

103^D CONGRESS
1ST SESSION

H. R. 707

To establish procedures to improve the allocation and assignment of the electromagnetic spectrum, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1993

Mr. DINGELL (for himself and Mr. MARKEY) introduced the following bill;
which was referred to the Committee on Energy and Commerce

A BILL

To establish procedures to improve the allocation and assignment of the electromagnetic spectrum, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Emerging Tele-
5 communications Technologies Act of 1993”.

6 **SEC. 2. AMENDMENT TO THE NATIONAL TELECOMMUNI-**
7 **CATIONS AND INFORMATION ADMINISTRA-**
8 **TION ORGANIZATION ACT.**

9 The National Telecommunications and Information
10 Administration Organization Act is amended—

1 (1) by redesignating part B as part C; and

2 (2) by inserting after part A the following new

3 part:

4 **“PART B—EMERGING TELECOMMUNICATIONS**
5 **TECHNOLOGIES**

6 **“SEC. 111. FINDINGS.**

7 “The Congress finds that—

8 “(1) the Federal Government currently reserves
9 for its own use, or has priority of access to, approxi-
10 mately 40 percent of the electromagnetic spectrum
11 that is assigned for use pursuant to the Communica-
12 tions Act of 1934;

13 “(2) many of such frequencies are underutilized
14 by Federal Government licensees;

15 “(3) the public interest requires that many of
16 such frequencies be utilized more efficiently by Fed-
17 eral Government and non-Federal licensees;

18 “(4) additional frequencies are assigned for
19 services that could be obtained more efficiently from
20 commercial carriers or other vendors;

21 “(5) scarcity of assignable frequencies for li-
22 censing by the Commission can and will—

23 “(A) impede the development and commer-
24 cialization of new telecommunications products
25 and services;

1 “(B) limit the capacity and efficiency of
2 the United States telecommunications systems;

3 “(C) prevent some State and local police,
4 fire, and emergency services from obtaining ur-
5 gently needed radio channels; and

6 “(D) adversely affect the productive capac-
7 ity and international competitiveness of the
8 United States economy;

9 “(6) a reassignment of these frequencies can
10 produce significant economic returns; and

11 “(7) the Secretary of Commerce, the President,
12 and the Federal Communications Commission should
13 be directed to take appropriate steps to correct these
14 deficiencies.

15 **“SEC. 112. NATIONAL SPECTRUM PLANNING.**

16 “(a) PLANNING ACTIVITIES.—The Assistant Sec-
17 retary and the Chairman of the Commission shall meet,
18 at least biannually, to conduct joint spectrum planning
19 with respect to the following issues—

20 “(1) the future spectrum requirements for pub-
21 lic and private uses, including State and local gov-
22 ernment public safety agencies;

23 “(2) the spectrum allocation actions necessary
24 to accommodate those uses; and

1 “(3) actions necessary to promote the efficient
2 use of the spectrum, including spectrum manage-
3 ment techniques to promote increased shared use of
4 the spectrum that does not cause harmful inter-
5 ference as a means of increasing commercial access.

6 “(b) REPORTS.—The Assistant Secretary and the
7 Chairman of the Commission shall submit a joint annual
8 report to the Committee on Energy and Commerce of the
9 House of Representatives, the Committee on Commerce,
10 Science, and Transportation of the Senate, the Secretary,
11 and the Commission on the joint spectrum planning activi-
12 ties conducted under subsection (a) and recommendations
13 for action developed pursuant to such activities.

14 “(c) REPORTING REQUIREMENTS.—The first annual
15 report submitted after the date of the report by the advi-
16 sory committee under section 113(d)(4) shall—

17 “(1) include an analysis of and response to that
18 committee report; and

19 “(2) include an analysis of the effect on spec-
20 trum efficiency and the cost of equipment to Federal
21 spectrum users of maintaining separate allocations
22 for Federal Government and non-Federal Govern-
23 ment licensees for the same or similar services.

