

In the Absence of Congressional Action, FCC Proposes Rules for Reallocating T-Band Spectrum

July 10, 2020

On July 6, 2020, the Federal Communications Commission (FCC or Commission) released a Notice of Proposed Rulemaking (NPRM) that seeks comment on establishing a competitive bidding system in the 470-512 MHz band (T-Band) and relocating public safety entities from the band pursuant to Section 6103 of the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act).^[1] Comments on the NPRM will be due 30 days after publication in the Federal Register.

As required by the Spectrum Act, the FCC issued the NPRM proposing an auction framework and licensing, operating, and technical rules. The NPRM seeks comment on proposed rules that would allow flexible use in the T-Band, including wireless (fixed or mobile use) and broadcast operations. The Commission also seeks comment on transition mechanisms and costs for relocating public safety entities from the T-Band, noting that by the Commission's estimates, relocation costs would greatly exceed the total expected revenue from an auction.^[2]

The proposed T-Band auction has been the subject of controversy. The T-Band is currently assigned to Public Safety Pool and Industrial/Business private land mobile radio services (PLMR) operations and consists of otherwise unused broadcast spectrum in TV channels 14-20 in 11 cities.^[3] Public safety entities have relied on this spectrum for decades to meet internal communications needs in major urban areas. The band contains approximately 925 public safety entities and 700 industrial/business entities.^[4] Operations using T-Band spectrum provide mission-critical voice push-to-talk communications for local government, law enforcement, and first responder entities

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(including fire management, emergency medical, road maintenance, transit, public works, and others).^[5]

Nevertheless, the Spectrum Act directs the FCC to reallocate T-band spectrum used by public safety licensees and to begin a system of competitive bidding to grant new initial licenses for use of the spectrum by February 22, 2021.^[6]

Numerous entities, including federal agencies, have opposed reallocating and auctioning T-Band spectrum. The Government Accountability Office (GAO) reported to Congress that the T-Band mandate poses significant challenges (including available spectrum, high cost, and interoperability concerns) and could deprive first responders of their current ability to communicate by radio. The National Public Safety Telecommunications Council calculated that the cost to relocate public safety operations from the T-Band would be approximately \$5.9 billion. FCC Chairman Ajit Pai released a statement on December 2, 2019 calling on Congress to repeal the mandate.

Multiple bills that would repeal the mandated reallocation of T-Band spectrum have been introduced in both houses of Congress but, despite bipartisan support, none of the bills have been passed out of committee.^[7]

In the absence of Congressional action, the FCC is required to move forward with the auction and relocation process. The Commission suspended the processing of applications for renewal of T-Band licenses in 2019, allowing licenses with pending renewal applications to continue operating pending implementation of the Spectrum Act's mandate.^[8]

If you have questions about the NPRM or are interested in filing comments, please contact the Wiley attorney who regularly assists you with your FCC matters or one of the authors listed on this alert.

[1] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6103, 126 Stat. 156, 205-206 (2012) (Spectrum Act).

[2] *Reallocation of 470-512 MHz (T-Band) Spectrum*, PS Docket No. 13-42 ¶ 2 (rel. Jul. 6, 2020) (NPRM).

[3] *Id.* at ¶ 3.

[4] *Id.* at ¶ 10.

[5] *Id.* at ¶ 5.

[6] See Spectrum Act at § 6103(a).

[7] See, e.g., Don't Break Up the T-Band Act of 2018, H.R. 5085, 115th Cong. § 2 (2018); Don't Break Up the T-Band Act of 2018, S. 3347, 115th Cong. § 2 (2018); Don't Break Up the T-Band Act of 2019, S. 2748, 116th Cong. § 2 (2019); Don't Break Up the T-Band Act of 2019, H. R. 451, 116th Cong. § 2 (2019); 5G Spectrum Act of 2019, S. 2881, 116th Cong. § 4 (2019); FIRST RESPONDER Act of 2020, H.R. 5928, 116th Cong. § 2 (2020); HEROES Act, H.R. 6800, 116th Cong. § 2, Div. M, Title V (2020); Take Responsibility for Workers and Families Act, H.R. 6379, 116th Cong (2020).

[8] *Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Suspend the Processing of Applications to Renew Part 22 and 90 Licenses for Systems Operating on 470-512 MHz (T-Band) Spectrum*, Public Notice, 34 FCC Rcd 11136, 11136-37 (rel. Dec. 2, 2019).