

106TH CONGRESS
1ST SESSION

S. 1824

To amend the Communications Act of 1934 to enhance the efficient use
of spectrum by non-Federal Government users.

IN THE SENATE OF THE UNITED STATES

OCTOBER 28, 1999

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

A BILL

To amend the Communications Act of 1934 to enhance the
efficient use of spectrum by non-Federal Government users.

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 Use Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress makes the following findings:

8 (1) Competent management of the electro-

9 magnetic radio spectrum includes continued avail-

10 ability of spectrum for private wireless entities be-

1 cause of such entities' unique ability to achieve sub-
2 stantial efficiencies in their use of this important
3 and finite public resource. A private wireless system
4 licensee or entity is able to customize communica-
5 tions systems to meet the individual needs of that li-
6 censee or end user while using engineering solutions
7 and other cooperative arrangements to share spec-
8 trum with other private system licensees and entities
9 without causing harmful interference or other deg-
10 radation of quality or reliability to such other licens-
11 ees or entities. Accordingly, spectrum allocations for
12 the shared use of private wireless systems achieve a
13 high level of spectrum use efficiency and contribute
14 to the economic and social welfare of the United
15 States.

16 (2) Wireless communication systems dedicated
17 to the internal communication needs of America's in-
18 dustrial, land transportation, energy (including utili-
19 ties and pipelines), and other business enterprises
20 are critical to the competitiveness of American in-
21 dustry and business in international commerce; in-
22 crease corporate productivity; enhance the safety
23 and welfare of employees; and improve the delivery
24 of products and services to consumers in the United
25 States and abroad.

1 (3) During the past decade, the Federal Com-
2 munications Commission allocation and licensing
3 policies have led to dramatic increases in spectrum
4 available for commercial mobile radio services while
5 the spectrum available for private mobile radio sys-
6 tems has decreased, even though the Commission
7 recognizes the spectrum use efficiencies and other
8 public benefits of such private systems and the sub-
9 stantial increases in the use of such systems.

10 (4) Spectrum auctions are designed to select
11 among competing applications for spectrum licenses
12 when engineering solutions, negotiation, threshold
13 qualifications, service regulations, and other coopera-
14 tive means employed by the Commission are not able
15 to prevent mutual exclusivity among such applica-
16 tions. Private wireless systems, on the other hand,
17 avoid mutual exclusivity through cooperative, mul-
18 tiple uses generally achieved by the Commission, the
19 users, or the frequency advisory committees. Accord-
20 ingly, the requirements of such private wireless sys-
21 tems are accommodated within the spectrum bands
22 allocated for private uses. Since there is no mutual
23 exclusivity among private wireless system applica-
24 tions, there is no need for the Commission to employ
25 a mechanism, such as auctions, to select among ap-

1 plications. Auction valuation principles also do not
2 apply to the private wireless licensing process be-
3 cause the private wireless spectrum is not used on
4 a commercial, interconnected basis. Rather, such
5 private allocations are used for internal communica-
6 tions applications to enhance safety, efficiency and
7 productivity. Nonetheless, there should be some pay-
8 ment associated with the assignment of new private
9 wireless spectrum, and the Commission can and
10 should develop a payment mechanism for this pur-
11 pose.

12 **SEC. 3. DEFINITIONS.**

13 Section 3 of the Communications Act of 1934 (47
14 U.S.C. 153) is amended—

15 (1) by redesignating paragraphs (33) through
16 (52) as paragraph (35) through (54); and

17 (2) by inserting after paragraph (32) the fol-
18 lowing:

19 “(33) PRIVATE WIRELESS SYSTEM.—The term
20 ‘private wireless system’ means an infrastructure of
21 telecommunications equipment and customer prem-
22 ises equipment that is owned by, and operated solely
23 to meet the internal wireless communication needs
24 of, an industrial, business, transportation, education,

1 or energy (including utilities and pipelines) entity, or
2 other licensee.

3 “(34) PRIVATE WIRELESS PROVIDER.—The
4 term ‘private wireless provider’ means an entity that
5 owns, operates, or manages an infrastructure of tele-
6 communications equipment and customer premises
7 equipment that is—

8 “(A) used solely for the purpose of meeting
9 the internal communications needs of another
10 entity that is an industrial, business, transpor-
11 tation, education, or energy (including utilities
12 and pipelines) entity, or similar end-user;

13 “(B) neither a commercial mobile service
14 (as defined in section 332(d)(1)) nor used to
15 provide public safety services (as defined in sec-
16 tion 337(f)(1)); and

17 “(C) not interconnected with the public
18 switched network.”.

