

108TH CONGRESS  
1ST SESSION

# H. R. 1320

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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## IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 2003

Mr. UPTON (for himself, Mr. TOWNS, Mr. TAUZIN, Mr. BOUCHER, Mr. TERRY, Mr. GREEN of Texas, and Mr. STEARNS) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the National Telecommunications and Information Administration Organization Act to facilitate the reallocation 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Commercial Spectrum  
5 Enhancement Act”.

1 **SEC. 2. RELOCATION OF ELIGIBLE FEDERAL ENTITIES FOR**  
2 **THE REALLOCATION OF SPECTRUM FOR**  
3 **COMMERCIAL PURPOSES.**

4 (a) RELOCATION FROM AUCTIONED SPECTRUM.—  
5 Section 113 of the National Telecommunications and In-  
6 formation Administration Organization Act (47 U.S.C.  
7 923(g)) is amended—

8 (1) by redesignating subsection (i) as subsection  
9 (j); and

10 (2) by inserting after subsection (h) the fol-  
11 lowing new subsection:

12 “(i) RELOCATION OF ELIGIBLE FEDERAL ENTITIES  
13 FOR THE REALLOCATION OF SPECTRUM FOR COMMER-  
14 CIAL PURPOSES.—

15 “(1) ELIGIBLE FEDERAL ENTITIES.—Any Fed-  
16 eral entity that operates a Federal Government sta-  
17 tion assigned to a band of frequencies specified in  
18 paragraph (2) and that incurs relocation costs be-  
19 cause of the reallocation of frequencies from Federal  
20 use to non-Federal use shall receive payment for  
21 such costs from the Spectrum Relocation Fund, in  
22 accordance with section 118 of this Act, in lieu of  
23 receiving compensation under subsection (g) of this  
24 section. For purposes of this paragraph, Federal  
25 power agencies exempted under subsection (c)(4)  
26 that choose to relocate from the frequencies identi-

1       fied for reallocation pursuant to subsection (a), are  
2       eligible to receive payment under this paragraph.

3               “(2) ELIGIBLE FREQUENCIES.—The bands of  
4       eligible frequencies for purposes of this section are  
5       as follows:

6                       “(A) the 1710–1755 megahertz band; and

7                       “(B) any other band of frequencies reallo-  
8       cated from Federal use to non-Federal use after  
9       January 1, 1995, that is assigned by competi-  
10      tive bidding pursuant to section 309(j) of the  
11      Communications Act of 1934 (47 U.S.C.  
12      309(j)).

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

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

24                       “(B) the costs of all engineering, equip-  
25      ment, software, site acquisition and construc-

1           tion costs, as well as any legitimate and pru-  
2           dent transaction expense, including outside con-  
3           sultants, and reasonable additional costs in-  
4           curred by the Federal entity that are attrib-  
5           utable to relocation, including increased recur-  
6           ring costs associated with the replacement fa-  
7           cilities;

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

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

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

6           “(4) NOTICE TO COMMISSION OF ESTIMATED  
7           RELOCATION COSTS.—

8           “(A) The Commission shall notify the  
9           NTIA at least 9 months prior to the commence-  
10          ment of any auction of eligible frequencies de-  
11          fined in paragraph (2). At least 6 months prior  
12          to the commencement of any such auction, the  
13          NTIA, on behalf of the Federal entities and  
14          after review by the Office of Management and  
15          Budget, shall notify the Commission of esti-  
16          mated relocation costs and timelines for such  
17          relocation.

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

1 to the Commission pursuant to subparagraph  
2 (A).

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

10 “(5) IMPLEMENTATION OF PROCEDURES.—The  
11 NTIA shall take such actions as necessary to ensure  
12 the timely relocation of Federal entities’ spectrum-  
13 related operations from frequencies defined in para-  
14 graph (2) to frequencies or facilities of comparable  
15 capability. Upon a finding by the NTIA that a Fed-  
16 eral entity has achieved comparable capability of sys-  
17 tems by relocating to a new frequency assignment or  
18 by utilizing an alternative technology, the NTIA  
19 shall terminate the entity’s authorization and notify  
20 the Commission that the entity’s relocation has been  
21 completed. The NTIA shall also terminate such enti-  
22 ty’s authorization if the NTIA determines that the  
23 entity has unreasonably failed to comply with the  
24 timeline for relocation submitted by the Director of

1 the Office of Management and Budget under section  
2 118(d)(2)(B).”.

