

support of the local noncommercial educational broadcast operations of the retained station; and

“(2) the compensation provided to the licensee for assigning such license reflects the value of the license and related facilities.

“(c) DEFINITIONS.—For purposes of this section—

“(1) OVERLAPPING STATIONS.—The term ‘overlapping stations’ means 2 or more public television stations—

“(A) that serve the same market;

“(B) with respect to which the Grade A contour of one of such stations reaches more than 50 percent of the Grade A population reached by the other such station; and

“(C) with respect to which less than 20 percent of the population reached by either station is unduplicated by the other.

“(2) TELEVISION MARKET.—The term ‘television market’ has the meaning provided in section 76.55(e)(1) of the Commission’s rules (47 C.F.R. 76.55(e)(1)).”.

## TITLE II—PUBLIC BROADCASTING EMPOWERMENT COMMISSION

### SEC. 201. ESTABLISHMENT.

There is established a commission to be known as the Commission on Public Broadcasting Empowerment (referred to in this section as the “Commission”).

### SEC. 202. DUTIES.

(a) STUDY AND RECOMMENDATIONS.—The Commission shall—

(1) conduct a comprehensive study of—

(A) alternatives for providing long-term funding for public broadcasting services other than with appropriated Federal funds, with particular emphasis on the development of earned income opportunities;

(B) the feasibility of generating revenue for a trust fund based upon spectrum grants or other sources of funding;

(C) the effectiveness and adequacy of those means of generating revenue for public broadcasting services made available by title I of this Act;

(D) the impact that particular funding methods may have on the purpose, role, and availability of public broadcasting, particularly in smaller markets;

(E) funding distribution formulas for smaller markets that take into account the special nature of such markets, including the additional infrastructure investment necessary to obtain sufficient audience reach; and

(F) opportunities for reducing the cost of public broadcasting through increased efficiencies of production, distribution, and operation without impairing universal access to public broadcasting; and

(2) submit to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Commerce of the House of Representatives a report setting forth the results of its study and making recommendations for—

(A) long-term funding for public broadcasting that would not compromise its essential noncommercial nature;

(B) improving the economic efficiency with which public broadcasting operates;

(C) guaranteeing universal access, particularly to rural and underserved areas; and

(D) stimulating the development of regional and local programming centers in order to increase geographic diversity in the origination of programming.

(b) INTERIM AND FINAL REPORTS.—The Commission shall submit a preliminary report under subsection (a)(2) not later than December 31, 1997, and a final report not later than December 31, 1998.

(c) TRUST FUND ESTABLISHED.—

(1) IN GENERAL.—There is hereby established in the Treasury of the United States a trust fund to be known as the “Public Broadcasting Trust Fund”.

(2) ACCOUNTS.—The Public Broadcasting Trust Fund shall consist of such accounts as may be provided by law. Each such Account shall consist of such amounts as may be appropriated, credited, or paid to it as provided by law.

(3) EXPENDITURES.—Amounts in the Public Broadcasting Trust Fund shall be available for making such expenditures as may be provided by law.

(4) MANAGEMENT.—The Public Broadcasting Trust Fund shall be managed in accordance with the provisions of section 9602 of the Internal Revenue Code of 1986.

### SEC. 203. MEMBERSHIP.

(a) COMPOSITION.—

(1) APPOINTMENTS.—The Commission shall be composed of 12 voting members and 3 ex officio members to be appointed not later than 60 days after the date of the enactment of this Act as follows:

(A) SENATORS.—One Senator shall be appointed by the Majority Leader of the Senate, and one Senator shall be appointed by the Minority Leader of the Senate.

(B) MEMBERS OF THE HOUSE OF REPRESENTATIVES.—One Member of the House of Representatives shall be appointed by the Speaker of the House of Representatives, and one Member of the House of Representatives shall be appointed by the Minority Leader of the House of Representatives.

(C) ADDITIONAL MEMBERS.—Eight members shall be appointed by the President, without regard to political affiliation, on the basis of demonstrated expertise in public broadcasting, education, entertainment, finance, or investment.

(2) EX OFFICIO MEMBERS.—The Secretary of Commerce, the Chairman of the Federal Communications Commission, and the President of the Corporation for Public Broadcasting shall serve on the Commission as nonvoting ex officio members.

(b) VACANCIES.—Any vacancy on the Commission shall be filled in the manner in which the original appointment was made. The vacancy shall not affect the power of the remaining members to execute the duties of the Commission.

(c) CHAIRPERSON AND VICE CHAIRPERSON.—The Commission shall elect a chairperson and a vice chairperson from among the members of the Commission.

(d) QUORUM.—Eight members of the Commission shall constitute a quorum for all purposes, except that a lesser number may constitute a quorum for the purpose of holding hearings.

### SEC. 204. COMPENSATION.

(a) PAY.—Members of the Commission shall serve without compensation.

(b) TRAVEL EXPENSES.—Members of the Commission shall be allowed reasonable travel expenses, including a per diem allowance, in accordance with section 5703 of title 5, United States Code, when performing duties of the Commission.

### SEC. 205. POWERS.

(a) MEETINGS.—The Commission shall first meet not later than 30 days after the date on which all members are appointed, and the Commission shall meet thereafter on the call of the chairperson or a majority of the members.

(b) HEARINGS AND SESSIONS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.

(c) ACCESS TO INFORMATION.—The Commission may secure directly from any Federal agency information necessary to enable it to carry out this title, if the information may be disclosed under section 552 of title 5,

United States Code. Subject to the previous sentence, on the request of the chairperson or vice chairperson of the Commission, the head of such agency shall furnish such information to the Commission.

(d) USE OF FACILITIES AND SERVICES.—Upon the request of the Commission, the head of any Federal agency may make available to the Commission any of the facilities and services of such agency.

(e) PERSONNEL FROM OTHER AGENCIES.—On the request of the Commission, the head of any Federal agency may detail any of the personnel of such agency to serve as an Executive Director of the Commission or assist the Commission in carrying out the duties of the Commission. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(f) VOLUNTARY SERVICE.—Notwithstanding section 1342 of title 31, United States Code, the chairperson of the Commission may accept for the Commission voluntary services provided by a member of the Commission.

### SEC. 206. TERMINATION.

The Commission shall terminate 30 days after the date of the submission of the final report of the Commission to Congress.

### SEC. 207. AUTHORIZATION OF APPROPRIATIONS.

(a) COMMISSION.—There are authorized to be appropriated to the Commission such sums as may be necessary to carry out the provisions of title II of this Act.

(b) CORPORATION FOR PUBLIC BROADCASTING.—Section 396(k)(1)(C) of the Communications Act of 1934 (47 U.S.C. 396(k)(1)(C)) is amended—

(1) by striking “and” after “1995.”; and

(2) by striking “1996.” and inserting “1996, and \$250,000,000 for each of fiscal years 1998, 1999, and 2000.”.

## SPECTRUM REFORM DISCUSSION DRAFT

Mr. PRESSLER. Mr. President, I rise today to take another step in my overall telecommunications and information policy reform agenda. As I have stated many times, the historic enactment earlier this year of the Telecommunications Act of 1996 was only the first step in a new national telecommunications policy for 21st Century America.

Today, I am putting out for public comment a discussion draft of spectrum reform legislation to institute comprehensive reforms in how the Federal Government uses—and fails to use—our most important valuable national resource, the radio frequency spectrum.

### THE SPECTRUM AND ITS USES

The radio spectrum is to the information age what oil and steel were to the Industrial Age. Like any resource, it is finite. Therefore it must be managed responsibly.

This valuable resource is one of the principle building blocks for tomorrow’s “Information Economy.” It also is critical to delivering new and valuable services to the American public.

All of us have seen the contribution traditional radio-based services—such as public and commercial broadcasting—have made to our national life. We have seen the benefits of low-cost satellite communications, which have enormously expanded the range of news, information, and entertainment

choices. We have seen the proven value of cellular radiotelephones. In addition, there are an array of other critical radio-based communications services—everything from the radar systems so important to air traffic control, to the radios policemen, firemen, and ambulances use, to communications networks central to maintaining a strong national defense.

From its very beginning, wireless communication has played a vital role in protecting lives and property. Through the development of radio and television broadcasting, it has delivered information and entertainment programming to the public at large. More recently, wireless, spectrum-based telecommunications services, products and technologies have proven indispensable enablers and drivers of productivity and economic growth, as well as international competitiveness.

