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S. 335

To require the Secretary of Commerce to make additional frequencies available for commercial assignment in order to promote the development and use of new telecommunications technologies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4 (legislative day, JANUARY 5), 1993

Mr. INOUE (for himself, Mr. STEVENS, Mr. DANFORTH, Mr. KERRY, and Mr. BURNS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require the Secretary of Commerce to make additional frequencies available for commercial assignment in order to promote the development and use of new telecommunications technologies, 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. FINDINGS.**

7 The Congress finds that—

1 (1) the Federal Government currently reserves
2 for its own use, or has priority of access to, approxi-
3 mately 40 percent of the electromagnetic spectrum
4 that is assigned for use pursuant to the Communica-
5 tions Act of 1934;

6 (2) many of such frequencies are underutilized
7 by Federal Government licensees;

8 (3) the public interest requires that many of
9 such frequencies be utilized more efficiently by Fed-
10 eral Government and non-Federal licensees;

11 (4) additional frequencies are assigned for serv-
12 ices that could be obtained more efficiently from
13 commercial carriers or other vendors;

14 (5) scarcity of assignable frequencies for licens-
15 ing by the Commission can and will—

16 (A) impede the development and commer-
17 cialization of new telecommunications products
18 and services;

19 (B) limit the capacity and efficiency of the
20 telecommunications systems in the United
21 States;

22 (C) prevent some State and local police,
23 fire, and emergency services from obtaining ur-
24 gently needed radio channels; and

1 (D) adversely affect the productive capac-
2 ity and international competitiveness of the
3 United States economy;

4 (6) a reassignment of these frequencies can
5 produce significant economic returns;

6 (7) a reassignment of Federal Government fre-
7 quencies can be accomplished without adverse im-
8 pact on amateur radio licenses that currently share
9 allocations with Federal Government stations;

10 (8) current spectrum assignment procedures—
11 comparative hearings and lotteries—can be expen-
12 sive and time consuming, can strain the limited re-
13 sources of the Federal Communications Commission,
14 and can result in an inefficient distribution of spec-
15 trum and an unjustified windfall to speculators;

16 (9) competitive bidding could reduce the cost in
17 time and money—and increase the efficiency—of the
18 spectrum assignment process for certain radio serv-
19 ices, discourage speculative applications, encourage
20 the efficient use of spectrum by licensees, and fairly
21 compensate United States taxpayers for use of a
22 scarce public natural resource;

23 (10) competitive bidding should be structured
24 to—

1 (A) facilitate introduction of new spec-
2 trum-based technologies and services and entry
3 of new companies into the telecommunications
4 market;

5 (B) recognize the legitimate needs of rural
6 telephone companies in providing spectrum-
7 based, common carrier services in rural markets
8 in which they provide telephone exchange serv-
9 ice by wire;

10 (C) give appropriate consideration to small
11 businesses that want to participate in the com-
12 petitive bidding process;

13 (D) recognize the need to make reasonably
14 priced mobile communications services available
15 to businesses in rural areas; and

16 (E) otherwise further the public interest;

17 (11) competitive bidding should apply only to
18 the granting of new spectrum licenses and should
19 not—

20 (A) disrupt the operations of existing spec-
21 trum licensees;

22 (B) alter existing spectrum allocation pro-
23 cedures;

24 (C) apply to certain services governed by
25 public interest regulations;

1 (D) diminish the existing authority of the
2 Federal Communications Commission to regu-
3 late or reclaim spectrum licenses; or

4 (E) grant any right to a spectrum licensee
5 different from the rights awarded to licensees
6 who obtain their license through assignment
7 methods other than competitive bidding;

8 (12) in appropriating revenues received from
9 competitive bidding, priority should be given to—

10 (A) funding spectrum management, plan-
11 ning, monitoring, and enforcement and other
12 activities of the Federal Communications Com-
13 mission, the National Telecommunications and
14 Information Administration, and other Federal
15 agencies aimed at increasing the efficiency and
16 effectiveness of spectrum use, facilitating the
17 introduction of new spectrum-based tech-
18 nologies and services, and enhancing the inter-
19 national competitiveness of the United States
20 and the ability of American companies to enter
21 new markets; and

22 (B) extending the reach of public radio
23 and television to underserved areas of the Unit-
24 ed States and underserved groups of Ameri-
25 cans; and

1 (13) the Secretary of Commerce, the President,
2 and Federal Communications Commission should be
3 directed to take appropriate steps to correct these
4 deficiencies.

