

108TH CONGRESS  
1ST SESSION

# H. R. 1396

To allocate spectrum for the enhancement of wireless telecommunications, and to invest wireless spectrum auction proceeds for the military preparedness and educational preparedness of the United States for the digital era, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 2003

Mr. MARKEY (for himself and Mr. LARSON of Connecticut) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To allocate spectrum for the enhancement of wireless telecommunications, and to invest wireless spectrum auction proceeds for the military preparedness and educational preparedness of the United States for the digital era, and for other purposes.

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 “Spectrum Commons  
5        and Digital Dividends Act of 2003”.

6        **SEC. 2. FINDINGS.**

7        The Congress finds the following:

1           (1) The United States stands to benefit in the  
2           global economy by reallocating additional airwave as-  
3           sets to the private sector for innovative wireless serv-  
4           ices.

5           (2) Congress previously mandated reallocation  
6           of over 200 megahertz of frequency spectrum from  
7           Government use to the Federal Communications  
8           Commission for private sector licensing.

9           (3) This previous reallocation spurred deploy-  
10          ment of new digital wireless services, Government  
11          action that helped to lower prices, create jobs, and  
12          increase consumer choice.

13          (4) Similarly, the public interest would be  
14          served by reallocating additional portions of the  
15          public's airwaves for use by the private sector for  
16          advanced wireless services.

17          (5) In addition, certain frequencies should be  
18          allocated to the general public as a "spectrum com-  
19          mons" for unlicensed use.

20          (6) A continuation of our competition-based  
21          spectrum policy can promote innovation, create jobs,  
22          lower prices, and increase consumer choice in the  
23          marketplace.

24          (7) Determining which specific frequencies to  
25          reallocate must be done in a manner that reflects an

1 appropriate balance between the needs of current  
2 users and the legitimate requirements of the private  
3 sector for introducing new services.

4 (8) Spectrum auctions will reap revenue that  
5 can be used to compensate incumbent users, includ-  
6 ing the military, for relocation costs.

7 (9) Auction proceeds can additionally be utilized  
8 to foster the use of educational technology, promote  
9 deployment of public telecommunications infrastruc-  
10 ture, and establish a self-sustaining fund for grants  
11 to address the digital divide.

12 (10) While more and more Americans are uti-  
13 lizing electronic tools in every aspect of their lives,  
14 a digital divide still remains in many areas of our  
15 country between rich and poor, and between urban  
16 and many rural areas.

17 (11) Utilizing spectrum auction proceeds to en-  
18 hance the use of educational technology and to in-  
19 crease public access to advanced telecommunications  
20 underscores our commitment to ensuring that our  
21 citizens obtain the skill set necessary to compete for  
22 jobs in the new economy.

23 (12) Educational preparedness will be critical if  
24 the United States is to have a technologically savvy

1 workforce to fuel growth of our high tech economy  
2 in the global marketplace.

3 (13) The creation of a self-sustaining mecha-  
4 nism to make available annual funding for needed  
5 public access and educational technology grants is  
6 an appropriate use of revenue generated from cor-  
7 porate use of the public’s airwaves.

8 (14) A policy that promotes investment in wire-  
9 less technology along with a concomitant investment  
10 in the human resources of our Nation is in the na-  
11 tional economic interest of the United States.

12 **TITLE I—TELECOMMUNI-**  
13 **CATIONS INFRASTRUCTURE**  
14 **DEVELOPMENT AND CITIZEN**  
15 **EMPOWERMENT**

16 **SEC. 101. DIGITAL DIVIDENDS TRUST FUND.**

17 Title III of the Communications Act of 1934 is  
18 amended by inserting after section 309 (47 U.S.C. 309)  
19 the following new section:

20 **“SEC. 309A. DIGITAL DIVIDENDS TRUST FUND.**

21 **“(a) ESTABLISHMENT.—**

22 **“(1) FUND ESTABLISHED.—**There is hereby es-  
23 tablished in the Treasury of the United States the  
24 Digital Dividends Trust Fund (hereinafter in this  
25 section referred to as the ‘Fund’).

1           “(2) DEPOSITS.—The corpus of the Fund shall  
2           be the amounts deposited into the Fund pursuant to  
3           section 309(j)(8)(D)(ii).

4           “(b) BOARD OF TRUSTEES.—The Fund shall be ad-  
5           ministered under the direction of a board of directors  
6           (hereinafter in this section referred to as ‘the board’) com-  
7           prised of—

8           “(1) the Assistant Secretary for Communica-  
9           tions and Information of the Department of Com-  
10          merce; and

11          “(2) 6 additional members, appointed by the  
12          President, with experience in one or more of the fol-  
13          lowing fields: investment management; corporate fi-  
14          nance; computer software; telecommunications; and  
15          education and cultural heritage.