3 (b) CONFORMING AMENDMENT.—Section  
4 113(g)(1)(B) of such Act is amended by striking “A per-  
5 son” and inserting “Except as provided in subsection (i)  
6 with respect to a relocation from eligible frequencies de-  
7 scribed in paragraph (2) of such subsection, a person”.

8 **SEC. 3. MINIMUM AUCTION RECEIPTS AND DISPOSITION OF**  
9 **PROCEEDS.**

10 (a) AUCTION DESIGN.—Section 309(j)(3) of the  
11 Communications Act of 1934 (47 U.S.C. 309(j)(3)) is  
12 amended—

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

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

17 (3) by adding at the end the following new sub-  
18 paragraph:

19 “(F) for any auction of eligible frequencies  
20 described in section 113(i)(2) of the National  
21 Telecommunications and Information Adminis-  
22 tration Organization Act (47 U.S.C. 923(i)(2)),  
23 the recovery of 110 percent of estimated reloca-  
24 tion costs as provided to the Commission pursu-  
25 ant to section 113(i)(4) of such Act.”.

1 (b) SPECIAL AUCTION PROVISIONS FOR ELIGIBLE  
2 FREQUENCIES.—Section 309(j) of such Act is further  
3 amended by adding at the end the following new para-  
4 graph:

5 “(15) SPECIAL AUCTION PROVISIONS FOR ELI-  
6 GIBLE FREQUENCIES.—

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

18 “(B) CONCLUSION OF AUCTIONS CONTIN-  
19 GENT ON MINIMUM PROCEEDS.—The Commis-  
20 sion shall not conclude any auction of eligible  
21 frequencies described in section 113(i)(2) of  
22 such Act if the total cash proceeds attributable  
23 to such spectrum are less than 110 percent of  
24 the total estimated relocation costs provided to  
25 the Commission pursuant to section 113(i)(4)

1 of such Act. If the Commission is unable to  
2 conclude an auction for the foregoing reason,  
3 the Commission shall cancel the auction, return  
4 within 45 days after the auction cancellation  
5 date any deposits from participating bidders  
6 held in escrow, and absolve such bidders from  
7 any obligation to bid in any subsequent reauc-  
8 tion of such spectrum.

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

22 (c) DEPOSIT OF PROCEEDS.—Paragraph (8) of sec-  
23 tion 309(j) of the Communications Act of 1934 (47 U.S.C.  
24 309(j)) is amended—

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

3 (2) by adding at the end the following new sub-  
4 paragraph:

5 “(D) DISPOSITION OF CASH PROCEEDS.—  
6 Cash proceeds attributable to the auction of any  
7 eligible frequencies described in section  
8 113(i)(2) of the National Telecommunications  
9 and Information Administration Organization  
10 Act (47 U.S.C. 923(i)(2)) shall be deposited in  
11 the Spectrum Relocation Fund established  
12 under section 118 of such Act, and shall be  
13 available in accordance with that section.”.

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

15 Part B of the National Telecommunications and In-  
16 formation Administration Organization Act is amended by  
17 adding after section 117 (47 U.S.C. 927) the following  
18 new section:

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

20 “(a) ESTABLISHMENT OF SPECTRUM RELOCATION  
21 FUND.—There is established on the books of the Treasury  
22 a separate fund to be known as the ‘Spectrum Relocation  
23 Fund’ (in this section referred to as the ‘Fund’), which  
24 shall be administered by the Office of Management and

1 Budget (in this section referred to as ‘OMB’), in consulta-  
2 tion with the NTIA.

3 “(b) CREDITING OF RECEIPTS.—The Fund shall be  
4 credited with the amounts specified in section  
5 309(j)(8)(D) of the Communications Act of 1934 (47  
6 U.S.C. 309(j)(8)(D)). The proceeds attributable to each  
7 auction of any eligible frequencies described in section  
8 113(i)(2) of this Act shall be deposited in a separate ac-  
9 count in the Fund.

10 “(c) USED TO PAY RELOCATION COSTS.—The  
11 amounts in an account in the Fund from an auction of  
12 eligible frequencies are authorized to be used to pay relo-  
13 cation costs, as defined in section 113(i)(3) of this Act,  
14 of an eligible Federal entity incurring such costs with re-  
15 spect to relocation from those frequencies.