5 **SEC. 3. NATIONAL SPECTRUM PLANNING.**

6 (a) **PLANNING ACTIVITIES.**—The Assistant Secretary
7 of Commerce for Communications and Information and
8 the Chairman of the Commission shall meet, at least bian-
9 nually, to conduct joint spectrum planning with respect
10 to the following issues:

11 (1) the future spectrum requirements for public
12 and private uses, including State and local govern-
13 ment public safety agencies;

14 (2) the spectrum allocation actions necessary to
15 accommodate those uses; and

16 (3) actions necessary to promote the efficient
17 use of the spectrum, including spectrum manage-
18 ment techniques to promote increased shared use of
19 the spectrum that does not cause harmful inter-
20 ference, as a means of increasing commercial access.

21 (b) **REPORTS.**—The Assistant Secretary of Com-
22 merce for Communications and Information and the
23 Chairman of the Commission shall submit a joint annual
24 report to the Committee on Energy and Commerce of the
25 House of Representatives, the Committee on Commerce,

1 Science, and Transportation of the Senate, the Secretary,
2 and the Commission on the joint spectrum planning activi-
3 ties conducted under subsection (a) and recommendations
4 for action developed pursuant to such activities. The first
5 annual report submitted after the date of the report by
6 the advisory committee under section 4(d)(4) shall include
7 an analysis of and response to that committee report.

8 **SEC. 4. RECOMMENDATIONS FOR REALLOCATION OF CER-**
9 **TAIN FREQUENCIES.**

10 (a) IDENTIFICATION REQUIRED.—For purposes of
11 reallocation, the Secretary shall identify frequencies
12 that—

13 (1) are allocated on a primary basis for Federal
14 Government use;

15 (2) are not required for the present or identifi-
16 able future needs of the Federal Government;

17 (3) can feasibly be made available, as of the
18 date of such identification or at any time during the
19 next 15 years, for use under the Act (other than for
20 Federal Government stations under section 305
21 thereof) without resulting in costs to the Federal
22 Government, or loss of services or benefits to the
23 public, that are excessive in relation to the benefits
24 that may be obtained by non-Federal licensees; and

1 (4) are most likely to have the greatest poten-
2 tial for productive uses and public benefits under the
3 Act if allocated for commercial uses.

4 (b) MINIMUM AMOUNT OF SPECTRUM REC-
5 COMMENDED.—

6 (1) OVERALL RECOMMENDATION.—In accord-
7 ance with the provisions of this section, the Sec-
8 retary shall recommend for reallocation, for use
9 other than by Federal Government stations under
10 section 305 of the Act (47 U.S.C. 305), at least 200
11 megahertz of frequencies identified under subsection
12 (a) that are located below 5 gigahertz. At least one-
13 half of such frequencies shall be located below 3
14 gigahertz.

15 (2) MIXED USES PERMITTED TO BE COUNT-
16 ED.—Among the frequencies recommended under
17 this section for allocation, the Secretary may include
18 frequencies and frequency bands that are to be par-
19 tially retained for use by Federal Government sta-
20 tions but that are also recommended to be reallo-
21 cated under the Act for use by non-Federal stations,
22 except that—

23 (A) such mixed-use frequencies and fre-
24 quency bands may not count toward more than

1 one-half of the 200 megahertz minimum re-
2 quired by paragraph (1);

3 (B) such mixed-use frequencies and fre-
4 quency bands may not be so counted unless the
5 assignments of the frequencies to Federal Gov-
6 ernment stations under section 305 of the Act
7 (47 U.S.C. 305) are limited by geographic
8 areas, by time, or by other means so as to guar-
9 antee that the potential use to be made by such
10 Federal Government stations is substantially
11 less (as measured by geographic area, time, or
12 otherwise) than the potential use to be made by
13 non-Federal stations; and

14 (C) such operational sharing shall be sub-
15 ject to coordination procedures that the Com-
16 mission shall establish and implement to ensure
17 against harmful interference.

