Calendar No. 314

108th Congress *1st Session*	SENATE	REPORT 108–168

COMMERCIAL SPECTRUM ENHANCEMENT ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

H.R. 1320

OCTOBER 17, 2003.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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OCTOBER 17, 2003.—Ordered to be printed

Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 1320]

The Committee on Commerce, Science, and Transportation, to which was referred the Act (H.R. 1320) an Act to amend the National Telecommunications and Information Administration Organization Act to facilitate the reallocation of spectrum from government to commercial users, having considered the same, reports favorably thereon with an amendment and recommends that the Act (as amended) do pass.

PURPOSE OF THE BILL

The purpose of this legislation is to streamline the current process for reimbursing Federal agencies that must relocate from spectrum that has been reallocated to commercial use. Under existing law, spectrum auction winners must negotiate with the Federal entity currently occupying the spectrum, and reimburse the entity directly for its relocation costs. The bill is intended to instill additional certainty into this process for both the auction winner and the Federal entity being relocated. The bill would create a central spectrum relocation fund (SRF) with the proceeds of spectrum auctions, and would grant authority to the relocated Federal entities to use the fund to pay their relocation costs without further appropriation. The bill also would make a technical correction to the statutory treatment of the Telecommunications Development Fund

(TDF), which would benefit small businesses by making it easier for the TDF to make loans to such businesses.

BACKGROUND AND NEEDS

Spectrum is a vital resource in the information and digital age. Today, there are ever-greater spectrum demands for both commercial and government uses. Policymakers have struggled to strike a balance between finding and allocating spectrum for new advanced services, and ensuring that our military forces and other public users have enough spectrum for current and future needs. The Federal government has decided to reallocate certain spectrum from Federal to commercial use. In order to complete this process, the displaced Federal user must relocate to another spectrum band or find an alternative technology to carry out its functions. H.R. 1320 would streamline the current process for reimbursing Federal entities that must relocate from spectrum that has been reallocated to commercial use.

The Omnibus Budget Reconciliation Act of 1993 (OBRA '93) required the Federal government to relinquish at least 100 megahertz (mhz) below 3 gigahertz (ghz) for commercial use (at least 200 mhz overall below 5 ghz). The Balanced Budget Act of 1997 (BBA '97) required the Federal government to reallocate another 20 mhz for commercial use. BBA '97 also accelerated the reallocation of the 1710-1755 mhz band, which had been designated for reallocation in accordance with OBRA '93.

At the 1998 World Radio Conference (WRC) in Istanbul, Turkey, the WRC, an intergovernmental body, voted to locate broadband, third-generation (or 3G) wireless services in certain spectrum bands, including the 1710–1755 mhz band. In the United States, the Department of Defense (DOD) uses much of the spectrum in this band for battlefield communications, aircraft-to-aircraft communications, and other communications-related functions.

The Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Strom Thurmond Act) reduced the overall amount of spectrum initially reallocated to 112 mhz below 3 ghz (212 mhz overall below 5 ghz). In addition, the Strom Thurmond Act also required companies that win the commercial licenses for this spectrum at auction to negotiate directly with government agencies over the terms and costs of relocating the government users to a different spectrum band. Under the current rules, the funds paid by the auction winner are deposited in the United States Treasury as miscellaneous receipts. The relocated agency must then be appropriated the money to pay for its relocation costs.

The current rules create uncertainty for both the relocated Federal entity and the successful bidder for the spectrum. The Federal entities currently face uncertainty, because they must seek funds for relocation through the appropriations process. H.R. 1320 seeks to establish a sustainable and predictable funding mechanism to ensure that DOD and other government users can relocate to new spectrum bands. Likewise, commercial bidders currently face substantial uncertainty about timing and total cost of licenses for the spectrum they seek to use, because of the negotiations they must begin upon winning an auction. This system provides potential licensees with diminished incentive to participate in auctions of reallocated government spectrum.

LEGISLATIVE HISTORY

Senators McCain, Dorgan, Brownback, and Ensign introduced S. 865, a bill that is nearly identical to H.R. 1320, on April 10, 2003. S. 865 was cosponsored by Senator Burns. On June 11, 2003, the House of Representatives passed H.R. 1320 by a vote of 408–10. On June 26, 2003, the Senate Committee on Commerce, Science, and Transportation (the Committee) held an executive session at which H.R. 1320 was considered. The bill was approved by voice vote and was ordered reported with an amendment offered by Senators Sununu and Cantwell regarding the Federal Communication Commission's ability to auction certain terrestrial spectrum, which was passed by a vote of 13–8.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

JULY 11, 2003.

Hon. JOHN MCCAIN,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, 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 the cost of 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 act would exempt certain licenses from being auctioned and 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 $1.5 billion over the 2006–2008 period and by $2.6 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, the increase in direct spending for relocation costs 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 950 (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
Auction exemption for certain licenses:											
Estimated budget authority	0	0	0.1	0	0	0	0	0	0	0	0
Estimated outlays	0	0	0.1	0	0	0	0	0	0	0	0
Total proposed changes:											
Estimated budget authority	0	0	7.6	−5.0	0	0	0	0	0	0	0
Estimated outlays	0	0	7.6	−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	−0.4	−13.0	−2.8	−2.5	0	0	0	0	0
Estimated outlays	−0.1	−0.3	−0.4	−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 estimated $2.5 billion increase in direct spending for relocation costs 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 three 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 preclude the FCC from auctioning licenses for terrestrial services that use the 500 megahertz extending from 12.2 gigahertz to 12.7 gigahertz. Finally, the act 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 provisions that would allow agencies to spend some of the proceeds from spectrum auctions without further appropriation would increase net direct spending by $2.5 billion over the next 10 years. Spending for agencies' spectrum relation expenses is subject to appropriation under current law. By providing this direct spending authority, the act 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 reallocated 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 location process. First, costs for relocation would be paid from the total auction proceeds rather than by individual licensees. The act 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 fail to at least match the minimum bid would be canceled. Under the act, 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 Conressional committees, and the General Accounting Office (GAO). Unspent auction proceeds would remain in the Treasury. The Act also would require the FCC to notify NTIA of an upcoming auction 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 act 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 $15 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 assumption, thereby shifting about $7.5 billion in offsetting receipts from 2005 to 2006. CBO assumes that the 18-month period would not begin until after 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 act 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 cold 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 proceess. 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 act, 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 act 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.

Auction Exemption for Certain Licenses

The FCC is required by law to use competitive bidding procedures to assign most licenses for commercial uses of the radio spectrum. H.R. 1320 would exempt certain licenses—those using the 12.2–12.7 gigahertz band for terrestrial services—from this auction requirement. It also would prohibit the FCC from licensing those frequencies for mobile telephony. CBO estimates that enacting this exemption would result in a loss of about $60 million in auction proceeds that would otherwise occur in 2005.

The 12.2–12.7 gigahertz band is currently used for two different satellite-based services. Licenses for direct broadcast satellite services (DBS), which use geostationary satellites, were assigned by competitive bidding in 1996 and generated auction proceeds totaling $735 million. (Those licenses currently are held by Echostar, which markets its satellite television services through the DISH Network). The FCC also allocated those frequencies for use by non-geostationary satellites that provide international telecommunication services. Under current law, licenses for international services are assigned administratively rather than by auction, with international protocols.

The FCC recently determined that it is also technically feasible to use the 12.2–12.7 gigahertz band for certain terrestrial services. Companies such as Northpoint Technology have proposed using those frequencies to provide multichannel video distribution and data services that would compete with existing DBS and cable television services. Other firms have expressed interest in using the band to provide high-speed data and broadband services. The FCC initially planned to begin auctioning licenses for terrestrial services for this band in June 2003, but the auction was postponed in response to industry proposals to change the geographic areas covered by each license. Although a new date has not yet been announced, CBO expects that the auction will now begin in 2004, with auction proceeds deposited in the Treasury in 2005.

