

105TH CONGRESS  
1ST SESSION

# S. 741

To amend the Communications Act of 1934 to enable the Federal Communications Commission to enhance its spectrum management program capabilities through the collection of lease fees for new spectrum for radio services that are statutorily excluded from competitive bidding, and to enhance law enforcement and public safety radio communications.

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IN THE SENATE OF THE UNITED STATES

MAY 14, 1997

Mr. BREAUX introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To amend the Communications Act of 1934 to enable the Federal Communications Commission to enhance its spectrum management program capabilities through the collection of lease fees for new spectrum for radio services that are statutorily excluded from competitive bidding, and to enhance law enforcement and public safety radio communications.

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 “Private Wireless Spec-

5       trum Availability Act”.

1 **SEC. 2. DEFINITIONS.**

2 As used in this Act—

3 (1) COMMISSION.—The term “Commission”  
4 means the Federal Communications Commission.

5 (2) PUBLIC SAFETY.—The term “public safety”  
6 means fire, police, or emergency medical service in-  
7 cluding critical care medical telemetry, and such  
8 other services related to public safety as the Com-  
9 mission may include within the definition of public  
10 safety for purposes of this Act.

11 (3) PRIVATE WIRELESS.—The term “private  
12 wireless” encompasses all land mobile telecommuni-  
13 cations systems operated by or through industrial,  
14 business, transportation, educational, philanthropic  
15 or ecclesiastical organizations where these systems,  
16 the operation of which may be shared, are for the  
17 licensees’ internal use, rather than subscriber-based  
18 Commercial Mobile Radio Services (CMRS) systems.

19 (4) SPECTRUM LEASE FEE.—The term “spec-  
20 trum lease fee” means a periodic payment for the  
21 use of a given amount of electromagnetic spectrum  
22 in a given area in consideration of which the user is  
23 granted a license for such use.

24 **SEC. 3. FINDINGS.**

25 The Congress finds that:

1           (1) Private wireless communications systems  
2           enhance the competitiveness of American industry  
3           and business in international commerce, promote the  
4           development of national infrastructure, improve the  
5           delivery of products and services to consumers in the  
6           United States and abroad, and contribute to the eco-  
7           nomic and social welfare of citizens of the United  
8           States.

9           (2) The highly specialized telecommunications  
10          requirements of licensees in the private wireless serv-  
11          ices would be served, and a more favorable climate  
12          would be created for the allocation of additional elec-  
13          tromagnetic spectrum for those services if an alter-  
14          native license administration methodology, in addi-  
15          tion to the existing competitive bidding process, were  
16          made available to the Commission.

17 **SEC. 4. SPECTRUM LEASING FEES.**

18          Title I of the Communications Act of 1934 (47  
19          U.S.C. 151 et seq.) is amended by adding at the end there-  
20          of the following:

21 **“SEC. 12. SPECTRUM LEASE FEE PROGRAM.**

22          “(a) SPECTRUM LEASE FEES.—

23                  “(1) IN GENERAL.—Within 6 months after the  
24          date of enactment of the Private Wireless Spectrum  
25          Availability Act, the Commission shall by rule—

1           “(A) implement a system of spectrum lease  
2 fees applicable to newly allocated frequency  
3 bands, as described in section 5 of the Private  
4 Wireless Spectrum Availability Act, assigned to  
5 systems (other than public safety systems (as  
6 defined in section 2(2) of the Private Wireless  
7 Spectrum Availability Act)) in private wireless  
8 service;

9           “(B) provide appropriate incentives for li-  
10 censees to confine their radio communications  
11 to the area of operation actually required for  
12 that communication; and

13           “(C) permit private land mobile frequency  
14 advisory committees certified by the Commis-  
15 sion to assist in the computation, assessment,  
16 collection, and processing of amounts received  
17 under the system of spectrum lease fees.