1 **“SEC. 113. IDENTIFICATION OF REALLOCABLE FRE-**
2 **QUENCIES.**

3 “(a) IDENTIFICATION REQUIRED.—The Secretary
4 shall, within 24 months after the date of the enactment
5 of this part, prepare and submit to the President and the
6 Congress a report identifying bands of frequencies that—

7 “(1) are allocated on a primary basis for Fed-
8 eral Government use and eligible for licensing pursu-
9 ant to section 305(a) of the Act (47 U.S.C. 305(a));

10 “(2) are not required for the present or identifi-
11 able future needs of the Federal Government;

12 “(3) can feasibly be made available, as of the
13 date of submission of the report or at any time dur-
14 ing the next 15 years, for use under the Act (other
15 than for Federal Government stations under such
16 section 305);

17 “(4) will not result in costs to the Federal Gov-
18 ernment, or losses of services or benefits to the pub-
19 lic, that are excessive in relation to the benefits that
20 may be obtained by non-Federal licensees; and

21 “(5) are most likely to have the greatest poten-
22 tial for productive uses and public benefits under the
23 Act.

24 “(b) MINIMUM AMOUNT OF SPECTRUM REC-
25 OMMENDED.—

1 “(1) IN GENERAL.—Based on the report re-
2 quired by subsection (a), the Secretary shall rec-
3 ommend for reallocation, for use other than by Fed-
4 eral Government stations under section 305 of the
5 Act (47 U.S.C. 305), bands of frequencies that span
6 a total of not less than 200 megahertz, that are lo-
7 cated below 6 gigahertz, and that meet the criteria
8 specified in paragraphs (1) through (4) of subsection
9 (a). The Secretary may not include, in such 200
10 megahertz, bands of frequencies that span more
11 than 20 megahertz and that are located between 5
12 and 6 gigahertz. If the report identifies (as meeting
13 such criteria) bands of frequencies spanning more
14 than 200 megahertz, the report shall identify and
15 recommend for reallocation those bands (spanning
16 not less than 200 megahertz) that meet the criteria
17 specified in paragraph (5) of such subsection.

18 “(2) MIXED USES PERMITTED TO BE COUNT-
19 ED.—Bands of frequencies which the Secretary’s re-
20 port recommends be partially retained for use by
21 Federal Government stations, but which are also
22 recommended to be reallocated to be made available
23 under the Act for use by non-Federal stations, may
24 be counted toward the minimum spectrum required
25 by paragraph (1) of this subsection, except that—

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

5 “(B) a band of frequencies may not be
6 counted under this paragraph unless the assign-
7 ments of the band to Federal Government sta-
8 tions under section 305 of the Act (47 U.S.C.
9 305) are limited by geographic area, by time, or
10 by other means so as to guarantee that the po-
11 tential use to be made by such Federal Govern-
12 ment stations is substantially less (as measured
13 by geographic area, time, or otherwise) than the
14 potential use to be made by non-Federal sta-
15 tions; and

16 “(C) the operational sharing permitted
17 under this paragraph shall be subject to coordi-
18 nation procedures which the Commission shall
19 establish and implement to ensure against
20 harmful interference.

21 “(c) CRITERIA FOR IDENTIFICATION.—

22 “(1) NEEDS OF THE FEDERAL GOVERNMENT.—
23 In determining whether a band of frequencies meets
24 the criteria specified in subsection (a)(2), the Sec-
25 retary shall—

1 “(A) consider whether the band of fre-
2 quencies is used to provide a communications
3 service that is or could be available from a com-
4 mercial carrier or other vendor;

5 “(B) seek to promote—

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

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

10 “(iii) the development and use of new
11 communications technologies; and

12 “(iv) the use of nonradiating commu-
13 nications systems where practicable; and

14 “(C) seek to avoid—

15 “(i) serious degradation of Federal
16 Government services and operations; and

17 “(ii) excessive costs to the Federal
18 Government and users of Federal Govern-
19 ment services.

20 “(2) FEASIBILITY OF USE.—In determining
21 whether a frequency band meets the criteria speci-
22 fied in subsection (a)(3), the Secretary shall—

23 “(A) assume such frequencies will be as-
24 signed by the Commission under section 303 of

1 the Act (47 U.S.C. 303) over the course of not
2 less than 15 years;

3 “(B) assume reasonable rates of scientific
4 progress and growth of demand for tele-
5 communications services;

6 “(C) determine the extent to which the
7 reallocation or reassignment will relieve actual
8 or potential scarcity of frequencies available for
9 licensing by the Commission for non-Federal
10 use;

11 “(D) seek to include frequencies which can
12 be used to stimulate the development of new
13 technologies; and

14 “(E) consider the immediate and recurring
15 costs to reestablish services displaced by the
16 reallocation of spectrum.

