

107TH CONGRESS
2D SESSION

H. R. 5638

To amend the National Telecommunications and Information Administration Organization Act to facilitate the reallocation of spectrum from governmental to commercial users.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 10, 2002

Mr. UPTON (for himself and Mr. TAUZIN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the National Telecommunications and Information Administration Organization Act to facilitate the reallocation of spectrum from governmental to commercial users.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

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

4 Subsection (g) of section 113 of the National Tele-
5 communications and Information Administration Organi-
6 zation Act (47 U.S.C. 923(g)) is amended to read as fol-
7 lows:

8 “(g) RELOCATION OF ELIGIBLE FEDERAL ENTITIES
9 FOR THE REALLOCATION OF SPECTRUM FOR COMMER-
10 CIAL PURPOSES.—

11 “(1) ELIGIBLE FEDERAL ENTITIES.—Any Fed-
12 eral entity that operates a Federal Government sta-
13 tion assigned to a band of frequencies specified in
14 paragraph (2) and that incurs relocation costs be-
15 cause of the reallocation of frequencies from Federal
16 use to non-Federal use is eligible for payment for
17 such costs from the Spectrum Relocation Fund, in
18 accordance with section 118 of this Act. For pur-
19 poses of this paragraph, Federal power agencies ex-
20 empted under subsection (c)(4) that choose to relo-
21 cate from the frequencies identified for reallocation
22 pursuant to subsection (a), are eligible to receive
23 payment under this paragraph.

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

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

“(B) any other band of frequencies reallocated from Federal use to non-Federal use after January 1, 2002.

“(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 recur-

1 ring costs associated with the replacement fa-
2 cilities;

3 “(C) the costs of engineering studies, eco-
4 nomic analyses, or other expenses reasonably
5 incurred in calculating the estimated relocation
6 costs that are provided to the Commission pur-
7 suant to paragraph (4) of this subsection;

8 “(D) the one-time costs of any modifica-
9 tion of equipment reasonably necessary to ac-
10 commodate commercial use of such frequencies
11 prior to the termination of the Federal entity’s
12 primary allocation or protected status, when the
13 eligible frequencies as defined in paragraph (2)
14 of this subsection are made available for private
15 sector uses by competitive bidding and a Fed-
16 eral entity retains primary allocation or pro-
17 tected status in those frequencies for a period
18 of time after the completion of the competitive
19 bidding process; and

20 “(E) the costs associated with the acceler-
21 ated replacement of systems and equipment if
22 such acceleration is necessary to ensure the
23 timely relocation of systems to a new frequency
24 assignment.”.

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

3 “(A) The Commission shall notify the
4 NTIA at least 9 months prior to the commence-
5 ment of any auction of eligible frequencies de-
6 fined in paragraph (2). At least 6 months prior
7 to the commencement of any such auction, the
8 NTIA, on behalf of the Federal entities and
9 after review by the Office of Management and
10 Budget, shall notify the Commission of esti-
11 mated relocation costs and timelines for such
12 relocation.

13 “(B) Upon timely request of a Federal en-
14 tity, the NTIA shall provide such entity with in-
15 formation regarding an alternative frequency
16 assignment or assignments to which their
17 radiocommunications operations could be relo-
18 cated for purposes of calculating the estimated
19 relocation costs and timelines to be submitted
20 to the Commission pursuant to subparagraph
21 (A).

22 “(C) To the extent practicable and con-
23 sistent with national security considerations,
24 the NTIA shall provide the information re-
25 quired by subparagraphs (A) and (B) by the ge-

ographic location of the Federal entities' facilities or systems and the frequency bands used by such facilities or systems.

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

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

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

1 (1) by striking “and” at the end of subpara-
2 graph (D);

3 (2) by striking the period at the end of sub-
4 paragraph (E) and inserting “; and”; and

5 (3) by adding at the end the following new sub-
6 paragraph:

7 “(F) for any auction of eligible frequencies
8 described in section 113(g)(2) of the National
9 Telecommunications and Information Adminis-
10 tration Organization Act (47 U.S.C. 923(g)(2)),
11 the recovery of 110 percent of estimated reloca-
12 tion costs as provided to the Commission pursu-
13 ant to section 113(g)(4) of such Act.”.