18           “(2) FORMULA.—The Commission shall include  
19 as a part of the rulemaking carried out under para-  
20 graph (1)—

21           “(A) a formula to be used by private wire-  
22 less licensees and certified frequency advisory  
23 committees to compute spectrum lease fees; and

24           “(B) an explanation of the technical fac-  
25 tors included in the spectrum lease fee formula,

1 including the relative weight given to each fac-  
2 tor.

3 “(b) FREE BASIS.—

4 “(1) INITIAL FEES.—Fees assessed under the  
5 spectrum lease fee system established under sub-  
6 section (a) shall be based on the approximate value  
7 of the assigned frequencies to licensees. In assessing  
8 the value of the assigned frequencies to licensees  
9 under this subsection, the Commission shall take  
10 into account all relevant factors, including the  
11 amount of assigned bandwidth, the coverage area of  
12 a system, the geographic location of the system, and  
13 the degree of frequency sharing with other licensees  
14 in the same area. These factors shall be incorporated  
15 in the formula described in subsection (a)(2).

16 “(2) ADJUSTMENT OF FEES.—The Commission  
17 may adjust the formula developed under subsection  
18 (a)(2) whenever it determines that adjustment is  
19 necessary in order to calculate the lease fees more  
20 accurately or fairly.

21 “(3) FEE CAP.—The spectrum lease fees shall  
22 be set so that, over a 10-year license term, the  
23 amount of revenues generated will not exceed the  
24 revenues generated from the auction of comparable  
25 spectrum. For purposes of this paragraph, the ‘com-

1       parable spectrum’ shall mean spectrum located with-  
2       in 500 megahertz of that spectrum licensed in a con-  
3       cluded auction for mobile radio communication li-  
4       censes.

5       “(c) APPLICATION TO PRIVATE WIRELESS SYS-  
6       TEMS.—After the Commission has implemented the spec-  
7       trum leasing fee system under subsection (a) and provided  
8       licensees access to new spectrum as defined in section  
9       6(c)(2) of the Private Wireless Spectrum Availability Act,  
10      it shall assess the fees established for that system against  
11      all licensees authorized in any new frequency bands allo-  
12      cated for private wireless use.”.

13      **SEC. 5. SPECTRUM LEASE FEE PROGRAM INITIATION.**

14      (a) IN GENERAL.—The Commission shall allocate for  
15      use in the spectrum lease fee program under section 12  
16      of the Communications Act of 1934 (47 U.S.C. 162) not  
17      less than 12 megahertz of electromagnetic spectrum, pre-  
18      viously unallocated to private wireless, located between  
19      150 megahertz and 1000 megahertz on a nationwide basis.

20      (b) EXISTING INCUMBENTS.—In allocating electro-  
21      magnetic spectrum under subsection (a), the Commission  
22      shall ensure that existing incumbencies do not inhibit ef-  
23      fective access to use of newly allocated spectrum to the  
24      detriment of the spectrum lease fee program.

25      (c) TIMEFRAME.—

1           (1) ALLOCATION.—The Commission shall allo-  
2           cate electromagnetic spectrum under subsection (a)  
3           within 6 months after the date of enactment of this  
4           Act.

5           (2) ACCESS.—The Commission shall take such  
6           reasonable action as may be necessary to ensure that  
7           initial access to electromagnetic spectrum allocated  
8           under subsection (a) commences not later than 12  
9           months after the date of enactment of this Act.

10 **SEC. 6. DELEGATION OF AUTHORITY.**

11           Section 5 of the Communications Act of 1934 (47  
12 U.S.C. 155) is amended by adding at the end thereof the  
13 following:

14           “(f) DELEGATION TO CERTIFIED FREQUENCY ADVI-  
15           SORY COMMITTEES.—

16           “(1) IN GENERAL.—The Commission may, by  
17           published rule or order, utilize the services of cer-  
18           tified private land mobile frequency advisory com-  
19           mittees to assist in the computation, assessment,  
20           collection, and processing of funds generated  
21           through the spectrum lease fee program under sec-  
22           tion 12 of this Act. Except as provided in paragraph  
23           (3), a decision or order made or taken pursuant to  
24           such delegation shall have the same force and effect,  
25           and shall be made, evidenced, and enforced in the

1 same manner, as decisions or orders of the Commis-  
2 sion.