17 “(3) ANALYSIS OF BENEFITS.—In determining
18 whether a band of frequencies meets the criteria
19 specified in subsection (a)(4), the Secretary shall
20 consider—

21 “(A) the extent to which equipment is or
22 will be available that is capable of utilizing the
23 band;

1 “(B) the proximity of frequencies that are
2 already assigned for commercial or other non-
3 Federal use; and

4 “(C) the activities of foreign governments
5 in making frequencies available for experimen-
6 tation or commercial assignments in order to
7 support their domestic manufacturers of equip-
8 ment.

9 “(4) POWER AGENCY FREQUENCIES.—

10 “(A) ELIGIBLE FOR MIXED USE ONLY.—
11 The frequencies assigned to any Federal power
12 agency may only be eligible for mixed use under
13 subsection (b)(2) in geographically separate
14 areas and shall not be recommended for the
15 purposes of withdrawing that assignment. In
16 any case where a frequency is to be shared by
17 an affected Federal power agency and a non-
18 Federal user, such use by the non-Federal user
19 shall, consistent with the procedures established
20 under subsection (b)(2)(C), not cause harmful
21 interference to the affected Federal power agen-
22 cy or adversely affect the reliability of its power
23 system.

24 “(B) DEFINITION.—As used in this para-
25 graph, the term ‘Federal power agency’ means

1 the Tennessee Valley Authority, the Bonneville
2 Power Administration, the Western Area Power
3 Administration, or the Southwestern Power
4 Administration.

5 “(d) PROCEDURE FOR IDENTIFICATION OF
6 REALLOCABLE BANDS OF FREQUENCIES.—

7 “(1) SUBMISSION OF PRELIMINARY IDENTIFICA-
8 TION TO CONGRESS.—Within 12 months after the
9 date of the enactment of this part, the Secretary
10 shall prepare and submit to the Congress a report
11 which makes a preliminary identification of
12 reallocable bands of frequencies which meet the cri-
13 teria established by this section.

14 “(2) CONVENING OF ADVISORY COMMITTEE.—
15 Not later than the date the Secretary submits the
16 report required by paragraph (1), the Secretary shall
17 convene an advisory committee to—

18 “(A) review the bands of frequencies iden-
19 tified in such report;

20 “(B) advise the Secretary with respect to
21 (i) the bands of frequencies which should be in-
22 cluded in the final report required by subsection
23 (a), and (ii) the effective dates which should be
24 established under subsection (e) with respect to
25 such frequencies;

1 “(C) receive public comment on the Sec-
2 retary’s report and on the final report; and

3 “(D) prepare and submit the report re-
4 quired by paragraph (4).

5 The advisory committee shall meet at least monthly
6 until each of the actions required by section 114(a)
7 have taken place.

8 “(3) COMPOSITION OF COMMITTEE; CHAIR-
9 MAN.—The advisory committee shall include—

10 “(A) the Chairman of the Commission and
11 the Assistant Secretary, and one other rep-
12 resentative of the Federal Government as des-
13 ignated by the Secretary; and

14 “(B) representatives of—

15 “(i) United States manufacturers of
16 spectrum-dependent telecommunications
17 equipment;

18 “(ii) commercial carriers;

19 “(iii) other users of the electro-
20 magnetic spectrum, including radio and
21 television broadcast licensees, State and
22 local public safety agencies, and the avia-
23 tion industry; and

1 “(iv) other interested members of the
2 public who are knowledgeable about the
3 uses of the electromagnetic spectrum.

4 A majority of the members of the committee shall be
5 members described in subparagraph (B), and one of
6 such members shall be designated as chairman by
7 the Secretary.

8 “(4) RECOMMENDATIONS ON SPECTRUM ALLO-
9 CATION PROCEDURES.—The advisory committee
10 shall, not later than 36 months after the date of the
11 enactment of this part, submit to the Secretary, the
12 Commission, the Committee on Energy and Com-
13 merce of the House of Representatives, and the
14 Committee on Commerce, Science, and Transpor-
15 tation of the Senate, a report containing such rec-
16 ommendations as the advisory committee considers
17 appropriate for the reform of the process of allocat-
18 ing the electromagnetic spectrum between Federal
19 and non-Federal use, and any dissenting views
20 thereon.