16          “(c) ADMINISTRATION; PRESERVATION OF PRIN-  
17          CIPAL.—All deposits described in subsection (a)(2) shall  
18          be invested in a manner that the board finds prudent and  
19          reasonable and that is designed to ensure that annual in-  
20          come is sufficient to cover the uses specified in subsection  
21          (d) and the other expected costs of carrying out the pur-  
22          poses of this section. Such deposits shall not be expended  
23          for the support of any of the purposes authorized by sub-  
24          section (d).

1       “(d) USE OF INCOME.—Income to the fund shall be  
2 allocated by the Board as follows:

3           “(1) HUMAN CAPITAL TELECOMMUNICATIONS  
4 INVESTMENTS.—Not to exceed 65 percent of the in-  
5 come for any fiscal year to the human capital tele-  
6 communications investment program under section  
7 106 of the National Telecommunications and Infor-  
8 mation Administration Organization Act.

9           “(2) BROADBAND INFRASTRUCTURE INVEST-  
10 MENTS FOR PUBLIC ACCESS AND RURAL DEVELOP-  
11 MENT.—Not to exceed 65 percent of the income for  
12 any fiscal year to the Public Broadband Infrastruc-  
13 ture Investments Program under section 107 of the  
14 National Telecommunications and Information Ad-  
15 ministration Organization Act.”.

16 **SEC. 102. HUMAN CAPITAL TELECOMMUNICATIONS INVEST-**  
17 **MENTS.**

18       Part A of the National Telecommunications and In-  
19 formation Administration Organization Act (47 U.S.C.  
20 901 et seq.) is amended by adding at the end the following  
21 new section:

22 **“SEC. 106. HUMAN CAPITAL TELECOMMUNICATIONS IN-**  
23 **VESTMENTS.**

24       “(a) GRANT PROGRAM AUTHORIZED.—From the  
25 funds available under section 309A(d)(1) of the Commu-

1 nications Act of 1934, the Secretary shall carry out a  
2 Human Capital Telecommunications Investment Program  
3 in accordance with the requirements of this section.

4 “(b) USE OF GRANT FUNDS.—Funds made available  
5 by a grant under this section may be used for—

6 “(1) training for teachers and other educational  
7 personnel at schools and libraries eligible for services  
8 or assistance under section 254;

9 “(2) research and development for sophisti-  
10 cated, content-related educational software and pro-  
11 gramming designed to enhance learning in elemen-  
12 tary, secondary, and postsecondary education and to  
13 enable schools, libraries, and museums to reach out-  
14 side their walls and into homes, other schools, and  
15 workplaces;

16 “(3) digitizing educational materials held in our  
17 Nation’s libraries, archives, and museums and other  
18 institutions of learning;

19 “(4) technology projects supported by volun-  
20 teers enrolled in the AmeriCorps and designated by  
21 the Corporation for National Service;

22 “(5) projects enhancing the access of individ-  
23 uals with disabilities to advanced telecommunications  
24 services;

1           “(6) projects for retraining workers and unem-  
2           employed individuals with skills applicable to the new  
3           economy; and

4           “(7) projects for after school programs for  
5           youth focused on computer literacy and interaction.

6           “(c) ELIGIBLE APPLICANTS.—The following organi-  
7           zations and agencies shall be eligible to apply for funds  
8           under this section:

9           “(1) an elementary, secondary, or postsec-  
10          ondary educational institution;

11          “(2) a nonprofit agency or organization that is  
12          exempt from income taxes under section 501(c)(3)  
13          of the Internal Revenue Code of 1986; or

14          “(3) an agency or instrumentality of a State or  
15          local government of the United States (including an  
16          agency or instrumentality of a territory or posses-  
17          sion of the United States).

18          “(d) APPLICATION.—Any organization or entity seek-  
19          ing a grant under this section shall submit to the Sec-  
20          retary an application at such time, in such manner, and  
21          containing or accompanied by such information and assur-  
22          ances as the Secretary may require by regulation.”.