Wireless technology can deliver telecommunications and information services directly to individuals on the move. No longer is being away from the office desk or factory floor an impediment to doing business. Fixed locations that cannot be served economically by wireline facilities because of physical infeasibility or prohibitively high costs are made accessible. Wireless services also are critically important in bringing competition to the wireline telephone network—one of the key goals of the Telecommunications Act.

Today, there is an almost limitless demand for the use of this spectrum. In other words, the spectrum is an enormously valuable, yet finite natural resource. This is the crux of the problem with our current spectrum policy structure. Unless a reformation plan is developed to create a more effective and efficient use of the spectrum, a vast array of new spectrum-based products, services, and technologies will go unrealized for the American people.

#### THE FUTURE

We are on the cusp of great change. Over the past couple of years, we in the Congress and the Federal Communications Commission [FCC] have accelerated the deployment of a whole new generation of pocket phones—so-called "Personal Communications Services." Just this spring, the FCC authorized a new generation of wireless computers—radio-based systems that may make it possible for us to interconnect our schools and provide our students with access to the Internet on a low-cost, highly, effective basis.

America has pioneered the development of digital television. Later this year, actual digital broadcast operations may begin. By the turn of the century—less than 4 years from now—we could have the equivalent of a digital overlay network in the United States, relying on a new electronic infrastructure broadcasters hope to put in place.

These and other accomplishments have been achieved despite a regulatory framework that dates to the days of Marconi. It is a policy designed

for an environment characterized by stable technology and stable, predictable demand for very basic communications. Under this antiquated model, the Government—not consumers—largely decides who uses frequencies, what they are used for, and how they are used—a government-sponsored electronic industrial policy.

This system is slow. It is anti-competitive. It is antifire speech.

#### INEFFICIENCIES IN THE CURRENT POLICY

As with other systems of central planning, the spectrum management system currently utilized in the United States tends to result in inefficient use of the spectrum resource. Federal regulators—rather than consumers—decide whether taxis, telephone service, broadcasters, or foresters are in greatest need of spectrum. Not surprisingly it is a highly politicized process. Most important, new services, products and technologies are delayed or, worse yet, denied. This obviously harms consumers.

Consider cellular phones, the lengthy delay in making cellular telephone service available imposed tremendous cost on the economy. One study estimated the delay cost the economy \$86 billion. As important, American consumers were denied a new productivity and security tool for many years.

Equally troubling, the system constrains competition. One of the most important qualities of a competitive industry is the ability of new firms to enter the business. Yet, the bureaucratic allocation process typically provides for a set number of licenses for each service. This precludes additional competitors. Only two cellular franchises, for instance, are allowed in each market.

Delays associated with the allocation and assignment processes, while perhaps acceptable in a slow changing world, are seriously out of step with the fast-changing, high-technology world of today. Pressures on the traditional radio frequency management structure are increasing. Demand for channels is outstripping supply.

The current environment hobbles progress. It makes it hard for innovators to gain access to the radio spectrum resources they need to deliver technology's promise to the American people.

Another problem with current policy is that the Federal Government alone claims nearly one-third of this critical resource for itself. Since 1992, there has been a bipartisan commitment to privatize some of the spectrum the Government has warehoused. Among the benefits of that bipartisan effort has been a series of spectrum auctions. Those auctions have produced more than \$20 billion for the U.S. Treasury. Although spectrum auctions have provided significant revenues for the U.S. Treasury, the overriding policy reason for adopting a spectrum auction policy is not—I repeat not—to provide more money for the Government.

Much more important, spectrum auctions have accelerated access to the re-

source by private sector entrepreneurs. The key policy goal achieved with auctions is placing the spectrum resource in the hands of those who value it most highly. Those who will put it to its best, highest valued use.

The FCC's current auction authority expires in 1998. We need to address these issues before then. We then ought to make the FCC's auction authority permanent.

But as I stated here on the Senate floor on March 13 much more definitely needs to be done.

Under the comprehensive discussion draft of spectrum reform legislation I am unveiling today, a far reaching series of reforms would be initiated.

#### SPECTRUM AUCTION AUTHORITY AND EXHAUSTIVE LICENSING

The spectrum reform discussion draft would expand the FCC's spectrum auction authority. This change would, once and for all, place the spectrum issue outside of the budget context and squarely in the arena of communications policy.

The FCC also would be required to exhaustively license all available spectrum by selecting bands of unallocated and unassigned frequencies to be auctioned. Any existing licensees in these bands would be protected and grandfathered. Indeed, they would gain flexibility in use within their actual or implied service area and spectrum block. The FCC is directed to maximize the value of spectrum licenses by selecting broad, low frequency bands of contiguous spectrum that are not fully assigned. The spectrum licensee seeking flexibility in use also may apply for any adjacent or cochannel spectrum contiguous to its existing license that is allocated but unassigned.

#### SPECTRUM FLEXIBILITY

The key reform contained in this discussion draft is freedom in spectrum use. While important, auctions are not the most important reform contained in this legislation. Much more important is replacing the current Government mandated industrial policy system with a market-based approach.

Auctions only tell you who gets a license. We now need to discuss what the license allows you to do.

Like land, the Government shouldn't tell people what they can do with frequencies. So long as they don't interfere with their neighbors, they should be able to use it for whatever consumers want.

Like newspapers, the Government shouldn't tell broadcasters what they say or how they say it. That should be up to viewers.

Simply put, frequencies should be treated more like private property.

However, in making these policy changes we should build on the current system. Many licensees already have a great deal of flexibility in what they can do. Let's build on that and give them more freedoms.

Mr. President, at the core of the spectrum reform I am today proposing is the concept of spectrum flexibility. Flexibility for a changing world.

For instance, radio frequency management historically has limited the permissible uses of allocated bands and assigned channels. This, in part, has been a function of technology, as well as the characteristics associated with particular frequencies.

For example, channels allocated to the Forest Products Service traditionally have been quite low frequencies. This is because those frequencies have been shown to have the greatest ability to penetrate underbrush, leaves, and other obstructions naturally occurring in a forest. New digital communications technologies have gone a long way toward changing this reality. Today's digital technology includes error correction and other features which lessen interference.

Another good example of why today's technology requires increased spectrum flexibility occurs in spread spectrum and digital overlay. These techniques make it possible for multiple communications pathways to be established within the same radio frequency channel. In other words, using this technology, broadcasters could transmit communications in addition to video and sound signals. Radio broadcast channels today, for example, already provide local links for paging operations. Government policy must allow multiple, more intensive use of radio frequency resources where there is no perceptible adverse technical impact.

Allowing radio frequency licensees greater flexibility also could facilitate equipment and systems modernization and upgrading in the public sector. This would enhance public safety. For example, many public communications systems today are in need of modernization, to meet the demand for more cost-effective and responsive law enforcement, fire safety, and emergency medical services. At the same time, the financial resources available to many public safety communications organizations are quite limited.

If local police forces were permitted greater flexibility in use of their channels, however, this challenge would be less severe. Switching to new digital communications techniques typically achieves a significant increase in the total number of channels available—in some cases, by a factor of four or more. Thus, a local police department could increase the number of channels available to support its operations and, at the same time, have capacity available which it could lease or barter with private communications organizations. Such arrangements could generate the funds needed to finance modernization.

Greater flexibility is a public interest win-win situation—an option that benefits all involved and affords the general public both better service and more communications options.

The FCC already has taken steps to allow some radio licensees more flexible use. The Commission's cellular radiotelephone rules, for example, place few constraints on permissible commu-

nications. The same is true in the case of the new PCS services. What is needed, however, is far greater application of this fundamental principle of flexible spectrum use. My bill does just that.

Under this discussion draft, each existing and future licensee would have increased flexibility in use including: The right to use assigned spectrum for any service, under any regulatory classification, and under any technical parameters. In addition, the licenses would have the right to freely transfer the license to others.

The flexible use would have to be within the licensee's existing or implied service area and spectrum block and could not be inconsistent with international treaty obligations of the United States. The spectrum licensee also would bear the burden of showing any new use was within the existing or implied service area and spectrum block.

