

COMMERCIAL SPECTRUM ENHANCEMENT ACT

JUNE 3, 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. TAUZIN, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 1320]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1320) to amend the National Telecommunications and Information Administration Organization Act to facilitate the reallocation of spectrum from governmental to commercial users, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Amendment	1
Purpose and Summary	5
Background and Need for Legislation	6
Hearings	7
Committee Consideration	7
Committee Votes	8
Committee Oversight Findings	8
Statement of General Performance Goals and Objectives	8
New Budget Authority, Entitlement Authority, and Tax Expenditures	8
Committee Cost Estimate	8
Congressional Budget Office Estimate	11
Federal Mandates Statement	15
Advisory Committee Statement	15
Constitutional Authority Statement	15
Applicability to Legislative Branch	15
Section-by-Section Analysis of the Legislation	15
Changes in Existing Law Made by the Bill, as Reported	20

AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Commercial Spectrum Enhancement Act”.

SEC. 2. RELOCATION OF ELIGIBLE FEDERAL ENTITIES FOR THE REALLOCATION OF SPECTRUM FOR COMMERCIAL PURPOSES.

Section 113(g) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)) is amended by striking paragraphs (1) through (3) and inserting the following:—

“(1) **ELIGIBLE FEDERAL ENTITIES.**—Any Federal entity that operates a Federal Government station assigned to a band of frequencies specified in paragraph (2) and that incurs relocation costs because of the reallocation of frequencies from Federal use to non-Federal use shall receive payment for such costs from the Spectrum Relocation Fund, in accordance with section 118 of this Act. For purposes of this paragraph, Federal power agencies exempted under subsection (c)(4) that choose to relocate from the frequencies identified for reallocation pursuant to subsection (a), are eligible to receive payment under this paragraph.

“(2) **ELIGIBLE FREQUENCIES.**—The bands of eligible frequencies for purposes of this section are as follows:

“(A) the 216–220 megahertz band, the 1432–1435 megahertz band, the 1710–1755 megahertz band, and the 2385–2390 megahertz band of frequencies; and

“(B) any other band of frequencies reallocated from Federal use to non-Federal use after January 1, 2003, that is assigned by competitive bidding pursuant to section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)), except for bands of frequencies previously identified by the National Telecommunications and Information Administration in the Spectrum Reallocation Final Report, NTIA Special Publication 95–32 (1995).

“(3) **DEFINITION OF RELOCATION COSTS.**—For purposes of this subsection, the term ‘relocation costs’ means the costs incurred by a Federal entity to achieve comparable capability of systems, regardless of whether that capability is achieved by relocating to a new frequency assignment or by utilizing an alternative technology. Such costs include—

“(A) the costs of any modification or replacement of equipment, software, facilities, operating manuals, training costs, or regulations that are attributable to relocation;

“(B) the costs of all engineering, equipment, software, site acquisition and construction costs, as well as any legitimate and prudent transaction expense, including outside consultants, and reasonable additional costs incurred by the Federal entity that are attributable to relocation, including increased recurring costs associated with the replacement facilities;

“(C) the costs of engineering studies, economic analyses, or other expenses reasonably incurred in calculating the estimated relocation costs that are provided to the Commission pursuant to paragraph (4) of this subsection;

“(D) the one-time costs of any modification of equipment reasonably necessary to accommodate commercial use of such frequencies prior to the termination of the Federal entity’s primary allocation or protected status, when the eligible frequencies as defined in paragraph (2) of this subsection are made available for private sector uses by competitive bidding and a Federal entity retains primary allocation or protected status in those frequencies for a period of time after the completion of the competitive bidding process; and

“(E) the costs associated with the accelerated replacement of systems and equipment if such acceleration is necessary to ensure the timely relocation of systems to a new frequency assignment.

“(4) **NOTICE TO COMMISSION OF ESTIMATED RELOCATION COSTS.**—

“(A) The Commission shall notify the NTIA at least 18 months prior to the commencement of any auction of eligible frequencies defined in paragraph (2). At least 6 months prior to the commencement of any such auction, the NTIA, on behalf of the Federal entities and after review by the Office of Management and Budget, shall notify the Commission of estimated relocation costs and timelines for such relocation.

“(B) Upon timely request of a Federal entity, the NTIA shall provide such entity with information regarding an alternative frequency assignment or assignments to which their radiocommunications operations could be relocated for purposes of calculating the estimated relocation costs and timelines to be submitted to the Commission pursuant to subparagraph (A).

“(C) To the extent practicable and consistent with national security considerations, the NTIA shall provide the information required by subpara-

graphs (A) and (B) by the geographic location of the Federal entities' facilities or systems and the frequency bands used by such facilities or systems.

“(5) NOTICE TO CONGRESSIONAL COMMITTEES AND GAO.—The NTIA shall, at the time of providing an initial estimate of relocation costs to the Commission under paragraph (4)(A), submit to the Committees on Appropriations and Energy and Commerce of the House of Representatives, the Committees on Appropriations and Commerce, Science, and Transportation of the Senate, and the Comptroller General a copy of such estimate and the timelines for relocation.

“(6) IMPLEMENTATION OF PROCEDURES.—The NTIA shall take such actions as necessary to ensure the timely relocation of Federal entities' spectrum-related operations from frequencies defined in paragraph (2) to frequencies or facilities of comparable capability. Upon a finding by the NTIA that a Federal entity has achieved comparable capability of systems by relocating to a new frequency assignment or by utilizing an alternative technology, the NTIA shall terminate the entity's authorization and notify the Commission that the entity's relocation has been completed. The NTIA shall also terminate such entity's authorization if the NTIA determines that the entity has unreasonably failed to comply with the timeline for relocation submitted by the Director of the Office of Management and Budget under section 118(d)(2)(B).”

SEC. 3. MINIMUM AUCTION RECEIPTS AND DISPOSITION OF PROCEEDS.

(a) AUCTION DESIGN.—Section 309(j)(3) of the Communications Act of 1934 (47 U.S.C. 309(j)(3)) is amended—

- (1) by striking “and” at the end of subparagraph (D);
- (2) by striking the period at the end of subparagraph (E) and inserting “; and”; and
- (3) by adding at the end the following new subparagraph:

“(F) for any auction of eligible frequencies described in section 113(g)(2) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2)), the recovery of 110 percent of estimated relocation costs as provided to the Commission pursuant to section 113(g)(4) of such Act.”

(b) SPECIAL AUCTION PROVISIONS FOR ELIGIBLE FREQUENCIES.—Section 309(j) of such Act is further amended by adding at the end the following new paragraph:

“(15) SPECIAL AUCTION PROVISIONS FOR ELIGIBLE FREQUENCIES.—

“(A) SPECIAL REGULATIONS.—The Commission shall revise the regulations prescribed under paragraph (4)(F) of this subsection to prescribe methods by which the total cash proceeds from any auction of eligible frequencies described in section 113(g)(2) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2)) shall at least equal 110 percent of the total estimated relocation costs provided to the Commission pursuant to section 113(g)(4) of such Act.

“(B) CONCLUSION OF AUCTIONS CONTINGENT ON MINIMUM PROCEEDS.—The Commission shall not conclude any auction of eligible frequencies described in section 113(g)(2) of such Act if the total cash proceeds attributable to such spectrum are less than 110 percent of the total estimated relocation costs provided to the Commission pursuant to section 113(g)(4) of such Act. If the Commission is unable to conclude an auction for the foregoing reason, the Commission shall cancel the auction, return within 45 days after the auction cancellation date any deposits from participating bidders held in escrow, and absolve such bidders from any obligation to the United States to bid in any subsequent reauction of such spectrum.

“(C) AUTHORITY TO ISSUE PRIOR TO DEAUTHORIZATION.—In any auction conducted under the regulations required by subparagraph (A), the Commission may grant a license assigned for the use of eligible frequencies prior to the termination of an eligible Federal entity's authorization. However, the Commission shall condition such license by requiring that the licensee cannot cause harmful interference to such Federal entity until such entity's authorization has been terminated by the National Telecommunications and Information Administration.”