CBO estimates that proceeds from the auction of this 500 megahertz band could range from $14 million (the minimum bid set by the FCC) to over $100 million, with an expected value of about $60 million. Auction proceeds are difficult to predict, and are especially uncertain in cases where the technology and markets are untested. For example, Nextel recently paid $144 million to buy worldcom spectrum licenses and equipment in the 2.5 gigahertz band, which may be used for broadband services. (Worldcom originally paid about $1 billion for those licenses.) Furthermore, some analysts

have suggested that the new services in the 12.2–12.7 gigahertz band could capture between 10 percent and 40 percent of the $14 billion DBS market. If auction participants were to base their bids on such marketing scenarios, CBO estimates that auction proceeds could exceed $100 million. Alternatively, auction proceeds could be at the lower end of this range if the potential services or technologies to be offered are considered financially risky.

Telecommunications Development Fund

The TDF was established by law in 1996 to spend the interest earned on certain proceess collected by the FCC as part of the spectrum auction process. Those 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.

Previous CBO estimate: On May 13, 2003, CBO transmitted a cost estimate for H.R. 1320 as ordered reported by the House Committee on Energy and Commerce on April 30, 2003. The House version did not include provisions exempting the 12.2–12.7 gigahertz band from auction requirements and our cost estimates reflect that difference.

Comparison with other estimates: In February 2003, the Administration recommended enacting legislation that included provisions similar to those in H.R. 1320 regarding federal relocation costs. The Office of Management and Budget estimated that enacting its proposed legislation 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; impact on the private sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

H.R. 1320 would streamline the process for reimbursing Federal agencies that must relocate from spectrum that has been reallo-

cated to commercial use. Because existing law requires auction winners to negotiate with the Federal entity currently occupying the spectrum, the number of persons affected by this legislation should be consistent with current levels.

ECONOMIC IMPACT

The legislation would expedite the introduction of new commercial wireless services, and would likely have a beneficial impact on the nation's economy.

PRIVACY

H.R. 1320 would not have any adverse impact on the personal privacy of the individuals affected.

PAPERWORK

H.R. 1320 would require the National Telecommunications and Information Administration (NTIA) to submit an annual report to the House of Representatives Committee on Appropriations, the House of Representatives Committee on Energy, the Senate Committee on Appropriations, the Senate Committee on Commerce, Science, and Transportation, and the Comptroller General on (1) the progress made in adhering to the timelines applicable to relocation, and (2) the relocation costs incurred and paid from the spectrum relocation fund established by the legislation. The bill also would require NTIA and the Office of Management and Budget (OMB) to prepare various estimates and detailed plans related to the costs of relocation and the use of funds to pay for those costs. Any increase in paperwork requirements would be commensurate with the benefits gained by Congressional oversight.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 would establish the short title of the bill as the "Commercial Spectrum Enhancement Act".

Section 2. Relocation of eligible federal entities for the reallocation of spectrum for commercial purposes

Section 2 of the bill would amend 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 costs incurred for relocating spectrum operations and by replacing those provisions as described in this section.

New sections 113(g)(1) and 113(g)(2) would define which Federal entities would be eligible to receive compensation for relocation expenses. Any Federal entity that has spectrum operations in certain frequencies that incurs relocation costs because of the reallocation of eligible frequencies from Federal use to non-Federal use would be eligible. Eligible bands include the 216–220 mhz band, the 1432–1435 mhz band, the 1710–1755 mhz band, and the 2385–2390 mhz 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 mhz band, the 1427–1432 mhz band, the 1670–

1675 mhz band, the 2300–2305 mhz band, the 2305–2310 mhz band, the 2390–2450 mhz band, the 3650–3700 mhz band, and the 4940–4990 mhz band. Section 113(g)(1) also would permit 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.

New section 113(g)(3) would define reimbursable relocation costs as such costs incurred by a Federal entity to achieve comparable capability of systems by relocating spectrum operations to a different frequency band or by utilizing an alternative technology.

New sections 113(g)(4) and 113(g)(5) would require the Federal Communications Commission (FCC or Commission) to notify NTIA at least 18 months prior to the commencement of an auction of spectrum used by a Federal agency. NTIA would then be required to notify the Commission of estimated relocation costs and timelines for relocation at least 6 months prior to the auction. NTIA would make this estimate on behalf of the affected agency, and after review by the OMB. NTIA also would be required to submit this estimate to the House of Representatives Committee on Appropriations, the House of Representatives Committee on Energy and Commerce, the Senate Committee on Appropriations, and the Senate Committee on Commerce, Science, and Transportation (relevant Congressional committees), and the Comptroller General. In order to assist an agency in calculating its estimated relocation costs, NTIA would be required to provide the agency with information regarding an alternative frequency assignment it could use when relocated to the extent that it is consistent with national security and if it is practicable to do so.

New section 113(g)(6) would require NTIA to take such actions as are 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) would require 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 would require NTIA to terminate a Federal entity's authorization if it 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

Sections 3 would amend 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. This section also would permit the FCC to grant a license for commercial use prior to the termination of a Federal entity's authorization if the licensee did not cause harmful interference to the Federal entity. Section 3 would require that proceeds from an auction of eligible frequencies be deposited in the SRF.

Section 4. Establishment of fund and procedures

Section 4 would create a new section 118 of the National Telecommunications and Information Organization Act. New section

118(a) would establish the SRF as a separate Treasury account, which would be administered by OMB in consultation with NTIA. New sections 118(b) and 118(c) would provide that the SRF be credited with the proceeds from auctions of eligible frequencies.

New section 118(d) would appropriate from the SRF such sums as required to pay the relocation costs of eligible Federal entities upon certain conditions. This section would prohibit the transfer of monies from the SRF unless OMB, in consultation with NTIA, has determined the appropriateness of the relocation costs and the timeline for relocation. Moreover, the monies would not be available 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 relevant Congressional committees, and the Comptroller General. This section also would provide that any auction proceeds remaining in the SRF after the payment of relocation costs shall revert to the general fund of the Treasury no later than 8 years after the date of the deposit of the respective auction proceeds in the SRF.

New section 118(e) would govern the transfer of monies to the Federal entity. This section would permit more than 1 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 would not be permitted without the prior approval of OMB, in consultation with NTIA, and would not be permitted until 45 days after OMB notified the relevant Congressional committees and the Comptroller General. This notice would 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. Within 30 days after receiving the plan, the Comptroller General would be required to review the plan and submit to the relevant committees an assessment of the explanation for the subsequent transfer. The transferred amounts would be credited to the Federal entity's appropriations account, and would remain available until expended. Any funds in excess of actual relocation costs would have to be transferred back to the SRF immediately after the entity's relocation is complete or after the entity unreasonably fails to complete the relocation in accordance with the timeline submitted to Congress, as determined by NTIA. Eligible Federal entities that receive amounts from the SRF would be required to report their expenditures to OMB.

Section 5. Telecommunications development fund

Section 5 would amend section 714(f) of the Communications Act of 1934 (47 U.S.C. 614(f)) to clarify that the Telecommunications Development Fund (TDF) would not be subject to the requirements of the Federal Credit Reform Act of 1990, which requires government entities making loans to get budget authority to cover the costs of loans, and to provide for those loans in advance in an appropriations act. TDF is not a government agency; it is a private entity funded by the interest on auction bids.

Section 6. Construction

Section 6 would provide 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 DOD unless comparable spectrum is made available, in advance, for the relevant operations.

Section 7. Section annual report

Section 7 would require NTIA to submit an annual report to the relevant Congressional committees 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.

Section 8. Preservation of authority; NTIA report required

Section 8 would clarify that, with the exception of the certain specified bands, 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. This section also would require NTIA to submit, within 1 year after the date of enactment, a report to the House of Representatives Committee on Energy and Commerce and the Senate Committee on Commerce, Science, and Transportation 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.

Section 9. Exempt auctions

Section 9 would amend section 647 of the Open-market Reorganization for the Betterment of International Telecommunications (ORBIT) Act (47 U.S.C. 765f) by exempting from auction the provision of fixed terrestrial services in the 12.2–12.7 ghz band. The section also would prohibit the use of terrestrial licenses in this band for mobile terrestrial telephony services.

ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following description of the record votes during its consideration of H.R. 1320:

Senator Sununu (for himself and Senator Cantwell) offered an amendment regarding the FCC's ability to auction certain terrestrial spectrum. By rollcall vote of 13 yeas and 8 nays as follows, the amendment was adopted:

YEAS—13	NAYS—8
Mr. Stevens	Mr. Brownback
Mr. Burns [1]	Mr. Fitzgerald
Mr. Lott	Mr. Ensign [1]
Ms. Snowe [1]	Mr. Hollings
Mr. Smith	Mr. Rockefeller [1]
Mr. Sununu	Mr. Wyden
Mr. Inouye [1]	Mrs. Boxer [1]
Mr. Kerry [1]	Mr. McCain
Mr. Breaux	
Mr. Dorgan [1]	

Mr. Nelson [1]
Ms. Cantwell
Mr. Lautenberg

[1] By proxy

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, 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 material is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

SEC. 309. APPLICATION FOR LICENSE

[47 U.S.C. 309]

(a) CONSIDERATIONS IN GRANTING APPLICATION.—Subject to the provisions of this section, the Commission shall determine, in the case of each application filed with it to which section 308 applies, whether the public interest, convenience, and necessity will be served by the granting of such application, and, if the Commission, upon examination of such application and upon consideration of such other matters as the Commission may officially notice, shall find that public interest, convenience, and necessity would be served by the granting thereof, it shall grant such application.

(b) TIME OF GRANTING APPLICATION.—Except as provided in subsection (c) of this section, no such application—

(1) for an instrument of authorization in the case of a station in the broadcasting or common carrier services, or

(2) for an instrument of authorization in the case of a station in any of the following categories:

(A) industrial radio positioning stations for which frequencies are assigned on an exclusive basis,

(B) aeronautical en route stations,

(C) aeronautical advisory stations,

(D) airdrome control stations,

(E) aeronautical fixed stations, and

(F) such other stations or classes of stations, not in the broadcasting or common carrier services, as the Commission shall by rule prescribe,

shall be granted by the Commission earlier than thirty days following issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereof.

(c) APPLICATIONS NOT AFFECTED BY SUBSECTION (b).—Subsection (b) of this section shall not apply—

(1) to any minor amendment of an application to which such subsection is applicable, or

(2) to any application for—

(A) a minor change in the facilities of an authorized station,

(B) consent to an involuntary assignment or transfer under section 310(b) or to an assignment or transfer there-

under which does not involve a substantial change in ownership or control,

(C) a license under section 319(c) or, pending application for or grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license,

(D) extension of time to complete construction of authorized facilities,

(E) an authorization of facilities for remote pickups, studio links and similar facilities for use in the operation of a broadcast station,

(F) authorizations pursuant to section 325(c) where the programs to be transmitted are special events not of a continuing nature,

(G) a special temporary authorization for nonbroadcast operation not to exceed thirty days where no application for regular operation is contemplated to be filed or not to exceed sixty days pending the filing of an application for such regular operation, or

(H) an authorization under any of the proviso clauses of section 308(a).

(d) PETITION TO DENY APPLICATION; TIME; CONTENTS; REPLY; FINDINGS.—

(1) Any party in interest may file with the Commission a petition to deny any application (whether as originally filed or as amended) to which subsection (b) of this section applies at any time prior to the day of Commission grant thereof without hearing or the day of formal designation thereof for hearing; except that with respect to any classification of applications, the Commission from time to time by rule may specify a shorter period (no less than thirty days following the issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereof), which shorter period shall be reasonably related to the time when the applications would normally be reached for processing. The petitioner shall serve a copy of such petition on the applicant. The petition shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with subsection (a)(or subsection (k) in the case of renewal of any broadcast station license). Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof. The applicant shall be given the opportunity to file a reply in which allegations of fact or denials thereof shall similarly be supported by affidavit.

(2) If the Commission finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there are no substantial and material questions of fact and that a grant of the application would be consistent with subsection (a)(or subsection (k) in the case of renewal of any broadcast station license), it shall make the grant, deny the petition, and issue a concise statement of the reasons for

denying the petition, which statement shall dispose of all substantial issues raised by the petition. If a substantial and material question of fact is presented or if the Commission for any reason is unable to find that grant of the application would be consistent with subsection (a)(or subsection (k) in the case of renewal of any broadcast station license), it shall proceed as provided in subsection (e).

(e) HEARINGS; INTERVENTION; EVIDENCE; BURDEN OF PROOF.—If, in the case of any application to which subsection (a) of this section applies, a substantial and material question of fact is presented or the Commission for any reason is unable to make the finding specified in such subsection, it shall formally designate the application for hearing on the ground or reasons then obtaining and shall forthwith notify the applicant and all other known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things in issue but not including issues or requirements phrased generally. When the Commission has so designated an application for hearing the parties in interest, if any, who are not notified by the Commission of such action may acquire the status of a party to the proceeding thereon by filing a petition for intervention showing the basis for their interest not more than thirty days after publication of the hearing issues or any substantial amendment thereto in the Federal Register. Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate. The burden of proceeding with the introduction of evidence and the burden of proof shall be upon the applicant, except that with respect to any issue presented by a petition to deny or a petition to enlarge the issues, such burdens shall be as determined by the Commission.

(f) TEMPORARY AUTHORIZATION OF OPERATIONS UNDER SUBSECTION (b).—When an application subject to subsection (b) has been filed, the Commission, notwithstanding the requirements of such subsection, may, if the grant of such application is otherwise authorized by law and if it finds that there are extraordinary circumstances requiring temporary operations in the public interest and that delay in the institution of such temporary operations would seriously prejudice the public interest, grant a temporary authorization, accompanied by a statement of its reasons therefor, to permit such temporary operations for a period not exceeding 180 days, and upon making like findings may extend such temporary authorization for additional periods not to exceed 180 days. When any such grant of a temporary authorization is made, the Commission shall give expeditious treatment to any timely filed petition to deny such application and to any petition for rehearing of such grant filed under section 405.

(g) CLASSIFICATION OF APPLICATIONS.—The Commission is authorized to adopt reasonable classifications of applications and amendments in order to effectuate the purposes of this section.

(h) FORM AND CONDITIONS OF STATION LICENSES.—Such station licenses as the Commission may grant shall be in such general form as it may prescribe, but each license shall contain, in addition to other provisions, a statement of the following conditions to which such license shall be subject:

(1) The station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein;

(2) neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of this Act;

(3) every license issued under this Act shall be subject in terms to the right of use or control conferred by section 706 of this Act.

(i) RANDOM SELECTION.—

(1) GENERAL AUTHORITY.—Except as provided in paragraph (5), if there is more than one application for any initial license or construction permit, then the Commission shall have the authority to grant such license or permit to a qualified applicant through the use of a system of random selection.

(2) No license or construction permit shall be granted to an applicant selected pursuant to paragraph (1) unless the Commission determines the qualifications of such applicant pursuant to subsection (a) and section 308(b). When substantial and material questions of fact exist concerning such qualifications, the Commission shall conduct a hearing in order to make such determinations. For the purpose of making such determinations, the Commission may, by rule, and notwithstanding any other provision of law—

(A) adopt procedures for the submission of all or part of the evidence in written form;

(B) delegate the function of presiding at the taking of the evidence to Commission employees other than administrative law judges; and

(C) omit the determination required by subsection (a) with respect to any application other than the one selected pursuant to paragraph (1).

(3)(A) The Commission shall establish rules and procedures to ensure that, in the administration of any system of random selection under this subsection used for granting licenses or construction permits for any media of mass communications, significant preferences will be granted to applicants or groups of applicants, the grant to which of the license or permit would increase the diversification of ownership of the media of mass communications. To further diversify the ownership of the media of mass communications, an additional significant preference shall be granted to any applicant controlled by a member or members of a minority group.

(B) The Commission shall have authority to require each qualified applicant seeking a significant preference under subparagraph (A) to submit to the Commission such information as may be necessary to enable the Commission to make a determination regarding whether such applicant shall be granted such preference. Such information shall be submitted in such form, at such times, and in accordance with such procedures, as the Commission may require.

(C) For purposes of this paragraph:

(i) The term "media of mass communications" includes television, radio, cable television, multipoint distribution service, direct broadcast satellite service, and other serv-

ices, the licensed facilities of which may be substantially devoted toward providing programming or other information services within the editorial control of the licensee.

(ii) The term "minority group" includes Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders.

(4)(A) The Commission shall, after notice and opportunity for hearing, prescribe rules establishing a system of random selection for use by the Commission under this subsection in any instance in which the Commission, in its discretion, determines that such use is appropriate for the granting of any license or permit in accordance with paragraph (1).