#### SPECTRUM PRIVATIZATION

Another major feature of the draft legislation is spectrum privatization. Simply put, under the discussion draft, the Federal Government would be obliged to relinquish one-quarter of its spectrum stockpile. Spectrum auctions would be held to place that spectrum into the hands of the public as quickly as possible. In addition, Government agencies would be required to rely, to the maximum extent possible, on the private sector to meet their radiocommunications needs. Taking into account the taxes paid, if nothing else, this would definitely help the public and strengthen the American information technology economy.

#### SPECTRUM MANAGEMENT CONSOLIDATION

The discussion draft would place the responsibility for managing the spectrum in the United States solely with the FCC. The Commission would be required to factor in critical national defense, law enforcement, and national policy priorities. However, the current regime divides responsibility between the FCC and the Department of Commerce, would be streamlined. This would improve the overall management process. It also would increase accountability.

#### SELF-MANAGED REGULATION

One of the more promising options for radio frequency management reform is expanded use of self-managed regulation—the use of private sector radio frequency coordinator groups to handle routine engineering, frequency coordination, and other functions which, in the past, typically had been undertaken by FCC staff.

At present, the FCC relies on frequency coordinators to handle many of the routine chores associated with private mobile radio systems. Organizations such as the National Association of Business & Educational Radio [NABER], the Associated Public-Safety Communications Officers [APCO], and the Special Industrial Radio Service Association [SIRSA] process applica-

tions, conduct engineering surveys, and otherwise facilitate licensing and channel usage in these specific private radio services. The FCC does not generally rely on frequency coordinators, however, with regard to broadcast services, satellite communications, and other large frequency using services.

The task of being a frequency coordinator depends, in large part, upon two things: Access to computerized data bases; and some expertise in radio frequency engineering. Access to data bases today, of course, is routine. At the same time the number of individuals with substantial radio frequency management expertise is growing. This is due in part to Federal Government and defense agency downsizing. There is, in short, no good reason to assume that multiple frequency coordinators could not be sanctioned by the FCC. This would have the effect of broadening users' options.

Competition among frequency coordinator groups, moreover, should have the effect of ensuring efficient charges and effective, responsive operations. That has been true in virtually every market in which competition has been introduced. It should prove true in this case as well. That is why the discussion draft directs the FCC to expand substantially the agency's use of private sector frequency coordinator groups.

#### PUBLIC SAFETY SPECTRUM

The draft legislation also directs the FCC to make spectrum block grants to States for public safety spectrum needs. In lieu of processing, issuing, and renewing tens of thousands of public safety communications licenses—at significant cost to licensees, as well as the FCC—the agency would issue 55 block grants to the chief executive officer of each State, Guam, Puerto Rico, the U.S. Virgin Islands, and the District of Columbia. It would then be the responsibility of State Governors to determine eligibility, to ensure compliance with standard FCC—and other—operating rules, and to resolve disputes among public safety licensees within their jurisdiction.

This reform would reduce delays and heighten responsiveness to actual user requirements. It would lessen substantially the burdens of traditional regulation now borne by the FCC. Most important, it would tend to ensure more and better public safety communications for State residents.

#### BROADCAST TELEVISION SPECTRUM

Mr. President, this draft legislation also would resolve the controversy that has surrounded the digital—or high-definition—television issue. It would speed up the migration of broadcast television to digital channels. At the same time, it would firm up the plans which have been announced regarding the retrocession of one 6 Mhz channel—assets which could be used for many purposes in addition to straight broadcast television.

Spectrum in the VHF and UHF television bands has the potential of being extremely valuable for a variety of

uses. Current licensing policy, however, keeps this spectrum locked up in a single, narrowly defined use. The fundamental thrust of this alternative broadcast TV spectrum policy is to allow markets to guide the spectrum to its highest valued use, while preserving the current level of free television service, noncompetitively assigning an additional 6 MHz to each existing NTSC licensee, and ensuring the public is fairly compensated for the use of spectrum. This alternative proposal recognizes the equities of incumbent full power broadcast licensees in the band to fully and fairly compete in the digital era, most especially their desire to convert to digital technology. At the same time—and let me be very clear on this point—it will maintain the current level of free television service for American consumers.

#### THE NEED FOR REFORM

Mr. President, we enacted comprehensive telecommunications legislation earlier this year for one very simple reason. It became more and more apparent to all of us that the traditional, highly bureaucratized telecommunications regulatory system no longer served the public's best interest. There were unexplainable delays. New services were not being offered. New investment and job opportunities were not materializing fast enough.

The oldtime telecommunications regulatory system, in short, had become the classical regulatory bottleneck. It was stalling forward progress. As a result—after nearly two decades of struggling with these issues—this Congress developed and enacted comprehensive reform legislation.

The discussion draft I am unveiling today is very much the other side of that fundamental regulatory reform equation. It addresses issues and choices that Congress, the FCC, and the executive branch have wrestled with for years. The approach is fair and balanced—and, balanced very much in terms of helping the American public while strengthening national competitiveness. I believe it could usher in a dynamic, vibrant "Wireless Era" in which American entrepreneurial capitalism leads the world into a robust high-technology future that will benefit all Americans.

Congress has spent years examining the way we manage other natural resources—from water, grazing, and timber issues so critical to my part of the country, to the fisheries vitally important to the Northeast, the Northwest, and, of course, Alaska. The natural resource this draft legislation focuses upon is just as important to America.

This discussion draft was crafted in consultation with a wide range of engineering, economic, and public policy experts. It is based, in large part, upon the extensive open hearings which the Senate Committee on Commerce, Science, and Transportation has conducted over the past few years.

This is a worthy regulatory reform initiative. It could pay enormous pub-

lic policy dividends. Let me stress, however, that the unveiling of this discussion draft is merely the beginning of what I hope will be a spirited, robust debate. I look forward to continuing to work cooperatively with all of my colleagues in the Senate and the House to develop sound, consensus legislation that can be introduced in the near future. I also want to encourage all affected parties to provide comments to the committee regarding this proposal.

Mr. President, the radio frequency management and use reforms contained in this spectrum reform discussion draft hold significant promise. They would reduce regulatory burdens. They would foster important public policies including advances in technology and innovation, greater choice and more customer options, and more effective, efficient, and responsive use of this valuable national resource.

Mr. President, I ask unanimous consent that a summary of the discussion draft together with the draft legislative language itself be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### SUMMARY OF PRESSLER SPECTRUM BILL DISCUSSION DRAFT: THE ELECTROMAGNETIC SPECTRUM MANAGEMENT POLICY REFORM AND PRIVATIZATION ACT

##### SPECTRUM AUCTION AUTHORITY

**Permanent Authority.** FCC's spectrum auction authority is extended and made permanent.

**Expanded Authority.** FCC's spectrum auction authority to make spectrum license assignments is expanded with the following limited exceptions: non-mutually exclusive applications; public safety services; digital television licenses for broadcasters; and spectrum and associated orbits within an international satellite system. FCC's auction authority also expanded to include allocations, where consistent with the Act.

**Exhaustive Licensing.** FCC required to exhaustively license all available spectrum by selecting bands of unallocated and unassigned frequencies to be auctioned. Any existing licensees in these bands will be protected and grandfathered and gain flexibility in use within their actual or implied service area and spectrum block. FCC is directed to maximize the value of spectrum licenses by selecting broad, low frequency bands of contiguous spectrum that are not fully assigned.

##### VOLUNTARY REALLOCATION—SPECTRUM FLEXIBILITY

**Flexibility In Use.** Each existing and future nonbroadcast licensee will have flexibility in use which includes: the right to use assigned spectrum for any service; under any regulatory classification; under any technical parameters; and the right to freely transfer this right to others.

**Limitations.** The flexible use must be within the licensee's existing or implied service area and spectrum block and cannot be inconsistent with international treaty obligations of the United States. The spectrum licensee bears the burden of showing that any new use is within the existing or implied service area and spectrum block.

The spectrum licensee seeking flexibility in use may also apply for any adjacent or co-channel spectrum contiguous to its existing license that is allocated but unassigned.

##### GOVERNMENT SPECTRUM USERS

**Flexibility In Use.** Government spectrum users are also granted spectrum flexibility

rights, including the right to transfer any spectrum rights now assigned to them to any government or private sector entity and to receive compensation for rights transferred.

**Privatization.** The Federal government is required to make an additional 25 percent of its exclusive or shared spectrum below 5 GHz available to the FCC for allocation to private sector spectrum licensees using spectrum auctions.