1 **SEC. 103. PUBLIC BROADBAND INFRASTRUCTURE INVEST-**  
2 **MENTS.**

3 Part A of the National Telecommunications and In-  
4 formation Administration Organization Act is amended by  
5 adding after section 106 (as added by section 102 of this  
6 Act) the following new section:

7 **“SEC. 107. PUBLIC BROADBAND INFRASTRUCTURE INVEST-**  
8 **MENTS PROGRAM.**

9 “(a) GRANT PROGRAM AUTHORIZED.—From the  
10 funds available under section 309A(d)(2) of the Commu-  
11 nications Act of 1934, the Secretary shall carry out a Pub-  
12 lic Broadband Infrastructure Investments Program in ac-  
13 cordance with the requirements of this section.

14 “(b) USE OF GRANT FUNDS.—

15 “(1) PERMITTED USES.—Funds made available  
16 by a grant under this section may be used for—

17 “(A) local and regional initiatives that ex-  
18 pand public access to advanced telecommuni-  
19 cations and information services at locations  
20 that are accessible to the general public;

21 “(B) deployment of broadband tele-  
22 communications services in unserved rural  
23 areas; and

24 “(C) deployment of broadband tele-  
25 communications services to low-income housing  
26 and community centers.

1           “(2) REQUIRED USES.—Not to exceed  
2           \$300,000,000 from the funds available under section  
3           309A(d)(2) of the Communications Act of 1934 for  
4           each of the first 5 fiscal years shall be made avail-  
5           able by grant for the purpose of converting public  
6           broadcasting facilities to digital technology through  
7           the public telecommunications facilities program  
8           under section 392 of the Communications Act of  
9           1934.

10          “(c) ELIGIBLE APPLICANTS.—The following organi-  
11         zations and agencies shall be eligible to apply for funds  
12         under this subsection (b)(1):

13                 “(1) a nonprofit agency or organization that is  
14                 exempt from income taxes under section 501(c)(3)  
15                 of the Internal Revenue Code of 1986; or

16                 “(2) an agency or instrumentality of a State or  
17                 local government of the United States (including an  
18                 agency or instrumentality of a territory or posses-  
19                 sion of the United States).

20          “(d) APPLICATION.—Any organization or entity seek-  
21         ing a grant under this section shall submit to the Sec-  
22         retary an application at such time, in such manner, and  
23         containing or accompanied by such information and assur-  
24         ances as the Secretary may require by regulation.”.

1 **TITLE II—CREATION OF SPEC-**  
2 **TRUM COMMONS AND AVAIL-**  
3 **ABILITY OF SPECTRUM FOR**  
4 **ADVANCED WIRELESS SERV-**  
5 **ICES**

6 **SEC. 201. AVAILABILITY OF SPECTRUM FOR ADVANCED**  
7 **WIRELESS SERVICES.**

8 (a) IDENTIFICATION.—Section 113 of the National  
9 Telecommunications and Information Administration Or-  
10 ganization Act (47 U.S.C. 923) is amended by adding at  
11 the end thereof the following new subsection:

12 “(j) CREATION OF SPECTRUM COMMONS AND DES-  
13 IGNATION OF SPECTRUM FOR ADVANCED WIRELESS  
14 SERVICES; RELOCATION PLAN.—

15 “(1) PLAN REQUIRED.—The Secretary shall,  
16 not later than January 1, 2003, prepare, make pub-  
17 licly available, and submit to the President, the Con-  
18 gress, and the Commission a report that—

19 “(A) designates a 20-megahertz band of  
20 contiguous frequencies located below 2  
21 gigahertz, and a band of between 3 and 500  
22 megahertz of contiguous frequencies above 2  
23 gigahertz and below 6 gigahertz, for realloca-  
24 tion to the public for unlicensed use;

1           “(B) designates bands of frequencies for  
2           reallocation for the provision of advanced wire-  
3           less services; and

4           “(C) in consultation with the Commission,  
5           establishes a plan for the relocation or modi-  
6           fication of Federal Government stations cur-  
7           rently occupying the band of frequencies located  
8           at 1,710–1,850 megahertz, including a descrip-  
9           tion of the phases by which such relocation or  
10          modification shall be accomplished consistent  
11          with the public interest.

12          “(2) DEADLINES.—

13                 “(A)   MINIMUM   FOR   2005.—Notwith-  
14                 standing any other provision of law, such plan  
15                 shall ensure that not less than 30, but not more  
16                 than 45, megahertz of paired spectrum is avail-  
17                 able and usable for advanced wireless services  
18                 by December 31, 2005.

19                 “(B)   MINIMUM   FOR   2008.—Notwith-  
20                 standing any other provision of law, such plan  
21                 shall ensure that an additional 50 megahertz of  
22                 paired spectrum is made available and usable  
23                 for advanced wireless services by December 31,  
24                 2008.

