

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1661

To amend the Small Business Act and the Communications Act of 1934 to increase participation by small businesses in spectrum auctions conducted by the Federal Communications Commission.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 14, 2005

Mr. RUSH introduced the following bill; which was referred to the Committee on Small Business, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Small Business Act and the Communications Act of 1934 to increase participation by small businesses in spectrum auctions conducted by the Federal Communications Commission.

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. PURPOSE.**

4 The purpose of this Act is to increase telecommuni-  
5 cations ownership opportunities for small businesses, in-  
6 cluding small businesses owned or controlled by socially  
7 disadvantaged individuals, through Small Business Ad-

1 ministration participation in a market-oriented restruc-  
2 turing of the credit aspects of Federal Communications  
3 Commission telecommunications spectrum auctions.

4 **SEC. 2. ASSOCIATE ADMINISTRATOR FOR TELECOMMUNI-**  
5 **CATIONS FINANCE.**

6 (a) IN GENERAL.—Section 4(b)(1) of the Small Busi-  
7 ness Act (15 U.S.C. 633(b)(1)) is amended—

8 (1) in the fifth sentence, by striking “five” and  
9 inserting “six”; and

10 (2) by adding at the end the following new sen-  
11 tence: “One of the Associate Administrators shall be  
12 designated at the time of appointment as the Asso-  
13 ciate Administrator for Telecommunications Finance  
14 and shall have the qualifications and responsibilities  
15 specified in subsection (g).”.

16 (b) QUALIFICATIONS AND RESPONSIBILITIES.—Sec-  
17 tion 4 of the Small Business Act (15 U.S.C. 633) is  
18 amended by adding at the end the following new sub-  
19 section:

20 “(g) ASSOCIATE ADMINISTRATOR FOR TELE-  
21 COMMUNICATIONS FINANCE.—

22 “(1) IN GENERAL.—The Associate Adminis-  
23 trator for Telecommunications Finance—

1           “(A) shall be an employee in the competi-  
2           tive service or in the Senior Executive Service  
3           and a career appointee;

4           “(B) shall be responsible to the Adminis-  
5           trator for the supervision and management of  
6           financing in the area of telecommunications, in-  
7           cluding the programs and other activities under  
8           section 38 and section 39;

9           “(C) shall establish, with respect to tele-  
10          communications concerns, the detailed defini-  
11          tions or standards referred to in section  
12          3(a)(2);

13          “(D) shall have authority—

14                 “(i) to prescribe maximum amounts  
15                 for loan guarantees under any program  
16                 under section 38 or 39;

17                 “(ii) to approve all loan guarantees in  
18                 telecommunications; and

19                 “(iii) to approve all direct loans under  
20                 section 38(a)(1); and

21          “(E) in addition to any other duties under  
22          this Act, shall have authority to approve loan  
23          guarantees under section 7(a) with respect to  
24          Federal Communications Commission spectrum  
25          licenses acquired in the secondary market.

1           “(2) NEUTRALITY IN CHOICE OF PROGRAM BY  
2           APPLICANT FOR LOAN OR LOAN GUARANTEE.—In  
3           the administration of the Telecommunications Spec-  
4           trum Installment Loan Program under section 38  
5           and the Telecommunications Accelerated Certified  
6           Lender Program under section 39, the Associate Ad-  
7           ministrator for Telecommunications Finance shall  
8           observe strict neutrality as to the choice that a po-  
9           tential applicant may make as to the appropriate-  
10          ness of a program for the applicant. The choice of  
11          one program over the other shall be solely that of  
12          the applicant and the Associate Administrator shall  
13          neither encourage nor discourage any applicant in  
14          that choice.”.

15 **SEC. 3. SMALL BUSINESS ADMINISTRATION FINANCING**  
16                   **FOR ENTREPRENEUR PARTICIPATION IN**  
17                   **TELECOMMUNICATIONS SPECTRUM AUC-**  
18                   **TIONS CONDUCTED BY FEDERAL COMMU-**  
19                   **NICATIONS COMMISSION.**

20          The Small Business Act (15 U.S.C. 631 et seq.) is  
21 amended—

22           (1) by redesignating section 37 as section 40;

23          and

24           (2) by inserting after section 36 the following  
25          new sections:

1 **“SEC. 37. TELECOMMUNICATIONS FINANCE OFFICE.**

2       “(a) IN GENERAL.—There is established, within the  
3 Administration, an office to perform functions relating to  
4 the policies and programs of the Administration with re-  
5 spect to financing in the area of telecommunications. The  
6 office—

7           “(1) shall be known as the ‘Telecommunications  
8 Finance Office’;

9           “(2) shall be headed by the Associate Adminis-  
10 trator for Telecommunications Finance under sec-  
11 tion 4(g);

12           “(3) shall be staffed by employees who are from  
13 diverse backgrounds and who are highly skilled in  
14 the areas of telecommunications technology and tele-  
15 communications financing; and

16           “(4) shall be the principal entity within the Ad-  
17 ministration for implementation of the programs  
18 under sections 38 and 39.

