

THE MICHIGAN BROADCASTER



Editorial

April 2015

The Latest on the TV Incentive Auction – More Regional Information Sessions by the FCC for Auction that Still Appears Targeted for 2016

By: David Oxenford, Wilkinson Barker Knauer, LLP

The FCC recently [announced a number of new regional information sessions on the TV incentive auction](#), by which the FCC proposes to purchase the spectrum of some TV stations to resell that spectrum to wireless users. At these seminars, the FCC representatives will answer questions from the stations attending, and schedule private meetings with TV owners to discuss the specifics of the amounts that they will initially be offered to surrender their spectrum and other issues unique to their stations. These seminars are just part of the FCC's efforts to hold that auction in 2016, with preliminary filings by parties interested in participating potentially due later this year.



At the recent NAB Convention, there were repeated statements by FCC officials, including the Chairman himself, **that the auction is on schedule to happen next year**, and these officials do not seem to be concerned that the wireless companies that will buy this spectrum have stretched their financial resources to a point that would limit their participation in a 2016 auction through their spending in the recently concluded AWS-3 auction. Instead, seemingly the only thing that would slow the auction would be an adverse result in the appeals of the auction rules filed by Sinclair Broadcasting and the NAB – appeals that have been briefed and argued in front of the US Court of Appeals in the District of Columbia. A decision in this case appeal is expected by June, although the court has no official timeline for issuing its ruling. There are other potential appeals of the FCC's auction rules that could also play into auction timing, though this case is the most advanced. FCC statements have suggested that even an adverse result could be remedied in time for the auction to occur next year – though such optimism may depend on exactly how the court rules, if the court ultimately has concerns about the issues raised in the appeal. Otherwise, the FCC is moving forward, and we expect some clarifications of some other issues very shortly.

In particular, we expect the FCC to issue an order changing its rules on post-auction channel sharing by TV stations that do not totally cease operations after the auction. In the initial order, the FCC has allowed stations to enter into channel sharing agreements, where two stations agree to share a single 6 MHz TV channel with both retaining full must-carry and retransmission consent rights, but only if those agreements were entered into before the auction, and only if they were essentially permanent agreements. Statements made at the NAB convention and elsewhere indicate that the FCC may relax those rules and allow agreements to be entered into either before or after the auction, and perhaps for a limited duration. We expect a decision on channel sharing to be released shortly, as a draft is currently circulating among the Commissioners.

These issues and others will be discussed at the upcoming FCC information sessions. The new seminars have been scheduled as follows:

- May 11, 2015: Orlando, FL
- May 12, 2015: Miami, FL
- May 18, 2015: Boston, MA
- May 19, 2015: Hartford, CT
- June 1, 2015: Austin, TX
- June 2, 2015: Dallas, TX
- June 8, 2015: Chicago, IL
- June 9, 2015: Milwaukee, WI

If you are interested in participating, or scheduling a private meeting in connection with one of these information sessions, contact the FCC at the address provided in the [Public Notice](#).