1           “(C) POTENTIAL ADDITIONAL SPECTRUM  
2           FOR TIMELY REALLOCATION.—Notwithstanding  
3           any other provision of law, the Commission  
4           shall ensure that any rules necessary to effec-  
5           tuate the timely transition to digital television  
6           are promulgated and completed by the Commis-  
7           sion prior to making available the bands of fre-  
8           quencies at 747–762 and 777–792 megahertz  
9           for advanced wireless services or other competi-  
10          tive wireless services. The Commission shall en-  
11          sure that any plan to achieve the clearance of  
12          such frequencies shall not result in the unjust  
13          enrichment of any incumbent licensee.

14          “(D) DEFINITION.—For the purposes of  
15          subparagraph (C), the term ‘rules necessary to  
16          effectuate the timely transition to digital tele-  
17          vision’ includes rules requiring must-carry of  
18          free, over-the-air signals of broadcast television  
19          stations, minimum digital television network  
20          programming and broadcasting requirements,  
21          and rules requiring that models of television re-  
22          ceiver equipment have the capability of dis-  
23          playing digital television signals by certain  
24          dates.”.

1 (b) ALLOCATION.—Section 115 of the National Tele-  
2 communications and Information Administration Organi-  
3 zation Act (47 U.S.C. 925) is amended by adding at the  
4 end the following new subsection:

5 “(d) ALLOCATION OF SPECTRUM FOR ADVANCED  
6 WIRELESS SERVICES.—

7 “(1) IN GENERAL.—With respect to the fre-  
8 quencies identified in section 113(j)(1)(A) and in  
9 section 113(j)(1)(B), the Commission shall, within  
10 60 days of the release of the report required by sec-  
11 tion 113(j), commence a proceeding to allocate such  
12 frequencies for advanced wireless services and adopt  
13 technical, licensing, and service rules applicable to  
14 such frequencies. Such frequencies shall be assigned  
15 by competitive bidding pursuant to section 309(j) of  
16 the 1934 Act on a schedule consistent with the relo-  
17 cation plan established pursuant to section  
18 113(j)(1)(B) and the requirements of section  
19 113(g)(1)(A).

20 “(2) SPECTRUM COMMONS.—With respect to  
21 the frequencies designated for reallocation pursuant  
22 to section 113(j)(1)(C), the Commission shall—

23 “(A) establish any rules necessary for unli-  
24 censed use of such spectrum including—

1 “(i) standards for interference protec-  
2 tion; and

3 “(ii) rules ensuring that all wireless  
4 broadband devices meet minimum technical  
5 standards; and

6 “(B) make such spectrum available to the  
7 public by December 31, 2004.”.

8 **SEC. 202. RELOCATION OF FEDERAL GOVERNMENT STA-**  
9 **TIONS.**

10 (a) RELOCATION FROM SPECTRUM FOR ADVANCED  
11 WIRELESS SERVICES.—Section 113(g) of National Tele-  
12 communications and Information Administration Organi-  
13 zation Act (47 U.S.C. 923(g)) is amended by adding at  
14 the end the following new paragraph:

15 “(4) SPECIAL PROVISIONS FOR RELOCATION  
16 FROM SPECTRUM FOR ADVANCED WIRELESS SERV-  
17 ICES.—

18 “(A) APPLICABILITY.—The provisions of  
19 this paragraph shall apply in lieu of the provi-  
20 sions of paragraphs (1) through (3) with re-  
21 spect to relocating the operations of Federal en-  
22 tities from the frequencies reallocated to ad-  
23 vanced wireless services under section 115(d).

24 “(B) AUTHORITY TO ACCEPT COMPENSA-  
25 TION.—In order to expedite the commercial use

1 of the electromagnetic spectrum and notwith-  
2 standing section 3302(b) of title 31, United  
3 States Code, the head of any Federal entity  
4 may accept from the Spectrum Relocation  
5 Trust Fund compensation for the costs of relo-  
6 cating such entity's operations from one or  
7 more frequencies to another frequency or fre-  
8 quencies. The costs for which the Federal entity  
9 shall be compensated shall be the relocation  
10 costs of the entity's operations, except that the  
11 entity may be compensated for the replacement  
12 costs of relocating a particular station if the  
13 head of such entity can demonstrate to the  
14 President that such a level of compensation is  
15 vital to the national security or public safety.

16 “(C) REQUIREMENT TO COMPENSATE FED-  
17 ERAL ENTITIES.—The Federal entity shall be  
18 compensated in advance for the costs that the  
19 Federal entity incurs under subparagraph (B).  
20 Such compensation may take the form of a cash  
21 payment or in-kind compensation. Such com-  
22 pensation shall come from the Spectrum Relo-  
23 cation Trust Fund.

