

# Union Calendar No. 71

108TH CONGRESS  
1ST SESSION

# H. R. 1320

[Report No. 108-137]

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

JUNE 3, 2003

Additional sponsors: Mr. KIRK, Mr. PICKERING, Mr. BASS, Mr. WHITFIELD, Mr. DOOLITTLE, Mr. WYNN, Mr. RUSH, Mr. GORDON, Mr. ISSA, and Mrs. WILSON of New Mexico

JUNE 3, 2003

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on March 18, 2003]

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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”.*

6 **SEC. 2. RELOCATION OF ELIGIBLE FEDERAL ENTITIES FOR**  
7 **THE REALLOCATION OF SPECTRUM FOR COM-**  
8 **MERCIAL PURPOSES.**

9 *Section 113(g) of the National Telecommunications*  
10 *and Information Administration Organization Act (47*  
11 *U.S.C. 923(g)) is amended by striking paragraphs (1)*  
12 *through (3) and inserting the following:—*

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

1           “(2) *ELIGIBLE FREQUENCIES.*—*The bands of eli-*  
2           *gible frequencies for purposes of this section are as fol-*  
3           *lows:*

4                   “(A) *the 216–220 megahertz band, the*  
5                   *1432–1435 megahertz band, the 1710–1755*  
6                   *megahertz band, and the 2385–2390 megahertz*  
7                   *band of frequencies; and*

8                   “(B) *any other band of frequencies reallo-*  
9                   *cated from Federal use to non-Federal use after*  
10                   *January 1, 2003, that is assigned by competitive*  
11                   *bidding pursuant to section 309(j) of the Com-*  
12                   *munications Act of 1934 (47 U.S.C. 309(j)), ex-*  
13                   *cept for bands of frequencies previously identified*  
14                   *by the National Telecommunications and Infor-*  
15                   *mation Administration in the Spectrum Re-*  
16                   *allocation Final Report, NTIA Special Publica-*  
17                   *tion 95–32 (1995).*

18           “(3) *DEFINITION OF RELOCATION COSTS.*—*For*  
19           *purposes of this subsection, the term ‘relocation costs’*  
20           *means the costs incurred by a Federal entity to*  
21           *achieve comparable capability of systems, regardless*  
22           *of whether that capability is achieved by relocating to*  
23           *a new frequency assignment or by utilizing an alter-*  
24           *native technology. Such costs include—*

1           “(A) the costs of any modification or re-  
2           placement of equipment, software, facilities, op-  
3           erating manuals, training costs, or regulations  
4           that are attributable to relocation;

5           “(B) the costs of all engineering, equipment,  
6           software, site acquisition and construction costs,  
7           as well as any legitimate and prudent trans-  
8           action expense, including outside consultants,  
9           and reasonable additional costs incurred by the  
10          Federal entity that are attributable to relocation,  
11          including increased recurring costs associated  
12          with the replacement facilities;

13          “(C) the costs of engineering studies, eco-  
14          nomic analyses, or other expenses reasonably in-  
15          curred in calculating the estimated relocation  
16          costs that are provided to the Commission pursu-  
17          ant to paragraph (4) of this subsection;

18          “(D) the one-time costs of any modification  
19          of equipment reasonably necessary to accommo-  
20          date commercial use of such frequencies prior to  
21          the termination of the Federal entity’s primary  
22          allocation or protected status, when the eligible  
23          frequencies as defined in paragraph (2) of this  
24          subsection are made available for private sector  
25          uses by competitive bidding and a Federal entity

1        *retains primary allocation or protected status in*  
2        *those frequencies for a period of time after the*  
3        *completion of the competitive bidding process;*  
4        *and*

5                *“(E) the costs associated with the acceler-*  
6        *ated replacement of systems and equipment if*  
7        *such acceleration is necessary to ensure the time-*  
8        *ly relocation of systems to a new frequency as-*  
9        *signment.*