18 (c) CONSIDERATION OF CRITERIA FOR IDENTIFICA-
19 TION.—

20 (1) NEEDS OF THE FEDERAL GOVERNMENT.—

21 In determining whether a frequency meets the cri-
22 teria specified in subsection (a)(2), the Secretary
23 shall—

24 (A) consider whether the frequency is used
25 to provide a communications service that is or

1 could be available from a commercial carrier or
2 other vendor;

3 (B) seek to promote—

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

6 (ii) the sharing of frequencies (as per-
7 mitted under subsection (b)(2));

8 (iii) the development and use of new
9 communications technologies; and

10 (iv) the use of nonradiating commu-
11 nications systems where practicable; and

12 (C) seek to avoid—

13 (i) serious degradation of Federal
14 Government services and operations;

15 (ii) excessive costs to the Federal Gov-
16 ernment and users of Federal Government
17 services; and

18 (iii) excessive disruption of existing
19 use of Federal Government frequencies by
20 amateur radio licensees.

21 (2) FEASIBILITY OF USE.—In determining
22 whether a frequency meets the criteria specified in
23 subsection (a)(3), the Secretary shall—

24 (A) assume that the frequency will be as-
25 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) COMMERCIAL USE.—In determining wheth-
18 er a frequency meets the criteria specified in sub-
19 section (a)(4), the Secretary shall consider—

20 (A) the extent to which equipment is avail-
21 able that is capable of utilizing the band;

22 (B) the proximity of frequencies that are
23 already assigned for commercial or other non-
24 Federal use;

1 (C) the extent to which commercial users
2 can share the frequency with amateur radio li-
3 censees; and

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

9 (4) OTHER USES.—

10 (A) APPLICABILITY OF CRITERIA.—The
11 criteria specified by subsection (a) shall be
12 deemed not to be met for any purpose under
13 this Act with regard to any frequency assign-
14 ment to, or any frequency assignment used by,
15 a Federal power agency for the purpose of with-
16 drawing that assignment.

17 (B) MIXED USE ELIGIBILITY.—The fre-
18 quencies assigned to any Federal power agency
19 may only be eligible for mixed use under sub-
20 section (b)(2) in geographically separate areas,
21 but in those cases where a frequency is to be
22 shared by an affected Federal power agency
23 and a non-Federal user, such use by the non-
24 Federal user shall not cause harmful inter-
25 ference to the affected Federal power agency or

1 adversely affect the reliability of its power sys-
2 tem.

3 (C) DEFINITION.—As used in this para-
4 graph, the term “Federal power agency” means
5 the Tennessee Valley Authority, the Bonneville
6 Power Administration, the Western Area Power
7 Administration, or the Southwestern Power Ad-
8 ministration.

9 (d) PROCEDURE FOR IDENTIFICATION OF
10 REALLOCABLE BANDS OF FREQUENCIES.—

11 (1) SUBMISSION OF REPORTS TO THE PRESI-
12 DENT AND CONGRESS.—

13 (A) REPORT IDENTIFYING 30 MEGAHERTZ
14 FOR IMMEDIATE REALLOCATION.—Within 6
15 months after the date of enactment of this Act,
16 the Secretary shall prepare and submit to the
17 President and the Congress a report that rec-
18 ommends for immediate reallocation 30 mega-
19 hertz of frequencies identified under subsection
20 (a). None of the frequencies covered by such re-
21 port may be allocated for mixed use as de-
22 scribed in subsection (b)(2). Not less than one-
23 half of such frequencies shall be located below
24 3 gigahertz.

1 (B) PRELIMINARY REPORT ON OTHER
2 REALLOCABLE FREQUENCIES.—Within 12
3 months after the date of enactment of this Act,
4 the Secretary shall prepare and submit to the
5 President and the Congress a preliminary re-
6 port that recommends for reallocation at least
7 170 megahertz of frequencies identified under
8 subsection (a), other than those recommended
9 for immediate reallocation under subparagraph
10 (A).

11 (C) FINAL REPORT ON OTHER
12 REALLOCABLE FREQUENCIES.—Within 24
13 months after the date of enactment of this Act,
14 the Secretary shall prepare and submit to the
15 President and the Congress a final report that
16 recommends the reallocation of at least 170
17 megahertz of frequencies as described in sub-
18 paragraph (B). Not less than one-half of such
19 frequencies shall be located below 3 gigahertz.