24 “(D) SPECTRUM RELOCATION TRUST  
25 FUND.—

1           “(i) ESTABLISHMENT.—There is es-  
2           tablished in the Treasury a Spectrum Relo-  
3           cation Trust Fund (referred to in this sub-  
4           paragraph as the ‘Fund’), consisting of  
5           amounts deposited pursuant to section  
6           309(j)(8)(D)(i) of the 1934 Act.

7           “(ii) EXPENDITURE OF AMOUNTS FOR  
8           REIMBURSEMENT OF RELOCATED OPER-  
9           ATIONS.—The Secretary of the Treasury  
10          shall transfer from the Fund to each Fed-  
11          eral entity the sums identified under sub-  
12          paragraph (B) to pay the costs of reloca-  
13          tion or modification of the entity’s stations  
14          and the head of such entity shall use such  
15          sums to make payments to satisfy such  
16          costs.

17          “(iii) MAXIMUM DEPOSITS.—If the  
18          NTIA determines that the proceeds of an  
19          auction the proceeds of which are required  
20          to be deposited in the Fund have exceeded  
21          or will exceed a sum equal to (I) the re-  
22          placement costs incurred in connection  
23          with such auction, plus (II) 10 percent of  
24          any auction proceeds above such amount,  
25          the NTIA shall notify the Secretary of the

1 Treasury. Upon receipt of such notice, the  
2 Secretary of the Treasury shall, notwith-  
3 standing section 309(j)(8) of the Commu-  
4 nications Act of 1934 (47 U.S.C.  
5 309(j)(8)), transfer the remainder of the  
6 proceeds of any such auction in excess of  
7 such sum to the Digital Dividends Trust  
8 Fund established by section 309A of the  
9 1934 Act.

10 “(iv) TERMINATION.—When the  
11 NTIA determines that no additional Fed-  
12 eral Government stations need to be relo-  
13 cated or modified, NTIA shall notify the  
14 Secretary of the Treasury, who shall termi-  
15 nate the Fund. Any unallocated funds re-  
16 maining in the Fund shall be transferred  
17 to the Fund specified in clause (iii).”.

18 **SEC. 203. DEFINITIONS.**

19 Section 111 of the National Telecommunications and  
20 Information Administration Organization Act (47 U.S.C.  
21 921) is amended by adding at the end the following new  
22 paragraphs:

23 “(4) The term ‘relocation costs’ means the costs  
24 that will be incurred by a Federal entity to achieve  
25 comparable capability of systems that are relocated

1 to a new frequency assignment or band or otherwise  
 2 modified, including the costs of any modification, re-  
 3 placement, or reissuance of equipment and facilities  
 4 incurred by that entity.

5 “(5) The term ‘replacement costs’ means the  
 6 costs that would be incurred by a Federal entity to  
 7 replace existing equipment or facilities in order to  
 8 relocate to a new frequency assignment or band.”.

9 **TITLE III—DISTRIBUTION OF**  
 10 **PROCEEDS OF AUCTIONS FOR**  
 11 **ADVANCED WIRELESS SERV-**  
 12 **ICES**

13 **SEC. 301. DIVISION BETWEEN TRUST FUNDS.**

14 Section 309(j)(8) of the Communications Act of 1934  
 15 (47 U.S.C. 309(j)(8)) is amended—

16 (1) in subparagraph (A), by striking “subpara-  
 17 graph (B)” and inserting “subparagraphs (B) and  
 18 (D)”; and

19 (2) by adding at the end the following new sub-  
 20 paragraph:

21 “(D) PROCEEDS OF AUCTIONS FOR AD-  
 22 VANCED WIRELESS SERVICES.—Notwith-  
 23 standing subparagraph (A), the proceeds of any  
 24 competitive bidding under this subsection with  
 25 respect to the spectrum allocated for advanced

1 wireless services pursuant to section 115(d)(1)  
2 of the National Telecommunications and Infor-  
3 mation Administration Organization Act shall,  
4 after the deduction of salaries and expenses re-  
5 quired by subparagraph (B), be allocated as fol-  
6 lows:

7 “(i) the first \$5,000,000,000 shall be  
8 deposited in the Relocated Federal Entities  
9 Trust Fund established BY section  
10 113(g)(4)(D) of such Act; and

11 “(ii) the remainder of the proceeds of  
12 such competitive bidding shall be deposited  
13 in the Digital Dividends Trust Fund estab-  
14 lished by section 309A of this Act.”.

○