(B) The Commission shall have authority to amend such rules from time to time to the extent necessary to carry out the provisions of this subsection. Any such amendment shall be made after notice and opportunity for hearing.

(C) Not later than 180 days after the date of enactment of this subparagraph, the Commission shall prescribe such transfer disclosures and antitrafficking restrictions and payment schedules as are necessary to prevent the unjust enrichment of recipients of licenses or permits as a result of the methods employed to issue licenses under this subsection.

(5) TERMINATION OF AUTHORITY.—

(A) Except as provided in subparagraph (B), the Commission shall not issue any license or permit using a system of random selection under this subsection after July 1, 1997.

(B) Subparagraph (A) of this paragraph shall not apply with respect to licenses or permits for stations described in section 397(6) of this Act.

(j) USE OF COMPETITIVE BIDDING.—

(1) GENERAL AUTHORITY.—If, consistent with the obligations described in paragraph (6)(E), mutually exclusive applications are accepted for any initial license or construction permit, then, except as provided in paragraph (2), the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding that meets the requirements of this subsection.

(2) EXEMPTIONS.—The competitive bidding authority granted by this subsection shall not apply to licenses or construction permits issued by the Commission—

(A) for public safety radio services, including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations, that—

(i) are used to protect the safety of life, health, or property; and

(ii) are not made commercially available to the public;

(B) for initial licenses or construction permits for digital television service given to existing terrestrial broadcast licensees to replace their analog television service licenses; or

(C) for stations described in section 397(6) of this Act.

(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) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays;

(B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women;

(C) recovery for the public of a portion of the value of the public spectrum resource made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource;

(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) before issuance of bidding rules, to permit notice and comment on proposed auction procedures; and

(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.**]** *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.

(4) CONTENTS OF REGULATIONS.—In prescribing regulations pursuant to paragraph (3), the Commission shall—

(A) consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods that promote the objectives described in paragraph (3)(B), and combinations of such schedules and methods;

(B) include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services;

(C) consistent with the public interest, convenience, and necessity, the purposes of this Act, and the characteristics of the proposed service, prescribe area designations and bandwidth assignments that promote (i) an equitable distribution of licenses and services among geographic areas, (ii) economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, and (iii) investment in and rapid deployment of new technologies and services;

(D) ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures;

(E) require such transfer disclosures and antitrafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits; and

(F) prescribe methods by which a reasonable reserve price will be required, or a minimum bid will be established, to obtain any license or permit being assigned pursuant to the competitive bidding, unless the Commission determines that such a reserve price or minimum bid is not in the public interest.

(5) BIDDER AND LICENSEE QUALIFICATION.—No person shall be permitted to participate in a system of competitive bidding pursuant to this subsection unless such bidder submits such information and assurances as the Commission may require to demonstrate that such bidder's application is acceptable for filing. No license shall be granted to an applicant selected pursuant to this subsection unless the Commission determines that the applicant is qualified pursuant to subsection (a) and sections 308(b) and 310. Consistent with the objectives described in paragraph (3), the Commission shall, by regulation, prescribe expedited procedures consistent with the procedures authorized by subsection (i)(2) for the resolution of any substantial and material issues of fact concerning qualifications.

(6) RULES OF CONSTRUCTION.—Nothing in this subsection, or in the use of competitive bidding, shall—

(A) alter spectrum allocation criteria and procedures established by the other provisions of this Act;

(B) limit or otherwise affect the requirements of subsection (h) of this section, section 301, 304, 307, 310, or 706, or any other provision of this Act (other than subsections (d)(2) and (e) of this section);

(C) diminish the authority of the Commission under the other provisions of this Act to regulate or reclaim spectrum licenses;

(D) be construed to convey any rights, including any expectation of renewal of a license, that differ from the rights that apply to other licenses within the same service that were not issued pursuant to this subsection;

(E) be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings;

(F) be construed to prohibit the Commission from issuing nationwide, regional, or local licenses or permits;

(G) be construed to prevent the Commission from awarding licenses to those persons who make significant contributions to the development of a new telecommunications service or technology; or

(H) be construed to relieve any applicant for a license or permit of the obligation to pay charges imposed pursuant to section 8 of this Act.

(7) CONSIDERATION OF REVENUES IN PUBLIC INTEREST DETERMINATIONS.—

(A) CONSIDERATION PROHIBITED.—In making a decision pursuant to section 303(c) to assign a band of frequencies to a use for which licenses or permits will be issued pursuant to this subsection, and in prescribing regulations pursuant to paragraph (4)(C) of this subsection, the Commission may not base a finding of public interest, convenience, and necessity on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.

(B) CONSIDERATION LIMITED.—In prescribing regulations pursuant to paragraph (4)(A) of this subsection, the Commission may not base a finding of public interest, convenience, and necessity solely or predominantly on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.

(C) CONSIDERATION OF DEMAND FOR SPECTRUM NOT AFFECTED.—Nothing in this paragraph shall be construed to prevent the Commission from continuing to consider consumer demand for spectrum-based services.

(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.

(B) RETENTION OF REVENUES.—Notwithstanding subparagraph (A), the salaries and expenses account of the Commission shall retain as an offsetting collection such

sums as may be necessary from such proceeds for the costs of developing and implementing the program required by this subsection. Such offsetting collections shall be available for obligation subject to the terms and conditions of the receiving appropriations account, and shall be deposited in such accounts on a quarterly basis. Such offsetting collections are authorized to remain available until expended. No sums may be retained under this subparagraph during any fiscal year beginning after September 30, 1998, if the annual report of the Commission under section 4(k) for the second preceding fiscal year fails to include in the itemized statement required by paragraph (3) of such section a statement of each expenditure made for purposes of conducting competitive bidding under this subsection during such second preceding fiscal year.

(C) DEPOSIT AND USE OF AUCTION ESCROW ACCOUNTS.—Any deposits the Commission may require for the qualification of any person to bid in a system of competitive bidding pursuant to this subsection shall be deposited in an interest bearing account at a financial institution designated for purposes of this subsection by the Commission (after consultation with the Secretary of the Treasury). Within 45 days following the conclusion of the competitive bidding—

(i) the deposits of successful bidders shall be paid to the Treasury;

(ii) the deposits of unsuccessful bidders shall be returned to such bidders; and

(iii) the interest accrued to the account shall be transferred to the Telecommunications Development Fund established pursuant to section 714 of this Act.

(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.

(9) USE OF FORMER GOVERNMENT SPECTRUM.—The Commission shall, not later than 5 years after the date of enactment of this subsection, issue licenses and permits pursuant to this subsection for the use of bands of frequencies that—

(A) in the aggregate span not less than 10 mhz; and

(B) have been reassigned from Government use pursuant to part B of the National Telecommunications and Information Administration Organization Act.

(10) AUTHORITY CONTINGENT ON AVAILABILITY OF ADDITIONAL SPECTRUM.—

(A) INITIAL CONDITIONS.—The Commission's authority to issue licenses or permits under this subsection shall not take effect unless—

(i) the Secretary of Commerce has submitted to the Commission the report required by section 113(d)(1) of the National Telecommunications and Information Administration Organization Act;

(ii) such report recommends for immediate reallocation bands of frequencies that, in the aggregate, span not less than 50 mhz;

(iii) such bands of frequencies meet the criteria required by section 113(a) of such Act; and

(iv) the Commission has completed the rulemaking required by section 332(c)(1)(D) of this Act.

(B) SUBSEQUENT CONDITIONS.—The Commission's authority to issue licenses or permits under this subsection on and after 2 years after the date of the enactment of this subsection shall cease to be effective if—

(i) the Secretary of Commerce has failed to submit the report required by section 113(a) of the National Telecommunications and Information Administration Organization Act;

(ii) the President has failed to withdraw and limit assignments of frequencies as required by paragraphs (1) and (2) of section 114(a) of such Act;

(iii) the Commission has failed to issue the regulations required by section 115(a) of such Act;

(iv) the Commission has failed to complete and submit to Congress, not later than 18 months after the date of enactment of this subsection, a study of current and future spectrum needs of State and local government public safety agencies through the year 2010, and a specific plan to ensure that adequate frequencies are made available to public safety licensees; or

(v) the Commission has failed under section 332(c)(3) to grant or deny within the time required by such section any petition that a State has filed within 90 days after the date of enactment of this subsection;

until such failure has been corrected.