(c) DEPOSIT OF PROCEEDS.—Paragraph (8) of section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) is amended—

- (1) in subparagraph (A), by inserting “or subparagraph (D)” after “subparagraph (B)”; and
- (2) by adding at the end the following new subparagraph:

“(D) DISPOSITION OF CASH PROCEEDS.—Cash proceeds attributable to the auction of any eligible frequencies described in section 113(g)(2) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2)) shall be deposited in the Spectrum Relocation

Fund established under section 118 of such Act, and shall be available in accordance with that section.”.

SEC. 4. ESTABLISHMENT OF FUND AND PROCEDURES.

Part B of the National Telecommunications and Information Administration Organization Act is amended by adding after section 117 (47 U.S.C. 927) the following new section:

“SEC. 118. SPECTRUM RELOCATION FUND.

“(a) ESTABLISHMENT OF SPECTRUM RELOCATION FUND.—There is established on the books of the Treasury a separate fund to be known as the ‘Spectrum Relocation Fund’ (in this section referred to as the ‘Fund’), which shall be administered by the Office of Management and Budget (in this section referred to as ‘OMB’), in consultation with the NTIA.

“(b) CREDITING OF RECEIPTS.—The Fund shall be credited with the amounts specified in section 309(j)(8)(D) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(D)).

“(c) USED TO PAY RELOCATION COSTS.—The amounts in the Fund from auctions of eligible frequencies are authorized to be used to pay relocation costs, as defined in section 113(g)(3) of this Act, of an eligible Federal entity incurring such costs with respect to relocation from those frequencies.

“(d) FUND AVAILABILITY.—

“(1) APPROPRIATION.—There are hereby appropriated from the Fund such sums as are required to pay the relocation costs specified in subsection (c).

“(2) TRANSFER CONDITIONS.—None of the funds provided under this subsection may be transferred to any eligible Federal entity—

“(A) unless the Director of OMB has determined, in consultation with the NTIA, the appropriateness of such costs and the timeline for relocation; and

“(B) until 30 days after the Director of the OMB has submitted to the Committees on Appropriations and Energy and Commerce of the House of Representatives, the Committees on Appropriations and Commerce, Science, and Transportation of the Senate, and the Comptroller General a detailed plan describing how the sums transferred from the Fund will be used to pay relocation costs in accordance with such subsection and the timeline for such relocation.

“(3) REVERSION OF UNUSED FUNDS.—Any auction proceeds in the Fund that are remaining after the payment of the relocation costs that are payable from the Fund shall revert to and be deposited in the general fund of the Treasury not later than 8 years after the date of the deposit of such proceeds to the Fund.

“(e) TRANSFER TO ELIGIBLE FEDERAL ENTITIES.—

“(1) TRANSFER.—

“(A) Amounts made available pursuant to subsection (d) shall be transferred to eligible Federal entities, as defined in section 113(g)(1) of this Act.

“(B) An eligible Federal entity may receive more than one such transfer, but if the sum of the subsequent transfer or transfers exceeds 10 percent of the original transfer—

“(i) such subsequent transfers are subject to prior approval by the Director of OMB as required by subsection (d)(2)(A);

“(ii) the notice to the committees containing the plan required by subsection (d)(2)(B) shall be not less than 45 days prior to the date of the transfer that causes such excess above 10 percent;

“(iii) such notice shall include, in addition to such plan, a explanation of need for such subsequent transfer or transfers; and

“(iv) the Comptroller General shall, within 30 days after receiving such plan, review such plan and submit to such committees an assessment of the explanation for the subsequent transfer or transfers.

“(C) Such transferred amounts shall be credited to the appropriations account of the eligible Federal entity which has incurred, or will incur, such costs, and shall, subject to paragraph (2), remain available until expended.

“(2) RETRANSFER TO FUND.—An eligible Federal entity that has received such amounts shall report its expenditures to OMB and shall transfer any amounts in excess of actual relocation costs back to the Fund immediately after the NTIA has notified the Commission that the entity’s relocation is complete, or has determined that such entity has unreasonably failed to complete such relocation in accordance with the timeline required by subsection (d)(2)(A).”.

SEC. 5. TELECOMMUNICATIONS DEVELOPMENT FUND.

Section 714(f) of the Communications Act of 1934 (47 U.S.C. 614(f)) is amended to read as follows:

“(f) LENDING AND CREDIT OPERATIONS.—Loans or other extensions of credit from the Fund shall be made available to an eligible small business on the basis of—

- “(1) the analysis of the business plan of the eligible small business;
- “(2) the reasonable availability of collateral to secure the loan or credit extension;
- “(3) the extent to which the loan or credit extension promotes the purposes of this section; and
- “(4) other lending policies as defined by the Board.”

SEC. 6. CONSTRUCTION.

Nothing in this Act is intended to modify section 1062(b) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65).

SEC. 7. ANNUAL REPORT.

The National Telecommunications and Information Administration shall submit an annual report to the Committees on Appropriations and Energy and Commerce of the House of Representatives, the Committees on Appropriations and Commerce, Science, and Transportation of the Senate, and the Comptroller General on—

- (1) the progress made in adhering to the timelines applicable to relocation from eligible frequencies required under section 118(d)(2)(A) of the National Telecommunications and Information Administration Organization Act, separately stated on a communication system-by-system basis and on an auction-by-auction basis; and
- (2) with respect to each relocated communication system and auction, a statement of the estimate of relocation costs required under section 113(g)(4) of such Act, the actual relocations costs incurred, and the amount of such costs paid from the Spectrum Relocation Fund.

SEC. 8. PRESERVATION OF AUTHORITY; NTIA REPORT REQUIRED.

(a) SPECTRUM MANAGEMENT AUTHORITY RETAINED.—Except as provided with respect to the bands of frequencies identified in section 113(g)(2)(A) of National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2)(A)) as amended by this Act, nothing in this Act or the amendments made by this Act shall be construed as limiting the Federal Communications Commission’s authority to allocate bands of frequencies that are reallocated from Federal use to non-Federal use for unlicensed, public safety, shared, or non-commercial use.

(b) NTIA REPORT REQUIRED.—Within 1 year after of the date of enactment of this Act, the Administrator of the National Telecommunications and Information Administration shall submit to the Energy and Commerce Committee of the House of Representatives and the Commerce, Science, and Transportation Committee of the Senate a report on various policy options to compensate Federal entities for relocation costs when such entities’ frequencies are allocated by the Commission for unlicensed, public safety, shared, or non-commercial use.

PURPOSE AND SUMMARY

The purpose of H.R. 1320, the Commercial Spectrum Enhancement Act of 2003, is to provide a clear, predictable mechanism for compensating federal entities that move their spectrum operations from frequencies that are reallocated from government to non-government use.

H.R. 1320 provides federal government spectrum licensees that incur relocation costs because of the reallocation of spectrum bands from government to non-government use with the authority to receive reimbursement for their relocation costs from the Spectrum Relocation Fund (SRF). H.R. 1320 defines relocation costs as expenses that are incurred by federal government agencies in order to achieve comparable capability of systems. This means that a federal spectrum operation moved to a different band will be reimbursed for all costs necessary to prevent that operation from experiencing any degradation in service or capability. In addition, the agency would be reimbursed for utilizing a different technology (such as wireline communications) rather than relocating to a different spectrum band.

H.R. 1320 requires the Federal Communications Commission (the Commission) to notify the National Telecommunications and Information Administration (NTIA) eighteen months before conducting an auction of reallocated spectrum. The purpose of this notification is so that NTIA, after review by the Office of Management and Budget (OMB), can provide the Commission with an estimate of relocation costs for a particular band and a timeline for relocation. This information is critical because, under the legislation, an FCC auction of reallocated spectrum is only valid if the auction yields proceeds of at least 110 percent of the estimated relocation costs.

The proceeds from auctions of eligible reallocated bands are deposited in the SRF, which is an OMB-administered separate fund at the Treasury. If any agency has any transferred money remaining when relocation is complete, the agency is required to transfer the funds back to the SRF immediately. Unexpended auction proceeds are transferred to the Treasury no later than eight years after the proceeds were initially deposited in the SRF.

BACKGROUND AND NEED FOR LEGISLATION

Spectrum is the basic building block for any wireless service. Spectrum has therefore become an increasingly valuable asset to government and commercial entities. Government operations, especially defense-related operations, are increasingly reliant upon spectrum. The most recent military conflict in Iraq demonstrated that the armed forces rely on spectrum for a significant amount of tactical operations and intelligence gathering.