19       “(b) FUNDING.—The expenses of the Telecommuni-  
20 cations Finance Office shall be paid from the Tele-  
21 communications Loan Guarantee Fund, established under  
22 section 715 of the Communications Act of 1934.

1 **“SEC. 38. TELECOMMUNICATIONS SPECTRUM INSTALL-**  
2 **MENT LOAN PROGRAM.**

3 “(a) IN GENERAL.—There is established a program,  
4 to be known as the ‘Telecommunications Spectrum Install-  
5 ment Loan Program’, under which the Administrator—

6 “(1) shall make direct loans to qualified tele-  
7 communications borrowers for acquisition of spec-  
8 trum licenses through Federal Communications  
9 Commission auction; and

10 “(2) shall guarantee loans to qualified tele-  
11 communications borrowers for telecommunications  
12 equipment and working capital in connection with  
13 any acquisition referred to in paragraph (1).

14 “(b) DIRECT LOAN CONDITIONS.—

15 “(1) LIMITATION ON DISBURSEMENT.—The Ad-  
16 ministrator may not disburse any loan amount under  
17 subsection (a)(1) if the cost of the license involved  
18 exceeds the approved loan amount plus, as deter-  
19 mined by the Administrator, cash available to the  
20 applicant for the purpose of paying the difference  
21 between the approved loan amount and the cost of  
22 the license.

23 “(2) INTEREST AT MARKET RATE.—The rate of  
24 interest on a loan shall be the prime interest rate or  
25 such other competitive market rate as the Adminis-  
26 trator determines to be appropriate.

1           “(3) INTEREST-ONLY PERIOD.—The Adminis-  
2           trator, in accordance with criteria established by  
3           regulation, may provide, on a case-by-case basis, for  
4           an initial period during which a borrower under sub-  
5           section (a)(1) shall pay interest only. In the case of  
6           such a determination, loan principal shall be amor-  
7           tized over the remainder of the loan term. The max-  
8           imum interest-only period under this paragraph is 6  
9           years.

10           “(4) MAXIMUM LOAN TERM.—The term of any  
11           loan under subsection (a)(1) may not exceed the  
12           term of the spectrum license involved.

13           “(c) LOAN GUARANTEE CONDITION.—The Adminis-  
14           trator may make loan guarantees under subsection (a)(2)  
15           to a borrower under subsection (a)(1) only for tele-  
16           communications equipment and working capital necessary  
17           to carry out the terms of the license to be financed.

18           “(d) SECURITY INTEREST AND FORCED SALE CON-  
19           DITIONS FOR DIRECT LOANS AND LOAN GUARANTEES.—  
20           The Administrator shall require, as a condition of any di-  
21           rect loan under subsection (a)(1) and any loan guarantee  
22           under subsection (a)(2), that—

23           “(1) any disbursement of a loan amount be  
24           fully protected by a secured interest in the proceeds

1 of a sale or other assignment of the license involved;  
2 and

3 “(2) the loan agreement contain specific meas-  
4 ures by which, in the case of a default by the bor-  
5 rower, the lender may require the borrower to sell or  
6 otherwise assign the license.

7 “(e) GENERAL APPLICABILITY; WAIVER EXCEP-  
8 TION.—Loans and loan guarantees under this section shall  
9 be subject to all otherwise applicable provisions of this Act,  
10 except that the Administrator may waive any limitation  
11 on the amount of an individual loan or loan guarantee or  
12 on the total amount of loans or loan guarantees to a single  
13 borrower.

14 “(f) TREASURY ACCOUNT.—The Administrator shall  
15 notify the Secretary of the Treasury of each loan trans-  
16 action entered into under subsection (a)(1). Upon receipt  
17 of notice under the preceding sentence, the Secretary shall  
18 establish an account in the Treasury for the loan.

19 “(g) DEFINITIONS.—As used in this section—

20 “(1) the term ‘qualified telecommunications  
21 borrower’ means a small business concern that, as  
22 determined by the Administrator, has, in addition to  
23 the other requirements of this Act, a level of special-  
24 ized telecommunications expertise (including tech-  
25 nical knowledge, business skill, and management ex-

1       perience) that is appropriate for the purpose for  
2       which the loan or guarantee involved is made; and

3               “(2) the term ‘Administrator’ means the Ad-  
4       ministrator, acting through the Associate Adminis-  
5       trator for Telecommunications Finance.

