

frequencies and equipment necessary for its utilization; and

(B) an estimate of the cost of displacing spectrum users licensed by the Commission.

(c) Costs of reclaiming frequencies

The Federal Government shall bear all costs of reclaiming frequencies pursuant to this section, including the cost of equipment which is rendered unusable, the cost of relocating operations to a different frequency, and any other costs that are directly attributable to the reclaiming of the frequency pursuant to this section, and there are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

(d) Effective date of reclaimed frequencies

The Commission shall not withdraw licenses for any reclaimed frequencies until the end of the fiscal year following the fiscal year in which a statement under section 924(b)(1)(B) of this title pertaining to such frequencies is received by the Commission.

(e) Effect on other law

Nothing in this section shall be construed to limit or otherwise affect the authority of the President under section 706 of the 1934 Act (47 U.S.C. 606).

(Pub. L. 102-538, title I, §116, as added Pub. L. 103-66, title VI, §6001(a)(3), Aug. 10, 1993, 107 Stat. 386.)

Editorial Notes

REFERENCES IN TEXT

For definition of the 1934 Act, referred to in subsec. (b)(1), see section 921(3) of this title.

§ 927. Existing allocation and transfer authority retained

(a) Additional reallocation

Nothing in this subchapter prevents or limits additional reallocation of spectrum from the Federal Government to other users.

(b) Implementation of new technologies and services

Notwithstanding any other provision of this subchapter—

(1) the Secretary may, consistent with section 903(e) of this title, at any time allow frequencies allocated on a primary basis for Federal Government use to be used by non-Federal licensees on a mixed-use basis for the purpose of facilitating the prompt implementation of new technologies or services and for other purposes; and

(2) the Commission shall make any allocation and licensing decisions with respect to such frequencies in a timely manner and in no event later than the date required by section 157 of this title.

(Pub. L. 102-538, title I, §117, as added Pub. L. 103-66, title VI, §6001(a)(3), Aug. 10, 1993, 107 Stat. 386.)

§ 928. Spectrum Relocation Fund

(a) Establishment of Spectrum Relocation Fund

There is established on the books of the Treasury a separate fund to be known as the “Spec-

trum Relocation Fund” (in this section referred to as the “Fund”), which shall be administered by the Office of Management and Budget (in this section referred to as “OMB”), in consultation with the NTIA.

(b) Crediting of receipts

The Fund shall be credited with the amounts specified in section 309(j)(8)(D) of this title.

(c) Use of funds

The amounts in the Fund from auctions of eligible frequencies are authorized to be used to pay relocation or sharing costs of an eligible Federal entity incurring such costs with respect to relocation from or sharing of those frequencies.

(d) Fund availability

(1) Appropriation

There are hereby appropriated from the Fund such sums as are required to pay the relocation or sharing costs specified in subsection (c).

(2) Transfer conditions

None of the funds provided under this subsection may be transferred to any eligible Federal entity—

(A) unless the eligible Federal entity has submitted a transition plan to the NTIA as required by paragraph (1) of section 923(h) of this title, the Technical Panel has found such plan sufficient under paragraph (4) of such section, and the NTIA has made available such plan on its website as required by paragraph (5) of such section;

(B) unless the Director of OMB has determined, in consultation with the NTIA, the appropriateness of such costs and the timeline for relocation or sharing; and

(C) until 30 days after the Director of OMB has submitted to the Committees on Appropriations and Energy and Commerce of the House of Representatives for approval, to the Committees on Appropriations and Commerce, Science, and Transportation of the Senate for approval, and to the Comptroller General a detailed plan describing specifically how the sums transferred from the Fund will be used to pay relocation or sharing costs in accordance with such subsection and the timeline for such relocation or sharing.

Unless disapproved within 30 days, the amounts in the Fund shall be available immediately. If the plan is disapproved, the Director may resubmit a revised plan.

(3) Transfers for pre-auction costs

(A) In general

Subject to subparagraph (B), the Director of OMB may transfer to an eligible Federal entity, at any time (including prior to a scheduled auction), such sums as may be available in the Fund to pay relocation or sharing costs related to pre-auction estimates or research, as such costs are described in section 923(g)(3)(A)(iii) of this title.