Commercial mobile radio services have proliferated in the United States, where there are more than 140 million wireless subscribers. While voice services currently represent the vast majority of commercial mobile radio services, consumers have been using mobile data services at an increasing rate. However, mobile data services are generally offered at bit-rate speeds that prevent consumers from using these services to access video and data applications that require significant bandwidth.

Advanced mobile data services, also known as third-generation mobile services, will present consumers with the ability to access exciting new applications. These applications will provide consumers with enhanced opportunities to communicate, work, learn, shop, and entertain themselves in a mobile environment. However, commercial mobile radio service providers need additional spectrum in order to provide consumers with these services so that new data services are not offered at the expense of the quality of service and network reliability of existing services.

Making additional spectrum available for commercial use that has the propagation characteristics necessary for advanced mobile services is therefore critical, although the propagation characteristics limit the number of spectrum bands on which advanced services can operate. In addition, certain spectrum bands are more desirable because they present opportunities for global harmonization of the frequencies used for advanced mobile services. The federal government currently conducts spectrum operations on certain spectrum bands that would be ideal for such services.

Existing law rightly prohibits spectrum from simply being taken from federal agencies and made available for commercial use. Spe-

cifically, the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Strom Thurmond Act) requires an auction winner that wants to use spectrum reallocated from government to non-government use to reimburse a federal entity for costs incurred in the process of relocating the federal entity's spectrum operations to a different spectrum band. Under the Strom Thurmond Act, after a commercial entity wins an auction for a particular license of spectrum reallocated from government to non-government use, a commercial entity has to negotiate with the government entity to determine the cost and timeline for relocation of the government entity's spectrum operations. Furthermore, with certain exceptions, the National Defense Authorization Act of 2000 prohibits the surrender of spectrum by the Department of Defense unless comparable spectrum is made available, in advance, for the relevant operations. The Secretary of Commerce, Secretary of Defense, and the Chairman of the Joint Chiefs of Staff must jointly certify that the alternative band (or bands) provides comparable capability.

As a result, a potential licensee has to pay twice—once to win the auction for the license and again to pay to relocate any government operations in the band. In addition, the federal agency occupying the band has complete control over when it would relocate its spectrum operations. This system provides potential licensees with little incentive to participate in auctions of reallocated government spectrum.

H.R. 1320 attempts to remedy this problem by establishing a relocation fund for moving the spectrum operations of affected federal entities. Under H.R. 1320, proceeds from auctions of spectrum reallocated from government to non-government use are deposited directly into the SRF, instead of being deposited into the general fund of the Treasury. Affected federal entities draw from the SRF to pay for their relocation costs.

H.R. 1320 creates certainty for both federal agencies and potential commercial licensees. The legislation creates certainty for federal entities required to relocate their spectrum operations that they will be fully compensated for their relocation expenses. In addition, H.R. 1320 creates certainty for potential commercial licensees because they will have a clear understanding, prior to an auction and throughout the relocation process, of the cost of relocating federal spectrum operations and of the timelines for relocating such operations.

HEARINGS

The Subcommittee on Telecommunications and the Internet held a hearing on H.R. 1320 on March 25, 2003. The Subcommittee received testimony from: Nancy Victory, Assistant Secretary of Commerce for Communications and Information; Stephen Price, Deputy Assistant Secretary of Defense for Spectrum, Space, Sensors and C3 Policy; Steve Berry, Senior Vice President for Government Affairs, Cellular Telecommunications and Internet Association; and Larry Grossman, Co-Chairman, Digital Promise Project.

COMMITTEE CONSIDERATION

On Wednesday, April 9, 2003, the Subcommittee on Telecommunications and the Internet met in open markup session and

approved H.R. 1320 for Full Committee consideration, as amended, by a voice vote, a quorum being present. On Wednesday, April 30, 2003, the Full Committee met in open markup session and ordered H.R. 1320 favorably reported to the House, as amended, by a voice vote, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 1320 reported. A motion by Mr. Tauzin to order H.R. 1320 reported to the House, as amended, was agreed to by a voice vote. Chairman Tauzin asked for and received unanimous consent to make technical and conforming changes to the bill.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 1320 is to make spectrum used by federal agencies available for advanced commercial mobile radio services and to compensate the affected federal agencies for relocating their spectrum operations.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1320, the Commercial Spectrum Enhancement Act of 2003, would result in changes to budget authority, entitlement authority, and tax expenditures and revenues to the extent stated below in the Committee Cost Estimate.

COMMITTEE COST ESTIMATE

The Congressional Budget Office (CBO) analysis of the budgetary impact of H.R. 1320 fails to adequately consider the impact of this legislation on projected auction receipts and spending for the relocation of the spectrum operations of federal entities. CBO estimates that “implementing H.R. 1320 would increase net direct spending by \$1.4 billion over the 2006–2008 period and by \$2.5 billion over the next 10 years.” According to CBO, enactment of this legislation has no measurable effect on projected auction proceeds.

The Committee strongly disagrees with CBO’s analysis. Enactment of H.R. 1320 should increase net revenues to the federal government over 5 and 10 years. The Committee also believes that H.R. 1320 imposes greater fiscal discipline on eligible federal entities than CBO anticipates.

The CBO baseline estimate for the 90 MHz 3G auction assumes that the federal government will collect \$15 billion—59 cents/MHz/pop—in auction receipts. CBO’s analysis states, “This estimate re-

flects our expectation that companies will discount their bids by about \$2 billion to \$3 billion [roughly 15%] because of the uncertainty associated with the time and cost of relocating federal and commercial users.” Based on that statement, CBO must assume that the market value of the 3G spectrum will be \$17–18 billion or 67–71 cents/MHz/pop in 2006 when CBO expects the 3G auction to occur.

The current market value of spectrum is significantly higher. Verizon Wireless purchased PCS licenses from Northcoast Communications in April of 2003 for \$750 million, which translates into a market value of \$1.58/MHz/pop. While the spectrum purchased by Verizon is comparable in propagation characteristics to the spectrum that will be included in the 3G auction, it is important to note some differences in the licenses. The Northcoast licenses were assigned on an MTA/BTA basis, which means that the licenses represent limited geographic areas. On the other hand, the 3G spectrum licenses are expected to be a mixture of national, super-regional and limited-geographic area licenses, which means that many of the 3G spectrum licenses will be much more valuable than the Northcoast licenses. In addition, the 3G spectrum will be used for services that the Committee expects will yield much higher revenues than current-generation services. Nonetheless, CBO’s market valuation estimate for the 3G spectrum, for an auction that will probably occur in 2006, is less than half of current market value for spectrum used for existing mobile services.

Based on the Northcoast transaction, the current market value for 90 MHz of spectrum is in the \$25–40 billion range. Even with CBO’s 15% uncertainty discount (the Committee strongly disagrees with the application of this discount to the auction assuming that H.R. 1320 is enacted into law), the 3G auction should yield \$21–34 billion in 2006. At those levels, enactment of H.R. 1320 would increase projected auction receipts by \$6–19 billion over the 2006–2008 period and increase net revenues to the federal government by \$3.5–16.5 billion over the next 10 years relative to the CBO baseline.

CBO acknowledges that “simplifying the reimbursement process could reduce some of the uncertainty for bidders, which could result in higher auction proceeds.” But their analysis concludes that the “magnitude of any change would be small relative to other factors that will affect the market value of these frequencies.” H.R. 1320 does much more than just simplify the reimbursement process. It significantly reduces the financial risks in the current relocation process for potential bidders and for federal agencies.

Under current law, a winning bidder at an FCC spectrum auction begins negotiating with federal entities with operations in the auctioned bands after the bidder wins the license at auction. Thus, a winning bidder pays twice—once at auction and again if and when it reaches an agreement with a federal entity regarding the cost and timeline for relocation of federal spectrum operations. This cumbersome two-step process contains a number of risks for prospective bidders and for federal entities, particularly when national security interests are involved. In addition, under current law, an auction winner cannot spend all of its money at auction. Instead, an auction winner must save some money allocated to spectrum ac-

quisition for paying government agencies to relocate their spectrum operations.