14 (b) SPECIAL AUCTION PROVISIONS FOR ELIGIBLE
15 FREQUENCIES.—Section 309(j) of such Act is further
16 amended by adding at the end the following new para-
17 graph:

18 “(15) SPECIAL AUCTION PROVISIONS FOR ELI-
19 GIBLE FREQUENCIES.—

20 “(A) SPECIAL REGULATIONS.—The Com-
21 mission shall revise the regulations prescribed
22 under paragraph (4)(F) of this subsection to
23 prescribe methods by which the total cash pro-
24 ceeds from any auction of eligible frequencies
25 described in section 113(g)(2) of the National

1 Telecommunications and Information Adminis-
2 tration Organization Act (47 U.S.C. 923(g)(2))
3 shall at least equal 110 percent of the total esti-
4 mated relocation costs provided to the Commis-
5 sion pursuant to section 113(g)(4) of such Act.

6 “(B) CONCLUSION OF AUCTIONS CONTIN-
7 GENT ON MINIMUM PROCEEDS.—The Commis-
8 sion shall not conclude any auction of eligible
9 frequencies described in section 113(g)(2) of
10 such Act if the total cash proceeds attributable
11 to such spectrum are less than 110 percent of
12 the total estimated relocation costs provided to
13 the Commission pursuant to section 113(g)(4)
14 of such Act. If the Commission is unable to
15 conclude an auction for the foregoing reason,
16 the Commission shall cancel the auction, return
17 within 45 days from the auction cancellation
18 date any deposits from participating bidders
19 held in escrow, and absolve such bidders from
20 any obligation to bid in any subsequent reaue-
21 tion of such spectrum.

22 “(C) AUTHORITY TO ISSUE PRIOR TO DE-
23 AUTHORIZATION.—In any auction conducted
24 under the regulations required by subparagraph
25 (A), the Commission may grant a license as-

1 signed for the use of eligible frequencies prior
2 to the termination of an eligible Federal entity's
3 authorization. However, the Commission shall
4 condition such license by requiring that the li-
5 censee cannot cause harmful interference to
6 such Federal entity until such entity's author-
7 ization has been terminated by the National
8 Telecommunications and Information Adminis-
9 tration.”.

10 (c) DEPOSIT OF PROCEEDS.—Paragraph (8) of sec-
11 tion 309(j) of the Communications Act of 1934 (47 U.S.C.
12 309(j)) is amended—

13 (1) in subparagraph (A), by inserting “or sub-
14 paragraph (D)” after “subparagraph (B); and

15 (2) by adding at the end the following new sub-
16 paragraph:

17 “(D) DISPOSITION OF CASH PROCEEDS.—

18 Cash proceeds attributable to the auction of any
19 eligible frequencies described in section
20 113(g)(2) of the National Telecommunications
21 and Information Administration Organization
22 Act (47 U.S.C. 923(g)(2)) shall be deposited in
23 the Spectrum Relocation Fund established
24 under section 118 of such Act, and shall be
25 available in accordance with that section.”.

1 **SEC. 4. ESTABLISHMENT OF FUND AND PROCEDURES.**

2 Part B of the National Telecommunications and In-
3 formation Administration Organization Act is amended by
4 adding after section 117 (47 U.S.C. 927) the following
5 new section:

6 **“SEC. 118. SPECTRUM RELOCATION FUND.**

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

14 “(b) CREDITING OF RECEIPTS.—The Fund shall be
15 credited with the amounts specified in section
16 309(j)(8)(D) of the Communications Act of 1934 (47
17 U.S.C. 309(j)(8)(D)). The proceeds attributable to each
18 auction of any eligible frequencies described in section
19 113(g)(2) of this Act shall be deposited in a separate ac-
20 count in the Fund.

21 “(c) USED TO PAY RELOCATION COSTS.—The
22 amounts in an account in the Fund from an auction of
23 eligible frequencies are authorized to be used to pay relo-
24 cation costs, as defined in section 113(g)(3) of this Act,
25 of an eligible Federal entity incurring such costs with re-
26 spect to relocation from those frequencies.

1 “(d) FUND AVAILABILITY.—

2 “(1) APPROPRIATION.—There are hereby ap-
3 propriated from the Fund such sums as are required
4 to pay the relocation costs specified in subsection
5 (c).