**BRAC-Like Commission.** A Presidentially appointed Advisory Committee On Withdrawal will be established to determine how to make available the 25 percent of spectrum for privatization and to determine what, if any, amount of spectrum beyond the mandatory 25 percent which will be made available to the private sector over a period of 10 years.

**Financial Incentives.** To encourage government agency and personnel cooperation, financial incentives will be developed to reward them for opening more spectrum for private sector use.

**Relocation Compensation.** Federal government users are allowed to accept compensation, including in-kind reimbursement of costs, from any entity to defray the costs of relocating the Federal entities operations from one set of spectrum frequencies to another.

**Additional Privatization.** The Act adopts as statutory law OMB's Circular A-76 which requires Federal agencies to undertake an extensive cost-benefit analysis prior to vertically integrating or continuing to vertically integrate to meet their needs, and to take into account taxes forgone when the Government chooses to make rather than buy products or services to meet its needs. A-76 analysis has simply not been consistently—nor continuously—applied to Government radio communications requirements. The new bill changes that by obliging Federal agencies to systematically review their communications systems and operations, and shift to private sector suppliers wherever feasible.

**Technology Teaming.** The number of communications channels can be significantly multiplied if the analog communications facilities used by many Federal agencies were changed to digital. Federal agencies will be required to team with a private company to install advanced, digital capability and increased capacity, which in turn can be equitably apportioned between agency and private partner.

**Multi-Agency Systems.** Federal agencies will be required to explore not only the availability of private sector suppliers but also other government agency suppliers. Today each Federal agency maintains—and jealously guards—its own system. As a result, there are very few "common user" systems.

##### CONSOLIDATION OF FEDERAL SPECTRUM MANAGEMENT FUNCTION

**NTIA Eliminated.** Management of spectrum for Federal government agencies, together with the IRAC Secretariat and associated support activities, is transferred from NTIA to the FCC.

**National Security Safety Valve.** The President may veto any FCC action which limits the amount of spectrum available to government users, limits the uses to which spectrum may be put, or interferes with or compromises Federal use, if such action substantially harms national security or public safety.

##### NON-EXCLUSIVE LICENSES

For non-exclusive spectrum licenses not assigned by spectrum auction, the FCC will

have the authority to use other economic incentives, including user fees, to ensure that spectrum is assigned and used efficiently and that the public is fairly compensated for the use of the spectrum.

#### SELF MANAGED REGULATION

FCC is directed to substantially expand its use of private sector frequency coordinator groups thus reducing need for FCC in house engineering.

#### PUBLIC SAFETY SPECTRUM BLOCK GRANTS

Each State will assume responsibility as a block grant licensee for managing the spectrum currently allocated to public safety uses within its State boundaries.

Each State may grant licensees the same flexibility in use available to private FCC licensees.

Interference disputes between the States will be resolved by the FCC.

#### BROADCAST TV SPECTRUM—DEPOSIT, RETURN AND OVERLAY (A MARKET-BASED ALTERNATIVE TO A GOVERNMENT MANDATED AND DICTATED TRANSITION POLICY)

Purpose. Spectrum in the VHF and UHF television bands is potentially extremely valuable for a variety of uses. Current licensing policy, however, keeps this spectrum "locked up" in a single, narrowly defined use. The fundamental thrust of this alternative broadcast TV spectrum policy is to allow markets to guide the spectrum to its highest valued use (as up front spectrum auctions would) while preserving the current level of free television service, noncompetitively assigning an additional 6 MHz to each existing NTSC licensee, and ensuring the public is fairly compensated for the use of spectrum. This alternative proposal recognizes the equities of incumbent full power broadcast licensees in the band to fully and fairly compete in the digital era, most especially their desire to convert to digital technology. At the same time it will maintain the current level of free television service for American consumers.

No Standards Setting. FCC is specifically precluded from mandating an HDTV or digital television (DTV) standard for broadcast licensees or establishing a requirement that all TV sets sold or imported must be digital compatible by a date certain.

Deposit. One 6 MHz DTV channel will be assigned non-competitively to each existing NTSC licensee. Each existing NTSC licensee will have the choice of receiving a DTV license for payment of a fee (Deposit) or to simply keep their existing NTSC license and relinquishing their right to the DTV license. The deposit will be based on the market value of the license determined by the auction of the overlay licenses (see below). Any DTV licenses not accepted will be auctioned by the FCC as part of an overlay license.

Return. The money deposited for the DTV license can be paid in installments over a period of 15 years with the money going into an escrow account. Interest accrued will go to the U.S. Treasury for deficit reduction. After 15 years from the date the FCC assigns a DTV license, the broadcast licensee can relinquish a 6 MHz license and reclaim the full amount of its deposit (Return), less interest accrued, or continue to maintain NTSC and/or DTV license operations as outlined below. The amount of the deposit returned to the broadcast licensee will decrease 20 percent for each year that the return of a 6 MHz channel is delayed past 15 years.

DTV Flexibility/Transferability. DTV licensees will have full flexibility, without imposition of economic fees as required in the Telecommunications Act of 1996, to use their assigned DTV channels within their designated service area for any service consistent with the technical limits imposed by

the FCC to prevent interference to NTSC and other DTV assignments. DTV licensees may voluntarily transfer their license at any time, separate from or together with their existing NTSC channel.

No Mandates. DTV licensees will not be required to meet a minimum service requirement or construction schedule.

Protecting Consumer Investment. Existing full power NTSC stations will be grandfathered indefinitely. An NTSC licensee will be permitted to continue providing standard NTSC television service or to transfer its license to another party who will then become the NTSC licensee.

NTSC Flexibility Subject To Replacement Of Free Service. An NTSC licensee will also be given flexibility within its assigned channel and service area to provide any services, without imposition of economic fees as required in the Telecommunications Act of 1996, other than standard NTSC service subject to technical limits imposed by the FCC to prevent interference to DTV and other NTSC assignments. Before any NTSC service may be reduced or discontinued, however, the NTSC licensee must have provided a comparable free replacement for such service including necessary receiving equipment to allow such service to be displayed on standard NTSC receivers.

Exhaustive Licensing. FCC will define overlay licenses collectively covering all 402 MHz of spectrum in the current VHF and UHF TV bands and covering the entire U.S. Each overlay license will cover a block of one or more contiguous 6 MHz channels and a contiguous geographic area. The FCC will determine the appropriate spectrum block and area size.

Overlay Auction. Overlay licenses to exhaustively fill the entire 402 MHz allotted for television broadcasting in each market will be assigned by a simultaneous, multiple round auction.

Overlay Flexibility. Within its defined spectrum block and service area, an overlay licensee will be permitted to implement any service, subject to power limits defined by the FCC at the boundaries of such spectrum block and service area, and subject to additional technical restrictions as may be imposed by the FCC to protect NTSC and DTV licensees from harmful interference.

Overlay licenses will be freely transferable.

Overlay licenses may be aggregated to create larger service areas and spectrum blocks.

#### SPECTRUM REPORT

After 2 years the FCC will prepare a cost-benefit report on the results of the legislation together with any recommendations for additional legislation.

S. —

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Electromagnetic Spectrum Management Policy Reform and Privatization Act".

#### SEC. 2. FINDINGS.

The Congress finds that—

(1) New applications of wireless communications technologies await access to the electromagnetic spectrum to provide innovative services to the public.

(2) The spectrum, however, is often characterized as overcrowded and filled to capacity with current allocations.

(3) Capacity may now be underutilized due to the use of obsolete technologies, while bands with great promise for delivering better quality communications products to consumers fail to realize their potential.

(4) This seeming paradox may be the result of a regulatory structure that is increasingly

inefficient in the dynamic worlds of telecommunications and information technologies.

(5) This inefficiency results from structural defects in the system itself, not in the expertise of, or competence at, the regulatory agencies.

(6) Central allocation mechanisms provide insufficient information with which to rank competing uses for spectrum, or competing technologies for delivering those uses.

(7) Approximately one-third of the usable spectrum is allocated to government or otherwise unavailable for private sector use. Innovations to help and encourage the government to use spectrum more efficiently should be adopted.

(8) The dramatic acceleration in the pace of technological change and the increasing complexity of allocation and assignment decisions make the case for an overhaul of the current system more compelling than ever before.

(9) Lack of capital and outmoded equipment have led to inefficient utilization of the spectrum bands used by Federal agencies and public safety users.