H.R. 1320 eliminates the uncertainty over the additional cost of federal relocation for prospective bidders. Bidders pay once, at the auction, and have no financial liability to pay for relocation other than what they pay at auction. Bidders also receive information about federal relocation costs and schedules well before each auction occurs. In addition, bidders are held harmless for any federal relocation cost overruns. The bill further reduces the uncertainty associated with the timing of the relocation process with increased reporting requirements and oversight by Office of Management and Budget (OMB), Congress, and the General Accounting Office (GAO).

Under H.R. 1320's improved process, bidders should pay much closer to market value for spectrum than under current law. The risk discount that CBO applies to the auction under current law cannot logically be applied to the auction after enactment of H.R. 1320. Reducing the CBO's uncertainty discount by 50% would increase CBO's estimate of the 3G auction proceeds to roughly \$16.5 billion. Using CBO's below-market spectrum valuations, that change alone would make enactment of H.R. 1320 a net revenue-raiser for the federal government over the 2006–2008 period. However, based on current market values and a reduced uncertainty discount for prospective bidders, the 3G auction should raise \$23–37 billion. These assumptions would increase projected auction proceeds by \$8–22 billion over the 2006–2008 period and increase net projected revenues to the federal government by \$5.5–19.5 billion over the next 10 years relative to the CBO baseline.

H.R. 1320 also imposes cost-controls that the Committee believes will ensure that government agencies are accountable for their relocation expenses. H.R. 1320 creates third-party review of federal agency relocation estimates and timetables by National Telecommunications and Information Administration (NTIA), OMB, Congress and GAO. The bill also requires annual relocation progress reports to Congress that will detail whether cost overruns are occurring. These requirements should result in a more-orderly relocation process, reduce the likelihood of cost overruns, accelerate planned federal relocations, and decrease the future costs of maintaining outdated Department of Defense and other federal communications systems operating in bands with increasing global commercial interference problems.

Even more importantly, section 4 of H.R. 1320 stipulates that no funds may be transferred from the Spectrum Relocation Fund to a federal entity until 30 days after the Director of OMB, in consultation with NTIA, has determined the appropriateness of an agency's relocations costs and timeline for relocation, and the Director of OMB has submitted a relocation plan to Congress and GAO containing detailed relocation cost estimates and timelines. Section 4 requires that OMB, in consultation with NTIA, must approve any subsequent transfer exceeding 10 percent of the first transfer to the agency and notify Congress and GAO 45 days in advance of the proposed transfer. It also requires that GAO review the proposed transfer and submit its assessment to Congress within 30 days. These notification requirements will provide Congress with a suffi-

cient amount of time to address concerns Congress may have regarding how an agency plans to spend relocation funds.

For the foregoing reasons, the Committee believes that its estimate more accurately reflects the fiscal impact associated with the enactment of H.R. 1320 than the CBO estimate reprinted below.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 13, 2003.

Hon. W.J. "BILLY" TAUZIN,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1320, the Commercial Spectrum Enhancement Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kathleen Gramp.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

H.R. 1320—Commercial Spectrum Enhancement Act

Summary: H.R. 1320 would amend the procedures used to pay for relocating federal telecommunications systems that use electromagnetic spectrum that will be licensed for commercial use. It would simplify the process companies use to reimburse the government for relocation costs and would allow agencies to spend those funds without further appropriation. Under current law, such spending is subject to appropriation. In addition, the bill would amend existing law regarding loans made by the Telecommunications Development Fund (TDF).

CBO estimates that implementing H.R. 1320 would increase net direct spending by \$1.4 billion over the 2006–2008 period and by \$2.5 billion over the next 10 years. Allowing agencies to directly spend some auction proceeds would eliminate the need to appropriate funds for relocation costs. Consequently, this increase in direct spending could be largely offset by a reduction in discretionary spending if the total amounts appropriated in future years are reduced correspondingly.

H.R. 1320 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1320 is shown in the following table. The costs of this legislation fall primarily within budget functions 050 (national defense) and 905 (undistributed offsetting receipts).

	By fiscal year (in billions of dollars)										
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
CHANGES IN DIRECT SPENDING											
Spectrum auction receipts under current law:											
Estimated budget authority	-0.1	-0.3	-8.0	-8.0	-2.8	-2.5	0	0	0	0	0
Estimated outlays	-0.1	-0.3	-8.0	-8.0	-2.8	-2.5	0	0	0	0	0
Proposed changes:											
Delay of spectrum auctions:											
Estimated budget authority	0	0	7.5	-7.5	0	0	0	0	0	0	0
Estimated outlays ...	0	0	7.5	-7.5	0	0	0	0	0	0	0
Spending for relocation costs ¹ :											
Estimated budget authority	0	0	0	2.5	0	0	0	0	0	0	0
Estimated outlays ...	0	0	0	0.3	0.5	0.6	0.6	0.3	0.1	0.1	0
Total proposed changes:											
Estimated budget authority	0	0	7.5	-5.0	0	0	0	0	0	0	0
Estimated outlays ...	0	0	7.5	-7.2	0.5	0.6	0.6	0.3	0.1	0.1	0
Net spectrum auction receipts under H.R. 1320:											
Estimated budget authority	-0.1	-0.3	-0.5	-13.0	-2.8	-2.5	0	0	0	0	0
Estimated outlays	-0.1	-0.3	-0.5	-15.2	-2.3	-1.9	0.6	0.3	0.1	0.1	0

¹ Implementing H.R. 1320 could result in a reduction in discretionary spending, similar to the \$2.5 billion increase in direct spending if the total amounts appropriated in future years are reduced accordingly.

Basis of Estimate

H.R. 1320 would amend current law that governs auctions of the electromagnetic spectrum in two ways. First, it would change the process used to pay for the cost of relocating government operations when spectrum that is used by agencies is going to be reallocated and licensed for commercial services. Second, the bill would change the treatment of loans made by the Telecommunications Development Fund. The cost of these changes is described below.

Federal relocation costs

CBO estimates that implementing H.R. 1320 would increase net direct spending by \$2.5 billion over the next 10 years because it would allow agencies to spend some of the proceeds from spectrum auctions without further appropriation. Spending for agencies' spectrum relocation expenses is subject to appropriation under current law. By providing this direct spending authority, the bill could lead to lower discretionary spending in the future if the funds appropriated are reduced by corresponding amounts.

Relocation Costs Under Current Law. Some of the electromagnetic spectrum now used by federal agencies is being reallo-

cated from government to commercial use. Relocating agency operations to new frequencies or services typically involves buying new equipment and facilities. Under current law, those costs will be paid by the companies that win the commercial licenses at auctions held by the Federal Communications Commission (FCC). Agencies will notify bidders of estimated relocation costs before the auction begins, but final payment will be negotiated and made after the winning bidder has obtained—and paid for—the license. Funds paid by the commercial licensees for relocation costs will be deposited in the Treasury as miscellaneous receipts, but agencies cannot spend the proceeds until they are appropriated. How well the current relocation process would work is unknown because no auctions of such frequencies have occurred since the requirements were enacted in 1998.

Proposed Changes. H.R. 1320 would make two key changes in the agency relocation process. First, costs for relocation would be paid from the total auction proceeds, rather than by individual licensees. The bill would direct the FCC to set a minimum bid for an auction equal to 110 percent of the estimated relocation costs. If auction proceeds exceed that minimum bid, then all of the proceeds from the auction of the federal frequencies would be deposited in a Spectrum Relocation Fund. Auctions that failed to at least match the minimum bid would be cancelled. Under the bill, all auction proceeds in the fund could be spent by agencies without further appropriation on eligible relocation costs. Agency expenditures and relocation progress would be subject to review by the Office of Management and Budget (OMB), the National Telecommunications and Information Administration (NTIA), various Congressional committees, and the General Accounting Office (GAO). Unspent auction proceeds would remain in the Treasury.

The bill also would require the FCC to notify NTIA of an upcoming auction of at least 18 months in advance, giving agencies a year to prepare estimates of relocation costs that must be given to the FCC at least six months prior to the start of the auction.

Budgetary Effects Related to Auctioning the 1710–1755 Megahertz Band. The relocation procedures, both in current law and under H.R. 1320, apply only to certain frequencies. Among the bands eligible for reimbursement are the 1710–1755 megahertz band, three small bands covered by existing law, and any frequencies reallocated from government to commercial use after January 1, 2003.

