

(B) the International Organization for Standardization (commonly known as “ISO”);

(C) the Inter-American Telecommunication Commission (commonly known as “CITEL”); and

(D) the voluntary standards organizations that develop protocols for wireless devices and other equipment, such as the 3GPP and the Institute of Electrical and Electronics Engineers (commonly known as “IEEE”).

(2) Annual report

The Secretary of State, the Secretary of Commerce, and the Chairman of the Committees of Congress shall jointly submit to the relevant committees of Congress an annual report on the progress made under paragraph (1).

(c) Definitions

In this section:

(1) The term “3GPP” means the Third Generation Partnership Project.

(2) The term “5G network” means a radio network as described by 3GPP Release 15 or higher.

(3) The term “Commission” means the Federal Communications Commission.

(4) The term “NTIA Administrator” means the Assistant Secretary of Commerce for Communications and Information.

(5) The term “Open-RAN” means the Open Radio Access Network approach to standardization adopted by the O-RAN Alliance, Telecom Infra Project, or 3GPP, or any similar set of open standards for multi-vendor network equipment interoperability.

(6) The term “relevant committees of Congress” means—

(A) the Select Committee on Intelligence of the Senate;

(B) the Committee on Foreign Relations of the Senate;

(C) the Committee on Homeland Security and Governmental Affairs of the Senate;

(D) the Committee on Armed Services of the Senate;

(E) the Committee on Commerce, Science, and Transportation of the Senate;

(F) the Committee on Appropriations of the Senate;

(G) the Permanent Select Committee on Intelligence of the House of Representatives;

(H) the Committee on Foreign Affairs of the House of Representatives;

(I) the Committee on Homeland Security of the House of Representatives;

(J) the Committee on Armed Services of the House of Representatives;

(K) the Committee on Energy and Commerce of the House of Representatives; and

(L) the Committee on Appropriations of the House of Representatives.

(7) The term “Secretary” means the Secretary of Commerce.

(Pub. L. 116–283, div. H, title XCII, §9202, Jan. 1, 2021, 134 Stat. 4788; Pub. L. 117–167, div. A, §105(b), Aug. 9, 2022, 136 Stat. 1392; Pub. L. 118–31, div. F, title LXVII, §6707(b)(1)(A), Dec. 22, 2023, 137 Stat. 1018.)

Editorial Notes

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (a)(1)(F)(i), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which was set out in the Appendix to Title 5, Government Organization and Employees, and was substantially repealed and restated in chapter 10 (§1001 et seq.) of Title 5 by Pub. L. 117–286, §§3(a), 7, Dec. 27, 2022, 136 Stat. 4197, 4361. For disposition of sections of the Act into chapter 10 of Title 5, see Disposition Table preceding section 101 of Title 5.

CODIFICATION

Section was enacted as part of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 and not as part of the National Telecommunications and Information Administration Organization Act which comprises this chapter.

AMENDMENTS

2023—Subsec. (a)(2)(C), (D). Pub. L. 118–31 redesignated subpar. (D) as (C) and struck out former subpar. (C) which related to annual report to Congress.

2022—Subsec. (a)(1)(G)(ii)(I). Pub. L. 117–167 inserted “(including whether recipients are majority owned and controlled by minority individuals and majority owned and controlled by women)” after “to whom”.

SUBCHAPTER II—TRANSFER OF AUCTIONABLE FREQUENCIES

§ 921. Definitions

As used in this subchapter:

(1) The term “allocation” means an entry in the National Table of Frequency Allocations of a given frequency band for the purpose of its use by one or more radiocommunication services.

(2) The term “assignment” means an authorization given to a station licensee to use specific frequencies or channels.

(3) The term “the 1934 Act” means the Communications Act of 1934 (47 U.S.C. 151 et seq.).

(Pub. L. 102–538, title I, §111, as added Pub. L. 103–66, title VI, §6001(a)(3), Aug. 10, 1993, 107 Stat. 379.)

Editorial Notes

REFERENCES IN TEXT

The Communications Act of 1934, referred to in par. (3), is act June 19, 1934, ch. 652, 48 Stat. 1064, which is classified principally to chapter 5 (§151 et seq.) of this title. For complete classification of this Act to the Code, see section 609 of this title and Tables.