(B) Notification

No funds may be transferred pursuant to subparagraph (A) unless—

(i) the notification provided under paragraph (2)(C) includes a certification from the Director of OMB that—

(I) funds transferred before an auction will likely allow for timely implementation of relocation or sharing, thereby increasing net expected auction proceeds by an amount not less than the time value of the amount of funds transferred; and

(II) the auction is intended to occur not later than 8 years after transfer of funds; and

(ii) the transition plan submitted by the eligible Federal entity under section 923(h)(1) of this title provides—

(I) to the fullest extent possible, for sharing and coordination of eligible frequencies with non-Federal users, including reasonable accommodation by the eligible Federal entity for the use of eligible frequencies by non-Federal users during the period that the entity is relocating its spectrum uses (in this clause referred to as the “transition period”);

(II) for non-Federal users to be able to use eligible frequencies during the transition period in geographic areas where the eligible Federal entity does not use such frequencies;

(III) that the eligible Federal entity will, during the transition period, make itself available for negotiation and discussion with non-Federal users not later than 30 days after a written request therefor; and

(IV) that the eligible Federal entity will, during the transition period, make available to a non-Federal user with appropriate security clearances any classified information (as defined in section 798(b) of title 18) regarding the relocation process, on a need-to-know basis, to assist the non-Federal user in the relocation process with such eligible Federal entity or other eligible Federal entities.

(C) Applicability to certain costs

(i) In general

The Director of OMB may transfer under subparagraph (A) not more than \$10,000,000 for costs incurred after June 28, 2010, but before February 22, 2012.

(ii) Supplement not supplant

Any amounts transferred by the Director of OMB pursuant to clause (i) shall be in addition to any amounts that the Director of OMB may transfer for costs incurred on or after February 22, 2012.

(4) Reversion of unused funds

Any amounts in the Fund that are remaining after the payment of the relocation or sharing costs that are payable from the Fund shall revert to and be deposited in the general fund of the Treasury, for the sole purpose of deficit reduction, not later than 8 years after the date of the deposit of such proceeds to the Fund, unless within 60 days in advance of the reversion of such funds, the Director of OMB,

in consultation with the NTIA, notifies the congressional committees described in paragraph (2)(C) that such funds are needed to complete or to implement current or future relocation or sharing arrangements.

(e) Transfer to eligible Federal entities

(1) Transfer

(A) Amounts made available pursuant to subsection (d) shall be transferred to eligible Federal entities, as defined in section 923(g)(1) of this title.

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

(i) such subsequent transfers are subject to prior approval by the Director of OMB as required by subsection (d)(2)(B);

(ii) the notice to the committees containing the plan required by subsection (d)(2)(C) shall be not less than 45 days prior to the date of the transfer that causes such excess above 10 percent; and

(iii) such notice shall include, in addition to such plan, an explanation of need for such subsequent transfer or transfers.

(C) Such transferred amounts shall be credited to the appropriations account of the eligible Federal entity which has incurred, or will incur, such costs, and shall, subject to paragraph (2), remain available until expended.

(D) At the request of an eligible Federal entity, the Director of the Office of Management and Budget (in this subsection referred to as “OMB”) may transfer the amount under subparagraph (A) immediately—

(i) after the frequencies are reallocated by competitive bidding under section 309(j) of this title; or

(ii) in the case of an incumbent Federal entity that is incurring relocation or sharing costs to accommodate sharing spectrum frequencies with another Federal entity, after the frequencies from which the other eligible Federal entity is relocating are reallocated by competitive bidding under section 309(j) of this title, without regard to the availability of such sums in the Fund.

(E) Prior to the deposit of proceeds into the Fund from an auction, the Director of OMB may borrow from the Treasury the amount under subparagraph (A) for a transfer under subparagraph (D). The Treasury shall immediately be reimbursed, without interest, from funds deposited into the Fund.

(2) Retransfer to fund

An eligible Federal entity that has received such amounts shall report its expenditures to OMB and shall transfer any amounts in excess of actual relocation or sharing costs back to the Fund immediately after the NTIA has notified the Commission that the relocation of the entity or implementation of the sharing arrangement by the entity is complete, or has determined that such entity has unreasonably failed to complete such relocation or the implementation of such arrangement in accordance with the timeline required by subsection (d)(2)(B).

(f) Additional payments from Fund**(1) Amounts available**

Notwithstanding subsections (c) through (e), after February 22, 2012, there are appropriated from the Fund and available to the Director of OMB for use in accordance with paragraph (2) not more than 10 percent of the amounts deposited in the Fund from auctions occurring after such date of licenses for the use of spectrum vacated by eligible Federal entities.

(2) Use of amounts**(A) In general**

The Director of OMB, in consultation with the NTIA, may use amounts made available under paragraph (1) to make payments to eligible Federal entities that are implementing a transition plan submitted under section 923(h)(1) of this title in order to encourage such entities to complete the implementation more quickly, thereby encouraging timely access to the eligible frequencies that are being reallocated for exclusive non-Federal use or shared use.