Most of the estimated cost of this bill would result from applying the new process to the 1710–1755 megahertz band, which is scheduled to be paired with 45 megahertz of commercial spectrum and auctioned for use by advanced, third-generation wireless services in the next few years. Under current law, CBO anticipates that licenses for this 90 megahertz will be auctioned near the beginning of fiscal year 2005 and that proceeds totaling about \$1.5 billion would be collected over the 2005–2006 period. This estimate reflects our expectation that companies will discount their bids by about \$2 billion to \$3 billion because of the uncertainty associated with the time and cost of relocating federal and commercial users.

CBO estimates that implementing the new relocation procedures would affect the budget in three ways:

- Requiring the FCC to give NTIA at least 18-months notice would delay the start of the auction relative to CBO's baseline as-

sumption, thereby shifting about \$7.5 billion in offsetting receipts from 2005 and 2006. CBO assumes that the 18-month period would not begin until the NTIA and FCC identify alternative frequencies for federal operations, which will be a key determinant of relocation costs.

- Agencies would spend about \$2.5 billion, without further appropriation, to relocate federal systems that now use this band. This estimate reflects the preliminary estimate prepared by NTIA in 2001 on the cost of moving all federal systems out of this band. Most of this expense will be incurred by the Department of Defense (DoD).

- The estimated increase in direct spending could be largely offset by a reduction in discretionary spending if the amounts appropriated in future years are reduced correspondingly. However, CBO anticipates that total spending probably would be higher under H.R. 1320 than under current law because agencies' relocation plans would not be subject to negotiations with winning bidders or the appropriation process.

It is possible that the net effect of the bill on direct spending could be higher or lower than estimated by CBO. On the one hand, agency spending could exceed \$2.5 billion because the NTIA study was based on preliminary data and did not include all systems or all allowable expenditures. Recent statements by DoD have suggested that its costs alone could exceed \$4 billion.

On the other hand, simplifying the reimbursement process could reduce some of the uncertainty for bidders, which could result in higher auction proceeds. Under current law, companies may underbid or overbid for spectrum licenses depending on how the amount they ultimately pay agencies for relocation expenses compares to the amount assumed in their bidding strategy. Likewise, under the bill, agencies might have access to funds more quickly than under the current process, but CBO has no basis for determining whether this would have a material effect on when the spectrum would be available for commercial service. On balance, CBO expects that simplifying the process for bidders might lead to higher proceeds, but we estimate that the magnitude of any change would be small relative to other factors that will affect the market value of these frequencies.

Budgetary Effects Related to Other Bands. Based on information from NTIA and other agencies, CBO expects that implementing this bill would have no significant effect on the net proceeds from other auctions likely to be held before the FCC's auction authority expires in 2007.

Telecommunications Development Fund

The TDF was established by law in 1996 to spend the interest earned on certain proceeds collected by the FCC as part of the spectrum auction process. These interest earnings are used as venture capital for small businesses and spent on other activities related to telecommunications services. The fund is administered by a seven-member board appointed by the FCC and is governed by certain statutory criteria. H.R. 1320 would remove one of those requirements, namely that loans made by the TDF are subject to the Federal Credit Reform Act.

Since its creation, CBO has suggested that the TDF be included in the budget as a federal activity because its leadership, purpose, and funding are controlled by the government. OMB, however, treats the TDF as a nonfederal entity. Because the TDF currently is treated as a nonfederal entity, CBO estimates that enacting this provision would have no budgetary impact.

Intergovernmental and Private-Sector Impact: H.R. 1320 contains no intergovernmental or private-sector mandates as defined in the UMRA and would impose no costs on state, local, or tribal governments.

Comparison With Other Estimates: In February 2003, the Administration recommended enacting legislation similar to H.R. 1320. The Office of Management and Budget estimated that enacting its proposed legislation also would increase direct spending by \$2.5 billion over the 2005–2013 period.

Estimate Prepared by: Federal Costs: Kathleen Gramp, Impact on State, Local, and Tribal Governments: Victoria Heid Hall, and Impact on the Private Sector: Paige Piper/Bach.

Estimate Approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short Title

Section 1 establishes the short title of the bill, the “Commercial Spectrum Enhancement Act of 2002.”

Section 2. Relocation of Eligible Federal Entities for the Reallocation of Spectrum for Commercial Purposes

Section 2 of the bill amends section 113(g) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)) by striking the existing provisions governing the

compensation of federal entities for relocation costs incurred as the result of the reallocation of frequencies from government to non-government use and by replacing those provisions with the following:

Section 113(g)(1) provides that any federal entity that has spectrum operations and that incurs relocation costs because of the reallocation of eligible frequencies from government to non-government use shall receive compensation for relocation expenses from the SRF. Section 113(g)(1) also permits Federal Power Agencies (FPAs) that voluntarily relocate from spectrum bands reallocated from government to non-government use to receive compensation for relocation costs from the SRF.

Section 113(g)(2) establishes the frequency bands from which a federal entity's relocation costs would be compensated from the SRF. The bands include the 216–220 megahertz band, the 1432–1435 megahertz band, the 1710–1755 megahertz band, and the 2385–2390 megahertz band. Also included as an eligible band is any other band of frequencies reallocated from federal to non-federal use after January 1, 2003 that the Commission assigns by auction, except for the 1390–1400 megahertz band, the 1427–1432 megahertz band, the 1670–1675 megahertz band, the 2300–2305 megahertz band, the 2305–2310 megahertz band, the 2390–2450 megahertz band, the 3650–3700 megahertz band, and the 4940–4990 megahertz band.

Section 113(g)(3) defines relocation costs for which reimbursement from the SRF may be received by federal entities for achieving comparable capability of systems by relocating spectrum operations to a different frequency band or by utilizing an alternative technology. The Committee recognizes the unique situation of the Federal Power Agencies with respect to their funding derived from ratepayers. The Committee does not expect the requirement for the agencies to develop a pre-auction estimate of relocation expenses to result in out-of-pocket costs for the FPAs. To the extent necessary, the Committee expects NTIA and the Department of Energy will assist the FPAs in developing this estimate.

New section 113(g)(4) requires the Commission to notify NTIA at least 18 months prior to the commencement of any auction of reallocated eligible frequencies. At least six months prior to such an auction, NTIA, on behalf of a federal entity that will be relocating spectrum operations from a reallocated band, must notify the Commission of the estimated relocation costs and timelines for such relocation. OMB is required to review the estimated costs and timelines before NTIA makes its submission to the Commission. New section 113(g)(4) also requires the NTIA to provide federal entities, upon a timely request, with information regarding alternative frequency assignments for the purpose of calculating estimated relocation costs and timelines. NTIA must provide the information to the Commission and to requesting federal entities by the geographic location of the federal entities' facilities or systems or the frequency bands used by such facilities or systems. However, new section 113(g)(4) only requires NTIA to provide such information to the extent that it is consistent with national security and if it is practicable to do so.

New section 113(g)(5) requires NTIA to provide a copy of any cost and timeline estimate submitted to the Commission to the Commit-

tees on Appropriations and Energy and Commerce of the House of Representatives, the Committees on Appropriations and Commerce, Science, and Transportation of the Senate, and the Comptroller General.

New section 113(g)(6) requires NTIA to take any actions necessary to ensure the timely relocation of federal entities' spectrum operations from eligible frequencies to frequencies or facilities of comparable capability. Once NTIA has determined that a federal entity has achieved comparable capability of systems, new section 113(g)(6) requires NTIA to terminate the entity's authorization to operate on the reallocated frequency band, and to notify the Commission that the entity's relocation is complete. New section 113(g)(6) also requires NTIA to terminate a federal entity's authorization if the NTIA determines that the entity has unreasonably failed to comply with the timeline for relocation submitted by OMB to Congress after the completion of the auction.

Section 3. Minimum Auction Receipts and Disposition of Proceeds

Section 3(a) amends section 309(j)(3) of the Communications Act of 1934 (47 U.S.C. 309(j)(3)) by requiring an auction of eligible frequencies described in section 113(g)(2) to yield at least 110 percent of the estimated relocation costs as provided to the Commission under new section 113(g)(4).