(10) The management of spectrum can be substantially reformed by giving most licensees the freedom and incentive to use the spectrum more efficiently.

(11) In particular, within its explicit or implicit service area and spectrum block, a licensee should be given—

- (A) service and technical flexibility;
- (B) freedom to resell or sublease; and
- (C) freedom to pick regulatory classification.

(12) To get the full benefit of liberalizing existing licenses, currently unassigned or unallocated spectrum will have to be made available in an efficient manner. The Commission will have to exhaustively license this spectrum expeditiously. These new assignments should—

- (A) be exclusive;
- (B) provide new licensees marketplace freedoms similar to those enjoyed by existing licensees; and
- (C) be assigned through simultaneous multiple round auctions where there are mutually exclusive applicants.

(13) Similar incentive-based reforms should be adopted for the spectrum used by the Federal government and by the public safety community, including substantial privatization, flexibility in use, financial incentives and compensation for relocation and band clearing, consolidation of the Federal spectrum management function, and spectrum block grants to the States.

(14) An alternative broadcast television spectrum policy is needed to allow markets to guide the spectrum to its highest valued use while preserving the current level of free television service, noncompetitively and flexibly assigning an additional 6 megahertz to each existing NTSC licensee, and ensuring that the public is fairly compensated for the use of spectrum.

(15) All reforms should encourage private dispute resolution and avoid prolonged administrative delays.

#### SEC. 3. DEFINITIONS.

When used in this Act—

(1) COMMISSION.—The term "Commission" means the Federal Communications Commission.

(2) FLEXIBILITY IN USE.—The term "flexibility in use" means—

- (A) the right to use assigned spectrum for any service (including but not limited to those defined by the Commission), under any regulatory classification, and under any technical parameters, if the use is within the licensee's existing or implied service area and spectrum block and is not inconsistent

with international treaty obligations of the United States, and

(B) the right to freely transfer this right to others.

(3) IMPLIED SERVICE AREA.—The term “implied service area” means the service area implied by the potential power level and antenna height for a licensee, even if that area is not expressly defined in a license.

(4) SERVICE AREA.—The term “service area” means the geographic area over which a licensee may provide service and is protected from interference.

(5) SPECTRUM BLOCK.—The term “spectrum block” means the range of frequencies over which the apparatus licensed by the Commission is authorized to transmit signals.

#### SEC. 4. SPECTRUM AUCTION AUTHORITY.

(a) SPECTRUM AUCTION AUTHORITY MADE PERMANENT.—Section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) is amended—

(1) by striking paragraph (11); and

(2) by redesignating paragraphs (12) and (13) as paragraphs (11) and (12).

(b) EXPANSION OF SPECTRUM AUCTION AUTHORITY.—

(1) IN GENERAL.—Section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) is amended by striking paragraphs (1) and (2) and inserting the following:

“(1) GENERAL AUTHORITY.—If mutually exclusive applications are accepted for any initial license or construction permit which will involve use of electromagnetic spectrum, then the Commission shall grant such license or permit to a qualified applicant through a system of competitive bidding that meets the requirements of this subsection. The Commission may also use auctions to allocate spectrum where it determines that such an auction is consistent with the purposes of this Act.

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

“(A) for public safety radio services, including non-Government uses the sole or principal purpose of which is to protect the safety of life, health, and property and which are not made commercially available to the public;

“(B) for initial licenses or construction permits for new terrestrial digital television services assigned by the Commission to existing terrestrial broadcast licenses; or

“(C) for spectrum and associated orbits used in the provision of any satellite within a global satellite system.”

(2) CONFORMING AMENDMENT.—Section 309(j)(6) of such Act is amended—

(A) by striking subparagraph (E); and

(B) by redesignating subparagraphs (F) through (H) as subparagraphs (E) through (G), respectively.

(c) EXHAUSTIVE SPECTRUM LICENSING POLICY.—

(1) IN GENERAL.—The Commission shall complete all actions necessary to permit the allocation and assignment by competitive bidding pursuant to section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) of licenses for the use of bands of frequencies that—

(A) in the aggregate span not less than 250 megahertz and that are located below 5 gigahertz, within 1 year after the date of enactment of this Act; and

(B) in the aggregate span not less than 5 gigahertz and that are located between 5 gigahertz and 60 gigahertz, within 2 years after the date of enactment of this Act; and

(C) have not, as of the date of enactment of this Act—

(i) been assigned or designated by Commission regulation for assignment pursuant to such section;

(ii) been identified by the Secretary of Commerce pursuant to section 113 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923); or

(iii) been reserved for exclusive Federal Government use pursuant to section 305 of the Communications Act of 1934 (47 U.S.C. 305); and

(D) may include spectrum exhaustively licensed throughout the United States under the provisions of section 337(c)(4)(C) of the Communications Act of 1934.

(2) CRITERIA FOR BAND SELECTION.—In making available bands of frequencies for competitive bidding pursuant to paragraph (1), the Commission shall, to the greatest extent possible, maximize the value of the spectrum licenses by—

(A) selecting broad, low-frequency bands of contiguous spectrum that are not fully assigned; and

(B) exhaustively licensing it throughout the United States.

(d) EFFECTIVE DATE.—The amendment made by subsection (b) does not apply with respect to any license or permit for a terrestrial radio or television broadcast station for which the Commission has accepted mutually exclusive applications on or before the date of enactment of this Act.

#### SEC. 5. VOLUNTARY REALLOCATION; SPECTRUM FLEXIBILITY.

(a) IN GENERAL.—Part I of title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) is amended by adding at the end thereof the following new section:

##### “SEC. 337. SPECTRUM LICENSE USE FLEXIBILITY.

“(a) FLEXIBILITY IN USE.—Notwithstanding any other provision of this title to the contrary, each holder of a nonbroadcast license granted under this title is hereby granted flexibility in use. A licensee may change the use for which the license was granted to provide any other use of that license within its existing explicit or implied service area and spectrum block, unless the Commission disapproves the holder's application for such change under subsection (c).

“(b) ADDITIONAL SPECTRUM.—The holder of a nonbroadcast license making application for a change of use under subsection (a) may include in the application an application for any adjacent or co-channel spectrum contiguous to its nonbroadcast license to which the change of use application relates that is allocated but unassigned.

“(c) APPLICATION; PROCEDURE.—

“(1) APPLICATION.—An application for flexibility in use under subsection (a), or for flexibility in use and for additional spectrum under subsection (b), shall be made in such form and at such time as the Commission may require and shall include an adequate interference showing.

“(2) PUBLIC NOTIFICATION.—Within 10 days after receiving an application under this section, the Commission shall publish notice of the application in the Federal Register.

“(3) APPROVAL OF USE FLEXIBILITY APPLICATION.—

“(A) IN GENERAL.—The Commission shall approve an application for flexibility in use under subsection (a) unless it determines that—

“(i) the applicant fails to demonstrate that the new use is within the licensee's existing explicit or implied service area or spectrum block;

“(ii) the applicant fails to make an adequate interference showing; or

“(iii) the new use is inconsistent with treaty obligations of the United States.

“(B) COMMISSION FAILURE TO ACT.—If no objection is filed with the Commission and the

Commission fails to act on the application within 60 days, the application shall be deemed approved.

“(C) THIRD PARTY CHALLENGES.—A co-channel licensee or adjacent channel licensee has standing to object to the approval of an application under subsection (a) if the objection is filed in writing with the Commission within 30 days after the date on which the notice of application is published in the Federal Register.

“(D) ARBITRATION OF INTERFERENCE DISPUTES.—

“(i) If an objection based on interference cannot be resolved to the satisfaction of the parties within 60 days after the close of the comment cycle for the application, then either the applicant or the person making the objection may invoke binding arbitration to resolve any unresolved issues by notifying the Commission in writing.

“(ii) Upon receipt of such notification, the Commission shall appoint an arbitrator to resolve the dispute.

“(iii) An arbitrator appointed by the Commission under clause (ii) shall resolve the dispute within 60 days after appointment.

“(iv) The costs of arbitration shall be paid by the applicant for license use flexibility or as assigned by the arbitrator.

“(E) INTERFERENCE GUIDELINES.—The Commission shall prepare interference guidelines similar to those now in use for personal communications services bands for applications affecting occupied bands that would provide a safe harbor for any licensee seeking to change its license use.