Statutory Notes and Related Subsidiaries

SPECTRUM AUCTIONS

Pub. L. 117–58, div. I, §90008(a), (b), Nov. 15, 2021, 135 Stat. 1348, 1349, provided that:

“(a) DEFINITIONS.—In this section:

“(1) COMMISSION.—The term ‘Commission’ means the Federal Communications Commission.

“(2) COVERED BAND.—The term ‘covered band’ means the band of frequencies between 3100 and 3450 megahertz.

“(3) RELEVANT CONGRESSIONAL COMMITTEES.—The term ‘relevant congressional committees’ means—

“(A) the Committee on Armed Services of the Senate;

“(B) the Committee on Armed Services of the House of Representatives;

“(C) the Committee on Commerce, Science, and Transportation of the Senate; and

“(D) the Committee on Energy and Commerce of the House of Representatives.

“(b) 3.1–3.45 GHZ BAND.—

“(1) PRE-AUCTION FUNDING.—

“(A) IN GENERAL.—On the date of enactment of this Act [Nov. 15, 2021], the Director of the Office of Management and Budget shall transfer \$50,000,000 from the Spectrum Relocation Fund established under section 118 of the National Telecommunications and Information Administration Act (47 U.S.C. 928) to the Department of Defense for the purpose of research and development, engineering studies, economic analyses, activities with respect to systems, or other planning activities to improve efficiency and effectiveness of the spectrum use of the Department of Defense in order to make available electromagnetic spectrum in the covered band—

“(i) for reallocation for shared Federal and non-Federal commercial licensed use; and

“(ii) for auction under paragraph (3) of this subsection.

“(B) EXEMPTION.—Section 118(g) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 928(g)) shall not apply with respect to the payment required under subparagraph (A).

“(C) REPORT TO SECRETARY OF COMMERCE.—For purposes of paragraph (2)(A), the Secretary of Defense shall report to the Secretary of Commerce the findings of the planning activities described in subparagraph (A) of this paragraph.

“(2) IDENTIFICATION.—

“(A) IN GENERAL.—Not later than 21 months after the date of enactment of this Act, in accordance with the findings of the planning activities described in paragraph (1)(A) and subject to the determination of the Secretary of Defense under subparagraph (B) of this paragraph, the Secretary of Commerce, in coordination with the Secretary of Defense, the Director of the Office of Science and Technology Policy, and relevant congressional committees, shall—

“(i) determine which frequencies of electromagnetic spectrum in the covered band could be made available on a shared basis between Federal use and non-Federal commercial licensed use, subject to flexible-use service rules; and

“(ii) submit to the President and the Commission a report that identifies the frequencies determined appropriate under clause (i).

“(B) REQUIRED DETERMINATION.—The Secretary of Commerce may identify frequencies under subparagraph (A)(ii) only if the Secretary of Defense has determined that sharing those frequencies with non-Federal users would not impact the primary mission of military spectrum users in the covered band.

“(3) AUCTION.—Not earlier than November 30, 2024, the Commission, in consultation with the Assistant Secretary of Commerce for Communications and Information, shall begin a system of competitive bidding under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) to grant new licenses for the spectrum identified under paragraph (2)(A)(ii) of this subsection.

“(4) SHARING OF SPECTRUM.—Not earlier than May 31, 2025, the President shall modify any assignment to a Federal Government station of the frequencies identified under clause (ii) of paragraph (2)(A) in order to accommodate shared Federal and non-Federal commercial licensed use in accordance with that paragraph.

“(5) AUCTION PROCEEDS TO COVER 110 PERCENT OF FEDERAL RELOCATION OR SHARING COSTS.—Nothing in this subsection shall be construed to relieve the Commission from the requirements under section 309(j)(16)(B) of the Communications Act of 1934 (47 U.S.C. 309(j)(16)(B)).”

REALLOCATION AND AUCTION OF 3450–3550 MHZ
SPECTRUM BAND

Pub. L. 116–260, div. FF, title IX, §905, Dec. 27, 2020, 134 Stat. 3215, provided that:

“(a) SHORT TITLE.—This section may be cited as the ‘Beat China by Harnessing Important, National Airwaves for 5G Act of 2020’ or the ‘Beat CHINA for 5G Act of 2020’.

“(b) DEFINITIONS.—In this Act [probably means “this section”]—

“(1) the term ‘Commission’ means the Federal Communications Commission; and

“(2) the term ‘covered band’ means the band of electromagnetic spectrum between the frequencies of 3450 megahertz and 3550 megahertz, inclusive.

