

108TH CONGRESS
1ST SESSION

S. 865

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

IN THE SENATE OF THE UNITED STATES

APRIL 10, 2003

Mr. MCCAIN (for himself, Mr. DORGAN, Mr. BROWNBACK, and Mr. ENSIGN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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

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

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

24 “(A) the 216–220 megahertz band, the
25 1432–1435 megahertz band, the 1710–1755

1 megahertz band, and the 2385–2390 megahertz
2 band of frequencies; and

3 “(B) any other band of frequencies reallo-
4 cated from Federal use to non-Federal use after
5 January 1, 2003, that is assigned by competi-
6 tive bidding pursuant to section 309(j) of the
7 Communications Act of 1934 (47 U.S.C.
8 309(j)), except for bands of frequencies pre-
9 viously identified by the National Telecommuni-
10 cations and Information Administration in the
11 Spectrum Reallocation Final Report, NTIA
12 Special Publication 95–32 (1995).

13 “(3) DEFINITION OF RELOCATION COSTS.—For
14 purposes of this subsection, the term ‘relocation
15 costs’ means the costs incurred by a Federal entity
16 to achieve comparable capability of systems, regard-
17 less of whether that capability is achieved by relo-
18 cating to a new frequency assignment or by utilizing
19 an alternative technology. Such costs include—

20 “(A) the costs of any modification or re-
21 placement of equipment, software, facilities, op-
22 erating manuals, training costs, or regulations
23 that are attributable to relocation;

24 “(B) the costs of all engineering, equip-
25 ment, software, site acquisition and construc-

tion 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

1 “(E) the costs associated with the acceler-
2 ated replacement of systems and equipment if
3 such acceleration is necessary to ensure the
4 timely relocation of systems to a new frequency
5 assignment.

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

8 “(A) The Commission shall notify the
9 NTIA at least 18 months prior to the com-
10 mencement of any auction of eligible fre-
11 quencies defined in paragraph (2). At least 6
12 months prior to the commencement of any such
13 auction, the NTIA, on behalf of the Federal en-
14 tities and after review by the Office of Manage-
15 ment and Budget, shall notify the Commission
16 of estimated relocation costs and timelines for
17 such relocation.

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

1 to the Commission pursuant to subparagraph
2 (A).

3 “(C) To the extent practicable and con-
4 sistent with national security considerations,
5 the NTIA shall provide the information re-
6 quired by subparagraphs (A) and (B) by the ge-
7 ographic location of the Federal entities’ facili-
8 ties or systems and the frequency bands used
9 by such facilities or systems.

10 “(5) NOTICE TO CONGRESSIONAL COMMITTEES
11 AND GAO.—The NTIA shall, at the time of providing
12 an initial estimate of relocation costs to the Commis-
13 sion under paragraph (4)(A), submit to the Commit-
14 tees on Appropriations and Energy and Commerce
15 of the House of Representatives, the Committees on
16 Appropriations and Commerce, Science, and Trans-
17 portation of the Senate, and the Comptroller Gen-
18 eral a copy of such estimate and the timelines for re-
19 location.

20 “(6) IMPLEMENTATION OF PROCEDURES.—The
21 NTIA shall take such actions as necessary to ensure
22 the timely relocation of Federal entities’ spectrum-
23 related operations from frequencies defined in para-
24 graph (2) to frequencies or facilities of comparable
25 capability. Upon a finding by the NTIA that a Fed-

1 eral entity has achieved comparable capability of sys-
 2 tems by relocating to a new frequency assignment or
 3 by utilizing an alternative technology, the NTIA
 4 shall terminate the entity’s authorization and notify
 5 the Commission that the entity’s relocation has been
 6 completed. The NTIA shall also terminate such enti-
 7 ty’s authorization if the NTIA determines that the
 8 entity has unreasonably failed to comply with the
 9 timeline for relocation submitted by the Director of
 10 the Office of Management and Budget under section
 11 118(d)(2)(B).”.