“(4) APPROVAL OF ADDITIONAL SPECTRUM REQUESTS.—

“(A) FILING WINDOW FOR COMPETING APPLICATIONS.—Any person may apply for spectrum requested by another person if the application is filed within 30 days after notice of the other person's application is first published in the Federal Register.

“(B) APPROVAL OF NONCONTESTED APPLICATIONS.—The Commission shall approve an application for additional spectrum under subsection (b) if no other applicant applies for that spectrum within 30 days after publication of notice of the application in the Federal Register, unless it determines that—

“(i) the applicant fails to demonstrate that the new use is within the licensee's existing explicit or implied service area or spectrum block;

“(ii) the applicant fails to make an adequate interference showing; or

“(iii) the new use is inconsistent with treaty obligations of the United States.

“(C) COMMISSION FAILURE TO ACT.—If no objection is filed with the Commission and the Commission fails to act on the application within 60 days, the application shall be deemed approved.

“(D) THIRD PARTY CHALLENGES.—A co-channel licensee or adjacent channel licensee has standing to object to the approval of an application under subsection (a) if the objection is filed in writing with the Commission within 30 days after the date on which the notice of application is published in the Federal Register.

“(E) ARBITRATION OF INTERFERENCE DISPUTES.—

“(i) If an objection based on interference cannot be resolved to the satisfaction of the parties within 60 days after the close of the comment cycle for the application, then either the applicant or the person making the objection may invoke binding arbitration to resolve any unresolved issues by notifying the Commission in writing.

“(ii) Upon receipt of such notification, the Commission shall appoint an arbitrator to resolve the dispute.



“(iii) An arbitrator appointed by the commission under clause (i) shall resolve the dispute within 90 days after appointment.

“(iv) The costs of arbitration shall be paid by the applicant for license use flexibility or as assigned by the arbitrator.

“(F) INTERFERENCE GUIDELINES.—The Commission shall prepare interference guidelines similar to those now in use for personal communications services bands for applications affecting occupied bands that would provide a safe harbor for any licensee seeking to change its license use.

“(G) AUCTION OF CONTESTED SPECTRUM.—If mutually exclusive applications are accepted for spectrum under subsection (b), then the Commission shall assign the spectrum through the use of a system of competitive bidding.

“(H) EXPANSION OF AUCTIONED SPECTRUM.—In auctioning spectrum under subparagraph (G), the Commission may auction larger blocks of spectrum encompassing the spectrum requested by the applicant under subsection (b) if—

“(i) there are inconsistent and overlapping requests for the unassigned spectrum; or

“(ii) it would enhance the efficient use of spectrum.”.

#### SEC. 6. GOVERNMENT SPECTRUM USE REFORMS.

(a) MINIMUM REALLOCATION OF GOVERNMENT FREQUENCIES.—

(1) IN GENERAL.—Section 114 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 924) is amended by adding at the end thereof the following:

“(c) MINIMUM WITHDRAWAL SCHEDULE.—

“(1) IN GENERAL.—Over a period of 10 years beginning with fiscal year 1997, the President shall take action under subsection (a) to withdraw or limit the assignment of not less than 25 percent of the exclusive or shared spectrum allocated for Federal government use below 5 gigahertz and make available the spectrum withdrawn, or otherwise made available, to the Commission for allocation to private sector licensees using competitive bidding.

“(2) ADVISORY COMMITTEE ON WITHDRAWAL.—The President shall appoint an advisory committee of 7 members to advise the Commission and the President on the choice of spectrum for withdrawal or limitation of assignment under paragraph (1) of this subsection. The advisory committee shall also advise the President and the Commission concerning the potential for withdrawal or limitation of additional spectrum beyond the 25 percent of frequencies that are required to be privatized under paragraph (1) of this subsection, if any. The advisory committee shall include 3 representatives of affected Federal departments or agencies, 3 representatives of the private sector with experience and expertise in telecommunications, and 1 representative of the public, and shall meet at such times and places as the President shall require. The President shall designate a chairman and vice chairman and provide for appropriate administrative support. The members of the advisory committee shall serve at the pleasure of the President.”.

(b) IDENTIFICATION AND REALLOCATION OF FREQUENCIES.—Section 113 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 901 et seq.) is amended by adding at the end thereof the following:

“(f) RELOCATION OF FEDERAL GOVERNMENT STATIONS.—

“(1) IN GENERAL.—In order to expedite the efficient 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 payment in advance or in-kind reimbursement of costs, or a combination of payment in advance and in-kind

reimbursement, from any person to defray entirely the expenses of relocating the Federal entity's operations from one or more radio spectrum frequencies to any other frequency or frequencies, including, without limitation, the costs of any modification, replacement, or reissuance of equipment, facilities, operating manuals, regulations, or other expenses incurred by that entity. Any such payment shall be deposited in the account of such Federal entity in the Treasury of the United States. Funds deposited according to this section shall be available, without appropriation or fiscal year limitation, only for the operations of the Federal entity for which such funds were deposited under this section.

“(2) PROCESS FOR RELOCATION.—Any person seeking to relocate a Federal Government station that has been assigned a frequency within a band allocated for mixed Federal and non-Federal use may submit a petition for such relocation to the Commission. The Commission shall limit the Federal Government station's operating license to secondary status when the following requirements are met—

“(A) the person seeking relocation of the Federal Government station has guaranteed to defray entirely, through payment in advance, in-kind reimbursement of costs, or a combination thereof, all relocation costs incurred by the Federal entity, including all engineering, equipment, site acquisition and construction, and regulatory fee costs;

“(B) the person seeking relocation completes all activities necessary for implementing the relocation, including construction of replacement facilities (if necessary and appropriate) and identifying and obtaining on the Federal entity's behalf new frequencies for use by the relocated Federal Government station (where such station is not relocating to other technology or 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 accomplish its purposes successfully; and

“(D) the Commission 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 this subparagraph with respect to issues that have national security or foreign relations implications, the Commission shall consult with the Secretary of Defense or the Secretary of State, or both, as appropriate.

“(3) RIGHT TO RECLAIM.—If within one year after the relocation the Federal Government station 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 seeking such relocation must take reasonable steps to remedy any defects or pay the Federal entity for the costs of returning the Federal Government station to the spectrum from which such station was relocated.

“(g) FEDERAL ACTION TO EXPEDITE SPECTRUM TRANSFER.—Any Federal Government station which operates on electromagnetic spectrum that has been identified for reallocation for mixed Federal and non-Federal use in the Spectrum Reallocation Final Report or by the President pursuant to recommendation of the Advisory Committee on Withdrawal shall, to the maximum extent

practicable through the use of the authority granted under subsection (f) 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.

“(h) DEFINITIONS.—For purposes of this section—

“(1) FEDERAL ENTITY.—The term ‘Federal entity’ means any Department, agency, or other element of the Federal Government that utilizes radio frequency spectrum in the conduct of its authorized activities, including a Federal power agency.

“(2) SPECTRUM REALLOCATION FINAL REPORT.—The term ‘Spectrum Reallocation Final Report’ means the report submitted by the Secretary to the President and Congress in compliance with the requirements of subsection (a).”; and

(2) by striking “(a) or (d)(1)” in section 114(a)(1) and inserting “(a), (d)(1), or (f)”.

(c) FLEXIBILITY IN USE OF GOVERNMENT SPECTRUM LICENSES.—Part B of title I of the Telecommunications Authorization Act of 1992 (47 U.S.C. 921 et seq.) is amended by adding at the end thereof the following:

#### “SEC. 118. FLEXIBILITY IN USE FOR GOVERNMENT LICENSE-HOLDERS.

“(a) IN GENERAL.—Notwithstanding any other provision of law to the contrary, any department, agency, or instrumentality of the United States that holds an exclusive spectrum license may change the use of that license under section 337 of the Communications Act of 1934 (47 U.S.C. 337) in the same manner and to the same extent as any other holder of an exclusive nonbroadcast license.

“(b) INCENTIVES.—To the extent consistent with its existing authority, each department, agency, or instrumentality of the United States may establish financial incentives to assist in providing more government-assigned spectrum for reallocation or assignment beyond the percentage allocated under section 114(c) of this Act (47 U.S.C. 924(c)).

“(c) REGULATIONS.—The Commission shall promulgate regulations to carry out the provisions of this section after consultation with the heads of departments, agencies, and instrumentalities of the United States that hold spectrum licenses.”.