6 “(2) TRANSFER CONDITIONS.—None of the
7 funds provided under this subsection may be trans-
8 ferred to any eligible Federal entity—

9 “(A) unless the Director of OMB has de-
10 termined, in consultation with the NTIA, the
11 appropriateness of such costs and the timeline
12 for relocation; and

13 “(B) until 30 days after the Director of
14 the Office of Management and Budget has sub-
15 mitted to the House and Senate Committees on
16 Appropriations, the House Committee on En-
17 ergy and Commerce, and the Senate Committee
18 on Commerce, Science, and Transportation a
19 detailed plan describing how the sums trans-
20 ferred from the Fund will be used to pay relo-
21 cation costs in accordance with such subsection
22 and the timeline for such relocation.

23 “(3) REVERSION OF UNUSED FUNDS.—Any un-
24 expended balances of an account in the Fund that
25 are remaining after the payment of the relocation

1 costs that are payable from such account shall revert
2 to and be deposited in the general fund of the Treas-
3 ury. Such reversion and deposit shall be made not
4 later than the end of the fiscal year in which the
5 NTIA has notified the Commission that all of the
6 entities whose relocation costs are payable from such
7 account have either—

8 “(A) completed their relocation; or

9 “(B) been determined by NTIA to have
10 unreasonably failed to complete such relocation
11 in accordance with the timeline required by
12 paragraph (2)(A).

13 “(e) TRANSFER TO ELIGIBLE FEDERAL ENTITIES.—

14 “(1) TRANSFER.—Amounts made available pur-
15 suant to subsection (d) shall be transferred to eligi-
16 ble Federal entities, as defined in section 113(g)(1)
17 of this Act. An eligible Federal entity may, subject
18 to subsection (d)(2) of this section and the avail-
19 ability of funds in the relevant account, receive more
20 than one such transfer, but all such transfers are
21 subject to prior approval by the Director of OMB.
22 Such transferred amounts shall be credited to the
23 account of the eligible Federal entity which has in-
24 curred, or will incur, such costs, and shall remain
25 available until the NTIA has notified the Commis-

1 sion that the Federal entity has completed the relo-
2 cation, or the NTIA has determined that such entity
3 has unreasonably failed to complete such relocation
4 in accordance with the timeline required by para-
5 graph (2)(A).

6 “(2) RETRANSFER TO FUND.—An eligible Fed-
7 eral entity that has received such amounts shall re-
8 port its expenditures to OMB and shall transfer any
9 amounts in excess of actual relocation costs back to
10 the account in the Fund from which it was trans-
11 ferred immediately after the NTIA has notified the
12 Commission that the entity’s relocation is complete,
13 or has determined that such entity has unreasonably
14 failed to complete such relocation in accordance with
15 the timeline required by paragraph (2)(A).”.

16 **SEC. 5. CONSTRUCTION.**

17 Nothing in this Act is intended to modify section
18 1062(b) of the National Defense Authorization Act for
19 Fiscal Year 2000 (Public Law 106–65).

20 **SEC. 6. EXEMPTION FROM SEQUESTRATION.**

21 The Spectrum Relocation Fund shall be exempt from
22 reduction under any order issued under section 254 of the
23 Balanced Budget and Emergency Deficit Control Act of
24 1985, as amended.

1 **SEC. 7. REPORT.**

2 The National Telecommunications and Information
3 Administration shall submit an annual report to the Com-
4 mittees on Appropriations and Energy and Commerce of
5 the House of Representatives and the Committees on Ap-
6 propriations and Commerce, Science, and Transportation
7 of the Senate on—

8 (1) the progress made in adhering to the
9 timelines applicable to relocation from eligible fre-
10 quencies required under section 118(d)(2)(A) of the
11 National Telecommunications and Information Ad-
12 ministration Organization Act, separately stated on
13 a communication system-by-system basis and on an
14 auction-by-auction basis; and

15 (2) with respect to each relocated communica-
16 tion system and auction, a statement of the estimate
17 of relocation costs required under section 113(g)(4)
18 of such Act, the actual relocations costs incurred,
19 and the amount of such costs paid from the Spec-
20 trum Relocation Fund.

○