20 (D) LIMITATION ON REALLOCATION.—
21 None of the frequencies recommended for
22 reallocation in the reports required by this
23 paragraph shall have been recommended, prior
24 to the date of enactment of this Act, for

1 reallocation to non-Federal use by international
2 agreement.

3 (2) CONVENING OF ADVISORY COMMITTEE.—

4 Not later than the date the Secretary submits the
5 report required by paragraph (1)(B), the Secretary
6 shall convene an advisory committee to—

7 (A) review the frequencies identified in
8 such report;

9 (B) advise the Secretary with respect to (i)
10 the frequencies which should be included in the
11 final report required by paragraph (1)(C), and
12 (ii) the effective dates which should be estab-
13 lished under subsection (e) with respect to such
14 frequencies;

15 (C) receive public comment on the Sec-
16 retary's report and on the final report; and

17 (D) prepare and submit the report re-
18 quired by paragraph (4).

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

22 (3) COMPOSITION OF COMMITTEE; CHAIR-
23 MAN.—The advisory committee shall include—

24 (A) the Chairman of the Commission and
25 the Assistant Secretary of Commerce for Com-

1 munications and Information, and one other
2 representative of the Federal Government as
3 designated by the Secretary; and

4 (B) representatives of—

5 (i) United States manufacturers of
6 spectrum-dependent telecommunications
7 equipment;

8 (ii) commercial carriers;

9 (iii) other users of the electromagnetic
10 spectrum, including radio and television
11 broadcast licensees, State and local public
12 safety agencies, amateur radio licensees,
13 and the aviation industry; and

14 (iv) other interested members of the
15 public who are knowledgeable about the
16 uses of the electromagnetic spectrum.

17 A majority of the members of the committee shall be
18 members described in subparagraph (B), and one of
19 such members shall be designated as chairman by
20 the Secretary.

21 (4) RECOMMENDATIONS ON SPECTRUM ALLOCA-
22 TION PROCEDURES.—The advisory committee shall,
23 not later than 36 months after the date of enact-
24 ment of this Act, submit to the Secretary, the Com-
25 mission, the Committee on Energy and Commerce of

1 the House of Representatives, and the Committee on
2 Commerce, Science and Transportation of the Sen-
3 ate a report containing such recommendations as the
4 advisory committee considers appropriate for the re-
5 form of the process of allocating the electromagnetic
6 spectrum between Federal and non-Federal use, and
7 any dissenting views thereon.

8 (e) TIMETABLE FOR REALLOCATION AND LIMITA-
9 TION.—The Secretary shall, as part of the reports re-
10 quired by subparagraphs (B) and (C) of subsection (d)(1),
11 include a timetable that recommends dates by which the
12 President shall withdraw or limit assignments of the fre-
13 quencies specified in the reports. The recommended effec-
14 tive dates shall—

15 (1) permit the earliest possible reallocation of
16 frequencies, taking into account the requirements of
17 section 6;

18 (2) be based on the useful remaining life of
19 equipment that has been purchased or contracted for
20 to operate on identified frequencies;

21 (3) be based on the need to coordinate fre-
22 quency use with other nations; and

23 (4) take into account the relationship between
24 the costs to the Federal Government of changing to
25 different frequencies and the benefits that may be

1 (1) AUTHORITY TO SUBSTITUTE.—If the Presi-
2 dent determines that a circumstance described in
3 paragraph (2) exists, the President—

4 (A) may substitute an alternative fre-
5 quency for the frequency that is subject to such
6 determination and withdraw (or limit) the as-
7 signment of that alternative frequency in the
8 manner required by subsection (a); and

9 (B) shall submit a statement of the rea-
10 sons for taking the action described in subpara-
11 graph (A) to the Committee on Energy and
12 Commerce of the House of Representatives and
13 the Committee on Commerce, Science, and
14 Transportation of the Senate.

15 (2) GROUNDS FOR SUBSTITUTION.—Each of
16 the following subparagraphs describes a cir-
17 cumstance referred to in paragraph (1):

18 (A) The reassignment would seriously jeop-
19 ardize the national defense interests of the
20 United States.

