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*From One End of the Spectrum to the Other:  
The FCC's Auction Authority Under the Balanced Budget Act of 1997*

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Abstract by Janet C. Goldberg

Prior to 1993, the Federal Communications Commission (FCC) awarded electromagnetic spectrum licenses primarily through comparative hearings and lotteries. However, the Omnibus Budget Reconciliation Act of 1993 (1993 Budget Act) revolutionized the FCC's license assignment process by permitting the agency to use a competitive bidding, or auction, process to resolve situations where applications for spectrum use were mutually exclusive, if the "principal use" of such spectrum involved subscriber-based services and certain objectives were promoted. These objectives included the development and rapid deployment of new technologies, promotion of economic opportunities and competition, reimbursement to the public for use of the spectrum, and efficient use of the spectrum.

The Balanced Budget Act of 1997 (BBA) removed many of the limitations imposed by the 1993 Budget Act on the use of competitive bidding in assigning spectrum licenses and, therefore, expanded the authority of the FCC to use a competitive bidding process. One expansion of the FCC's authority to use competitive bidding is the elimination of the requirement that mutually exclusive applications can only be auctioned when the applications are for subscriber-based services and when certain objectives are promoted. The BBA permits the FCC to use competitive bidding to resolve mutually exclusive applications for all initial licenses and construction permits, unless an express exemption applies. A second expansion that BBA provides is a legislative presumption that the entire spectrum is auctionable, unless an express preemption applies. A third expansion provided in the BBA is an increase in the amount and type of spectrum that the FCC must auction through a competitive bidding process, including broadcast services and portions of the spectrum previously allocated to the federal government. However, the BBA exempts digital television, public television, and public safety radio services from the general requirement that mutually exclusive applications are subject to the competitive bidding process. The BBA's expansion of the FCC's use of competitive bidding is desirable because it allows licensees to determine how best to use the spectrum, which, in turn, enables them to respond to market forces and frees them from cumbersome bureaucracy.