Section 3(b) further amends section 309(j) of the Communications Act by requiring the Commission to revise its regulations to ensure that the total cash proceeds from any auction of eligible frequencies equals at least 110 percent of the estimated relocation costs provided to the Commission. Section 3(b) amends section 309(j) of the Communications Act to prohibit the Commission from concluding any auction of eligible frequencies if the total cash proceeds are less than 110 percent of the total estimated relocation costs. If the Commission cannot conclude an auction, the Commission is required to cancel the auction, return any deposits to participating bidders within 45 days, and absolve such bidders from any obligation to the United States to bid in any subsequent reauction of the spectrum.

For auctions of eligible frequencies, Section 3(b) permits the Commission to grant a license for commercial use prior to the termination of a federal entity's authorization. However, the Commission is required to prevent the licensee from causing harmful interference to a federal entity until the entity's authorization has been terminated. The Commission should authorize the commercial use of government frequencies prior to termination of the federal entity's authorization, to the extent such use would not cause harmful interference to the federal entity. However, the Committee expects the Commission to consider any such commercial use to be in addition to the term of a commercial entity's license that commences upon the termination of the federal entity's authorization by NTIA in accordance with H.R. 1320.

Section 3(c) amends section 309(j) of the Communications Act by requiring that proceeds from an auction of eligible frequencies must be deposited in the SRF.

Section 4. Establishment of Fund and Procedures

Section 4 creates a new section 118 of the National Telecommunications and Information Organization Act. New section 118(a) establishes a separate fund (the SRF) on the books of the Treasury. New section 118(a) provides that OMB shall administer the SRF in consultation with NTIA.

New section 118(b) provides that the SRF shall be credited with the proceeds from auctions of eligible frequencies.

New section 118(c) provides that the amounts in the SRF shall be used to pay the relocation costs of federal entities that relocate their spectrum operations from eligible frequencies. The amounts in the SRF are not available for any other purpose.

New section 118(d) appropriates from the SRF such sums as required to pay the relocation costs of eligible federal entities. The Committee recognizes that this provision deviates from the traditional Congressional process for appropriating money for federal agencies. However, new section 118(d) is one of the most important provisions in H.R. 1320. Without the absolute certainty that money will be available to pay relocation costs, federal agencies would be extremely reluctant, if not outright opposed, to relocating their spectrum operations. This certainty can only be provided through a deviation from the annual appropriations process, and through guaranteeing that all proceeds from an auction of eligible frequencies will go directly into the SRF, be used exclusively for relocation expenses, and be available from the outset, not subject to annual appropriations.

New section 118(d) also provides that monies from the SRF cannot be transferred to a federal entity unless OMB, in consultation with NTIA, has determined the appropriateness of the relocation costs and the timeline for relocation. The Committee expects agencies, in consultation with OMB and NTIA, to reevaluate cost estimates after an auction has been completed. The Committee does not expect the cost estimate required by new section 113(g)(4) to be the only cost estimate performed to determine actual relocation costs.

New section 118(d) further provides that monies from the SRF cannot be transferred to a federal entity until 30 days after OMB submits a detailed plan describing how the funds will be spent for relocation and the timeline for relocation to the Committees on Appropriations and Energy and Commerce of the House of Representatives, the Committees on Appropriations and Commerce, Science, and Transportation of the Senate, and the Comptroller General.

New section 118(d) provides that any auction proceeds remaining in the SRF after the payment of relocation costs shall revert to and be deposited in the Treasury no later than 8 years after such proceeds are initially deposited in the SRF. Proceeds from subsequent auctions conducted in accordance with H.R. 1320 would not revert to the Treasury eight years after the initial deposit of proceeds from the first auction conducted in accordance with H.R. 1320. Excess proceeds from each auction remain in the fund for no more than eight years after their initial deposit following that particular auction.

New section 118(e) provides that monies appropriated from the SRF are transferred to eligible federal entities in accordance with new section 118(d). New section 118(e) permits more than one

transfer to be made to an eligible federal entity. However, if a subsequent transfer (or transfers) exceeds 10 percent of the first transfer to an entity, such subsequent transfer cannot be made without the prior approval of OMB, in consultation with NTIA, and until 45 days after OMB notifies the Committees on Appropriations and Energy and Commerce of the House of Representatives, the Committees on Appropriations and Commerce, Science, and Transportation of the Senate, and the Comptroller General. The notice of the subsequent transfer must include a detailed plan describing how the funds will be spent for relocation and the timeline for relocation, as well as an explanation of the need for the subsequent transfer. In addition, within 30 days after receiving the plan, the Comptroller General is required to review the plan and submit to the relevant committees an assessment of the explanation for the subsequent transfer.

New section 118(e) also provides that amounts transferred to an eligible federal entity shall be credited to the entity's appropriations account. The amounts shall remain available until expended, although any funds in excess of actual relocation costs shall be transferred back to the SRF immediately after NTIA has notified the Commission that an entity's relocation is complete or has determined that such entity has unreasonably failed to complete the relocation in accordance with the timeline submitted to Congress by OMB under new section 118(d). Eligible federal entities that receive amounts from the SRF are required to report their expenditures to OMB.

Section 5. Telecommunications Development Fund

Section 5 clarifies that the Telecommunications Development Fund is not subject to the requirements of the Federal Credit Reform Act of 1990 or any other applicable law. Loans made with monies derived from the Telecommunications Development Fund are not backed by the full faith and credit of the United States. Therefore, subjecting such loans to the Federal Credit Reform Act and other similar laws is not necessary.

Section 6. Construction

Section 6 provides that H.R. 1320 does not modify section 1062(b) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65), which prohibits, with certain exceptions, the surrender of spectrum by the Department of Defense unless comparable spectrum is made available, in advance, for the relevant operations. The Secretary of Commerce, Secretary of Defense, and the Chairman of the Joint Chiefs of Staff must jointly certify that the alternative band or bands provides comparable capability.

Section 7. Section Annual Report

Section 7 requires NTIA to submit an annual report to Committees on Appropriations and Energy and Commerce of the House of Representatives, the Committees on Appropriations and Commerce, Science, and Transportation of the Senate, and the Comptroller General regarding (1) the progress made in adhering to the timelines presented by OMB to Congress under new section 118(d), and (2) the estimated relocation costs, the actual costs incurred, and the amount of such costs paid from the SRF. This information

must be provided on a communication-system-by-system and an auction-by-auction basis.

Section 8. Preservation of Authority; NTIA Report Required

Section 8 clarifies that, with the exception of the 216–220 megahertz band, the 1432–1435 megahertz band, the 1710–1755 megahertz band, and the 2385–2390 megahertz band, nothing in H.R. 1320 is intended to limit the Commission’s authority to allocate spectrum reallocated from government to non-government use for unlicensed, public safety, shared, or non-commercial purposes.

Section 8 also requires NTIA to submit a report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate within one year after enactment of H.R. 1320 regarding policy options to compensate federal entities for relocation costs when such entities’ spectrum bands are reallocated from government to non-government use and the Commission allocates the spectrum for unlicensed, public safety, shared, or non-commercial purposes. The Committee expects NTIA to make policy recommendations appropriate to and consistent with its statutory authority.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**NATIONAL TELECOMMUNICATIONS AND INFORMATION
ADMINISTRATION ORGANIZATION ACT**

* * * * *

**TITLE I—NATIONAL TELECOMMUNI-
CATIONS AND INFORMATION ADMIN-
ISTRATION**

* * * * *

**PART B—TRANSFER OF AUCTIONABLE
FREQUENCIES**

* * * * *

SEC. 113. IDENTIFICATION OF REALLOCABLE FREQUENCIES.

(a) * * *

* * * * *

(g) RELOCATION OF FEDERAL GOVERNMENT STATIONS.—

[(1) IN GENERAL.—

[(A) AUTHORITY OF FEDERAL ENTITIES TO ACCEPT COMPENSATION.—In order to expedite the commercial use of the electromagnetic spectrum and notwithstanding section 3302(b) of title 31, United States Code, any Federal entity

which operates a Federal Government station may accept from any person payment of the expenses of relocating the Federal entity's operations from one or more frequencies to another frequency or frequencies, including the costs of any modification, replacement, or reissuance of equipment, facilities, operating manuals, or regulations incurred by that entity. Any such Federal entity which proposes to so relocate shall notify the NTIA, which in turn shall notify the Commission, before the auction concerned of the marginal costs anticipated to be associated with such relocation or with modifications necessary to accommodate prospective licensees. The Commission in turn shall notify potential bidders of the estimated relocation or modification costs based on the geographic area covered by the proposed licenses before the auction.