21 (B) The frequency proposed for reassign-
22 ment is uniquely suited to meeting important
23 governmental needs.

24 (C) The reassignment would seriously jeop-
25 ardize public health or safety.

1 (D) The reassignment will result in costs
2 to the Federal Government that are excessive in
3 relation to the benefits that may be obtained
4 from commercial or other non-Federal uses of
5 the reassigned frequency.

6 (E) The reassignment will disrupt the ex-
7 isting use of a Federal Government band of fre-
8 quencies by amateur radio licensees.

9 (3) CRITERIA FOR SUBSTITUTED FRE-
10 QUENCIES.—For purposes of paragraph (1), a fre-
11 quency may not be substituted for a frequency iden-
12 tified and recommended under section 4 for
13 reallocation, unless the substituted frequency also
14 meets each of the criteria specified by section 4(a).

15 (4) DELAYS IN IMPLEMENTATION.—If the
16 President determines that any action cannot be com-
17 pleted by the effective date recommended by the Sec-
18 retary pursuant to section 4(e), or that such an ac-
19 tion by such date would result in a frequency being
20 unused as a consequence of the Commission's plan
21 under section 6(b), the President may—

22 (A) withdraw or limit the assignment to
23 Federal Government stations on a later date
24 that is consistent with such plan, except that
25 the President shall notify each Committee spec-

1 ified in paragraph (1)(B) and the Commission
2 of the reason that withdrawal or limitation at
3 a later date is required; or

4 (B) substitute alternative frequencies pur-
5 suant to this subsection.

6 (c) LIMITATION ON DELEGATION.—Notwithstanding
7 any other provision of law, the authorities and duties es-
8 tablished by this section may not be delegated.

9 (d) COSTS OF WITHDRAWING FREQUENCIES AS-
10 SIGNED TO THE FEDERAL GOVERNMENT.—

11 (1) REIMBURSEMENT AUTHORIZED.—Any Fed-
12 eral agency, or non-Federal entity operating on be-
13 half of a Federal agency, whose operation is dis-
14 placed from a frequency pursuant to this section
15 may be reimbursed, from revenues received pursuant
16 to section 8, not more than the incremental costs
17 such agency or entity incurs (in such amounts as
18 provided in advance in an appropriations Act) that
19 are directly attributable to the displacement from
20 the frequency. The estimates of these costs shall be
21 prepared by the affected agency, in consultation with
22 the Department of Commerce.

23 (2) AUTHORIZATION OF APPROPRIATIONS.—
24 There are authorized to be appropriated to the af-

1 account the timetable recommended by the Secretary
2 pursuant to section 4(e), shall propose—

3 (A) gradually to allocate and assign the
4 frequencies remaining, after making the res-
5 ervation required by subparagraph (B), over the
6 course of a period of not less than 10 years nor
7 more than 15 years beginning on the date of
8 submission of such plan; and

9 (B) to reserve a significant portion of such
10 frequencies for distribution beginning after the
11 end of such 10-year period;

12 (2) contain appropriate provisions to ensure the
13 availability of frequencies for new technologies and
14 services in accordance with the policies of section 7
15 of the Act (47 U.S.C. 157);

16 (3) address (A) the feasibility of reallocating
17 portions of the spectrum from current commercial
18 and other non-Federal uses to provide for more effi-
19 cient use of the spectrum, and (B) innovation and
20 marketplace developments that may affect the rel-
21 ative efficiencies of different spectrum allocations;
22 and

23 (4) not prevent the Commission from allocating
24 frequencies for specific uses in future rulemaking
25 proceedings.

1 (c) AMENDMENT TO THE ACT.—Section 303 of the
2 Act (47 U.S.C. 303) is amended by adding at the end the
3 following new subsection:

4 “(v) Have authority to assign the frequencies reallo-
5 cated from United States Government use to non-United
6 States Government use pursuant to the Emerging Tele-
7 communications Technologies Act of 1993; except that
8 any such assignment shall be made expressly subject to
9 the right of the President to reclaim such frequencies
10 under section 7 of such Act.”.

