

“(D) include frequencies at 2,110–2,150 megahertz; and

“(E) include 15 megahertz from within the bands of frequencies at 1,990–2,110 megahertz.

“(2) CRITERIA FOR REASSIGNMENT.—In making available bands of frequencies for competitive bidding pursuant to paragraph (1), the Commission shall—

“(A) seek to promote the most efficient use of the electromagnetic spectrum;

“(B) consider the cost of relocating existing uses to other bands of frequencies or other means of communication;

“(C) consider the needs of existing public safety radio services (as such services are described in section 309(j)(2)(A) of the Communications Act of 1934, as amended by this Act);

“(D) comply with the requirements of international agreements concerning spectrum allocations; and

“(E) coordinate with the Secretary of Commerce when there is any impact on Federal Government spectrum use.

“(3) USE OF BANDS AT 2,110–2,150 MEGAHERTZ.—The Commission shall reallocate spectrum located at 2,110–2,150 megahertz for assignment by competitive bidding unless the Commission determines that auction of other spectrum (A) better serves the public interest, convenience, and necessity, and (B) can reasonably be expected to produce greater receipts. If the Commission makes such a determination, then the Commission shall, within 2 years after the date of enactment of this Act [Aug. 5, 1997], identify an alternative 40 megahertz, and report to the Congress an identification of such alternative 40 megahertz for assignment by competitive bidding.

“(4) USE OF 15 MEGAHERTZ FROM BANDS AT 1,990–2,110 MEGAHERTZ.—The Commission shall reallocate 15 megahertz from spectrum located at 1,990–2,110 megahertz for assignment by competitive bidding unless the President determines such spectrum cannot be reallocated due to the need to protect incumbent Federal systems from interference, and that allocation of other spectrum (A) better serves the public interest, convenience, and necessity, and (B) can reasonably be expected to produce comparable receipts. If the President makes such a determination, then the President shall, within 2 years after the date of enactment of this Act, identify alternative bands of frequencies totalling 15 megahertz, and report to the Congress an identification of such alternative bands for assignment by competitive bidding.

“(5) NOTIFICATION TO THE SECRETARY OF COMMERCE.—The Commission shall attempt to accommodate incumbent licensees displaced under this section by relocating them to other frequencies available for allocation by the Commission. The Commission shall notify the Secretary of Commerce whenever the Commission is not able to provide for the effective relocation of an incumbent licensee to a band of frequencies available to the Commission for assignment. The notification shall include—

“(A) specific information on the incumbent licensee;

“(B) the bands the Commission considered for relocation of the licensee;

“(C) the reasons the licensee cannot be accommodated in such bands; and

“(D) the bands of frequencies identified by the Commission that are—

“(i) suitable for the relocation of such licensee; and

“(ii) allocated for Federal Government use, but that could be reallocated pursuant to part B of the National Telecommunications and Information Administration Organization Act (as amended by this Act) [part B (§§ 131–135) of title I of Pub. L. 102–538, see Tables for classification].”

§ 926. Authority to recover reassigned frequencies

(a) Authority of President

Subsequent to the withdrawal of assignment to Federal Government stations pursuant to sec-

tion 924 of this title, the President may reclaim reassigned frequencies for reassignment to Federal Government stations in accordance with this section.

(b) Procedure for reclaiming frequencies

(1) Unallocated frequencies

If the frequencies to be reclaimed have not been allocated or assigned by the Commission pursuant to the 1934 Act [47 U.S.C. 151 et seq.], the President shall follow the procedures for substitution of frequencies established by section 924(b) of this title.

(2) Allocated frequencies

If the frequencies to be reclaimed have been allocated or assigned by the Commission, the President shall follow the procedures for substitution of frequencies established by section 924(b) of this title, except that the statement required by section 924(b)(1)(B) of this title shall include—

(A) a timetable to accommodate an orderly transition for licensees to obtain new frequencies and equipment necessary for its utilization; and

(B) an estimate of the cost of displacing spectrum users licensed by the Commission.

(c) Costs of reclaiming frequencies

The Federal Government shall bear all costs of reclaiming frequencies pursuant to this section, including the cost of equipment which is rendered unusable, the cost of relocating operations to a different frequency, and any other costs that are directly attributable to the reclaiming of the frequency pursuant to this section, and there are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

(d) Effective date of reclaimed frequencies

The Commission shall not withdraw licenses for any reclaimed frequencies until the end of the fiscal year following the fiscal year in which a statement under section 924(b)(1)(B) of this title pertaining to such frequencies is received by the Commission.

(e) Effect on other law

Nothing in this section shall be construed to limit or otherwise affect the authority of the President under section 706 of the 1934 Act (47 U.S.C. 606).

(Pub. L. 102–538, title I, § 116, as added Pub. L. 103–66, title VI, § 6001(a)(3), Aug. 10, 1993, 107 Stat. 386.)

REFERENCES IN TEXT

For definition of the 1934 Act, referred to in subsec. (b)(1), see section 921(3) of this title.