[(B) REQUIREMENT TO COMPENSATE FEDERAL ENTITIES.— Any person on whose behalf a Federal entity incurs costs under subparagraph (A) shall compensate the Federal entity in advance for such costs. Such compensation may take the form of a cash payment or in-kind compensation.

[(C) DISPOSITION OF PAYMENTS.—

[(i) PAYMENT BY ELECTRONIC FUNDS TRANSFER.—A person making a cash payment under this paragraph shall make the cash payment by depositing the amount of the payment by electronic funds transfer in the account of the Federal entity concerned in the Treasury of the United States or in another account as authorized by law.

[(ii) AVAILABILITY.—Subject to the provisions of authorization Acts and appropriations Acts, amounts deposited under this subparagraph shall be available to the Federal entity concerned to pay directly the costs of relocation under this paragraph, to repay or make advances to appropriations or funds which do or will initially bear all or part of such costs, or to refund excess sums when necessary.

[(D) APPLICATION TO CERTAIN OTHER RELOCATIONS.—The provisions of this paragraph also apply to any Federal entity that operates a Federal Government station assigned to used electromagnetic spectrum identified for reallocation under subsection (a) if before August 5, 1997, the Commission has not identified that spectrum for service or assigned licenses or otherwise authorized service for that spectrum.

[(E) IMPLEMENTATION PROCEDURES.—The NTIA and the Commission shall develop procedures for the implementation of this paragraph, which procedures shall include a process for resolving any differences that arise between the Federal Government and commercial licensees regarding estimates of relocation or modification costs under this paragraph.

[(F) INAPPLICABILITY TO CERTAIN RELOCATIONS.—With the exception of the band of frequencies located at 1710–1755 megahertz, the provisions of this paragraph shall not apply to Federal spectrum identified for reallocation in the

first reallocation report submitted to the President and Congress under subsection (a).

【(2) PROCESS FOR RELOCATION.—Any person seeking to relocate a Federal Government station that has been assigned a frequency within a band that has been allocated for mixed Federal and non-Federal use, or that has been scheduled for reallocation to non-Federal use, may submit a petition for such relocation to NTIA. The NTIA shall limit or terminate the Federal Government station’s operating license within 6 months after receiving the petition if the following requirements are met:

【(A) the person seeking relocation of the Federal Government station has guaranteed to pay all relocation costs incurred by the Federal entity, including all engineering, equipment, site acquisition and construction, and regulatory fee costs;

【(B) all activities necessary for implementing the relocation have been completed, including construction of replacement facilities (if necessary and appropriate) and identifying and obtaining new frequencies for use by the relocated Federal Government station (where such station is not relocating to spectrum reserved exclusively for Federal use);

【(C) any necessary replacement facilities, equipment modifications, or other changes have been implemented and tested to ensure that the Federal Government station is able to successfully accomplish its purposes; and

【(D) NTIA has determined that the proposed use of the spectrum frequency band to which the Federal entity will relocate its operations is—

【(i) consistent with obligations undertaken by the United States in international agreements and with United States national security and public safety interests; and

【(ii) suitable for the technical characteristics of the band and consistent with other uses of the band.

In exercising its authority under clause (i) of this subparagraph, NTIA shall consult with the Secretary of Defense, the Secretary of State, or other appropriate officers of the Federal Government.

【(3) RIGHT TO RECLAIM.—If within one year after the relocation the Federal entity demonstrates to the Commission that the new facilities or spectrum are not comparable to the facilities or spectrum from which the Federal Government station was relocated, the person who filed the petition under paragraph (2) for such relocation shall take reasonable steps to remedy any defects or pay the Federal entity for the expenses incurred in returning the Federal Government station to the spectrum from which such station was relocated.】

(1) *ELIGIBLE FEDERAL ENTITIES.*—Any Federal entity that operates a Federal Government station assigned to a band of frequencies specified in paragraph (2) and that incurs relocation costs because of the reallocation of frequencies from Federal use to non-Federal use shall receive payment for such costs from the Spectrum Relocation Fund, in accordance with section 118 of

this Act. For purposes of this paragraph, Federal power agencies exempted under subsection (c)(4) that choose to relocate from the frequencies identified for reallocation pursuant to subsection (a), are eligible to receive payment under this paragraph.

(2) *ELIGIBLE FREQUENCIES.—The bands of eligible frequencies for purposes of this section are as follows:*

(A) *the 216–220 megahertz band, the 1432–1435 megahertz band, the 1710–1755 megahertz band, and the 2385–2390 megahertz band of frequencies; and*

(B) *any other band of frequencies reallocated from Federal use to non-Federal use after January 1, 2003, that is assigned by competitive bidding pursuant to section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)), except for bands of frequencies previously identified by the National Telecommunications and Information Administration in the Spectrum Reallocation Final Report, NTIA Special Publication 95–32 (1995).*

(3) *DEFINITION OF RELOCATION COSTS.—For purposes of this subsection, the term “relocation costs” means the costs incurred by a Federal entity to achieve comparable capability of systems, regardless of whether that capability is achieved by relocating to a new frequency assignment or by utilizing an alternative technology. Such costs include—*

(A) *the costs of any modification or replacement of equipment, software, facilities, operating manuals, training costs, or regulations that are attributable to relocation;*

(B) *the costs of all engineering, equipment, software, site acquisition and construction costs, as well as any legitimate and prudent transaction expense, including outside consultants, and reasonable additional costs incurred by the Federal entity that are attributable to relocation, including increased recurring costs associated with the replacement facilities;*

(C) *the costs of engineering studies, economic analyses, or other expenses reasonably incurred in calculating the estimated relocation costs that are provided to the Commission pursuant to paragraph (4) of this subsection;*

(D) *the one-time costs of any modification of equipment reasonably necessary to accommodate commercial use of such frequencies prior to the termination of the Federal entity’s primary allocation or protected status, when the eligible frequencies as defined in paragraph (2) of this subsection are made available for private sector uses by competitive bidding and a Federal entity retains primary allocation or protected status in those frequencies for a period of time after the completion of the competitive bidding process; and*

(E) *the costs associated with the accelerated replacement of systems and equipment if such acceleration is necessary to ensure the timely relocation of systems to a new frequency assignment.*

(4) *NOTICE TO COMMISSION OF ESTIMATED RELOCATION COSTS.—*

(A) *The Commission shall notify the NTIA at least 18 months prior to the commencement of any auction of eligible frequencies defined in paragraph (2). At least 6 months prior to the commencement of any such auction, the NTIA, on behalf of the Federal entities and after review by the Office of Management and Budget, shall notify the Commission of estimated relocation costs and timelines for such relocation.*

(B) *Upon timely request of a Federal entity, the NTIA shall provide such entity with information regarding an alternative frequency assignment or assignments to which their radiocommunications operations could be relocated for purposes of calculating the estimated relocation costs and timelines to be submitted to the Commission pursuant to subparagraph (A).*

(C) *To the extent practicable and consistent with national security considerations, the NTIA shall provide the information required by subparagraphs (A) and (B) by the geographic location of the Federal entities' facilities or systems and the frequency bands used by such facilities or systems.*

(5) *NOTICE TO CONGRESSIONAL COMMITTEES AND GAO.—The NTIA shall, at the time of providing an initial estimate of relocation costs to the Commission under paragraph (4)(A), submit to the Committees on Appropriations and Energy and Commerce of the House of Representatives, the Committees on Appropriations and Commerce, Science, and Transportation of the Senate, and the Comptroller General a copy of such estimate and the timelines for relocation.*

(6) *IMPLEMENTATION OF PROCEDURES.—The NTIA shall take such actions as necessary to ensure the timely relocation of Federal entities' spectrum-related operations from frequencies defined in paragraph (2) to frequencies or facilities of comparable capability. Upon a finding by the NTIA that a Federal entity has achieved comparable capability of systems by relocating to a new frequency assignment or by utilizing an alternative technology, the NTIA shall terminate the entity's authorization and notify the Commission that the entity's relocation has been completed. The NTIA shall also terminate such entity's authorization if the NTIA determines that the entity has unreasonably failed to comply with the timeline for relocation submitted by the Director of the Office of Management and Budget under section 118(d)(2)(B).*

* * * * *

SEC. 118. SPECTRUM RELOCATION FUND.