3 “(2) PROCESSING AND DEPOSITING OF FEES.—

4 A frequency advisory committee shall deposit any  
5 spectrum lease fees collected by it under Commission  
6 authority with a banking agent designated by the  
7 Commission in the same manner as it deposits appli-  
8 cation filing fees collected under section 8 of this  
9 Act.

10 “(3) REVIEW OF ACTIONS.—A decision or order  
11 under paragraph (1) is subject to review in the same  
12 manner, and to the same extent, as decisions or or-  
13 ders under subsection (c)(1) are subject to review  
14 under paragraphs (4) through (7) of subsection (c).

15 **SEC. 7. PROHIBITION OF USE OF COMPETITIVE BIDDING.**

16 Section 309(j)(6) of the Communications Act of 1934  
17 (47 U.S.C. 309(j)(6)) is amended—

18 (1) by striking “or” at the end of subparagraph  
19 (G);

20 (2) by striking the period at the end of sub-  
21 paragraph (H) and inserting a semicolon and “or”;  
22 and

23 (3) by adding at the end thereof the following:

24 “(I) preclude the Commission from consid-  
25 ering the public interest benefits of private

1 wireless communications systems (as defined in  
2 section 2(3) of the Spectrum Efficiency Reform  
3 Act of 1977) and making allocations in cir-  
4 cumstances in which—

5 “(i) the pre-defined geographic mar-  
6 ket areas required for competitive bidding  
7 processes are incompatible with the needs  
8 of radio services for site-specific system de-  
9 ployment;

10 “(ii) the unique operating characteris-  
11 ties and requirements of Federal agency  
12 spectrum users demand, as a prerequisite  
13 for sharing of Federal spectrum, that non-  
14 government access to the spectrum be re-  
15 stricted to radio systems that are non sub-  
16 scriber-based;

17 “(iii) licensee concern for operational  
18 safety, security, and productivity are of  
19 paramount importance and, as a con-  
20 sequence, there is no incentive, interest, or  
21 intent to use the assigned frequency for  
22 producing subscriber-based revenue; or

23 “(iv) the Commission, in its discre-  
24 tion, deems competitive bidding processes

1 to be incompatible with the public interest,  
2 convenience, and necessity.”.

3 **SEC. 8. USE OF PROCEEDS FROM SPECTRUM LEASE FEES.**

4 (a) ESTABLISHMENT OF ACCOUNT.—There is hereby  
5 established on the books of the Treasury an account for  
6 the spectrum license fees generated by the spectrum li-  
7 cense fee system established under section 12 of the Com-  
8 munications Act of 1934 (47 U.S.C. 162). Except as pro-  
9 vided in subsections (b) and (c), all proceeds from spec-  
10 trum lease fees shall be deposited in the Treasury in ac-  
11 cordance with chapter 33 of title 31, United States Code,  
12 and credited to the account established by this subsection.

13 (b) ADMINISTRATIVE EXPENSES.—Out of amounts  
14 received from spectrum lease payments a fair and reason-  
15 able amount, as determined by the Commission, may be  
16 retained by a certified frequency advisory committee act-  
17 ing under section 5(f) of the Communications Act of 1934  
18 (47 U.S.C. 155(f)) to cover costs incurred by it in admin-  
19 istering the spectrum lease fee program.

20 **SEC. 9. LEASING NOT TO AFFECT COMMISSION’S DUTY TO**  
21 **ALLOCATE.**

22 The implementation of spectrum lease fees as a li-  
23 cense administration mechanism is not a substitute for ef-  
24 fective spectrum allocation procedures. The Commission  
25 shall continue to allocate spectrum to various services on

- 1 the basis of fulfilling the needs of these services, and shall
- 2 not use fees or auctions as an allocation mechanism.

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