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House Communications Subcommittee OK's Spectrum Auction Bill

Requires FCC to do its best to preserve the coverage areas and interference protections of broadcasters who do not give up spectrum

By John Eggerton -- Broadcasting & Cable, December 1, 2011

The House Communications Subcommittee Thursday approved in a 17 to 6 vote the Republican version of a spectrum incentive auction bill that would give the FCC the authority to pay broadcasters for voluntarily exiting the spectrum to be auctioned for broadband use, and set aside as much as \$3 billion to compensate broadcasters left behind for moving or sharing channels.

That \$3 billion is three times as much as Democrats were proposing in their version and was the subject of some debate, as were a number of issues.

The bill will now go to full committee for markup, where Democrats said they hoped they could negotiate compromises, though they got no promises from the Republican majority. The auction is projected to return at least \$15 billion to the treasury for deficit reduction after paying broadcasters and for the care and feeding of an interoperable emergency communications network.

A separate Senate bill has passed the Commerce Committee and is awaiting a floor vote.

The House's Jumpstarting Opportunity with Broadband Spectrum (JOBS) Act of 2011 that passed out of the subcommittee requires the FCC to do its best to preserve the coverage areas and interference protections of broadcasters who do not give up spectrum, compensates cable operators for any costs of picking up reconfigured broadcast signals, and prevents the FCC from forcing stations on UHF channels to move to VHF, which is not as robust for DTV.

Walden said the bill, which he motormanned, would create as many as 100,000 jobs by freeing up spectrum for innovation and investment.

The bill was amended to prevent the FCC from imposing network neutrality or wholesale conditions on the spectrum being reclaimed for auction, as well as to require the FCC to resolve broadcaster spectrum coordination issues with Canada and Mexico, to set aside money for e-911 call centers, and to prevent security risks from building out the emergency interoperable broadband communications network.

A Democrat amendment to substitute its own bill was defeated, and withdrawn were amendments that would have authorized FCC commissioner to hire engineer/advisers to help with spectrum issues, and one that would have given tax credits to broadcasters who used some of the money they got from the government for giving up spectrum to invest in small and disadvantaged businesses.

Ranking member Henry Waxman (D-Calif.) warned that the amendment preventing the auction conditions was a poison pill that could kill the bill in the Senate.

The bill allocates the D block of spectrum, rather than auctioning it, a Republican concession that Democrats on the committee praised. But in addition to the network neutrality amendment, Democrats had several other issues. Those included the bill's structuring of governance of the public safety network, the fact that it does not authorize the FCC to carve out any of the reclaimed spectrum for more unlicensed wireless use, and that \$3 billion relocation fund for broadcasters.

Rep. Anna Eshoo joined Waxman in questioning why, if the Congressional Budget Office had estimated broadcasters would need \$1 billion, the Republicans had thrown a couple of extra billion dollars broadcasters' way. Subcommittee Chairman Greg Walden (R-Ore.) said that was a cap and that it might not take that much. Waxman shot back that one thing Republicans frequently said, and he agreed with, is that caps also usually become the floor as well (given the reluctance to leave money on the table).

Eshoo asked where the \$3 billion figure had come from. The answer was that estimates had ranged from \$1 billion to \$2 billion, and that they had decided on \$3 billion just in case. Walden also pointed out that the original bill did not put any figure on compensation and would have required that broadcasters be compensated from the proceeds before any money went to fund the emergency broadband, potentially tying up that money for a dozen years or more. This way,

he said, after the first \$3 billion in auction revenue is put into the fund for broadcaster relocation, the rest is immediately available for emergency communications Democrats were not persuaded.

Asked by Rep. Lee Terry (R-Neb.) whether Democrats were suggesting broadcasters should not be compensated and simply forced off their spectrum, Eshoo said absolutely not. Waxman said they were surprised that the Republicans professing concern over the potential deficit reduction dollars that would be lost if the FCC set aside some \$1 billion in spectrum for more unlicensed use -- as the Democratic version of the bill would do -- would set aside up to \$3 billion for broadcasters. He also pointed out that public safety groups had sought \$7-10 billion for their network, while the Republicans seemed to have a pretty hard ceiling and no cushion on their \$5 billion figure.

Rep. Marsha Blackburn (R-Tenn.) said her amendment was an effort to prevent the FCC from regulating through auction conditions, and pointed out that the prohibition was specific to the auction and did not affect the FCC's general statutory authority. But Democrats said it was a way to undercut the FCC's network neutrality rules. After a lengthy history of telecommunications including the death of the black rotary phone, Rep. Ed Markey said the amendment would be a return to that era of behemoth-controlled communications, arguing that innovation had only come when competition from innovators and venture capitalists had been spurred by Congress and suggesting that cable and telco operators had not been doing much inventing or innovating in the past 15 years -- since the 1996 Telecom Act was passed.

Then there was Waxman's pronouncement that the amendment was a poison bill that the Senate likely would not swallow. He suggested it should come out now, because it was coming out later. He also pointed out that Walden had removed it from an earlier version of the bill as a sign of good faith. The amendment passed by voice vote, however, with no Democrat asking for a role call so the reps would be on the record.

Rep. John Dingell (D-Mich.), who with Rep. Brian Bibray (R-Calif.) co-sponsored the amendment requiring the FCC to resolve the border issues, took a few shots at the commission for failing to provide adequate responses to his concerns about those issues, which include the possibility that there could be no frequencies left in Detroit. He said the FCC had been secretive, unhelpful and nonresponsive to his concerns, and said the amendment would insure that border stations would continue to provide "proper service" to their viewers.

The National Association of Broadcasters and CTIA may be on opposite sides of the spectrum debate, but they both had nice things to say about the bill.

"NAB strongly endorses spectrum provisions in the incentive auction bill passed out of the House telecommunications subcommittee today," said NAB President Gordon Smith in a statement. "This bill balances sound spectrum policy with protections against the potential considerable loss of local TV service by millions of Americans. We appreciate Chairman Walden's outstanding leadership in shepherding this legislation through the subcommittee. NAB also salutes Reps. Bilbray and Dingell for their amendment -- passed with bipartisan unanimity -- ensuring that U.S. TV stations along the Canadian and Mexican borders aren't repacked out of business."

"CTIA is pleased that the subcommittee approved the JOBS Act to authorize incentive auctions and free additional spectrum for wireless broadband services," said CTIA: The Wireless Association President Steve Largent. "We thank Subcommittee Chairman Walden and Chairman [Fred] Upton [R-Mich.] for their leadership in moving the bill through today's mark-up. We look forward to seeing this important legislation considered by the full Energy and Commerce Committee as soon as possible."

Walden said he wanted to get the bill done by the end of the year, while Democrats, who also want a bill ASAP, just not this one, had wanted to delay the markup and said much work still needed to be done on the bill.

Walden pointed out that they had already had five hearings and nine bipartisan meetings before those ended in early October when the focus shifted to the Deficit-Reduction Committee, which was considering making the Senate version -- S. 911 -- part of a deficit reduction package that never materialized.