(11) TERMINATION.—The authority of the Commission to grant a license or permit under this subsection shall expire September 30, 2007.

(12) EVALUATION.—Not later than September 30, 1997, the Commission shall conduct a public inquiry and submit to the Congress a report—

(A) containing a statement of the revenues obtained, and a projection of the future revenues, from the use of competitive bidding systems under this subsection;

(B) describing the methodologies established by the Commission pursuant to paragraphs (3) and (4);

(C) comparing the relative advantages and disadvantages of such methodologies in terms of attaining the objectives described in such paragraphs;

(D) evaluating whether and to what extent—

(i) competitive bidding significantly improved the efficiency and effectiveness of the process for granting radio spectrum licenses;

(ii) competitive bidding facilitated the introduction of new spectrum-based technologies and the entry of new companies into the telecommunications market;

(iii) competitive bidding methodologies have secured prompt delivery of service to rural areas and have adequately addressed the needs of rural spectrum users; and

(iv) small businesses, rural telephone companies, and businesses owned by members of minority groups and women were able to participate successfully in the competitive bidding process; and

(E) recommending any statutory changes that are needed to improve the competitive bidding process.

(13) RECOVERY OF VALUE OF PUBLIC SPECTRUM IN CONNECTION WITH PIONEER PREFERENCES.—

(A) IN GENERAL.—Notwithstanding paragraph (6)(G), the Commission shall not award licenses pursuant to a preferential treatment accorded by the Commission to persons who make significant contributions to the development of a new telecommunications service or technology, except in accordance with the requirements of this paragraph.

(B) RECOVERY OF VALUE.—The Commission shall recover for the public a portion of the value of the public spectrum resource made available to such person by requiring such person, as a condition for receipt of the license, to agree to pay a sum determined by—

(i) identifying the winning bids for the licenses that the Commission determines are most reasonably comparable in terms of bandwidth, scope of service area, usage restrictions, and other technical characteristics to the license awarded to such person, and excluding licenses that the Commission determines are subject to bidding anomalies due to the award of preferential treatment;

(ii) dividing each such winning bid by the population of its service area (hereinafter referred to as the per capita bid amount);

(iii) computing the average of the per capita bid amounts for the licenses identified under clause (i);

(iv) reducing such average amount by 15 percent; and

(v) multiplying the amount determined under clause (iv) by the population of the service area of the license obtained by such person.

(C) INSTALLMENTS PERMITTED.—The Commission shall require such person to pay the sum required by subparagraph (B) in a lump sum or in guaranteed installment payments, with or without royalty payments, over a period of not more than 5 years.

(D) RULEMAKING ON PIONEER PREFERENCES.—Except with respect to pending applications described in clause (iv) of this subparagraph, the Commission shall prescribe regulations specifying the procedures and criteria by which the Commission will evaluate applications for preferential treatment in its licensing processes (by precluding the filing of mutually exclusive applications) for persons who make significant contributions to the development of a new service or to the development of new technologies that sub-

stantially enhance an existing service. Such regulations shall—

(i) specify the procedures and criteria by which the significance of such contributions will be determined, after an opportunity for review and verification by experts in the radio sciences drawn from among persons who are not employees of the Commission or by any applicant for such preferential treatment;

(ii) include such other procedures as may be necessary to prevent unjust enrichment by ensuring that the value of any such contribution justifies any reduction in the amounts paid for comparable licenses under this subsection;

(iii) be prescribed not later than 6 months after the date of enactment of this paragraph;

(iv) not apply to applications that have been accepted for filing on or before September 1, 1994; and

(v) cease to be effective on the date of the expiration of the Commission's authority under subparagraph (F).

(E) IMPLEMENTATION WITH RESPECT TO PENDING APPLICATIONS.—In applying this paragraph to any broadband licenses in the personal communications service awarded pursuant to the preferential treatment accorded by the Federal Communications Commission in the Third Report and Order in General Docket 90–314 (FCC 93–550, released February 3, 1994)—

(i) the Commission shall not reconsider the award of preferences in such Third Report and Order, and the Commission shall not delay the grant of licenses based on such awards more than 15 days following the date of enactment of this paragraph, and the award of such preferences and licenses shall not be subject to administrative or judicial review;

(ii) the Commission shall not alter the bandwidth or service areas designated for such licenses in such Third Report and Order;

(iii) except as provided in clause (v), the Commission shall use, as the most reasonably comparable licenses for purposes of subparagraph (B)(i), the broadband licenses in the personal communications service for blocks A and B for the 20 largest markets (ranked by population) in which no applicant has obtained preferential treatment;

(iv) for purposes of subparagraph (C), the Commission shall permit guaranteed installment payments over a period of 5 years, subject to—

(I) the payment only of interest on unpaid balances during the first 2 years, commencing not later than 30 days after the award of the license (including any preferential treatment used in making such award) is final and no longer subject to administrative or judicial review, except that no such payment shall be required prior to the date

of completion of the auction of the comparable licenses described in clause (iii); and

(II) payment of the unpaid balance and interest thereon after the end of such 2 years in accordance with the regulations prescribed by the Commission; and

(v) the Commission shall recover with respect to broadband licenses in the personal communications service an amount under this paragraph that is equal to not less than $ 400,000,000, and if such amount is less than $ 400,000,000, the Commission shall recover an amount equal to $ 400,000,000 by allocating such amount among the holders of such licenses based on the population of the license areas held by each licensee. The Commission shall not include in any amounts required to be collected under clause (v) the interest on unpaid balances required to be collected under clause (iv).

(F) EXPIRATION.—The authority of the Commission to provide preferential treatment in licensing procedures (by precluding the filing of mutually exclusive applications) to persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service shall expire on the date of enactment of the Balanced Budget Act of 1997.

(G) EFFECTIVE DATE.—This paragraph shall be effective on the date of its enactment and apply to any licenses issued on or after August 1, 1994, by the Federal Communications Commission pursuant to any licensing procedure that provides preferential treatment (by precluding the filing of mutually exclusive applications) to persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service.

(14) AUCTION OF RECAPTURED BROADCAST TELEVISION SPECTRUM.—

(A) LIMITATIONS ON TERMS OF TERRESTRIAL TELEVISION BROADCAST LICENSES.—A television broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond December 31, 2006.

(B) EXTENSION.—The Commission shall extend the date described in subparagraph (A) for any station that requests such extension in any television market if the Commission finds that—

(i) one or more of the stations in such market that are licensed to or affiliated with one of the four largest national television networks are not broadcasting a digital television service signal, and the Commission finds that each such station has exercised due diligence and satisfies the conditions for an extension of the Commission's applicable construction deadlines for digital television service in that market;

(ii) digital-to-analog converter technology is not generally available in such market; or

(iii) in any market in which an extension is not available under clause (i) or (ii), 15 percent or more of the television households in such market—

(I) do not subscribe to a multichannel video programming distributor (as defined in section 602) that carries one of the digital television service programming channels of each of the television stations broadcasting such a channel in such market; and

(II) do not have either—

(a) at least one television receiver capable of receiving the digital television service signals of the television stations licensed in such market; or

(b) at least one television receiver of analog television service signals equipped with digital-to-analog converter technology capable of receiving the digital television service signals of the television stations licensed in such market.

(C) SPECTRUM REVERSION AND RESALE.—

(i) The Commission shall—

(I) ensure that, as licenses for analog television service expire pursuant to subparagraph (A) or (B), each licensee shall cease using electromagnetic spectrum assigned to such service according to the Commission's direction; and

(II) reclaim and organize the electromagnetic spectrum in a manner consistent with the objectives described in paragraph (3) of this subsection.

(ii) Licensees for new services occupying spectrum reclaimed pursuant to clause (i) shall be assigned in accordance with this subsection.