(d) FEDERAL RADIOCOMMUNICATIONS; PRIVATE ENTERPRISE RELIANCE.—It shall be the policy of the United States to rely on competitive private enterprise to the maximum extent possible to meet the radiocommunications requirements of the Federal Government. This policy shall apply to all radiocommunications systems first authorized after December 31, 1996, and shall be applied to all systems authorized as of that date in accordance with regulations adopted pursuant to this Act.

(e) BUSINESS-GOVERNMENT RADIOCOMMUNICATIONS PARTNERSHIPS; TECHNOLOGY TEAMING.—

(1) The Commission, in consultation with the Director of the Office of Management and Budget, within 6 months after the date of enactment of this Act shall adopt rules applicable to all departments, agencies, and instrumentalities of the United States Government that—

(A) encourage the utilization, to the greatest extent possible, of previously conducted surveys of all radiocommunications systems operated by such department, agency, or instrumentality for the purpose of increasing the efficiency of those systems; and

(B) authorize the head of each department, agency, and instrumentality of the United

States Government to enter into contracts, leases, partnerships, teaming agreements, and other cooperative business-government arrangements, that will enable the private sector to participate, in whole or significant part, in the upgrading of government radiocommunications systems, and permit an equitable apportionment of the use of such upgraded systems to meet both government as well as private sector needs.

(2) APPLICATION TO LEGISLATIVE AND JUDICIAL BRANCHES.—

(A) THE CONGRESS.—As an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, the regulations promulgated by the Commission under paragraph (1) are deemed to have been adopted by each House of the Congress, respectively, as rules applicable only to that House. The rules so adopted supersede other rules of each House of the Congress only to the extent that they are inconsistent with those other rules, and they are enacted with full recognition of the constitutional right of each House to change them, to the extent that they relate to that House, in the same manner and to the same extent as any other rule of that House.

(B) THE FEDERAL JUDICIARY.—The judicial branch of the United States Government is authorized and requested to adopt the regulations promulgated by the Commission under paragraph (1) as applicable to the operations of that branch.

(3) COMPETITIVE PROCUREMENT TECHNIQUES.—Each department, agency, and instrumentality of the United States Government is authorized and encouraged to employ competitive procurement techniques in selecting private sector partners for the purpose of mutually benefiting from the upgrading of technology associated with Federal radiocommunications systems, except that—

(A) the head of any such department, agency, or instrumentality may waive compliance with competitive procurement techniques in whole or part, if it is in the government's interests; and

(B) business-government arrangements undertaken under this Act shall not be subject to limitations regarding gifts and bequests to Federal agencies.

The provisions of this paragraph shall apply to the legislative and judicial branches of the United States Government to the extent that such branches adopt the same or similar rules.

(4) REPORT.—The President shall include as part of the Budget of the United States for each fiscal year beginning after the date of enactment of this Act, a report detailing the number and scope of cooperative business-government radiocommunications arrangements undertaken in accordance with this Act for the preceding fiscal year.

(f) GOVERNMENT COMMUNICATIONS SYSTEMS; MULTIPLE USE AND APPLICATION.—

(1) It is the policy of the United States to encourage and facilitate the multiple, shared use of Federal radiocommunications systems to the maximum extent possible, in order to foster more effective and efficient use of radio spectrum resources.

(2) To implement this policy, the Commission in consultation with the Director of the Office of Management and Budget, and the Administrator of the General Services Administration and other appropriate officers or employees of the United States Government, within 1 year after the date of enactment of this Act shall adopt rules, regulations, and budgetary guidelines which—

(A) establish a Federal radiocommunications system register, to be maintained by the Director, or his designee, which register shall set forth capacity which could be available for use by other Federal agencies;

(B) require the heads of all Federal agencies seeking additional radio spectrum licenses or assignments to certify that they have fully considered the availability of private sector radiocommunications alternatives; and, based upon review of the register required by this Act, have also fully considered the feasibility of shared use of other Federal agency systems; and

(C) require all Federal agencies holding radio spectrum licenses or assignments promptly, and on a continuing basis, to assess the feasibility and desirability of sharing the capacity of their radiocommunications systems with other Federal agencies, and to report their findings for inclusion in the register required by this Act.

(g) CONSOLIDATION OF FREQUENCY MANAGEMENT RESPONSIBILITIES.—The radio frequency management functions of the National Telecommunications and Information Administration (hereinafter referred to as "NTIA"), including the Interdepartmental Radio Advisory Committee secretariat and associated support activities (including the NTIA's electromagnetic compatibility analysis operations), under the National Telecommunications and Information Administration Organization Act are hereby transferred to the Commission.

(h) PRESIDENTIAL INVALIDATION.—The President may invalidate any Commission action that—

(1) limits the amount of spectrum available to departments, agencies, or instrumentalities of the United States;

(2) limits the uses to which such spectrum may be put; or

(3) interferes with or compromises any use by any such department, agency, or instrumentality

if, after a hearing on the record, the President finds that such action would substantially harm national security or public safety.

SEC. 7. NONEXCLUSIVE LICENSES.

The Commission may use such other economic incentives as it deems appropriate, including user fees, to ensure that nonexclusive licenses and licenses not issued utilizing competitive bidding are used efficiently and that the public is fairly compensated for the use of the spectrum. In establishing the amount of such fees, the Commission shall consider such factors as spectrum bandwidth, frequency location, area of operation, service area population, and the value of the spectrum as determined by prices paid for spectrum in Commission auctions.

SEC. 8. SELF-MANAGED REGULATION; EXPANDED RELIANCE OF FREQUENCY COORDINATION.

(a) REPORT.—Not later than 90 days after the date of the date of enactment of this Act, the Commission shall report to the Chairman of the Committee on Commerce, Science, and Transportation of the Senate and the Chairman of the Committee on Commerce of the House of Representatives regarding the radio frequency management, recordkeeping, coordination, and other functions undertaken by the Commission that could be performed by private sector radio frequency coordinator groups.

(b) ASSESSMENT.—In preparing this report, the Commission shall assess the feasibility and desirability of relying upon nonprofit industry self-regulatory organizations as well as for-profit organizations, and shall also assess and report on the potential revenue which might inure to the Government by selecting private sector radio frequency coordinator groups through competitive bidding procedures, including auctions.

(c) RULEMAKING.—Following the transmittal of its report, the Commission shall

initiate a rulemaking or rulemakings with a view toward implementing the report's findings, and shall conclude such proceedings within 6 months.

SEC. 9. BLOCK GRANTS OF PUBLIC SAFETY SPECTRUM TO STATES.

The Commission shall delegate to the District of Columbia, the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, and each State responsibility for assigning and managing radio frequency spectrum allocated for public safety communications use. In making that delegation, the Commission shall consider, among other matters—

(1) a requirement that the polity to which the spectrum responsibility is delegated notify the Commission of its assignment of spectrum and its management activities;

(2) permitting each such polity to exercise or to grant licensees the same flexibility in use that is available to private sector license holders whose license is granted by the Commission;

(3) providing for the binding resolution of interference disputes between such polities by the Commission; and

(4) a requirement that each polity manage its public safety spectrum allocation to ensure efficient interoperability between its own wireless communications systems and those of Federal law enforcement, public safety, and disaster assistance agencies, to the greatest extent feasible.

SEC. 10. FLEXIBLE NTSC AND DTV LICENSES; DEPOSIT AND RETURN; FLEXIBLE OVERLAY VHF AND UHF BAND LICENSES.

(a) IN GENERAL.—Part I of title III of the Communications Act of 1934, as amended by section 5 of this Act, is amended by adding at the end thereof the following:

"SEC. 338. BROADCAST TELEVISION SPECTRUM POLICY.

"(a) ASSIGNMENT OF FLEXIBLE DTV LICENSES TO EXISTING BROADCASTERS.—

"(1) ASSIGNMENT.—The Commission shall assign one 6 megahertz DTV channel, on a non-competitive basis, to each existing NTSC licensee. An existing NTSC licensee to whom such a channel is assigned may—

"(A) receive a DTV license for a deposit; or

"(B) decline to accept a DTV license.

Any DTV license declined shall be auctioned by the Commission as part of an overlay license. The amount of the deposit shall be based on the market value of the license as shown by the auction of the overlay licenses and adjusted for relevant economic factors, such as the size and population of the area served. The Commission may waive the deposit in whole or in part for broadcasters in small markets and for small broadcasters competing in large markets.

