of free, over-the-air television broadcasting, in particular with respect to public awareness of emergency information, local news, political discourse, and education?

D. Market Mechanisms for Spectrum Contribution

What market-based or other incentive mechanisms should the Commission consider to enable broadcasters to choose whether or not to make any spectrum (excess or otherwise) available for reallocation to wireless broadband use?

If you have any questions about the content of this advisory, please contact the Pillsbury attorney with whom you regularly work or the attorneys below.

Richard R. Zaragoza **(bio)**
Washington, DC
+1.202.663.8266
richard.zaragoza@pillsburylaw.com

John K. Hane **(bio)**
Washington, DC
+1.202.663.8116
john.hane@pillsburylaw.com

Christine A. Reilly **(bio)**
Washington, DC
+1.202.663.8245
christine.reilly@pillsburylaw.com

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