“(c) WITHDRAWAL OR MODIFICATION OF FEDERAL GOVERNMENT ASSIGNMENTS.—The President, acting through the Assistant Secretary of Commerce for Communications and Information, shall—

“(1) not later than 180 days after the date of enactment of this Act [Dec. 27, 2020], in coordination with relevant Federal users, begin the process of withdrawing or modifying the assignments to Federal Government stations of the covered band as necessary for the Commission to comply with subsection (d); and

“(2) not later than 30 days after completing any necessary withdrawal or modification under paragraph (1), notify the Commission that the withdrawal or modification is complete.

“(d) REALLOCATION AND AUCTION.—

“(1) IN GENERAL.—The Commission shall—

“(A) revise the non-Federal allocation for the covered band to permit flexible-use services; and

“(B) notwithstanding paragraph (15)(A) of section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)), not later than December 31, 2021, begin a system of competitive bidding under that section to grant new initial licenses for the use of a portion or all of the covered band, subject to flexible-use service rules.

“(2) EXEMPTION FROM NOTIFICATION REQUIREMENT.—The first sentence of section 113(g)(4)(A) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(4)(A)) shall not apply with respect to the system of competitive bidding required under paragraph (1)(B) of this subsection.

“(3) PROCEEDS TO COVER 110 PERCENT OF FEDERAL RELOCATION OR SHARING COSTS.—Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of section 309(j)(16)(B) of the Communications Act of 1934 (47 U.S.C. 309(j)(16)(B)).”

IDENTIFICATION, REALLOCATION, AND AUCTION OF
FEDERAL SPECTRUM

Pub. L. 114–74, title X, §§1002–1004, Nov. 2, 2015, 129 Stat. 621, as amended by Pub. L. 114–328, div. A, title X, §1044, Dec. 23, 2016, 130 Stat. 2394, provided that:

“SEC. 1002. DEFINITIONS.

“In this title [see Short Title of 2015 Amendment note set out under section 901 of this title]:

“(1) ASSISTANT SECRETARY.—The term ‘Assistant Secretary’ means the Assistant Secretary of Commerce for Communications and Information.

“(2) COMMISSION.—The term ‘Commission’ means the Federal Communications Commission.

“(3) FEDERAL ENTITY.—The term ‘Federal entity’ has the meaning given such term in section 113(l) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(l)).

“(4) SECRETARY.—The term ‘Secretary’ means the Secretary of Commerce.

“SEC. 1003. RULE OF CONSTRUCTION.

“Each range of frequencies described in this title shall be construed to be inclusive of the upper and lower frequencies in the range.

“SEC. 1004. IDENTIFICATION, REALLOCATION, AND AUCTION OF FEDERAL SPECTRUM.

“(a) IDENTIFICATION OF SPECTRUM.—Not later than January 1, 2022, the Secretary shall submit to the

President and to the Commission a report identifying 30 megahertz of electromagnetic spectrum (in bands of not less than 10 megahertz of contiguous frequencies) below the frequency of 3 gigahertz (except for the spectrum between the frequencies of 1675 megahertz and 1695 megahertz) for reallocation from Federal use to non-Federal use or shared Federal and non-Federal use, or a combination thereof.

“(b) CLEARING OF SPECTRUM.—The President shall—

“(1) not later than January 1, 2022, begin the process of withdrawing or modifying the assignment to a Federal Government station of the electromagnetic spectrum identified under subsection (a); and

“(2) not later than 30 days after completing the withdrawal or modification, notify the Commission that the withdrawal or modification is complete.

“(c) REALLOCATION AND AUCTION.—

“(1) IN GENERAL.—The Commission shall—

“(A) reallocate the electromagnetic spectrum identified under subsection (a) for non-Federal use or shared Federal and non-Federal use, or a combination thereof; and

“(B) notwithstanding paragraph (15)(A) of section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)), not later than July 1, 2024, begin a system of competitive bidding under such section to grant new initial licenses for the use of such spectrum, subject to flexible-use service rules.

“(2) PROCEEDS TO COVER 110 PERCENT OF FEDERAL REALLOCATION OR SHARING COSTS.—Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of section 309(j)(16)(B) of the Communications Act of 1934 (47 U.S.C. 309(j)(16)(B)).