(B) Conditions

In the case of any payment by the Director of OMB under subparagraph (A)—

(i) such payment shall be based on the market value of the eligible frequencies, the timeliness with which the eligible Federal entity clears its use of such frequencies, and the need for such frequencies in order for the entity to conduct its essential missions;

(ii) the eligible Federal entity shall use such payment for the purposes specified in clauses (i) through (v) of section 923(g)(3)(A) of this title to achieve comparable capability of systems affected by the reallocation of eligible frequencies from Federal use to exclusive non-Federal use or to shared use;

(iii) such payment may not be made if the amount remaining in the Fund after such payment will be less than 10 percent of the winning bids in the auction of the spectrum with respect to which the Federal entity is incurring relocation or sharing costs; and

(iv) such payment may not be made until 30 days after the Director of OMB has notified the congressional committees described in subsection (d)(2)(C).

(g) Additional payments for research and development and planning activities**(1) Amounts available**

Notwithstanding subsections (c) through (e)—

(A) there are appropriated from the Fund on November 2, 2015, and available to the Director of OMB for use in accordance with paragraph (2), not more than \$500,000,000 from amounts in the Fund on November 2, 2015; and

(B) there are appropriated from the Fund after November 2, 2015, and available to the Director of OMB for use in accordance with such paragraph, not more than 10 percent of the amounts deposited in the Fund after November 2, 2015.

(2) Use of amounts**(A) In general**

The Director of OMB may use amounts made available under paragraph (1) to make payments requested by Federal entities for research and development, engineering studies, economic analyses, activities with respect to systems, or other planning activities intended to improve the efficiency and effectiveness of the spectrum use of Federal entities in order to make available frequencies described in subparagraph (C) for reallocation for non-Federal use or shared Federal and non-Federal use, or a combination thereof, and for auction in accordance with such reallocation.

(B) Systems that improve efficiency and effectiveness of Federal spectrum use

For purposes of a payment under subparagraph (A) for activities with respect to systems that improve the efficiency and effectiveness of the spectrum use of Federal entities, such systems include the following:

(i) Systems that have increased functionality or that increase the ability of a Federal entity to accommodate spectrum sharing with non-Federal entities.

(ii) Systems that consolidate functions or services that have been provided using separate systems.

(iii) Non-spectrum technology or systems.

(C) Frequencies described

The frequencies described in this subparagraph are, with respect to a payment under subparagraph (A), frequencies that—

(i) are assigned to a Federal entity; and

(ii) at the time of the activities conducted with such payment, are not identified for auction.

(D) Conditions

The Director of OMB may not make a payment to a Federal entity under subparagraph (A)—

(i) unless—

(I) the Federal entity has submitted to the Technical Panel established under section 923(h)(3) of this title a plan describing the activities that the Federal entity will conduct with such payment;

(II) the Technical Panel has approved such plan under subparagraph (E); and

(III) the Director of OMB has submitted the plan approved under subparagraph (E) to the congressional committees described in subsection (d)(2)(C); and

(ii) until 60 days have elapsed after submission of the plan under clause (i)(III).

(E) Review by technical panel**(i) In general**

Not later than 120 days after a Federal entity submits a plan under subparagraph (D)(i)(I) to the Technical Panel established under section 923(h)(3) of this title, the Technical Panel shall approve or disapprove such plan.

(ii) Criteria for review

In considering whether to approve or disapprove a plan under this subparagraph,

the Technical Panel shall consider whether—

(I) the activities that the Federal entity will conduct with the payment will—

(aa) increase the probability of relocation from or sharing of Federal spectrum;

(bb) facilitate an auction intended to occur not later than 8 years after the payment; and

(cc) increase the net expected auction proceeds in an amount not less than the time value of the amount of the payment; and

(II) the transfer will leave sufficient amounts in the Fund for the other purposes of the Fund.

(h) Prioritization of payments

In determining whether to make payments under subsections (f) and (g), the Director of OMB shall, to the extent practicable, prioritize payments under subsection (g).

(i) Restriction on use of Funds

No amounts in the Fund on the day before February 22, 2012, may be used for any purpose except—

(1) to pay the relocation or sharing costs incurred by eligible Federal entities in order to relocate from the frequencies the auction of which generated such amounts; or

(2) to pay relocation or sharing costs related to pre-auction estimates or research, in accordance with subsection (d)(3).

(Pub. L. 102-538, title I, §118, as added Pub. L. 108-494, title II, §204, Dec. 23, 2004, 118 Stat. 3994; amended Pub. L. 111-8, div. G, title I, §1301(a), Mar. 11, 2009, 123 Stat. 829; Pub. L. 112-96, title VI, §6702, Feb. 22, 2012, 126 Stat. 252; Pub. L. 114-74, title X, §1005(a), Nov. 2, 2015, 129 Stat. 622; Pub. L. 115-141, div. P, title VI, §§612, 613, Mar. 23, 2018, 132 Stat. 1109.)