(D) CERTAIN LIMITATIONS ON QUALIFIED BIDDERS PROHIBITED.—In prescribing any regulations relating to the qualification of bidders for spectrum reclaimed pursuant to subparagraph (C)(i), the Commission, for any license that may be used for any digital television service where the grade A contour of the station is projected to encompass the entirety of a city with a population in excess of 400,000 (as determined using the 1990 decennial census), shall not—

(i) preclude any party from being a qualified bidder for such spectrum on the basis of—

(I) the Commission's duopoly rule (47 C.F.R. 73.3555(b)); or

(II) the Commission's newspaper cross-ownership rule (47 C.F.R. 73.3555(d)); or

(ii) apply either such rule to preclude such a party that is a winning bidder in a competitive bidding for such spectrum from using such spectrum for digital television service.

(15) COMMISSION TO DETERMINE TIMING OF AUCTIONS.—

(A) COMMISSION AUTHORITY.—Subject to the provisions of this subsection (including paragraph (11)), but notwithstanding any other provision of law, the Commission shall determine the timing of and deadlines for the conduct of competitive bidding under this subsection, including the timing of and deadlines for qualifying for bidding; conducting auctions; collecting, depositing, and reporting revenues; and completing licensing processes and assigning licenses.

(B) TERMINATION OF PORTIONS OF AUCTIONS 31 AND 44.—Except as provided in subparagraph (C), the Commission shall not commence or conduct auctions 31 and 44 on June 19, 2002, as specified in the public notices of March 19, 2002, and March 20, 2002 (DA 02–659 and DA 02–563).

(C) EXCEPTION.—

(i) BLOCKS EXCEPTED.—Subparagraph (B) shall not apply to the auction of—

(I) the C-block of licenses on the bands of frequencies located at 710–716 mhz, and 740–746 mhz; or

(II) the D-block of licenses on the bands of frequencies located at 716–722 mhz.

(ii) ELIGIBLE BIDDERS.—The entities that shall be eligible to bid in the auction of the C-block and D-block licenses described in clause (i) shall be those entities that were qualified entities, and that submitted applications to participate in auction 44, by May 8, 2002, as part of the original auction 44 short form filing deadline.

(iii) AUCTION DEADLINES FOR EXCEPTED BLOCKS.—Notwithstanding subparagraph (B), the auction of the C-block and D-block licenses described in clause (i) shall be commenced no earlier than August 19, 2002, and no later than September 19, 2002, and the proceeds of such auction shall be deposited in accordance with paragraph (8) not later than December 31, 2002.

(iv) REPORT.—Within one year after the date of enactment of this paragraph, the Commission shall submit a report to Congress—

(I) specifying when the Commission intends to reschedule auctions 31 and 44 (other than the blocks excepted by clause (i)); and

(II) describing the progress made by the Commission in the digital television transition and in the assignment and allocation of additional spectrum for advanced mobile communications services that warrants the scheduling of such auctions.

(D) RETURN OF PAYMENTS.—Within one month after the date of enactment of this paragraph, the Commission shall return to the bidders for licenses in the A-block, B-block, and E-block of auction 44 the full amount of all upfront payments made by such bidders for such licenses.

(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.

(k) BROADCAST STATION RENEWAL PROCEDURES.—

(1) STANDARDS FOR RENEWAL.—If the licensee of a broadcast station submits an application to the Commission for renewal of such license, the Commission shall grant the application if it finds, with respect to that station, during the preceding term of its license—

(A) the station has served the public interest, convenience, and necessity;

(B) there have been no serious violations by the licensee of this Act or the rules and regulations of the Commission; and

(C) there have been no other violations by the licensee of this Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.

(2) CONSEQUENCE OF FAILURE TO MEET STANDARD.—If any licensee of a broadcast station fails to meet the requirements of this subsection, the Commission may deny the application for renewal in accordance with paragraph (3), or grant such application on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.

(3) STANDARDS FOR DENIAL.—If the Commission determines, after notice and opportunity for a hearing as provided in sub-

section (e), that a licensee has failed to meet the requirements specified in paragraph (1) and that no mitigating factors justify the imposition of lesser sanctions, the Commission shall—

(A) issue an order denying the renewal application filed by such licensee under section 308; and

(B) only thereafter accept and consider such applications for a construction permit as may be filed under section 308 specifying the channel or broadcasting facilities of the former licensee.

(4) COMPETITOR CONSIDERATION PROHIBITED.—In making the determinations specified in paragraph (1) or (2), the Commission shall not consider whether the public interest, convenience, and necessity might be served by the grant of a license to a person other than the renewal applicant.

(l) APPLICABILITY OF COMPETITIVE BIDDING TO PENDING COMPARATIVE LICENSING CASES.—With respect to competing applications for initial licenses or construction permits for commercial radio or television stations that were filed with the Commission before July 1, 1997, the Commission shall—

(1) have the authority to conduct a competitive bidding proceeding pursuant to subsection (j) to assign such license or permit;

(2) treat the persons filing such applications as the only persons eligible to be qualified bidders for purposes of such proceeding; and

(3) waive any provisions of its regulations necessary to permit such persons to enter an agreement to procure the removal of a conflict between their applications during the 180-day period beginning on the date of enactment of the Balanced Budget Act of 1997.

* * * * * * *

SEC. 714. TELECOMMUNICATIONS DEVELOPMENT FUND.

[47 U.S.C. 614]

(a) PURPOSE OF SECTION.—It is the purpose of this section—

(1) to promote access to capital for small businesses in order to enhance competition in the telecommunications industry;

(2) to stimulate new technology development, and promote employment and training; and

(3) to support universal service and promote delivery of telecommunications services to underserved rural and urban areas.

(b) ESTABLISHMENT OF FUND.—There is hereby established a body corporate to be known as the Telecommunications Development Fund, which shall have succession until dissolved. The Fund shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of venue and jurisdiction in civil actions, to be a resident and citizen thereof.

(c) BOARD OF DIRECTORS.—

(1) COMPOSITION OF BOARD; CHAIRMAN.—The Fund shall have a Board of Directors which shall consist of 7 persons appointed by the Chairman of the Commission. Four of such directors shall be representative of the private sector and three of such directors shall be representative of the Commission,

the Small Business Administration, and the Department of the Treasury, respectively. The Chairman of the Commission shall appoint one of the representatives of the private sector to serve as chairman of the Fund within 30 days after the date of enactment of this section, in order to facilitate rapid creation and implementation of the Fund. The directors shall include members with experience in a number of the following areas: finance, investment banking, government banking, communications law and administrative practice, and public policy.

(2) TERMS OF APPOINTED AND ELECTED MEMBERS.—The directors shall be eligible to serve for terms of 5 years, except of the initial members, as designated at the time of their appointment—

(A) 1 shall be eligible to service for a term of 1 year;

(B) 1 shall be eligible to service for a term of 2 years;

(C) 1 shall be eligible to service for a term of 3 years;

(D) 2 shall be eligible to service for a term of 4 years; and

(E) 2 shall be eligible to service for a term of 5 years (1 of whom shall be the Chairman). Directors may continue to serve until their successors have been appointed and have qualified.

(3) MEETINGS AND FUNCTIONS OF THE BOARD.—The Board of Directors shall meet at the call of its Chairman, but at least quarterly. The Board shall determine the general policies which shall govern the operations of the Fund. The Chairman of the Board shall, with the approval of the Board, select, appoint, and compensate qualified persons to fill the offices as may be provided for in the bylaws, with such functions, powers, and duties as may be prescribed by the bylaws or by the Board of Directors, and such persons shall be the officers of the Fund and shall discharge all such functions, powers, and duties.

(d) ACCOUNTS OF FUND.—The Fund shall maintain its accounts at a financial institution designated for purposes of this section by the Chairman of the Board (after consultation with the Commission and the Secretary of the Treasury). The accounts of the Fund shall consist of—

(1) interest transferred pursuant to section 309(j)(8)(C) of this Act;

(2) such sums as may be appropriated to the Commission for advances to the Fund;

(3) any contributions or donations to the Fund that are accepted by the Fund; and

(4) any repayment of, or other payment made with respect to, loans, equity, or other extensions of credit made from the Fund.

(e) USE OF FUND.—All moneys deposited into the accounts of the Fund shall be used solely for—

(1) the making of loans, investments, or other extensions of credits to eligible small businesses in accordance with subsection (f);

(2) the provision of financial advice to eligible small businesses;

(3) expenses for the administration and management of the Fund (including salaries, expenses, and the rental or purchase of office space for the fund);

(4) preparation of research, studies, or financial analyses; and

(5) other services consistent with the purposes of this section.

[(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.