“(d) PROTECTION OF CERTAIN FEDERAL SPECTRUM OPERATIONS.—If the report required by subsection (a) determines that reallocation and auction of the spectrum described in the report would harm national security by impacting existing terrestrial Federal spectrum operations at the Nevada Test and Training Range, the Commission, in coordination with the Secretary shall, prior to the auction described in subsection (c)(1)(B), establish rules for licensees in such spectrum sufficient to mitigate harmful interference to such operations.

“(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect any requirement under section 1062(b) of the National Defense Authorization Act for Fiscal Year 2000 (47 U.S.C. 921 note; Public Law 106-65).”

STUDY AND REPORT ON CURRENT AND FUTURE SPECTRUM USE

Pub. L. 106-553, §1(a)(2) [title II], Dec. 21, 2000, 114 Stat. 2762, 2762A-73, provided in part that the Administrator would, after consultation with other appropriate agencies, complete and submit to Congress not later than twelve months after Dec. 21, 2000, a study of the current and future use of spectrum by these entities to protect and maintain the nation's critical infrastructure and also provided that within six months after the release of this study, the Chairman of the Federal Communication Commission was to submit a report to Congress on actions that could be taken by the Commission to address any needs identified in the study.

REPORT ON PROGRESS ON SPECTRUM SHARING

Pub. L. 106-398, §1 [[div. A], title XVII, §1705], Oct. 30, 2000, 114 Stat. 1654, 1654A-366, provided that the Secretary of Defense, in consultation with the Attorney General and the Secretary of Commerce, would provide for an engineering study to identify any portion of the 138-144 megahertz band that the Department of Defense could share in various geographic regions with public safety radio services, any measures required to prevent harmful interference between Department of Defense systems and the public safety systems, and a reasonable schedule for implementation of sharing of frequencies, with an interim report due to Congress by 1 year after Oct. 30, 2000, on progress of the study, and no later than Jan. 1, 2002, a report submitted jointly by

the Secretary of Commerce and the Chairman of the Federal Communication Commission on alternative frequencies available for use by public safety systems.

SURRENDER OF DEPARTMENT OF DEFENSE SPECTRUM

Pub. L. 106-65, div. A, title X, §1062(b), Oct. 5, 1999, 113 Stat. 768, provided that:

“(1) IN GENERAL.—If, in order to make available for other use a band of frequencies of which it is a primary user, the Department of Defense is required to surrender use of such band of frequencies, the Department shall not surrender use of such band of frequencies until—

“(A) the National Telecommunications and Information Administration, in consultation with the Federal Communications Commission, identifies and makes available to the Department for its primary use, if necessary, an alternative band or bands of frequencies as a replacement for the band to be so surrendered; and

“(B) the Secretary of Commerce, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff jointly certify to the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Armed Services and the Committee on Commerce [now Committee on Energy and Commerce] of the House of Representatives, that such alternative band or bands provides comparable technical characteristics to restore essential military capability that will be lost as a result of the band of frequencies to be so surrendered.

“(2) EXCEPTION.—Paragraph (1) shall not apply to a band of frequencies that has been identified for reallocation in accordance with title VI of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66; 107 Stat. 379) [enacting sections 159 and 921 to 927 of this title and amending sections 152, 153, 156, 158, 309, 332, and 903 of this title] and title III of the Balanced Budget Act of 1997 (Public Law 105-33, 111 Stat. 258) [enacting section 337 of this title, amending sections 153, 303, 309, and 923 to 925 of this title, and repealing provisions set out as a note under section 309 of this title], other than a band of frequencies that is reclaimed pursuant to subsection (c) [amending section 923 of this title and enacting provisions set out as a note below].”

[Pub. L. 108-494, title II, §206, Dec. 23, 2004, 118 Stat. 3996, provided that: “Nothing in this title [see Short Title of 2004 Amendment note set out under section 901 of this title] is intended to modify section 1062(b) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65) [set out above].”]