6       “(h) COLLECTION OF DATA.—The Administrator  
7       shall collect data with respect to the operation of the pro-  
8       gram under this section. The data so collected—

9               “(1) shall be accumulated on a calendar year  
10      basis;

11              “(2) shall be maintained in an electronic data-  
12      base;

13              “(3) shall include information on the ethnicity,  
14      race, and sex of all applicants, whether the applica-  
15      tions involved are approved, denied, withdrawn, or  
16      otherwise disposed of; and

17              “(4) shall include other information that, as de-  
18      termined by the Administrator, is relevant to the  
19      disposition of applications.

20       “(i) REPORT.—Not later than December 31 of each  
21      year, the Administrator shall submit to the Congress a re-  
22      port, with respect to the preceding calendar year, of the  
23      status of the program under this section. The report shall  
24      include—

1           “(1) a statistical analysis (without personal  
2 identifying information) of the diversity characteris-  
3 tics of applicants and borrowers under the program;  
4 and

5           “(2) a probability analysis with respect to the  
6 diversity of applicants who receive loans under the  
7 program.

8 **“SEC. 39. TELECOMMUNICATIONS ACCELERATED CER-**  
9 **TIFIED LENDER PROGRAM.**

10          “(a) IN GENERAL.—There is established a program,  
11 to be known as the ‘Telecommunications Accelerated Cer-  
12 tified Lender Program’, under which the Administrator—

13           “(1) shall guarantee loans made to qualified  
14 telecommunications borrowers—

15                   “(A) for acquisition of spectrum licenses  
16 through Federal Communications Commission  
17 auction; and

18                   “(B) for acquisition of spectrum licenses in  
19 the secondary market for licenses originally ac-  
20 quired through Federal Communications Com-  
21 mission auction; and

22           “(2) shall guarantee loans made to qualified  
23 telecommunications borrowers for telecommuni-  
24 cations equipment and working capital in connection  
25 with any acquisition referred to in paragraph (1).

1       “(b) FUNDING.—The expenses of loan guarantees  
2 under subsection (a) shall be paid from the Telecommuni-  
3 cations Loan Guarantee Fund, established under section  
4 715 of the Communications Act of 1934.

5       “(c) APPROVED LENDERS.—Loans guaranteed under  
6 this section shall be made by lenders that are insured de-  
7 positary institutions and are approved by the Adminis-  
8 trator. In evaluating an institution for approval, the Ad-  
9 ministrator shall take into consideration the financial sta-  
10 bility of the institution, the experience and expertise of  
11 the institution in lending to telecommunications bor-  
12 rowers, and the need for diversity in the management and  
13 ownership of approved institutions.

14       “(d) LOAN GUARANTEE CONDITIONS.—

15               “(1) LIMITATION ON DISBURSEMENT.—The Ad-  
16 ministrator shall require, as a condition of any loan  
17 guarantee under subsection (a)(1), that the lender  
18 may not disburse any loan amount if the cost of the  
19 license involved exceeds the approved loan amount  
20 plus, as determined by the Administrator, cash avail-  
21 able to the applicant for the purpose of paying the  
22 difference between the approved loan amount and  
23 the cost of the license.

24               “(2) SECURITY INTEREST AND FORCED SALE  
25 REQUIREMENTS.—The Administrator shall require,

1 as a condition of any loan guarantee under sub-  
2 section (a), that—

3 “(A) any disbursement of a loan amount  
4 be fully protected by a secured interest in the  
5 proceeds of a sale or other assignment of the li-  
6 cense involved; and

7 “(B) the loan agreement contain specific  
8 measures by which, in the case of a default by  
9 the borrower, the lender may require the bor-  
10 rower to sell or otherwise assign the license.

11 “(e) GENERAL APPLICABILITY; WAIVER EXCEP-  
12 TION.—Loan guarantees under this section shall be sub-  
13 ject to all otherwise applicable provisions of this Act, ex-  
14 cept that the Administrator may waive any limitation on  
15 the amount of an individual loan guarantee or on the total  
16 amount of loan guarantees to a single borrower.

17 “(f) DEFINITIONS.—As used in this section—

18 “(1) the term ‘qualified telecommunications  
19 borrower’ means a small business concern that, as  
20 determined by the Administrator, has, in addition to  
21 the other requirements of this Act, a level of special-  
22 ized telecommunications expertise (including tech-  
23 nical knowledge, business skill, and management ex-  
24 perience) that is appropriate for the purpose for  
25 which the loan or guarantee involved is made; and

1           “(2) the term ‘Administrator’ means the Ad-  
2           ministrator, acting through the Associate Adminis-  
3           trator for Telecommunications Finance.