12 **SEC. 3. MINIMUM AUCTION RECEIPTS AND DISPOSITION OF**
 13 **PROCEEDS.**

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

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

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

21 (3) by adding at the end the following new sub-
 22 paragraph:

23 “(F) for any auction of eligible frequencies
 24 described in section 113(g)(2) of the National
 25 Telecommunications and Information Adminis-

1 tration Organization Act (47 U.S.C. 923(g)(2)),
 2 the recovery of 110 percent of estimated reloca-
 3 tion costs as provided to the Commission pursu-
 4 ant to section 113(g)(4) of such Act.”.

5 (b) SPECIAL AUCTION PROVISIONS FOR ELIGIBLE
 6 FREQUENCIES.—Section 309(j) of such Act is further
 7 amended by adding at the end the following new para-
 8 graph:

9 “(15) SPECIAL AUCTION PROVISIONS FOR ELI-
 10 GIBLE FREQUENCIES.—

11 “(A) SPECIAL REGULATIONS.—The Com-
 12 mission shall revise the regulations prescribed
 13 under paragraph (4)(F) of this subsection to
 14 prescribe methods by which the total cash pro-
 15 ceeds from any auction of eligible frequencies
 16 described in section 113(g)(2) of the National
 17 Telecommunications and Information Adminis-
 18 tration Organization Act (47 U.S.C. 923(g)(2))
 19 shall at least equal 110 percent of the total esti-
 20 mated relocation costs provided to the Commis-
 21 sion pursuant to section 113(g)(4) of such Act.

22 “(B) CONCLUSION OF AUCTIONS CONTIN-
 23 GENT ON MINIMUM PROCEEDS.—The Commis-
 24 sion shall not conclude any auction of eligible
 25 frequencies described in section 113(g)(2) of

1 such Act if the total cash proceeds attributable
2 to such spectrum are less than 110 percent of
3 the total estimated relocation costs provided to
4 the Commission pursuant to section 113(g)(4)
5 of such Act. If the Commission is unable to
6 conclude an auction for the foregoing reason,
7 the Commission shall cancel the auction, return
8 within 45 days after the auction cancellation
9 date any deposits from participating bidders
10 held in escrow, and absolve such bidders from
11 any obligation to the United States to bid in
12 any subsequent reauction of such spectrum.

13 “(C) AUTHORITY TO ISSUE PRIOR TO DE-
14 AUTHORIZATION.—In any auction conducted
15 under the regulations required by subparagraph
16 (A), the Commission may grant a license as-
17 signed for the use of eligible frequencies prior
18 to the termination of an eligible Federal entity’s
19 authorization. However, the Commission shall
20 condition such license by requiring that the li-
21 censee cannot cause harmful interference to
22 such Federal entity until such entity’s author-
23 ization has been terminated by the National
24 Telecommunications and Information Adminis-
25 tration.”.

1 (c) DEPOSIT OF PROCEEDS.—Paragraph (8) of sec-
 2 tion 309(j) of the Communications Act of 1934 (47 U.S.C.
 3 309(j)) is amended—

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

6 (2) by adding at the end the following new sub-
 7 paragraph:

8 “(D) DISPOSITION OF CASH PROCEEDS.—
 9 Cash proceeds attributable to the auction of any
 10 eligible frequencies described in section
 11 113(g)(2) of the National Telecommunications
 12 and Information Administration Organization
 13 Act (47 U.S.C. 923(g)(2)) shall be deposited in
 14 the Spectrum Relocation Fund established
 15 under section 118 of such Act, and shall be
 16 available in accordance with that section.”.

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

18 Part B of the National Telecommunications and In-
 19 formation Administration Organization Act is amended by
 20 adding after section 117 (47 U.S.C. 927) the following
 21 new section:

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

23 “(a) ESTABLISHMENT OF SPECTRUM RELOCATION
 24 FUND.—There is established on the books of the Treasury
 25 a separate fund to be known as the ‘Spectrum Relocation

1 Fund’ (in this section referred to as the ‘Fund’), which
2 shall be administered by the Office of Management and
3 Budget (in this section referred to as ‘OMB’), in consulta-
4 tion with the NTIA.

5 “(b) CREDITING OF RECEIPTS.—The Fund shall be
6 credited with the amounts specified in section
7 309(j)(8)(D) of the Communications Act of 1934 (47
8 U.S.C. 309(j)(8)(D)).