21 “(e) TIMETABLE FOR REALLOCATION AND LIMITA-
22 TION.—

23 “(1) TIMETABLE REQUIRED.—The Secretary
24 shall, as part of the report required by subsection
25 (a), include a timetable that recommends immediate

1 and delayed effective dates by which the President
2 shall withdraw or limit assignments on the fre-
3 quencies specified in the report.

4 “(2) EXPEDITED REALLOCATION OF INITIAL 30
5 MHZ PERMITTED.—The Secretary may prepare and
6 submit to the President a report which specifically
7 identifies an initial 30 megahertz of spectrum that
8 meets the criteria described in subsection (a) and
9 that can be made available for reallocation imme-
10 diately upon issuance of the report required by this
11 section.

12 “(3) DELAYED EFFECTIVE DATE.—The rec-
13 ommended delayed effective dates shall—

14 “(A) permit the earliest possible
15 reallocation of the frequency bands, taking into
16 account the requirements of section 115(1);

17 “(B) be based on the useful remaining life
18 of equipment that has been purchased or con-
19 tracted for to operate on identified frequencies;

20 “(C) be based on the need to coordinate
21 frequency use with other nations; and

22 “(D) take into account the relationship be-
23 tween the costs to the Federal Government of
24 changing to different frequencies and the bene-
25 fits that may be obtained from commercial and

1 other non-Federal uses of the reassigned fre-
2 quencies.

3 **“SEC. 114. WITHDRAWAL OF ASSIGNMENT TO FEDERAL**
4 **GOVERNMENT STATIONS.**

5 “(a) IN GENERAL.—The President shall—

6 “(1) within 6 months after receipt of the Sec-
7 retary’s report under section 113(a), withdraw the
8 assignment to a Federal Government station of any
9 frequency which the report recommends for imme-
10 diate reallocation;

11 “(2) within such 6-month period, limit the as-
12 signment to a Federal Government station of any
13 frequency which the report recommends be made im-
14 mediately available for mixed use under section
15 113(b)(2);

16 “(3) by the delayed effective date recommended
17 by the Secretary under section 113(e) (except as
18 provided in subsection (b)(4) of this section), with-
19 draw or limit the assignment to a Federal Govern-
20 ment station of any frequency which the report rec-
21 ommends be reallocated or made available for mixed
22 use on such delayed effective date;

23 “(4) assign or reassign other frequencies to
24 Federal Government stations as necessary to adjust
25 to such withdrawal or limitation of assignments; and

1 “(5) transmit a notice and description to the
2 Commission and each House of Congress of the ac-
3 tions taken under this subsection.

4 “(b) EXCEPTIONS.—

5 “(1) AUTHORITY TO SUBSTITUTE.—If the
6 President determines that a circumstance described
7 in paragraph (2) exists, the President—

8 “(A) may substitute an alternative fre-
9 quency or band of frequencies for the frequency
10 or band that is subject to such determination
11 and withdraw (or limit) the assignment of that
12 alternative frequency or band in the manner re-
13 quired by subsection (a); and

14 “(B) shall submit a statement of the rea-
15 sons for taking the action described in subpara-
16 graph (A) to the Committee on Energy and
17 Commerce of the House of Representatives and
18 the Committee on Commerce, Science, and
19 Transportation of the Senate.

20 “(2) GROUNDS FOR SUBSTITUTION.—For pur-
21 poses of paragraph (1), the following circumstances
22 are described in this paragraph:

23 “(A) the reassignment would seriously
24 jeopardize the national defense interests of the
25 United States;

1 “(B) the frequency proposed for reassign-
2 ment is uniquely suited to meeting important
3 governmental needs;

4 “(C) the reassignment would seriously
5 jeopardize public health or safety; or

6 “(D) the reassignment will result in costs
7 to the Federal Government that are excessive in
8 relation to the benefits that may be obtained
9 from commercial or other non-Federal uses of
10 the reassigned frequency.

11 “(3) CRITERIA FOR SUBSTITUTED FRE-
12 QUENCIES.—For purposes of paragraph (1), a fre-
13 quency may not be substituted for a frequency iden-
14 tified by the report of the Secretary under section
15 113(a) unless the substituted frequency also meets
16 each of the criteria specified by section 113(a).