4           “(g) COLLECTION OF DATA.—The Administrator  
5           shall collect data with respect to the operation of the pro-  
6           gram under this section. The data so collected—

7           “(1) shall be accumulated on a calendar year  
8           basis;

9           “(2) shall be maintained in an electronic data-  
10          base;

11          “(3) shall include information on the ethnicity,  
12          race, and sex of all applicants, whether the applica-  
13          tions involved are approved, denied, withdrawn, or  
14          otherwise disposed of; and

15          “(4) shall include other information that, as de-  
16          termined by the Administrator, is relevant to the  
17          disposition of applications.

18          “(h) REPORT.—Not later than December 31 of each  
19          year, the Administrator shall submit to the Congress a re-  
20          port, with respect to the preceding calendar year, of the  
21          status of the program under this section. The report shall  
22          include—

23          “(1) a statistical analysis (without personal  
24          identifying information) of the diversity characteris-

1       tics of applicants and borrowers under the program;  
2       and

3               “(2) a probability analysis with respect to the  
4       diversity of applicants who receive loans under the  
5       program.”.

6       **SEC. 4. TELECOMMUNICATIONS LOAN GUARANTEE FUND.**

7       (a) IN GENERAL.—Title VII of the Communications  
8       Act of 1934 is amended by inserting after section 714 (42  
9       U.S.C. 614) the following new section:

10      **“SEC. 715. TELECOMMUNICATIONS LOAN GUARANTEE**  
11               **FUND.**

12       “(a) ESTABLISHMENT.—

13               “(1) IN GENERAL.—There is hereby established  
14       the Telecommunications Loan Guarantee Fund  
15       (hereafter in this section referred to as the ‘Fund’)  
16       in the Department of the Treasury under the control  
17       of the Secretary of the Treasury (hereafter in this  
18       section referred to as the ‘Secretary’).

19               “(2) INITIAL CAPITALIZATION OF FUND.—The  
20       first \$10,000,000,000 of proceeds received from the  
21       auction of spectrum licenses by the Federal Commu-  
22       nications Commission after the date of the enact-  
23       ment of this section shall be deposited in the Fund  
24       and shall constitute the capitalization of the Fund.

25       “(b) MAINTENANCE OF FUND.—

1           “(1) IN GENERAL.—Amounts in the Fund shall  
2           be deposited by the Secretary in depositaries des-  
3           ignated by the Secretary which have also been des-  
4           ignated by the Telecommunications Finance Office  
5           of the Small Business Administration as certified  
6           telecommunications lenders.

7           “(2) INTEREST.—Interest paid by depositaries  
8           on amounts deposited in accordance with paragraph  
9           (1) shall be deposited in the Fund and be available  
10          for the purposes of the Fund.

11          “(c) PURPOSE OF FUND.—Amounts in the Fund  
12          shall be available to meet any obligation of the Small Busi-  
13          ness Administration arising under a loan guarantee issued  
14          by the Telecommunications Finance Office of the Small  
15          Business Administration in connection with a loan under  
16          section 38(a)(2) or section 39(a) of the Small Business  
17          Act.”.

18          **SEC. 5. PARTICIPATION IN SPECTRUM AUCTIONS.**

19          Section 309(j)(5) of the Communications Act of 1934  
20          (47 U.S.C. 309(j)(5)) is amended—

21                  (1) by striking “No person” and inserting the  
22          following:

23                          “(A) IN GENERAL.—No person”; and

24                  (2) by adding at the end the following:

1           “(B) QUALIFIED TELECOMMUNICATIONS  
2 BORROWERS.—With respect to any person that  
3 meets the qualification requirements of this  
4 paragraph and that is a qualified telecommuni-  
5 cations borrower under section 38 or 39 of the  
6 Small Business Act, the Commission shall ac-  
7 cept, in lieu of any upfront payment or earnest  
8 money deposit required by Commission regula-  
9 tion, a letter of credit provided to such bor-  
10 rower under such section that equals or exceeds  
11 the amount of such required payment or de-  
12 posit. In any competitive bidding conducted  
13 under this subsection in which the Commission  
14 identifies any such qualified telecommunications  
15 borrower as the high bidder at the time of de-  
16 claring that the bidding has closed, the Com-  
17 mission shall notify the Administrator of the  
18 Small Business Administration of the identity  
19 of such bidder, the amount of the high bid, and  
20 the total amount required to be deposited with  
21 the Commission to qualify for the award of the  
22 license under Commission regulations. In the  
23 case of a qualified telecommunications borrower  
24 under section 38, the amount of such deposit

1           may be satisfied by debiting the loan account of  
2           the borrower at the Treasury.”.

○