(g) RETURN OF ADVANCES.—Any advances appropriated pursuant to subsection (d)(2) shall be disbursed upon such terms and conditions (including conditions relating to the time or times of repayment) as are specified in any appropriations Act providing such advances.

(h) GENERAL CORPORATE POWERS.—The Fund shall have power—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel;

(2) to adopt, alter, and use the corporate seal, which shall be judicially noticed;

(3) to adopt, amend, and repeal by its Board of Directors, bylaws, rules, and regulations as may be necessary for the conduct of its business;

(4) to conduct its business, carry on its operations, and have officers and exercise the power granted by this section in any State without regard to any qualification or similar statute in any State;

(5) to lease, purchase, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with any property, real, personal, or mixed, or any interest therein, wherever situated, for the purposes of the Fund;

(6) to accept gifts or donations of services, or of property, real, personal, or mixed, tangible or intangible, in aid of any of the purposes of the Fund;

(7) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets;

(8) to appoint such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, to fix their salaries, require bonds for them, and fix the penalty thereof; and

(9) to enter into contracts, to execute instruments, to incur liabilities, to make loans and equity investment, and to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business.

(i) ACCOUNTING, AUDITING, AND REPORTING.—The accounts of the Fund shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants. A report of each such audit shall be furnished to the Secretary of the Treasury and the Commission. The representatives of the Secretary and the Commission shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Fund and necessary to facilitate the audit.

(j) REPORT ON AUDITS BY TREASURY.—A report of each such audit for a fiscal year shall be made by the Secretary of the Treasury to the President and to the Congress not later than 6 months following the close of such fiscal year. The report shall set forth the scope of the audit and shall include a statement of assets and liabilities, capital and surplus or deficit; a statement of surplus or deficit analysis; a statement of income and expense; a statement of sources and application of funds; and such comments and information as may be deemed necessary to keep the President and the Congress informed of the operations and financial condition of the Fund, together with such recommendations with respect thereto as the Secretary may deem advisable.

(k) DEFINITIONS.—As used in this section:

(1) ELIGIBLE SMALL BUSINESS.—The term "eligible small business" means business enterprises engaged in the telecommunications industry that have $50,000,000 or less in annual revenues, on average over the past 3 years prior to submitting the application under this section.

(2) FUND.—The term "Fund" means the Telecommunications Development Fund established pursuant to this section.

(3) TELECOMMUNICATIONS INDUSTRY.—The term "telecommunications industry" means communications businesses using regulated or unregulated facilities or services and includes broadcasting, telecommunications, cable, computer, data transmission, software, programming, advanced messaging, and electronics businesses.

ORBIT ACT

SEC. 647. SATELLITE AUCTIONS.

[47 U.S.C. 765f]

Notwithstanding any other provision of law, the Commission shall not have the authority to assign by competitive bidding orbital locations or spectrum used for the provision of international or [global satellite communications services.] *global satellite communications services or for the provision of fixed terrestrial services in the 12.2–12.7 GHz band.* The President shall oppose in the Inter-

national Telecommunication Union and in other bilateral and multilateral fora any assignment by competitive bidding of orbital locations or spectrum used for the provision of such services. *No license for fixed terrestrial services in the 12.2–12.7 GHz band may be used for the provision of mobile terrestrial telephony services.*

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION ORGANIZATION ACT

SEC. 113. IDENTIFICATION OF REALLOCABLE FREQUENCIES.

[47 U.S.C. 923]

(a) IDENTIFICATION REQUIRED.—The Secretary shall, within 18 months after the date of the enactment of the Omnibus Budget Reconciliation Act of 1993 and within 6 months after the date of enactment of the Balanced Budget Act of 1997, prepare and submit to the President and the Congress a report identifying and recommending for reallocation bands of frequencies—

(1) that are allocated on a primary basis for Federal Government use;

(2) that are not required for the present or identifiable future needs of the Federal Government;

(3) that can feasibly be made available, as of the date of submission of the report or at any time during the next 15 years, for use under the 1934 Act (other than for Federal Government stations under section 305 of the 1934 Act);

(4) the transfer of which (from Federal Government use) will not result in costs to the Federal Government, or losses of services or benefits to the public, that are excessive in relation to the benefits to the public that may be provided by non-Federal licensees; and

(5) that are most likely to have the greatest potential for productive uses and public benefits under the 1934 Act if allocated for non-Federal use.

(b) MINIMUM AMOUNT OF SPECTRUM RECOMMENDED.—

(1) INITIAL REALLOCATION REPORT.—In accordance with the provisions of this section, the Secretary shall recommend for reallocation in the initial report required by subsection (a), for use other than by Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305), bands of frequencies that in the aggregate span not less than 200 mhz, that are located below 5 gigahertz, and that meet the criteria specified in paragraphs (1) through (5) of subsection (a). Such bands of frequencies shall include bands of frequencies, located below 3 gigahertz, that span in the aggregate not less than 100 mhz.

(2) MIXED USES PERMITTED TO BE COUNTED.—Bands of frequencies which a report of the Secretary under subsection (a) or (d)(1) recommends be partially retained for use by Federal Government stations, but which are also recommended to be reallocated to be made available under the 1934 Act for use by non-Federal stations, may be counted toward the minimum spectrum required by paragraph (1) or (3) of this subsection, except that—

(A) the bands of frequencies counted under this paragraph may not count toward more than one-half of the minimums required by paragraph (1) or (3) of this subsection;

(B) a band of frequencies may not be counted under this paragraph unless the assignments of the band to Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305) are limited by geographic area, by time, or by other means so as to guarantee that the potential use to be made by such Federal Government stations is substantially less (as measured by geographic area, time, or otherwise) than the potential use to be made by non-Federal stations; and

(C) the operational sharing permitted under this paragraph shall be subject to the interference regulations prescribed by the Commission pursuant to section 305(a) of the 1934 Act and to coordination procedures that the Commission and the Secretary shall jointly establish and implement to ensure against harmful interference.

(3) SECOND REALLOCATION REPORT.—In accordance with the provisions of this section, the Secretary shall recommend for reallocation in the second report required by subsection (a), for use other than by Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305), a band or bands of frequencies that—

(A) in the aggregate span not less than 12 mhz;

(B) are located below 3 gigahertz; and

(C) meet the criteria specified in paragraphs (1) through (5) of subsection (a).

(c) CRITERIA FOR IDENTIFICATION.—

(1) NEEDS OF THE FEDERAL GOVERNMENT.—In determining whether a band of frequencies meets the criteria specified in subsection (a)(2), the Secretary shall—

(A) consider whether the band of frequencies is used to provide a communications service that is or could be available from a commercial provider or other vendor;

(B) seek to promote—

(i) the maximum practicable reliance on commercially available substitutes;

(ii) the sharing of frequencies (as permitted under subsection (b)(2));

(iii) the development and use of new communications technologies; and

(iv) the use of nonradiating communications systems where practicable; and

(C) seek to avoid—

(i) serious degradation of Federal Government services and operations;

(ii) excessive costs to the Federal Government and users of Federal Government services; and

(iii) excessive disruption of existing use of Federal Government frequencies by amateur radio licensees.

(2) FEASIBILITY OF USE.—In determining whether a frequency band meets the criteria specified in subsection (a)(3), the Secretary shall—

(A) assume that the frequency will be assigned by the Commission under section 303 of the 1934 Act (47 U.S.C. 303) within 15 years;

(B) assume reasonable rates of scientific progress and growth of demand for telecommunications services;

(C) seek to include frequencies which can be used to stimulate the development of new technologies; and

(D) consider the immediate and recurring costs to reestablish services displaced by the reallocation of spectrum.

(3) ANALYSIS OF BENEFITS.—In determining whether a band of frequencies meets the criteria specified in subsection (a)(5), the Secretary shall consider—

(A) the extent to which equipment is or will be available that is capable of utilizing the band;

(B) the proximity of frequencies that are already assigned for commercial or other non-Federal use;

(C) the extent to which, in general, commercial users could share the frequency with amateur radio licensees; and

(D) the activities of foreign governments in making frequencies available for experimentation or commercial assignments in order to support their domestic manufacturers of equipment.

