



# PUBLIC NOTICE

Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

News Media Information 202-418-0500  
Internet: [www.fcc.gov](http://www.fcc.gov)  
TTY: 888-835-5322

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## ESTIMATE OF SYSTEMS OF COMPETITIVE BIDDING FOR FISCAL YEAR 2023

Section 309(j)(18) of the Communications Act of 1934, as amended, requires the Commission to make publicly available an estimate of what systems of competitive bidding may be initiated during the upcoming 12-month period.<sup>1</sup> With two specified exceptions, the Commission’s authority to grant licenses or permits through systems of competitive bidding is set to expire on September 30, 2022; however, if signed into law, the 2022 Fiscal Year Continuing Resolution would extend it through December 16, 2022.<sup>2</sup> In that case, the Office of Economics and Analytics (OEA) estimates that no system of competitive bidding would be initiated during the 77 days between October 1 and December 16, 2022. Moreover, absent further Congressional action, the Commission does not have authority to initiate any systems of competitive bidding for the remainder of FY (Fiscal Year) 2023.

One specified exception to the expiration of the Commission’s authority applies to the 3.1–3.45 GHz Band, which was identified under section 90008(b)(2)(A)(ii) of the Infrastructure Investment and Jobs Act. Congress directed the Department of Defense (DoD) to study the 3.1–3.45 GHz band in order to identify spectrum for reallocation for shared use and auction.<sup>3</sup> Congress also directed that, “[n]ot later than 21 months after the date of [its] enactment, . . . the Secretary of Commerce, in coordination with the Secretary of Defense, the Director of the Office of the Science and Technology Policy, and relevant congressional committees, shall—(i) determine which frequencies of electromagnetic spectrum in the covered band could be made available on a shared basis between Federal use and non-Federal commercial licensed use, subject to flexible-use service rules; and (ii) submit to the President and the Commission a report that identifies the frequencies determined appropriate under clause (i).”<sup>4</sup> Following the report’s identification of spectrum for shared use, “the Commission, in consultation with the Assistant Secretary of Commerce for Communications and Information, shall begin a system of competitive bidding under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) to grant new licenses for the spectrum identified” “not earlier than November 30, 2024.”<sup>5</sup> As such, OEA estimates that a system of competitive bidding for this spectrum would not be initiated within FY 2023. The other specified

<sup>1</sup> 47 U.S.C. § 309(j)(18).

<sup>2</sup> 47 U.S.C. § 309(j)(11) (“The authority of the Commission to grant a license or permit under this subsection shall expire September 30, 2022, except that, with respect to the electromagnetic spectrum identified under section 1004(a) of the Spectrum Pipeline Act of 2015, such authority shall expire on September 30, 2025, and with respect to the electromagnetic spectrum identified under section 90008(b)(2)(A)(ii) of the Infrastructure Investment and Jobs Act, such authority shall expire on the date that is 7 years after November 15, 2021.”); Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023, H.R.6833.ENR (Sept. 30, 2022).

<sup>3</sup> Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 90008(b)(1)(A) (2021) (codified at 47 U.S.C. § 921 note).

<sup>4</sup> *Id.* § 90008(b)(2)(A).

<sup>5</sup> *Id.* § 90008(b)(3).

exception applies to 30 megahertz of spectrum to be identified pursuant to the Spectrum Pipeline Act.<sup>6</sup> As the National Telecommunications and Information Administration has not yet identified this spectrum, OEA estimates that a system of competitive bidding would not be initiated within FY 2023.

The FCC has several active proceedings in which it is considering whether and how to enable sharing or repurpose bands, potentially creating opportunities for spectrum auctions beyond FY2023. For example, the FCC recently put a freeze on new and modified applications in the 12.7 GHz band to preserve the current landscape as the Commission considers actions that might encourage more efficient use of that band.<sup>7</sup> Additionally, the Commission will examine for potential re-auction its inventory of licenses in services well-suited for 5G that were previously offered at auction, such as 600 MHz and AWS-3.

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<sup>6</sup> Spectrum Pipeline Act of 2015, Pub. L. No. 114-74, § 1004(a) (2015) (codified at 47 U.S.C. § 921 note).

<sup>7</sup> 180-Day Freeze on Applications for New or Modified Authorizations for the 12.7-13.25 GHz Band, Public Notice, DA 22-974 (WTB Sept. 19, 2022).