11 **SEC. 7. AUTHORITY TO RECLAIM REASSIGNED FRE-**
12 **QUENCIES.**

13 (a) AUTHORITY OF PRESIDENT.—Subsequent to the
14 withdrawal of assignment to Federal Government stations
15 pursuant to section 5, the President may reclaim reas-
16 signed frequencies for reassignment to Federal Govern-
17 ment stations in accordance with this section.

18 (b) PROCEDURE FOR RECLAIMING FREQUENCIES.—

19 (1) UNALLOCATED FREQUENCIES.—If the fre-
20 quencies to be reclaimed have not been allocated or
21 assigned by the Commission pursuant to the Act,
22 the President shall follow the procedures for substi-
23 tution of frequencies established by section 5(b) of
24 this Act.

1 (2) ALLOCATED FREQUENCIES.—If the fre-
2 quencies to be reclaimed have been allocated or as-
3 signed by the Commission, the President shall follow
4 the procedures for substitution of frequencies estab-
5 lished by section 5(b) of this Act, except that the no-
6 tification required by section 5(b)(1)(B) shall in-
7 clude—

8 (A) a timetable to accommodate an orderly
9 transition for displaced licensees to obtain new
10 frequencies and equipment necessary for its uti-
11 lization; and

12 (B) an estimate of the cost of displacing
13 spectrum uses licensed by the Commission.

14 (c) COSTS OF RECLAIMING FREQUENCIES; APPRO-
15 PRIATIONS AUTHORIZED.—The Federal Government shall
16 bear all costs of reclaiming frequencies pursuant to this
17 section, including the cost of equipment which is rendered
18 unusable, the cost of relocating operations to a different
19 frequency, and any other costs that are directly attrib-
20 utable to the reclaiming of the frequency pursuant to this
21 section. There are authorized to be appropriated such
22 sums as may be necessary to carry out the purposes of
23 this section.

24 (d) EFFECTIVE DATE OF RECLAIMED FRE-
25 QUENCIES.—The Commission shall not withdraw licenses

1 for any reclaimed frequencies until the end of the fiscal
2 year following the fiscal year in which the President's noti-
3 fication is received.

4 (e) EFFECT ON OTHER LAW.—Nothing in this sec-
5 tion shall be construed to limit or otherwise affect the au-
6 thority of the President under section 706 of the Act (47
7 U.S.C. 606).

8 **SEC. 8. COMPETITIVE BIDDING.**

9 (a) COMPETITIVE BIDDING TEST.—

10 (1) IN GENERAL.—

11 (A) THREE-YEAR AUTHORIZATION.—Sub-
12 ject to further authorization in an Act making
13 appropriations for the Commission, the Com-
14 mission shall, during fiscal years 1994 through
15 1996, use the competitive bidding process au-
16 thorized under the amendment made by sub-
17 section (b) to grant radio spectrum licenses en-
18 compassing not more than 30 megahertz of fre-
19 quencies in up to three different services.

20 (B) WAIVER OF REQUIREMENT.—The
21 Commission may waive the competitive bidding
22 requirement set forth in subparagraph (A) on a
23 case by case basis if it determines that a waiver
24 is necessary to further a fundamental policy ob-
25 jective of the Act.

1 (C) REPORT TO PRESIDENT AND CON-
2 GRESS.—The Commission shall prepare, in con-
3 sultation with the Assistant Secretary of Com-
4 merce for Communications and Information,
5 and submit, not later than March 31, 1997, to
6 the President and the Congress a report on the
7 use of competitive bidding under subparagraph
8 (A). Such report shall examine, in addition to
9 any other matters deemed appropriate by the
10 Commission, whether and to what extent—

11 (i) competitive bidding significantly
12 improved the efficiency and effectiveness of
13 the process for granting radio spectrum li-
14 censes;

15 (ii) competitive bidding facilitated the
16 introduction of new spectrum-based tech-
17 nologies and the entry of new companies
18 into the telecommunications market;

19 (iii) the needs of rural spectrum users
20 were adequately addressed in the competi-
21 tive bidding process;

22 (iv) small businesses were able to par-
23 ticipate in the competitive bidding process;
24 and

1 (v) statutory changes are needed to
2 improve the competitive bidding process.

3 (2) LIMITATION.—Notwithstanding any other
4 provision of this Act or other law, the Commission
5 shall not use competitive bidding, prior to September
6 30, 1997, to grant radio spectrum licenses except as
7 required in paragraph (1)(A).