10                *“(4) NOTICE TO COMMISSION OF ESTIMATED RE-*  
11        *LOCATION COSTS.—*

12                *“(A) The Commission shall notify the NTIA*  
13        *at least 18 months prior to the commencement of*  
14        *any auction of eligible frequencies defined in*  
15        *paragraph (2). At least 6 months prior to the*  
16        *commencement of any such auction, the NTIA,*  
17        *on behalf of the Federal entities and after review*  
18        *by the Office of Management and Budget, shall*  
19        *notify the Commission of estimated relocation*  
20        *costs and timelines for such relocation.*

21                *“(B) Upon timely request of a Federal enti-*  
22        *ty, the NTIA shall provide such entity with in-*  
23        *formation regarding an alternative frequency as-*  
24        *signment or assignments to which their*  
25        *radiocommunications operations could be relo-*

1           cated for purposes of calculating the estimated  
2           relocation costs and timelines to be submitted to  
3           the Commission pursuant to subparagraph (A).

4           “(C) To the extent practicable and con-  
5           sistent with national security considerations, the  
6           NTIA shall provide the information required by  
7           subparagraphs (A) and (B) by the geographic lo-  
8           cation of the Federal entities’ facilities or sys-  
9           tems and the frequency bands used by such fa-  
10          cilities or systems.

11          “(5) NOTICE TO CONGRESSIONAL COMMITTEES  
12          AND GAO.—The NTIA shall, at the time of providing  
13          an initial estimate of relocation costs to the Commis-  
14          sion under paragraph (4)(A), submit to the Commit-  
15          tees on Appropriations and Energy and Commerce of  
16          the House of Representatives, the Committees on Ap-  
17          propriations and Commerce, Science, and Transpor-  
18          tation of the Senate, and the Comptroller General a  
19          copy of such estimate and the timelines for relocation.

20          “(6) IMPLEMENTATION OF PROCEDURES.—The  
21          NTIA shall take such actions as necessary to ensure  
22          the timely relocation of Federal entities’ spectrum-re-  
23          lated operations from frequencies defined in para-  
24          graph (2) to frequencies or facilities of comparable ca-  
25          pability. Upon a finding by the NTIA that a Federal



1           *tration Organization Act (47 U.S.C. 923(g)(2)),*  
2           *the recovery of 110 percent of estimated reloca-*  
3           *tion costs as provided to the Commission pursu-*  
4           *ant to section 113(g)(4) of such Act.”.*

5           **(b) SPECIAL AUCTION PROVISIONS FOR ELIGIBLE**  
6 **FREQUENCIES.**—*Section 309(j) of such Act is further*  
7 *amended by adding at the end the following new paragraph:*

8           **“(15) SPECIAL AUCTION PROVISIONS FOR ELIGI-**  
9 **BLE FREQUENCIES.**—

10           **“(A) SPECIAL REGULATIONS.**—*The Com-*  
11 *mission shall revise the regulations prescribed*  
12 *under paragraph (4)(F) of this subsection to pre-*  
13 *scribe methods by which the total cash proceeds*  
14 *from any auction of eligible frequencies described*  
15 *in section 113(g)(2) of the National Tele-*  
16 *communications and Information Administra-*  
17 *tion Organization Act (47 U.S.C. 923(g)(2))*  
18 *shall at least equal 110 percent of the total esti-*  
19 *mated relocation costs provided to the Commis-*  
20 *sion pursuant to section 113(g)(4) of such Act.*

21           **“(B) CONCLUSION OF AUCTIONS CONTIN-**  
22 **ENT ON MINIMUM PROCEEDS.**—*The Commission*  
23 *shall not conclude any auction of eligible fre-*  
24 *quencies described in section 113(g)(2) of such*  
25 *Act if the total cash proceeds attributable to such*

1           *spectrum are less than 110 percent of the total*  
2           *estimated relocation costs provided to the Com-*  
3           *mission pursuant to section 113(g)(4) of such*  
4           *Act. If the Commission is unable to conclude an*  
5           *auction for the foregoing reason, the Commission*  
6           *shall cancel the auction, return within 45 days*  
7           *after the auction cancellation date any deposits*  
8           *from participating bidders held in escrow, and*  
9           *absolve such bidders from any obligation to the*  
10          *United States to bid in any subsequent reauction*  
11          *of such spectrum.*

