

**FHH Telecom Law**  
**January 2003**

**FCC Office Proposes**  
**Radical Spectrum Transition**

*By: Lee Petro*  
*703-812-0453*  
*petro@fhhlaw.com*

The Commission's Office of Plans and Policy released a proposal to overhaul the system for allocating spectrum in the United States. Sharing the widespread conviction that the current system is inefficient, the study proposes that the Commission conduct a large scale auction to better allocate the scarce resource. The release of the study follows on the heels of the Spectrum Task Force Report, (see page 2), reinforcing the growing recognition that the FCC must take bold steps to usher in the next wave of technological innovation.

The study proposes (1) reallocating a large amount of presently restricted spectrum to flexible use; (2) conducting large-scale, two-sided "band restructuring" auctions of spectrum voluntarily offered by incumbents, together with any unassigned spectrum; and (3) offering incumbents incentives to participate in those auctions by immediately granting them flexibility in spectrum use, and allowing them to keep the proceeds. Incumbents who win back their own spectrum at auction would receive immediate rights to flexible use. Those who choose not to participate would be allowed to continue to operate under the terms of their current licenses, and would receive full flexibility after five years. Participation would enable an incumbent licensee to learn how the market values its spectrum, and hence to make a rational decision on whether to accept the highest bid for the spectrum, or to place the highest bid itself and thus maintain control of the license.

The study notes that an ideal auction would involve the entire 300-3,000 MHz spectral band, but acknowledges the insurmountable technical and political obstacles. As a fallback, the study identifies 438 MHz for a first round of auction:

- (1) 698-746, 747-762, and 777-792 MHz (formerly licensed for TV);
- (2) 1710-1755 MHz (government transfer band);
- (3) 1990-2025 and 2165-2200 MHz (2 GHz mobile satellite band);
- (4) 2110-2165 MHz (general fixed and mobile band); and
- (5) 2500-2690 MHz (ITFS/MMDS).

Each band would require technical rules for protecting in-band and adjacent-band

services.

So far this approach represents only the views of its authors. Formal adoption by the Commission is not expected any time soon. The authors acknowledge their proposals will generate substantial debate, and might require congressional action. Of special concern would be the financial payments to the incumbent licensees that lose their spectrum to other bidders.

Nonetheless, the study reflects a growing recognition that the FCC and Congress must do a better job of allocating spectrum. While the current policies have served the telecommunications industry adequately for most of the past 90 years, the next 90 years will likely be focused on seeking full utilization of all the spectrum, all the time.