

108TH CONGRESS
1ST SESSION

H. R. 1320

AN ACT

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

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Commercial Spectrum
3 Enhancement Act”.

4 **SEC. 2. RELOCATION OF ELIGIBLE FEDERAL ENTITIES FOR**
5 **THE REALLOCATION OF SPECTRUM FOR**
6 **COMMERCIAL PURPOSES.**

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

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

24 “(2) **ELIGIBLE FREQUENCIES.**—The bands of
25 eligible frequencies for purposes of this section are
26 as follows:

1 “(A) the 216–220 megahertz band, the
2 1432–1435 megahertz band, the 1710–1755
3 megahertz band, and the 2385–2390 megahertz
4 band of frequencies; and

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

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

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

1 “(B) the costs of all engineering, equip-
2 ment, software, site acquisition and construc-
3 tion costs, as well as any legitimate and pru-
4 dent transaction expense, including outside con-
5 sultants, and reasonable additional costs in-
6 curred by the Federal entity that are attrib-
7 utable to relocation, including increased recur-
8 ring costs associated with the replacement fa-
9 cilities;

10 “(C) the costs of engineering studies, eco-
11 nomic analyses, or other expenses reasonably
12 incurred in calculating the estimated relocation
13 costs that are provided to the Commission pur-
14 suant to paragraph (4) of this subsection;

15 “(D) the one-time costs of any modifica-
16 tion of equipment reasonably necessary to ac-
17 commodate commercial use of such frequencies
18 prior to the termination of the Federal entity’s
19 primary allocation or protected status, when the
20 eligible frequencies as defined in paragraph (2)
21 of this subsection are made available for private
22 sector uses by competitive bidding and a Fed-
23 eral entity retains primary allocation or pro-
24 tected status in those frequencies for a period

1 of time after the completion of the competitive
2 bidding process; and

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

8 “(4) NOTICE TO COMMISSION OF ESTIMATED
9 RELOCATION COSTS.—

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

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

1 relocation costs and timelines to be submitted
2 to the Commission pursuant to subparagraph
3 (A).

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

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

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

1 capability. Upon a finding by the NTIA that a Fed-
2 eral entity has achieved comparable capability of sys-
3 tems by relocating to a new frequency assignment or
4 by utilizing an alternative technology, the NTIA
5 shall terminate the entity’s authorization and notify
6 the Commission that the entity’s relocation has been
7 completed. The NTIA shall also terminate such enti-
8 ty’s authorization if the NTIA determines that the
9 entity has unreasonably failed to comply with the
10 timeline for relocation submitted by the Director of
11 the Office of Management and Budget under section
12 118(d)(2)(B).”.

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

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

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

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

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

24 “(F) for any auction of eligible frequencies
25 described in section 113(g)(2) of the National

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

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

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

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

23 “(B) CONCLUSION OF AUCTIONS CONTIN-
24 GENT ON MINIMUM PROCEEDS.—The Commis-
25 sion shall not conclude any auction of eligible

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

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

1 Telecommunications and Information Adminis-
2 tration.”.

3 (c) DEPOSIT OF PROCEEDS.—Paragraph (8) of sec-
4 tion 309(j) of the Communications Act of 1934 (47 U.S.C.
5 309(j)) is amended—

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

8 (2) by adding at the end the following new sub-
9 paragraph:

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

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

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

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

2 “(a) ESTABLISHMENT OF SPECTRUM RELOCATION
3 FUND.—There is established on the books of the Treasury
4 a separate fund to be known as the ‘Spectrum Relocation
5 Fund’ (in this section referred to as the ‘Fund’), which
6 shall be administered by the Office of Management and
7 Budget (in this section referred to as ‘OMB’), in consulta-
8 tion with the NTIA.

9 “(b) CREDITING OF RECEIPTS.—The Fund shall be
10 credited with the amounts specified in section
11 309(j)(8)(D) of the Communications Act of 1934 (47
12 U.S.C. 309(j)(8)(D)).

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

19 “(d) FUND AVAILABILITY.—

20 “(1) APPROPRIATION.—There are hereby ap-
21 propriated from the Fund such sums as are required
22 to pay the relocation costs specified in subsection
23 (c).

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

1 “(A) unless the Director of OMB has de-
2 termined, in consultation with the NTIA, the
3 appropriateness of such costs and the timeline
4 for relocation; and

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

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

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

24 “(1) TRANSFER.—

1 “(A) Amounts made available pursuant to
2 subsection (d) shall be transferred to eligible
3 Federal entities, as defined in section 113(g)(1)
4 of this Act.

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

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

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

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

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

1 “(C) Such transferred amounts shall be
2 credited to the appropriations account of the el-
3 igible Federal entity which has incurred, or will
4 incur, such costs, and shall, subject to para-
5 graph (2), remain available until expended.

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

16 **SEC. 5. TELECOMMUNICATIONS DEVELOPMENT FUND.**

17 Section 714(f) of the Communications Act of 1934
18 (47 U.S.C. 614(f)) is amended to read as follows:

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

22 “(1) the analysis of the business plan of the eli-
23 gible small business;

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

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

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

5 **SEC. 6. CONSTRUCTION.**

6 Nothing in this Act is intended to modify section
7 1062(b) of the National Defense Authorization Act for
8 Fiscal Year 2000 (Public Law 106–65).

9 **SEC. 7. ANNUAL REPORT.**

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

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

23 (2) with respect to each relocated communica-
24 tion system and auction, a statement of the estimate
25 of relocation costs required under section 113(g)(4)

1 of such Act, the actual relocations costs incurred,
2 and the amount of such costs paid from the Spec-
3 trum Relocation Fund.

4 **SEC. 8. PRESERVATION OF AUTHORITY; NTIA REPORT RE-**
5 **QUIRED.**

6 (a) SPECTRUM MANAGEMENT AUTHORITY RE-
7 TAINED.—Except as provided with respect to the bands
8 of frequencies identified in section 113(g)(2)(A) of the Na-
9 tional Telecommunications and Information Administra-
10 tion Organization Act (47 U.S.C. 923(g)(2)(A)) as amend-
11 ed by this Act, nothing in this Act or the amendments
12 made by this Act shall be construed as limiting the Fed-
13 eral Communications Commission’s authority to allocate
14 bands of frequencies that are reallocated from Federal use
15 to non-Federal use for unlicensed, public safety, shared,
16 or non-commercial use.

17 (b) NTIA REPORT REQUIRED.—Within 1 year after
18 the date of enactment of this Act, the Administrator of
19 the National Telecommunications and Information Ad-
20 ministration shall submit to the Energy and Commerce
21 Committee of the House of Representatives and the Com-
22 merce, Science, and Transportation Committee of the Sen-
23 ate a report on various policy options to compensate Fed-
24 eral entities for relocation costs when such entities’ fre-

- 1 quencies are allocated by the Commission for unlicensed,
- 2 public safety, shared, or non-commercial use.

Passed the House of Representatives June 11, 2003.

Attest:

Clerk.