(4) POWER AGENCY FREQUENCIES.—

(A) APPLICABILITY OF CRITERIA.—The criteria specified by subsection (a) shall be deemed not to be met for any purpose under this part with regard to any frequency assignment to, or any frequency assignment used by, a Federal power agency for the purpose of withdrawing that assignment.

(B) MIXED USE ELIGIBILITY.—The frequencies assigned to any Federal power agency may only be eligible for mixed use under subsection (b)(2) in geographically separate areas, but in those cases where a frequency is to be shared by an affected Federal power agency and a non-Federal user, such use by the non-Federal user shall not cause harmful interference to the affected Federal power agency or adversely affect the reliability of its power system.

(C) DEFINITION.—As used in this paragraph, the term "Federal power agency" means the Tennessee Valley Authority, the Bonneville Power Administration, the Western Area Power Administration, the Southwestern Power Administration, the Southeastern Power Administration, or the Alaska Power Administration.

(5) LIMITATION ON REALLOCATION.—None of the frequencies recommended for reallocation in the reports required by this subsection shall have been recommended, prior to the date of enactment of the Omnibus Budget Reconciliation Act of 1993, for reallocation to non-Federal use by international agreement.

(d) PROCEDURE FOR IDENTIFICATION OF REALLOCABLE BANDS OF FREQUENCIES.—

(1) SUBMISSION OF PRELIMINARY IDENTIFICATION TO CONGRESS.—Within 6 months after the date of the enactment of the Omnibus Budget Reconciliation Act of 1993, the Secretary shall prepare, make publicly available, and submit to the

President, the Congress, and the Commission a report which makes a preliminary identification of reallocable bands of frequencies which meet the criteria established by this section.

(2) PUBLIC COMMENT.—The Secretary shall provide interested persons with the opportunity to submit, within 90 days after the date of its publication, written comment on the preliminary report required by paragraph (1). The Secretary shall immediately transmit a copy of any such comment to the Commission.

(3) COMMENT AND RECOMMENDATIONS FROM COMMISSION.—The Commission shall, within 90 days after the conclusion of the period for comment provided pursuant to paragraph (2), submit to the Secretary the Commission's analysis of such comments and the Commission's recommendations for responses to such comments, together with such other comments and recommendations as the Commission deems appropriate.

(4) DIRECT DISCUSSIONS.—The Secretary shall encourage and provide opportunity for direct discussions among commercial representatives and Federal Government users of the spectrum to aid the Secretary in determining which frequencies to recommend for reallocation. The Secretary shall provide notice to the public and the Commission of any such discussions, including the name or names of any businesses or other persons represented in such discussions. A representative of the Commission (and of the Secretary at the election of the Secretary) shall be permitted to attend any such discussions. The Secretary shall provide the public and the Commission with an opportunity to comment on the results of any such discussions prior to the submission of the initial report required by subsection (a).

(e) TIMETABLE FOR REALLOCATION AND LIMITATION.—

(1) TIMETABLE REQUIRED.—The Secretary shall, as part of the reports required by subsections (a) and (d)(1), include a timetable that recommends effective dates by which the President shall withdraw or limit assignments of the frequencies specified in such reports.

(2) EXPEDITED REALLOCATION.—

(A) REQUIRED REALLOCATION.—The Secretary shall, as part of the report required by subsection (d)(1), specifically identify and recommend for immediate reallocation bands of frequencies that in the aggregate span not less than 50 mhz, that meet the criteria described in subsection (a), and that can be made available for reallocation immediately upon issuance of the report required by subsection (d)(1). Such bands of frequencies shall include bands of frequencies, located below 3 gigahertz, that in the aggregate span not less than 25 mhz .

(B) PERMITTED REALLOCATION.—The Secretary may, as part of such report, identify and recommend bands of frequencies for immediate reallocation for a mixed use pursuant to subsection (b)(2), but such bands of frequencies may not count toward the minimums required by subparagraph (A).

(3) DELAYED EFFECTIVE DATES.—In setting the recommended delayed effective dates, the Secretary shall—

(A) consider the need to reallocate bands of frequencies as early as possible, taking into account the requirements of paragraphs (1) and (2) of section 115(b);

(B) be based on the useful remaining life of equipment that has been purchased or contracted for to operate on identified frequencies;

(C) consider the need to coordinate frequency use with other nations; and

(D) take into account the relationship between the costs to the Federal Government of changing to different frequencies and the benefits that may be obtained from commercial and other non-Federal uses of the reassigned frequencies.

(f) ADDITIONAL REALLOCATION REPORT.—If the Secretary receives a notice from the Commission pursuant to section 3002(c)(5) of the Balanced Budget Act of 1997, the Secretary shall prepare and submit to the President, the Commission, and the Congress a report recommending for reallocation for use other than by Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305), bands of frequencies that are suitable for the licensees identified in the Commission's notice. The Commission shall, not later than one year after receipt of such report, prepare, submit to the President and the Congress, and implement, a plan for the immediate allocation and assignment of such frequencies under the 1934 Act to incumbent licensees described in the Commission's notice.

(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 mhz, 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 mhz band, the 1432–1435 mhz band, the 1710–1755 mhz band, and the 2385–2390 mhz 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).

(h) FEDERAL ACTION TO EXPEDITE SPECTRUM TRANSFER.—Any Federal Government station which operates on electromagnetic spectrum that has been identified in any reallocation report under this section shall, to the maximum extent practicable through the use of the authority granted under subsection (g) and any other applicable provision of law, take action to relocate its spectrum use to other frequencies that are reserved for Federal use or to consolidate its spectrum use with other Federal Government stations in a manner that maximizes the spectrum available for non-Federal use.

(i) DEFINITION.—For purposes of this section, the term "Federal entity" means any department, agency, or other instrumentality of the Federal Government that utilizes a Government station license obtained under section 305 of the 1934 Act (47 U.S.C. 305).

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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, an 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).

ADDITIONAL VIEWS OF SENATORS McCAIN, HOLLINGS, AND BROWNBACK

We strongly support the bill as originally considered by the Committee. We ardently oppose section 9 of the bill, which was added as an amendment at the Committee's executive session. Section 9 would reverse long-standing Congressional spectrum policy, reaffirmed by an FCC decision last year, by prohibiting the FCC from holding a competitive spectrum auction for the terrestrial use of this valuable taxpayer resource. Section 9 is opposed by the Bush Administration, the satellite broadcasting industry, the wireless industry, and other potential bidders in this planned spectrum auction. In 1993, Congress put its faith in the auction process for the licensing of spectrum. We found that consumer benefit is maximized when spectrum is auctioned, because auctions ensure that spectrum is assigned to those who value it most highly.

The provision of ORBIT that this section seeks to modify prohibits the use of competitive bidding to award licenses for spectrum used for international or global satellite communications services. The original ORBIT limitation follows from the logic that the auction of international satellite spectrum may create uncertainty for a bidder that is sure to face sequential auctions in other countries after succeeding in the United States. Such an auction would create an incentive for other countries to demand exorbitant license fees of the American licensee knowing that the licensee needs to obtain such rights to avoid interference and to make use of its American license. Failure to create certainty in this area could have an adverse effect on investment in satellite technology.

Clearly none of these factors applies to the terrestrial use of spectrum contemplated by section 9. Bidders in an auction for terrestrial use rights would not face the uncertainty of a sequential auction, because the spectrum would be used to provide domestic services. In this sense, the award of such a license is similar to the FCC's award of a domestic license for the use of spectrum to provide direct broadcast satellite services, which the Commission has determined should be awarded via competitive bidding. Section 9 serves only to create a government handout of free spectrum to special interests.We are not now prepared to open the door to exceptions to our auction policy. The FCC believes a competitive auction is the right answer. We agree.

The Administration has opposed a similar provision in the Agriculture Appropriations Bill for FY 2002, stating, "The Administration would strongly oppose any amendment that would restrict the FCC's ability to assign, via competitive bidding, spectrum licenses that could be used by terrestrial (i.e., non-satellite) services. Such a provision would interfere with the efficient allocation of Federal spectrum licenses, provide a windfall to certain users, and reduce Federal revenues."

The Cellular Telecommunications and Internet Association (CTIA) agrees that this proposal would "give away valuable spectrum to certain private entities without recovering for the taxpayer any portion of the value of that spectrum" and "would stand in fundamental conflict to wise spectrum management policy."

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