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

1           (c) *DEPOSIT OF PROCEEDS.*—Paragraph (8) of section  
2 309(j) of the Communications Act of 1934 (47 U.S.C.  
3 309(j)) is amended—

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

6           (2) by adding at the end the following new sub-  
7 paragraph:

8           “(D) *DISPOSITION OF CASH PROCEEDS.*—  
9 Cash proceeds attributable to the auction of any  
10 eligible frequencies described in section 113(g)(2)  
11 of the National Telecommunications and Infor-  
12 mation Administration Organization Act (47  
13 U.S.C. 923(g)(2)) shall be deposited in the Spec-  
14 trum Relocation Fund established under section  
15 118 of such Act, and shall be available in accord-  
16 ance with that section.”.

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

18           Part B of the National Telecommunications and Infor-  
19 mation Administration Organization Act is amended by  
20 adding after section 117 (47 U.S.C. 927) the following new  
21 section:

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

23           “(a) *ESTABLISHMENT OF SPECTRUM RELOCATION*  
24 *FUND.*—There is established on the books of the Treasury  
25 a separate fund to be known as the ‘Spectrum Relocation

1 *Fund*’ (in this section referred to as the ‘*Fund*’), which shall  
2 be administered by the Office of Management and Budget  
3 (in this section referred to as ‘*OMB*’), in consultation with  
4 the *NTIA*.

5 “(b) *CREDITING OF RECEIPTS*.—The *Fund* shall be  
6 credited with the amounts specified in section 309(j)(8)(D)  
7 of the *Communications Act of 1934* (47 U.S.C.  
8 309(j)(8)(D)).

9 “(c) *USED TO PAY RELOCATION COSTS*.—The  
10 amounts in the *Fund* from auctions of eligible frequencies  
11 are authorized to be used to pay relocation costs, as defined  
12 in section 113(g)(3) of this Act, of an eligible Federal entity  
13 incurring such costs with respect to relocation from those  
14 frequencies.

15 “(d) *FUND AVAILABILITY*.—

16 “(1) *APPROPRIATION*.—There are hereby appro-  
17 priated from the *Fund* such sums as are required to  
18 pay the relocation costs specified in subsection (c).

19 “(2) *TRANSFER CONDITIONS*.—None of the funds  
20 provided under this subsection may be transferred to  
21 any eligible Federal entity—

22 “(A) unless the Director of *OMB* has deter-  
23 mined, in consultation with the *NTIA*, the ap-  
24 propriateness of such costs and the timeline for  
25 relocation; and

1           “(B) until 30 days after the Director of the  
2           OMB has submitted to the Committees on Appro-  
3           priations and Energy and Commerce of the  
4           House of Representatives, the Committees on Ap-  
5           propriations and Commerce, Science, and Trans-  
6           portation of the Senate, and the Comptroller  
7           General a detailed plan describing how the sums  
8           transferred from the Fund will be used to pay re-  
9           location costs in accordance with such subsection  
10          and the timeline for such relocation.

11          “(3) REVERSION OF UNUSED FUNDS.—Any auc-  
12          tion proceeds in the Fund that are remaining after  
13          the payment of the relocation costs that are payable  
14          from the Fund shall revert to and be deposited in the  
15          general fund of the Treasury not later than 8 years  
16          after the date of the deposit of such proceeds to the  
17          Fund.

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

19                 “(1) TRANSFER.—

20                         “(A) Amounts made available pursuant to  
21                         subsection (d) shall be transferred to eligible Fed-  
22                         eral entities, as defined in section 113(g)(1) of  
23                         this Act.