REASSIGNMENT TO FEDERAL GOVERNMENT FOR USE BY DEPARTMENT OF DEFENSE OF CERTAIN FREQUENCY SPECTRUM RECOMMENDED FOR REALLOCATION

Pub. L. 106-65, div. A, title X, §1062(c)(1), Oct. 5, 1999, 113 Stat. 768, provided that: “Notwithstanding any provision of the National Telecommunications and Information Administration Organization Act [47 U.S.C. 901 et seq.] or the Balanced Budget Act of 1997 [Pub. L. 105-33, see Tables for classification], the President shall reclaim for exclusive Federal Government use on a primary basis by the Department of Defense—

“(A) the bands of frequencies aggregating 3 megahertz located between 138 and 144 megahertz that were recommended for reallocation in the second reallocation report under section 113(a) of that Act [probably means 47 U.S.C. 923(a)]; and

“(B) the band of frequency aggregating 5 megahertz located between 1385 megahertz and 1390 megahertz, inclusive, that was so recommended for reallocation.”

ASSESSMENT OF ELECTROMAGNETIC SPECTRUM REALLOCATION

Pub. L. 102-538, title I, §156, as added by Pub. L. 106-65, div. A, title X, §1062(a), Oct. 5, 1999, 113 Stat. 767, required the Secretary of Commerce to convene an

interagency review and assessment of the progress made in implementation of national spectrum planning, the reallocation of Federal Government spectrum to non-Federal use, and the implications for such reallocations to the affected Federal executive agencies and to submit to the President and committees of Congress, not later than Oct. 1, 2000, a report on the assessment.

§ 922. National spectrum allocation planning

The Assistant Secretary and the Chairman of the Commission shall meet, at least biannually, to conduct joint spectrum planning with respect to the following issues:

- (1) the extent to which licenses for spectrum use can be issued pursuant to section 309(j) of this title to increase Federal revenues;
- (2) the future spectrum requirements for public and private uses, including State and local government public safety agencies;
- (3) the spectrum allocation actions necessary to accommodate those uses; and
- (4) actions necessary to promote the efficient use of the spectrum, including spectrum management techniques to promote increased shared use of the spectrum that does not cause harmful interference as a means of increasing commercial access.

(Pub. L. 102-538, title I, §112, as added Pub. L. 103-66, title VI, §6001(a)(3), Aug. 10, 1993, 107 Stat. 380.)

§ 923. Identification of reallocable frequencies

(a) Identification required

The Secretary shall, within 18 months after August 10, 1993, and within 6 months after August 5, 1997, prepare and submit to the President and the Congress a report identifying and recommending for reallocation bands of frequencies—

- (1) that are allocated on a primary basis for Federal Government use;
- (2) that are not required for the present or identifiable future needs of the Federal Government;
- (3) that can feasibly be made available, as of the date of submission of the report or at any time during the next 15 years, for use under the 1934 Act [47 U.S.C. 151 et seq.] (other than for Federal Government stations under section 305 of the 1934 Act [47 U.S.C. 305]);
- (4) the transfer of which (from Federal Government use) will not result in costs to the Federal Government, or losses of services or benefits to the public, that are excessive in relation to the benefits to the public that may be provided by non-Federal licensees; and
- (5) that are most likely to have the greatest potential for productive uses and public benefits under the 1934 Act [47 U.S.C. 151 et seq.] if allocated for non-Federal use.

(b) Minimum amount of spectrum recommended

(1) Initial reallocation report

In accordance with the provisions of this section, the Secretary shall recommend for reallocation in the initial report required by subsection (a), for use other than by Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305), bands of frequencies

that in the aggregate span not less than 200 megahertz, that are located below 5 gigahertz, and that meet the criteria specified in paragraphs (1) through (5) of subsection (a). Such bands of frequencies shall include bands of frequencies, located below 3 gigahertz, that span in the aggregate not less than 100 megahertz.

(2) Mixed uses permitted to be counted

Bands of frequencies which a report of the Secretary under subsection (a) or (d)(1) recommends be partially retained for use by Federal Government stations, but which are also recommended to be reallocated to be made available under the 1934 Act [47 U.S.C. 151 et seq.] for use by non-Federal stations, may be counted toward the minimum spectrum required by paragraph (1) or (3) of this subsection, except that—

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

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

(C) the operational sharing permitted under this paragraph shall be subject to the interference regulations prescribed by the Commission pursuant to section 305(a) of the 1934 Act [47 U.S.C. 305(a)] and to coordination procedures that the Commission and the Secretary shall jointly establish and implement to ensure against harmful interference.

(3) Second reallocation report

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

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

(B) are located below 3 gigahertz; and

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

(c) Criteria for identification

(1) Needs of the Federal Government

In determining whether a band of frequencies meets the criteria specified in subsection (a)(2), the Secretary shall—

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

(B) seek to promote—

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

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