16 “(d) FUND AVAILABILITY.—

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

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

24 “(A) unless the Director of OMB has de-  
25 termined, in consultation with the NTIA, the

1           appropriateness of such costs and the timeline  
2           for relocation; and

3           “(B) until 30 days after the Director of  
4           the Office of Management and Budget has sub-  
5           mitted to the House and Senate Committees on  
6           Appropriations, the House Committee on En-  
7           ergy and Commerce, and the Senate Committee  
8           on Commerce, Science, and Transportation a  
9           detailed plan describing how the sums trans-  
10          ferred from the Fund will be used to pay relo-  
11          cation costs in accordance with such subsection  
12          and the timeline for such relocation.

13          “(3) REVERSION OF UNUSED FUNDS.—Any un-  
14          expended balances of an account in the Fund that  
15          are remaining after the payment of the relocation  
16          costs that are payable from such account shall revert  
17          to and be deposited in the general fund of the Treas-  
18          ury. Such reversion and deposit shall be made not  
19          later than the end of the fiscal year in which the  
20          NTIA has notified the Commission that all of the  
21          entities whose relocation costs are payable from such  
22          account have either—

23                  “(A) completed their relocation; or

24                  “(B) been determined by NTIA to have  
25          unreasonably failed to complete such relocation

1 in accordance with the timeline required by  
2 paragraph (2)(A).

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

4 “(1) TRANSFER.—Amounts made available pur-  
5 suant to subsection (d) shall be transferred to eligi-  
6 ble Federal entities, as defined in section 113(i)(1)  
7 of this Act. An eligible Federal entity may, subject  
8 to subsection (d)(2) of this section and the avail-  
9 ability of funds in the relevant account, receive more  
10 than one such transfer, but all such transfers are  
11 subject to prior approval by the Director of OMB.  
12 Such transferred amounts shall be credited to the  
13 account of the eligible Federal entity which has in-  
14 curred, or will incur, such costs, and shall remain  
15 available until the NTIA has notified the Commis-  
16 sion that the Federal entity has completed the relo-  
17 cation, or the NTIA has determined that such entity  
18 has unreasonably failed to complete such relocation  
19 in accordance with the timeline required by para-  
20 graph (2)(A).

21 “(2) RETRANSFER TO FUND.—An eligible Fed-  
22 eral entity that has received such amounts shall re-  
23 port its expenditures to OMB and shall transfer any  
24 amounts in excess of actual relocation costs back to  
25 the account in the Fund from which it was trans-

1       ferred immediately after the NTIA has notified the  
2       Commission that the entity’s relocation is complete,  
3       or has determined that such entity has unreasonably  
4       failed to complete such relocation in accordance with  
5       the timeline required by paragraph (2)(A).”.

6       **SEC. 5. TELECOMMUNICATIONS DEVELOPMENT FUND.**

7       Section 714(f) of the Communications Act of 1934  
8       (47 U.S.C. 614(f)) is amended to read as follows:

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

12             “(1) the analysis of the business plan of the eli-  
13             gible small business;

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

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

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

20      **SEC. 6. CONSTRUCTION.**

21      Nothing in this Act is intended to modify section  
22      1062(b) of the National Defense Authorization Act for  
23      Fiscal Year 2000 (Public Law 106–65).

1 **SEC. 7. EXEMPTION FROM SEQUESTRATION.**

2 The Spectrum Relocation Fund shall be exempt from  
3 reduction under any order issued under section 254 of the  
4 Balanced Budget and Emergency Deficit Control Act of  
5 1985, as amended.

6 **SEC. 8. REPORT.**

7 The National Telecommunications and Information  
8 Administration shall submit an annual report to the Com-  
9 mittees on Appropriations and Energy and Commerce of  
10 the House of Representatives and the Committees on Ap-  
11 propriations and Commerce, Science, and Transportation  
12 of the Senate on—

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

20 (2) with respect to each relocated communica-  
21 tion system and auction, a statement of the estimate  
22 of relocation costs required under section 113(i)(4)  
23 of such Act, the actual relocations costs incurred,  
24 and the amount of such costs paid from the Spec-  
25 trum Relocation Fund.

○