"(2) USE OF DTV LICENSE.—A licensee to which a DTV license is assigned under paragraph (1)—

"(A) shall enjoy flexibility in use (within the meaning of that term as used in section 337(a)) of the license consistent with technical limits imposed by the Commission to prevent interference to NTSC and other DTV assignments;

"(B) may not be required to meet a minimum service requirement or construction schedule; and

"(C) may transfer or relinquish its DTV license at any time.

"(3) REASSIGNMENT OF RELINQUISHED LICENSES.—Except as provided in paragraph (1), the Commission may not reassign any DTV license relinquished by the licensee to whom it was assigned or transferred. Any spectrum that had been previously encumbered by a relinquished DTV license shall be available for use by overlay licensees (within the meaning of subsection (c)).

"(4) DEPOSIT AND RETURN.—



“(A) The amount to be paid as a deposit for a DTV license under paragraph (1)—

“(i) may be paid to the Commission in installments over a 15-year period beginning on the date on which the license is assigned; and

“(ii) shall be held in escrow and invested in interest-bearing obligations of the United States.

“(B) Amounts received as interest earned on deposits held in escrow under subparagraph (A) shall be available to the United States for tax reduction or deficit reduction purposes.

“(C) Fifteen years after a DTV license is assigned to an NTSC licensee under paragraph (1), the licensee may relinquish its NTSC license or its DTV license. If an NTSC licensee relinquishes either license under this subparagraph, then the amount of the deposit paid by the licensee shall be returned to the licensee, without interest, reduced by 20 percent for each year the licensee continues NTSC operations in excess of the 15-year period beginning on the date on which the DTV license is assigned to the licensee.

“(b) EXISTING NTSC LICENSES.—

“(1) GRANT OF FLEXIBILITY.—An NTSC licensee with a valid NTSC license on the date of enactment of the Electromagnetic Spectrum Management Policy Reform and Privatization Act—

“(A) may provide standard NTSC television service after such date of enactment;

“(B) may transfer its NTSC license to any other person who is qualified to be an NTSC licensee; and

“(C) shall enjoy flexibility in use (within the meaning of that term as used in section 337(a)) of the license, subject to technical limits imposed by the Commission to prevent interference to DTV and other NTSC assignments.

“(2) REDUCTION OR DISCONTINUANCE OF NTSC SERVICE.—An NTSC licensee may not reduce or discontinue any NTSC service unless the licensee provides comparable replacement for such service free to viewers, as defined and approved by the Commission, including necessary receiving equipment for all such service to be displayed on standard NTSC receivers. An NTSC license relinquished by a licensee who provides such comparable free replacement service may not be reassigned by the Commission.

“(3) REASSIGNMENT OF ABANDONED OR REVOKED LICENSES.—An NTSC license that is—

“(A) abandoned by the licensee without providing comparable free replacement service (within the meaning of such term as it is used in paragraph (2) of this subsection); or

“(B) revoked by the Commission, shall be reassigned by the Commission by auction for standard NTSC service, with the same flexibility in use rights provided to other NTSC licensees.

“(c) ASSIGNMENT OF NEW OVERLAY LICENSES.—

“(1) IN GENERAL.—The Commission shall assign overlay licenses by a simultaneous, multiple round auction. Any spectrum previously encumbered by NTSC or DTV licenses that have been relinquished shall be available for use by overlay licensees in accordance with such terms and conditions, consistent with the other provisions of this section, as the Commission may establish.

“(2) USE.—An overlay licensee—

“(A) shall enjoy flexibility in use (within the meaning of that term as used in section 337(a)) of the license, subject to—

“(i) power limits set by the Commission at the boundaries of the spectrum block and service area; and

“(ii) such additional technical restrictions as may be imposed by the Commission to protect NTSC and DTV licensees, and au-

thorized land mobile services, from harmful interference;

“(B) may aggregate multiple overlay licenses to create larger spectrum blocks and service areas; and

“(C) may transfer an overlay license to any other person qualified to be an overlay licensee.

“(d) DEFINITIONS.—For purposes of this section—

“(1) DTV.—The term ‘DTV’ means digital television.

“(2) NTSC.—The term ‘NTSC’ means the National Television Systems Committee.

“(3) NTSC LICENSEE.—The term ‘NTSC licensee’ means a licensee assigned a television channel allotted for full power television service under the Commission’s rules.

“(4) OVERLAY LICENSE.—

“(A) IN GENERAL.—The term ‘overlay license’ shall be defined by the Commission.

“(B) INDIVIDUALLY.—As defined by the Commission, each overlay license shall cover—

“(i) a block of one or more contiguous 6 megahertz channels; and

“(ii) a contiguous geographic area, as determined by the Commission.

“(C) COLLECTIVELY.—As defined by the Commission, overlay licenses shall cover collectively—

“(i) all 402 megahertz of spectrum in the VHF and UHF television bands; and

“(ii) the entire area of the United States.

#### “SEC. 339. COMMISSION MAY NOT ESTABLISH DTV STANDARDS OR DTV RECEPTION SET REQUIREMENTS.

“Notwithstanding any other provision of law to the contrary, the Commission may not—

“(1) establish DTV (as defined in section 338(d)(1)) standards; nor

“(2) require that television receivers manufactured in, or imported into, the United States be capable of receiving and decoding DTV signals.”.

#### SEC. 11. REPEAL OF FEES IMPOSED ON BROADCASTERS FOR ANCILLARY AND SUPPLEMENTARY SERVICES.

Section 336 of the Communications Act of 1934 (47 U.S.C. 336) is amended—

(1) by striking subsection (e); and

(2) by redesignating subsections (f) and (g) as subsections (e) and (f).

#### SEC. 12. SPECTRUM REPORT.

Two years after the date of enactment of this Act, the Commission shall report the results of implementation of this Act, together with a cost-benefit analysis of such results, and any recommendations for additional legislation related thereto, to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Commerce of the House of Representatives.

### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

#### EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

### MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 2980. An act to amend title 18, United States Code, with respect to stalking; to the Committee on the Judiciary.

The following concurrent resolution was read and referred as indicated:

H. Con. Res. 150. Concurrent resolution authorizing the use of the Capitol Grounds for an event displaying racing, restored, and customized motor vehicles and transporters; to the Committee on Rules and Administration.

### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-2543. A communication from the Managing Director of the Federal Communications Commission, transmitting, pursuant to law, the report of an interim rule relative to a freeze on paging applications (received on April 26, 1996); to the Committee on Commerce, Science, and Transportation.

EC-2544. A communication from the Secretary of the Federal Trade Commission, transmitting, pursuant to law, the report of rules relative to Premerger Notification and Trade Regulation (received on April 26, 1996); to the Committee on Commerce, Science, and Transportation.

EC-2545. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a final rule (RIN 2125-AC17); to the Committee on Environment and Public Works.

EC-2546. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of final rules (FRL-5455-4, FRL-5454-6, FRL-5455-4, FRL-5451-9, FRL-5463-9, FRL-5459-3, FRL-5463-1, FRL-5462-7, FRL-5424-2, FRL-5458-9, FRL-5464-1, FRL-5448-9, FRL-5461-7, FRL-5452-6, FRL-5465-1, FRL-5461-2); to the Committee on Environment and Public Works.

EC-2547. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of final rules (RIN 2137-AC79, RIN 2120-AA65, RIN 2120-AA65, RIN 2120-AA66, RIN 2127-AG22, RIN 2127-AG28, RIN 2127-AF68, RIN 2127-AF79, RIN, RIN 2127-AF65, RIN 2127-AG30, RIN 2115-AE47, RIN 2120-AA64, RIN 2137-AC69) (received April 29, 1996); to the Committee on Commerce, Science, and Transportation.

EC-2548. A communication from the Acting Assistant Secretary of State, Legislative Affairs, transmitting, pursuant to law, a report on military expenditures for countries receiving U.S. assistance; to the Committee on Appropriations.

EC-2549. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of final rules (FRL-5465-5, FRL-5458-8, FRL-5465-9, FRL-5467-9, FRL-5359-5, FRL-5364-5, FRL-5358-5, FRL-5365-2, FRL-5362-9, FRL-5360-3, FRL-4995-8, FRL-5365-6) received on April 30, 1996; to the Committee on Environment and Public Works.

EC-2550. A communication from the Director of the Office of Regulatory Management