17 “(4) DELAYS IN IMPLEMENTATION.—If the
18 President determines that any action cannot be com-
19 pleted by the delayed effective date recommended by
20 the Secretary pursuant to section 113(e), or that
21 such an action by such date would result in a fre-
22 quency being unused as a consequence of the Com-
23 mission’s plan under section 115, the President
24 may—

1 “(A) gradually to distribute the frequencies
2 remaining, after making the reservation re-
3 quired by subparagraph (B), over the course of
4 a period of not less than 10 years beginning on
5 the date of submission of such plan; and

6 “(B) to reserve a significant portion of
7 such frequencies for distribution beginning after
8 the end of such 10-year period;

9 “(2) contain appropriate provisions to ensure—

10 “(A) the availability of frequencies for new
11 technologies and services in accordance with the
12 policies of section 7 of the Act (47 U.S.C. 157);
13 and

14 “(B) the availability of frequencies to stim-
15 ulate the development of such technologies;

16 “(3) address (A) the feasibility of reallocating
17 spectrum from current commercial and other non-
18 Federal uses to provide for more efficient use of the
19 spectrum, and (B) innovation and marketplace de-
20 velopments that may affect the relative efficiencies
21 of different spectrum allocations; and

22 “(4) not prevent the Commission from allocat-
23 ing bands of frequencies for specific uses in future
24 rulemaking proceedings.

1 **“SEC. 116. AUTHORITY TO RECOVER REASSIGNED FRE-**
2 **QUENCIES.**

3 “(a) AUTHORITY OF PRESIDENT.—Subsequent to the
4 withdrawal of assignment to Federal Government stations
5 pursuant to section 114, the President may reclaim reas-
6 signed frequencies for reassignment to Federal Govern-
7 ment stations in accordance with this section.

8 “(b) PROCEDURE FOR RECLAIMING FRE-
9 QUENCIES.—

10 “(1) UNALLOCATED FREQUENCIES.—If the fre-
11 quencies to be reclaimed have not been allocated or
12 assigned by the Commission pursuant to the Act,
13 the President shall follow the procedures for substi-
14 tution of frequencies established by section 114(b) of
15 this part.

16 “(2) ALLOCATED FREQUENCIES.—If the fre-
17 quencies to be reclaimed have been allocated or as-
18 signed by the Commission, the President shall follow
19 the procedures for substitution of frequencies estab-
20 lished by section 114(b) of this part, except that the
21 notification required by section 114(b)(1)(A) shall
22 include—

23 “(A) a timetable to accommodate an or-
24 derly transition for licensees to obtain new fre-
25 quencies and equipment necessary for its utili-
26 zation; and

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

3 “(c) COSTS OF RECLAIMING FREQUENCIES; APPRO-
4 PRIATIONS AUTHORIZED.—The Federal Government shall
5 bear all costs of reclaiming frequencies pursuant to this
6 section, including the cost of equipment which is rendered
7 unusable, the cost of relocating operations to a different
8 frequency band, and any other costs that are directly at-
9 tributable to the reclaiming of the frequency pursuant to
10 this section. There are authorized to be appropriated such
11 sums as may be necessary to carry out the purposes of
12 this section.

13 “(d) EFFECTIVE DATE OF RECLAIMED FRE-
14 QUENCIES.—The Commission shall not withdraw licenses
15 for any reclaimed frequencies until the end of the fiscal
16 year following the fiscal year in which the President’s noti-
17 fication is received.

18 “(e) EFFECT ON OTHER LAW.—Nothing in this sec-
19 tion shall be construed to limit or otherwise affect the au-
20 thority of the President under sections 305 and 706 of
21 the Act (47 U.S.C. 305, 606).

22 **“SEC. 117. DEFINITIONS.**

23 As used in this part:

24 “(1) The term ‘allocation’ means an entry in
25 the National Table of Frequency Allocations of a

1 given frequency band for the purpose of its use by
2 one or more radiocommunication services.

3 “(2) The term ‘assignment’ means an author-
4 ization given to a station licensee to use specific fre-
5 quencies or channels.

6 “(3) The term ‘commercial carrier’ means any
7 entity that uses a facility licensed by the Federal
8 Communications Commission pursuant to the Com-
9 munications Act of 1934 for hire or for its own use,
10 but does not include Federal Government stations li-
11 censed pursuant to section 305 of the Act (47
12 U.S.C. 305).

13 “(4) The term ‘the Act’ means the Communica-
14 tions Act of 1934 (47 U.S.C. 151 et seq.).”.

○

HR 707 IH—2