24                         “(B) An eligible Federal entity may receive  
25                         more than one such transfer, but if the sum of

1           *the subsequent transfer or transfers exceeds 10*  
2           *percent of the original transfer—*

3                     “(i) *such subsequent transfers are sub-*  
4                     *ject to prior approval by the Director of*  
5                     *OMB as required by subsection (d)(2)(A);*

6                     “(ii) *the notice to the committees con-*  
7                     *taining the plan required by subsection*  
8                     *(d)(2)(B) shall be not less than 45 days*  
9                     *prior to the date of the transfer that causes*  
10                    *such excess above 10 percent;*

11                    “(iii) *such notice shall include, in ad-*  
12                    *dition to such plan, an explanation of need*  
13                    *for such subsequent transfer or transfers;*  
14                    *and*

15                    “(iv) *the Comptroller General shall,*  
16                    *within 30 days after receiving such plan,*  
17                    *review such plan and submit to such com-*  
18                    *mittees an assessment of the explanation for*  
19                    *the subsequent transfer or transfers.*

20                    “(C) *Such transferred amounts shall be*  
21                    *credited to the appropriations account of the eli-*  
22                    *gible Federal entity which has incurred, or will*  
23                    *incur, such costs, and shall, subject to paragraph*  
24                    *(2), remain available until expended.*

1           “(2) *RETRANSFER TO FUND.*—An eligible Fed-  
2           eral entity that has received such amounts shall re-  
3           port its expenditures to OMB and shall transfer any  
4           amounts in excess of actual relocation costs back to  
5           the Fund immediately after the NTIA has notified the  
6           Commission that the entity’s relocation is complete,  
7           or has determined that such entity has unreasonably  
8           failed to complete such relocation in accordance with  
9           the timeline required by subsection (d)(2)(A).”.

10 **SEC. 5. TELECOMMUNICATIONS DEVELOPMENT FUND.**

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

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

16           “(1) the analysis of the business plan of the eligi-  
17 ble small business;

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

20           “(3) the extent to which the loan or credit exten-  
21 sion promotes the purposes of this section; and

22           “(4) other lending policies as defined by the  
23 Board.”.

1 **SEC. 6. CONSTRUCTION.**

2 *Nothing in this Act is intended to modify section*  
3 *1062(b) of the National Defense Authorization Act for Fis-*  
4 *cal Year 2000 (Public Law 106–65).*

5 **SEC. 7. ANNUAL REPORT.**

6 *The National Telecommunications and Information*  
7 *Administration shall submit an annual report to the Com-*  
8 *mittees on Appropriations and Energy and Commerce of*  
9 *the House of Representatives, the Committees on Appro-*  
10 *priations and Commerce, Science, and Transportation of*  
11 *the Senate, and the Comptroller General on—*

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

19 *(2) with respect to each relocated communication*  
20 *system and auction, a statement of the estimate of re-*  
21 *location costs required under section 113(g)(4) of such*  
22 *Act, the actual relocations costs incurred, and the*  
23 *amount of such costs paid from the Spectrum Reloca-*  
24 *tion Fund.*

1 **SEC. 8. PRESERVATION OF AUTHORITY; NTIA REPORT RE-**  
2 **QUIRED.**

3 (a) *SPECTRUM MANAGEMENT AUTHORITY RE-*  
4 *TAINED.*—*Except as provided with respect to the bands of*  
5 *frequencies identified in section 113(g)(2)(A) of the Na-*  
6 *tional Telecommunications and Information Administra-*  
7 *tion Organization Act (47 U.S.C. 923(g)(2)(A)) as amended*  
8 *by this Act, nothing in this Act or the amendments made*  
9 *by this Act shall be construed as limiting the Federal Com-*  
10 *munications Commission’s authority to allocate bands of*  
11 *frequencies that are reallocated from Federal use to non-*  
12 *Federal use for unlicensed, public safety, shared, or non-*  
13 *commercial use.*

14 (b) *NTIA REPORT REQUIRED.*—*Within 1 year after*  
15 *the date of enactment of this Act, the Administrator of the*  
16 *National Telecommunications and Information Adminis-*  
17 *tration shall submit to the Energy and Commerce Com-*  
18 *mittee of the House of Representatives and the Commerce,*  
19 *Science, and Transportation Committee of the Senate a re-*  
20 *port on various policy options to compensate Federal enti-*  
21 *ties for relocation costs when such entities’ frequencies are*  
22 *allocated by the Commission for unlicensed, public safety,*  
23 *shared, or non-commercial use.*



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