§ 927. Existing allocation and transfer authority retained

(a) Additional reallocation

Nothing in this subchapter prevents or limits additional reallocation of spectrum from the Federal Government to other users.

(b) Implementation of new technologies and services

Notwithstanding any other provision of this subchapter—

(1) the Secretary may, consistent with section 903(e) of this title, at any time allow frequencies allocated on a primary basis for Federal Government use to be used by non-Federal licensees on a mixed-use basis for the purpose of facilitating the prompt implementation of new technologies or services and for other purposes; and

(2) the Commission shall make any allocation and licensing decisions with respect to such frequencies in a timely manner and in no event later than the date required by section 157 of this title.

(Pub. L. 102-538, title I, §117, as added Pub. L. 103-66, title VI, §6001(a)(3), Aug. 10, 1993, 107 Stat. 386.)

§ 928. Spectrum Relocation Fund

(a) Establishment of Spectrum Relocation Fund

There is established on the books of the Treasury a separate fund to be known as the "Spectrum Relocation Fund" (in this section referred to as the "Fund"), which shall be administered by the Office of Management and Budget (in this section referred to as "OMB"), in consultation with the NTIA.

(b) Crediting of receipts

The Fund shall be credited with the amounts specified in section 309(j)(8)(D) of this title.

(c) Used to pay relocation costs

The amounts in the Fund from auctions of eligible frequencies are authorized to be used to pay relocation costs, as defined in section 923(g)(3) of this title, of an eligible Federal entity incurring such costs with respect to relocation from those frequencies.

(d) Fund availability

(1) Appropriation

There are hereby appropriated from the Fund such sums as are required to pay the relocation costs specified in subsection (c) of this section.

(2) Transfer conditions

None of the funds provided under this subsection may be transferred to any eligible Federal entity—

(A) unless the Director of OMB has determined, in consultation with the NTIA, the appropriateness of such costs and the timeline for relocation; and

(B) until 30 days after the Director of OMB has submitted to the Committees on Appropriations and Energy and Commerce of the House of Representatives for approval, to the Committees on Appropriations and Commerce, Science, and Transportation of the Senate for approval, and to the Comptroller General a detailed plan describing specifically how the sums transferred from the Fund will be used to pay relocation costs in accordance with such subsection and the timeline for such relocation.

Unless disapproved within 30 days, the amounts in the Fund shall be available immediately. If the plan is disapproved, the Director may resubmit a revised plan.

(3) Reversion of unused funds

Any auction proceeds in the Fund that are remaining after the payment of the relocation costs that are payable from the Fund shall revert to and be deposited in the general fund of the Treasury not later than 8 years after the date of the deposit of such proceeds to the Fund.

(e) Transfer to eligible Federal entities

(1) Transfer

(A) Amounts made available pursuant to subsection (d) of this section shall be transferred to eligible Federal entities, as defined in section 923(g)(1) of this title.

(B) An eligible Federal entity may receive more than one such transfer, but if the sum of the subsequent transfer or transfers exceeds 10 percent of the original transfer—

(i) such subsequent transfers are subject to prior approval by the Director of OMB as required by subsection (d)(2)(A) of this section;

(ii) the notice to the committees containing the plan required by subsection (d)(2)(B) of this section shall be not less than 45 days prior to the date of the transfer that causes such excess above 10 percent; and

(iii) such notice shall include, in addition to such plan, an explanation of need for such subsequent transfer or transfers.

(C) Such transferred amounts shall be credited to the appropriations account of the eligible Federal entity which has incurred, or will incur, such costs, and shall, subject to paragraph (2), remain available until expended.

(2) Retransfer to fund

An eligible Federal entity that has received such amounts shall report its expenditures to OMB and shall transfer any amounts in excess of actual relocation costs back to the Fund immediately after the NTIA has notified the Commission that the entity's relocation is complete, or has determined that such entity has unreasonably failed to complete such relocation in accordance with the timeline required by subsection (d)(2)(A) of this section.

(Pub. L. 102-538, title I, §118, as added Pub. L. 108-494, title II, §204, Dec. 23, 2004, 118 Stat. 3994; amended Pub. L. 111-8, div. G, title I, §1301(a), Mar. 11, 2009, 123 Stat. 829.)

AMENDMENTS

2009—Subsec. (e)(1)(B)(ii) to (iv). Pub. L. 111-8 inserted "and" after semicolon in cl. (ii), substituted period for "; and" in cl. (iii), and struck out cl. (iv) which read as follows: "the Comptroller General shall, within 30 days after receiving such plan, review such plan and submit to such committees an assessment of the explanation for the subsequent transfer or transfers."

ANNUAL REPORT

Pub. L. 108-494, title II, §207, Dec. 23, 2004, 118 Stat. 3996, provided that: "The National Telecommunications and Information Administration shall submit an annual report to the Committees on Appropriations and Energy and Commerce of the House of Representatives, the Committees on Appropriations and Commerce, Science, and Transportation of the Senate, and the Comptroller General on—

"(1) the progress made in adhering to the timelines applicable to relocation from eligible frequencies re-