19 **SEC. 4. ALLOCATION AND ASSIGNMENT OF ADDITIONAL**
20 **SPECTRUM.**

21 Part I of title III of the Communications Act of 1934
22 (47 U.S.C. 301) is amended by inserting after section 337
23 the following:

1 **“SEC. 338. ALLOCATION AND ASSIGNMENT OF SPECTRUM**
2 **FOR PRIVATE WIRELESS USES.**

3 “(a) RULEMAKING REQUIRED.—Within 120 days
4 after the date of enactment of the Private Wireless Spec-
5 trum Use Act, the Commission shall initiate a rulemaking
6 designed to identify and allocate at least 12 megahertz of
7 electromagnetic spectrum located between 150 and 2,000
8 megahertz for use by private wireless licensees on a
9 shared-use basis. The new spectrum proposed to be reallo-
10 cated shall be available and appropriate for use by private
11 wireless communications systems and shall accommodate
12 the need for paired allocations and for proximity to exist-
13 ing private wireless spectrum allocations. In accommo-
14 dating the various private wireless system needs in this
15 rulemaking, the Commission shall reserve at least 50 per-
16 cent of the reallocated spectrum for the use of private
17 wireless systems. The remaining reallocated spectrum
18 shall be available for use by private wireless providers sole-
19 ly for the purpose described in section 3(34)(A).

20 “(b) ORDER REQUIRED.—Within 180 days after the
21 Commission initiates the rulemaking required by sub-
22 section (a), the Commission, in consultation with its fre-
23 quency advisory committees, shall—

24 “(1) issue an order reallocating spectrum in ac-
25 cordance with subsection (a); and

1 “(2) issue licenses for the reallocated spectrum
2 in a timely manner.”.

3 **SEC. 5. REIMBURSEMENT FOR ADDITIONAL SPECTRUM AL-**
4 **LOCATED FOR PRIVATE WIRELESS SYSTEM**
5 **USE.**

6 Section 309(j) of the Communications Act of 1934
7 (47 U.S.C. 309 (j)) is amended by inserting after para-
8 graph (14) the following:

9 “(15) SPECTRUM EFFICIENCY FOR SHARED
10 SPECTRUM.—

11 “(A) Within 120 days after the date of en-
12 actment of the Private Wireless Spectrum Use
13 Act, the Commission shall initiate a rulemaking
14 to devise a schedule of payment to the Treasury
15 by private wireless systems, and by private
16 wireless providers for the purpose described in
17 section 3(34)(A), in return for a license or
18 other ability to use a portion of the spectrum
19 reallocated under section 338. The schedule
20 shall be designed to promote the efficient use of
21 those frequencies.

22 “(B) Within 180 days after the Commis-
23 sion initiates the rulemaking required by sub-
24 paragraph (A), the Commission, after consulta-
25 tion with its frequency advisory committees and

1 after opportunity for comment, shall adopt a
2 schedule of payment in accordance with sub-
3 paragraph (A) and which it determines to be in
4 the public interest.

5 “(C) In adopting the schedule of payments
6 referred to in subparagraph (A), the
7 Commission—

8 “(i) may not base a finding of public
9 interest, convenience, and necessity on the
10 expectation of Federal revenues for the use
11 of such schedule of payment; and

12 “(ii) shall take into account the pri-
13 vate nature of the systems, the safety and
14 efficiencies realized by the public as a re-
15 sult of these private uses, the amount of
16 bandwidth and coverage area and geo-
17 graphic location of the license, and the de-
18 gree of frequency-sharing.”.

19 **SEC. 6. SPECTRUM SHARING**

20 Section 309(j)(6) of the Communications Act of 1934
21 (47 U.S.C. 309(j)(6)) is amended—

22 (1) by striking “or” at the end of subparagraph
23 (G);

24 (2) by striking “Act.” in subparagraph (H) and
25 inserting “Act; or”; and

1 (3) by adding at the end the following:

2 “(I) be construed to permit the Commis-
3 sion to take any action to create mutual exclu-
4 sivity where it does not already exist.”.

5 **SEC. 7. CONFORMING AND TECHNICAL AMENDMENTS.**

6 (a) PRIVATE MOBILE SERVICE.—Section 332(d) of
7 the Communications Act of 1934 (47 U.S.C. 332(d)) is
8 amended—

9 (1) by inserting “and” after the semicolon in
10 paragraph (1);

11 (2) by striking “(c)(1)(B); and” in paragraph
12 (2) and inserting “(c)(1)(B).”; and

13 (3) by striking paragraph (3).

14 (b) APPLICATION OF SPECTRUM-USE PAYMENT
15 SCHEDULE TO NEW LICENSES.—Section 337(a)(2) of the
16 Communications Act of 1934 (47 U.S.C. 337(a)(2)) is
17 amended by inserting “or spectrum use payment sched-
18 ule” after “competitive bidding”.

19 (c) EXEMPTION FROM COMPETITIVE BIDDING.—Sec-
20 tion 309(j)(2) of the Communications Act of 1934 (47
21 U.S.C. 309(j)(2)) is amended—

22 (1) by striking “or” at the end of subparagraph
23 (B);

24 (2) by striking “Act.” in subparagraph (C) and
25 inserting “Act; or”; and

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

2 “(D) for private wireless systems, and for
3 private wireless providers for the purpose de-
4 scribed in section 3(34)(A), that—

5 “(i) are used to enhance the produc-
6 tivity or safety of business or industry; and

7 “(ii) are not made commercially avail-
8 able to the public, except for that pur-
9 pose.”.

10 (d) TECHNICAL AMENDMENT.—Section 271(c)(1)(A)
11 of the Communications Act of 1934 (47 U.S.C.
12 271(c)(1)(A)) is amended by striking “3(47)(A),” and in-
13 serting “3(49)(A),”.

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