(a) *ESTABLISHMENT OF SPECTRUM RELOCATION FUND.—There is established on the books of the Treasury a separate fund to be known as the "Spectrum Relocation Fund" (in this section referred to as the "Fund"), which shall be administered by the Office of Management and Budget (in this section referred to as "OMB"), in consultation with the NTIA.*

(b) *CREDITING OF RECEIPTS.—The Fund shall be credited with the amounts specified in section 309(j)(8)(D) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(D)).*

(c) *USED TO PAY RELOCATION COSTS.*—The amounts in the Fund from auctions of eligible frequencies are authorized to be used to pay relocation costs, as defined in section 113(g)(3) of this Act, of an eligible Federal entity incurring such costs with respect to relocation from those frequencies.

(d) *FUND AVAILABILITY.*—

(1) *APPROPRIATION.*—There are hereby appropriated from the Fund such sums as are required to pay the relocation costs specified in subsection (c).

(2) *TRANSFER CONDITIONS.*—None of the funds provided under this subsection may be transferred to any eligible Federal entity—

(A) unless the Director of OMB has determined, in consultation with the NTIA, the appropriateness of such costs and the timeline for relocation; and

(B) until 30 days after the Director of the OMB has submitted to the Committees on Appropriations and Energy and Commerce of the House of Representatives, the Committees on Appropriations and Commerce, Science, and Transportation of the Senate, and the Comptroller General a detailed plan describing how the sums transferred from the Fund will be used to pay relocation costs in accordance with such subsection and the timeline for such relocation.

(3) *REVERSION OF UNUSED FUNDS.*—Any auction proceeds in the Fund that are remaining after the payment of the relocation costs that are payable from the Fund shall revert to and be deposited in the general fund of the Treasury not later than 8 years after the date of the deposit of such proceeds to the Fund.

(e) *TRANSFER TO ELIGIBLE FEDERAL ENTITIES.*—

(1) *TRANSFER.*—

(A) Amounts made available pursuant to subsection (d) shall be transferred to eligible Federal entities, as defined in section 113(g)(1) of this Act.

(B) An eligible Federal entity may receive more than one such transfer, but if the sum of the subsequent transfer or transfers exceeds 10 percent of the original transfer—

(i) such subsequent transfers are subject to prior approval by the Director of OMB as required by subsection (d)(2)(A);

(ii) the notice to the committees containing the plan required by subsection (d)(2)(B) shall be not less than 45 days prior to the date of the transfer that causes such excess above 10 percent;

(iii) such notice shall include, in addition to such plan, a explanation of need for such subsequent transfer or transfers; and

(iv) the Comptroller General shall, within 30 days after receiving such plan, review such plan and submit to such committees an assessment of the explanation for the subsequent transfer or transfers.

(C) Such transferred amounts shall be credited to the appropriations account of the eligible Federal entity which has incurred, or will incur, such costs, and shall, subject to paragraph (2), remain available until expended.

(2) *RETRANSFER TO FUND.*—An eligible Federal entity that has received such amounts shall report its expenditures to OMB and shall transfer any amounts in excess of actual relocation costs back to the Fund immediately after the NTIA has notified the Commission that the entity’s relocation is complete, or has determined that such entity has unreasonably failed to complete such relocation in accordance with the timeline required by subsection (d)(2)(A).

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COMMUNICATIONS ACT OF 1934

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TITLE III—PROVISIONS RELATING TO RADIO

PART I—GENERAL PROVISIONS

* * * * *

SEC. 309. ACTION UPON APPLICATIONS; FORM OF AND CONDITIONS ATTACHED TO LICENSES.

(a) * * *

* * * * *

(j) **USE OF COMPETITIVE BIDDING.**—

(1) * * *

* * * * *

(3) **DESIGN OF SYSTEMS OF COMPETITIVE BIDDING.**—For each class of licenses or permits that the Commission grants through the use of a competitive bidding system, the Commission shall, by regulation, establish a competitive bidding methodology. The Commission shall seek to design and test multiple alternative methodologies under appropriate circumstances. The Commission shall, directly or by contract, provide for the design and conduct (for purposes of testing) of competitive bidding using a contingent combinatorial bidding system that permits prospective bidders to bid on combinations or groups of licenses in a single bid and to enter multiple alternative bids within a single bidding round. In identifying classes of licenses and permits to be issued by competitive bidding, in specifying eligibility and other characteristics of such licenses and permits, and in designing the methodologies for use under this subsection, the Commission shall include safeguards to protect the public interest in the use of the spectrum and shall seek to promote the purposes specified in section 1 of this Act and the following objectives:

(A) * * *

* * * * *

(D) efficient and intensive use of the electromagnetic spectrum; [and]

(E) ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed—

(i) * * *

(ii) after issuance of bidding rules, to ensure that interested parties have a sufficient time to develop business plans, assess market conditions, and evaluate the availability of equipment for the relevant services[.]; and

(F) for any auction of eligible frequencies described in section 113(g)(2) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2)), the recovery of 110 percent of estimated relocation costs as provided to the Commission pursuant to section 113(g)(4) of such Act.

* * * * *

(8) TREATMENT OF REVENUES.—

(A) GENERAL RULE.—Except as provided in subparagraph (B) or subparagraph (D), all proceeds from the use of a competitive bidding system under this subsection shall be deposited in the Treasury in accordance with chapter 33 of title 31, United States Code.

* * * * *

(D) DISPOSITION OF CASH PROCEEDS.—Cash proceeds attributable to the auction of any eligible frequencies described in section 113(g)(2) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2)) shall be deposited in the Spectrum Relocation Fund established under section 118 of such Act, and shall be available in accordance with that section.

* * * * *

(15) SPECIAL AUCTION PROVISIONS FOR ELIGIBLE FREQUENCIES.—

(A) SPECIAL REGULATIONS.—The Commission shall revise the regulations prescribed under paragraph (4)(F) of this subsection to prescribe methods by which the total cash proceeds from any auction of eligible frequencies described in section 113(g)(2) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2)) shall at least equal 110 percent of the total estimated relocation costs provided to the Commission pursuant to section 113(g)(4) of such Act.

(B) CONCLUSION OF AUCTIONS CONTINGENT ON MINIMUM PROCEEDS.—The Commission shall not conclude any auction of eligible frequencies described in section 113(g)(2) of such Act if the total cash proceeds attributable to such spectrum are less than 110 percent of the total estimated relocation costs provided to the Commission pursuant to section 113(g)(4) of such Act. If the Commission is unable to conclude an auction for the foregoing reason, the Commission shall cancel the auction, return within 45 days after the auction cancellation date any deposits from participating bidders held in escrow, and absolve such bidders from any

obligation to the United States to bid in any subsequent re-auction of such spectrum.

(C) AUTHORITY TO ISSUE PRIOR TO DEAUTHORIZATION.—In any auction conducted under the regulations required by subparagraph (A), the Commission may grant a license assigned for the use of eligible frequencies prior to the termination of an eligible Federal entity's authorization. However, the Commission shall condition such license by requiring that the licensee cannot cause harmful interference to such Federal entity until such entity's authorization has been terminated by the National Telecommunications and Information Administration.

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TITLE VII—MISCELLANEOUS PROVISIONS

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SEC. 714. TELECOMMUNICATIONS DEVELOPMENT FUND.

(a) * * *

* * * * *

[(f) LENDING AND CREDIT OPERATIONS.—Loans or other extensions of credit from the Fund shall be made available in accordance with the requirements of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.) and any other applicable law to an eligible small business on the basis of—

[(1) the analysis of the business plan of the eligible small business;

[(2) the reasonable availability of collateral to secure the loan or credit extension;

[(3) the extent to which the loan or credit extension promotes the purposes of this section; and

[(4) other lending policies as defined by the Board.]

(f) LENDING AND CREDIT OPERATIONS.—Loans or other extensions of credit from the Fund shall be made available to an eligible small business on the basis of—

(1) the analysis of the business plan of the eligible small business;

(2) the reasonable availability of collateral to secure the loan or credit extension;

(3) the extent to which the loan or credit extension promotes the purposes of this section; and

(4) other lending policies as defined by the Board.

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