8 (b) COMPETITIVE BIDDING AUTHORIZATION.—Sec-
9 tion 309 of the Act (47 U.S.C. 309) is amended by adding
10 at the end the following new subsection:

11 “(j)(1) Subject to the exemptions and conditions set
12 forth in the other provisions of this subsection and to a
13 further authorization in an Act making appropriations for
14 the Commission, the Commission shall have authority to
15 use competitive bidding in the granting of new construc-
16 tion permits or initial licenses.

17 “(2)(A) The Commission shall, within 18 months
18 after the date of enactment of the Emerging Tele-
19 communications Technologies Act of 1993 and following
20 public notice and comment proceedings, issue rules estab-
21 lishing competitive bidding procedures under this sub-
22 section.

23 “(B)(i) In the rules issued pursuant to subparagraph
24 (A), the Commission shall require potential bidders to file
25 a first-stage application indicating an intent to participate

1 in the competitive bidding process and containing such
2 other information as the Commission finds necessary.
3 After conducting the bidding, the Commission shall re-
4 quire the winning bidder to file a second-stage application.
5 After determining that such application is acceptable for
6 filing and that the winning bidder is qualified as described
7 in clause (ii), the Commission shall grant the permit or
8 license to the winning bidder.

9 “(ii) No permit or license shall be granted to a win-
10 ning bidder pursuant to clause (i) unless the Commission
11 determines that such winning bidder is qualified pursuant
12 to section 308(b) and subsection (a) of this section, on
13 the basis of the information contained in the first-stage
14 and second-stage applications submitted pursuant to
15 clause (i).

16 “(iii) Each participant in the competitive bidding
17 process shall be subject to the schedule of charges con-
18 tained in section 8.

19 “(C) In the rules issued pursuant to subparagraph
20 (A), the Commission shall, in addition to other actions it
21 finds necessary to implement competitive bidding fairly
22 and effectively—

23 “(i) establish minimum acceptable competitive
24 bids;

1 “(ii) establish the method of bidding (including
2 but not limited to sealed bids) and the basis for pay-
3 ment (such as lump-sum or installment payments, a
4 combination thereof, or other reasonable forms of
5 payment); and

6 “(iii) establish other appropriate conditions on
7 such permits and licenses that serve the public inter-
8 est.

9 “(3)(A) If the Commission decides to use competitive
10 bidding to grant two or more national, regional, or local
11 licenses in a terrestrial service that will compete with tele-
12 phone exchange service provided by wire by a common car-
13 rier in a rural area, the Commission shall designate one
14 license in such rural area as a rural program license.

15 “(B)(i) Except as provided in subparagraph (D), the
16 Commissioner may only grant a rural program license to
17 the qualified common carrier or carriers providing tele-
18 phone exchange service in the rural area covered by such
19 license.

20 “(ii) If the geographic service area of a license award-
21 ed by competitive bidding overlaps the service area of more
22 than one qualified common carrier, the Commission shall
23 grant a rural program license to each qualified common
24 carrier or a consortium of such carriers for that portion
25 of the geographic area served by a license awarded by com-

1 petite bidding that is congruent to the geographic area
2 served by such qualified common carrier or carriers.

3 “(iii) No qualified common carrier that receives a
4 rural program license in a rural area shall be eligible to—

5 “(I) receive any other license to provide the
6 same service in such area; or

7 “(II) own any equity interest in, become a cred-
8 itor of, or otherwise become affiliated with any en-
9 tity that holds a license to provide the same service
10 in such area.

11 “(iv) Any qualified common carrier that receives a
12 rural program license in a rural area shall provide to all
13 other licensees providing the same service in such area the
14 same quality of access to its wire network that it provides
15 itself.

16 “(v) The Commission may establish other rules or
17 conditions for the award of a rural program license.

18 “(C) Upon the grant of a rural program license to
19 a qualified common carrier in a rural area, such carrier
20 shall pay a fee (in lump-sum or installment payments or
21 a combination thereof or on any other reasonable basis
22 specified by the Commission) equal to the value of such
23 license. The value of such license shall be the average of
24 the amounts paid by persons granted licenses through
25 competitive bidding to provide the same service in such

1 area, except that the Commission shall determine the
2 value of such license by any reasonable means when the
3 geographic area served by the rural license is not congru-
4 ent with the geographic area served by the other license
5 or licenses.