Editorial Notes

AMENDMENTS

2018—Subsec. (d)(3)(B)(i)(II). Pub. L. 115-141, §612, substituted “8 years” for “5 years”.

Subsec. (e)(1)(D), (E). Pub. L. 115-141, §613, added subpars. (D) and (E).

2015—Subsecs. (g) to (i). Pub. L. 114-74 added subsecs. (g) and (h) and redesignated former subsec. (g) as (i).

2012—Pub. L. 112-96, §6702(1), substituted “relocation or sharing costs” for “relocation costs” wherever appearing.

Subsec. (c). Pub. L. 112-96, §6702(2), amended subsec. (c) generally. Prior to amendment, text read as follows: “The amounts in the Fund from auctions of eligible frequencies are authorized to be used to pay relocation or sharing costs, as defined in section 923(g)(3) of this title, of an eligible Federal entity incurring such costs with respect to relocation from those frequencies.”

Subsec. (d)(2)(A). Pub. L. 112-96, §6702(3)(A)(iv), added subpar. (A). Former subpar. (A) redesignated (B).

Pub. L. 112-96, §6702(3)(A)(i), inserted “or sharing” before the semicolon.

Subsec. (d)(2)(B). Pub. L. 112-96, §6702(3)(A)(iii), redesignated subpar. (A) as (B). Former subpar. (B) redesignated (C).

Pub. L. 112-96, §6702(3)(A)(ii), inserted “or sharing” before period at end.

Subsec. (d)(2)(C). Pub. L. 112-96, §6702(3)(A)(iii), redesignated subpar. (B) as (C).

Subsec. (d)(3). Pub. L. 112-96, §6702(3)(B), (C), added par. (3) and struck out former par. (3). Prior to amendment, text read as follows: “Any auction proceeds in the Fund that are remaining after the payment of the relocation or sharing costs that are payable from the Fund shall revert to and be deposited in the general fund of the Treasury not later than 8 years after the date of the deposit of such proceeds to the Fund.”

Subsec. (d)(4). Pub. L. 112-96, §6702(3)(C), added par. (4).

Subsec. (e)(1)(B)(i). Pub. L. 112-96, §6702(4)(A)(i), substituted “subsection (d)(2)(B)” for “subsection (d)(2)(A)”.

Subsec. (e)(1)(B)(ii). Pub. L. 112-96, §6702(4)(A)(ii), substituted “subsection (d)(2)(C)” for “subsection (d)(2)(B)”.

Subsec. (e)(2). Pub. L. 112-96, §6702(4)(B), substituted “relocation of the entity or implementation of the sharing arrangement by the entity” for “entity’s relocation” and “subsection (d)(2)(B)” for “subsection (d)(2)(A)” and inserted “or the implementation of such arrangement” after “such relocation”.

Subsecs. (f), (g). Pub. L. 112-96, §6702(5), added subsecs. (f) and (g).

2009—Subsec. (e)(1)(B)(ii) to (iv). Pub. L. 111-8 inserted “and” after semicolon in cl. (ii), substituted period for “; and” in cl. (iii), and struck out cl. (iv) which read as follows: “the Comptroller General shall, within 30 days after receiving such plan, review such plan and submit to such committees an assessment of the explanation for the subsequent transfer or transfers.”

Statutory Notes and Related Subsidiaries

ANNUAL REPORT

Pub. L. 108-494, title II, §207, Dec. 23, 2004, 118 Stat. 3996, provided that: “The National Telecommunications and Information Administration shall submit an annual report to the Committees on Appropriations and Energy and Commerce of the House of Representatives, the Committees on Appropriations and Commerce, Science, and Transportation of the Senate, and the Comptroller General on—

“(1) the progress made in adhering to the timelines applicable to relocation from eligible frequencies required under [former] section 118(d)(2)(A) of the National Telecommunications and Information Administration Organization Act [now 47 U.S.C. 928(d)(2)(B)], separately stated on a communication system-by-system basis and on an auction-by-auction basis; and

“(2) with respect to each relocated communication system and auction, a statement of the estimate of relocation costs required under section 113(g)(4) of such Act [47 U.S.C. 923(g)(4)], the actual relocations costs incurred, and the amount of such costs paid from the Spectrum Relocation Fund.”

§ 929. National security and other sensitive information

(a) Determination

If the head of an Executive agency (as defined in section 105 of title 5) determines that public disclosure of any information contained in a notification or report required by section 923 or 928 of this title would reveal classified national security information, or other information for which there is a legal basis for nondisclosure and the public disclosure of which would be detrimental to national security, homeland security, or public safety or would jeopardize a law enforcement investigation, the head of the Executive agency shall notify the Assistant Secretary of that determination prior to the release of such information.

(b) Inclusion in annex

The head of the Executive agency shall place the information with respect to which a deter-