9 “(c) USED TO PAY RELOCATION COSTS.—The
10 amounts in the Fund from auctions of eligible frequencies
11 are authorized to be used to pay relocation costs, as de-
12 fined in section 113(g)(3) of this Act, of an eligible Fed-
13 eral entity incurring such costs with respect to relocation
14 from those frequencies.

15 “(d) FUND AVAILABILITY.—

16 “(1) APPROPRIATION.—There are hereby ap-
17 propriated from the Fund such sums as are required
18 to pay the relocation costs specified in subsection
19 (c).

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

23 “(A) unless the Director of OMB has de-
24 termined, in consultation with the NTIA, the

1 appropriateness of such costs and the timeline
2 for relocation; and

3 “(B) until 30 days after the Director of
4 the OMB has submitted to the Committees on
5 Appropriations and Energy and Commerce of
6 the House of Representatives, the Committees
7 on Appropriations and Commerce, Science, and
8 Transportation of the Senate, and the Comp-
9 troller General a detailed plan describing how
10 the sums transferred from the Fund will be
11 used to pay relocation costs in accordance with
12 such subsection and the timeline for such relo-
13 cation.

14 “(3) REVERSION OF UNUSED FUNDS.—Any un-
15 expended balances in the Fund that are remaining
16 after the payment of the relocation costs that are
17 payable from the Fund shall revert to and be depos-
18 ited in the general fund of the Treasury not later
19 than 8 years after the date of the initial deposit to
20 the Fund.

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

22 “(1) TRANSFER.—

23 “(A) Amounts made available pursuant to
24 subsection (d) shall be transferred to eligible

1 Federal entities, as defined in section 113(g)(1)
2 of this Act.

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

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

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

15 “(iii) such notice shall include, in ad-
16 dition to such plan, a explanation of need
17 for such subsequent transfer or transfers;
18 and

19 “(iv) the Comptroller General shall,
20 within 30 days after receiving such plan,
21 review such plan and submit to such com-
22 mittees an assessment of the explanation
23 for the subsequent transfer or transfers.

24 “(C) Such transferred amounts shall be
25 credited to the appropriations account of the el-

1 eligible Federal entity which has incurred, or will
 2 incur, such costs, and shall, subject to para-
 3 graph (2), remain available until expended.

4 “(2) RETRANSFER TO FUND.—An eligible Fed-
 5 eral entity that has received such amounts shall re-
 6 port its expenditures to OMB and shall transfer any
 7 amounts in excess of actual relocation costs back to
 8 the Fund immediately after the NTIA has notified
 9 the Commission that the entity’s relocation is com-
 10 plete, or has determined that such entity has unrea-
 11 sonably failed to complete such relocation in accord-
 12 ance with the timeline required by subsection
 13 (d)(2)(A).”.

14 **SEC. 5. TELECOMMUNICATIONS DEVELOPMENT FUND.**

15 Section 714(f) of the Communications Act of 1934
 16 (47 U.S.C. 614(f)) is amended to read as follows:

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

20 “(1) the analysis of the business plan of the eli-
 21 gible small business;

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

24 “(3) the extent to which the loan or credit ex-
 25 tension promotes the purposes of this section; and

1 “(4) other lending policies as defined by the
2 Board.”.

3 **SEC. 6. CONSTRUCTION.**

4 Nothing in this Act is intended to modify section
5 1062(b) of the National Defense Authorization Act for
6 Fiscal Year 2000 (Public Law 106–65).

7 **SEC. 7. EXEMPTION FROM SEQUESTRATION.**

8 The Spectrum Relocation Fund shall be exempt from
9 reduction under any order issued under section 254 of the
10 Balanced Budget and Emergency Deficit Control Act of
11 1985, as amended.

12 **SEC. 8. REPORT.**

13 The National Telecommunications and Information
14 Administration shall submit an annual report to the Com-
15 mittees on Appropriations and Energy and Commerce of
16 the House of Representatives, the Committees on Appro-
17 priations and Commerce, Science, and Transportation of
18 the Senate, and the Comptroller General on—

19 (1) the progress made in adhering to the
20 timelines applicable to relocation from eligible fre-
21 quencies required under section 118(d)(2)(A) of the
22 National Telecommunications and Information Ad-
23 ministration Organization Act, separately stated on
24 a communication system-by-system basis and on an
25 auction-by-auction basis; and

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

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