6 “(D) If no qualified common carrier applies for a
7 rural program license, the Commission shall grant such
8 license to any other qualified applicant by any other means
9 authorized under this Act.

10 “(E) For purposes of this paragraph—

11 “(i) the term ‘rural area’ means a geographic
12 area that does not include either—

13 “(I) any incorporated place of 2,500 inhab-
14 itants or more, or any part thereof; or

15 “(II) any territory, incorporated or unin-
16 corporated, included in an urbanized area (as
17 defined by the Bureau of the Census as of the
18 date of enactment of the Emerging Tele-
19 communications Technologies Act of 1993); and

20 “(ii) the term ‘qualified common carrier’ means
21 a common carrier that—

22 “(I) provides telephone exchange service by
23 wire in a rural area; and

24 “(II) submits an application for a rural
25 program license in such area that meets the

1 standards established by the Commission to de-
2 termine ability to provide the service covered by
3 the license.

4 “(4) The competitive bidding authority provided to
5 the Commission in paragraph (1) shall not extend to—

6 “(A) license renewals and modifications;

7 “(B) the United States Government and State
8 or local government entities;

9 “(C) amateur operator services, over-the-air ter-
10 restrial radio and television broadcast services, pub-
11 lic safety services, and radio astronomy services;

12 “(D) private radio end-user licenses, such as
13 Specialized Mobile Radio Service (SMRS), maritime,
14 and aeronautical end-user licenses;

15 “(E) any license grant to a non-Federal licensee
16 being moved from its current frequency assignment
17 to a different one by the Commission in order to im-
18 plement the goals and objectives underlying the
19 Emerging Telecommunications Technologies Act of
20 1993; and

21 “(F) any other service, class of services, or as-
22 signments that the Commission determines, after
23 conducting public notice and comment proceedings,
24 should be exempt from competitive bidding because
25 of public interest factors warranting an exemption to

1 the extent the Commission determines the use of
2 competitive bidding would jeopardize appropriate
3 treatment of those factors.

4 “(5) No provision of this subsection or of the Emerg-
5 ing Telecommunications Technologies Act of 1993 shall
6 be construed, in any way, to—

7 “(A) alter spectrum allocation criteria and pro-
8 cedures established by the other provisions of this
9 Act;

10 “(B) diminish the authority of the Commission
11 under the other provisions of this Act to regulate or
12 reclaim spectrum licenses; or

13 “(C) grant any right to a spectrum licensee dif-
14 ferent from the rights awarded to licensees who ob-
15 tained their license through assignment methods
16 other than competitive bidding.

17 “(6) Moneys received from competitive bidding pur-
18 suant to this subsection shall be deposited in the general
19 fund of the Treasury.”.

20 (c) FURTHER AUTHORIZATION DEFINED.—For pur-
21 poses of this section and section 309(j) of the Act, as
22 amended by this Act, the inclusion of the following lan-
23 guage in an Act making appropriations for the Commis-
24 sion shall be sufficient to meet any requirement that ac-
25 tion by the Commission be further authorized: “The au-

1 thority of the Federal Communications Commission to use
2 competitive bidding in the granting of radio spectrum li-
3 censes in conformance with the procedures set forth in the
4 Emerging Telecommunications Technologies Act of 1993
5 is hereby reconfirmed.”.

6 **SEC. 9. DEFINITIONS.**

7 As used in this Act:

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

12 (2) The term “assignment” means an author-
13 ization given to a station licensee to use specific fre-
14 quencies or channels.

15 (3) The term “commercial carrier” means any
16 entity that uses a facility licensed by the Federal
17 Communications Commission pursuant to the Com-
18 munications Act of 1934 for hire or for its own use,
19 but does not include Federal Government stations li-
20 censed pursuant to section 305 of the Act (47
21 U.S.C. 305).

22 (4) The term “Commission” means the Federal
23 Communications Commission.

24 (5) The term “Secretary” means the Secretary
25 of Commerce.

1 (6) The term “the Act” means the Communica-
2 tions Act of 1934 (47 U.S.C. 151 et seq.).

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