

“(b) SUBMISSION OF INTERIM REPORT.—Within one year after the date of the enactment of this Act [Oct. 30, 2000], the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives an interim report on the progress of the study conducted pursuant to subsection (a).

“(c) REPORT.—Not later than January 1, 2002, the Secretary of Commerce and the Chairman of the Federal Communications Commission shall jointly submit a report to Congress on alternative frequencies available for use by public safety systems.”

SURRENDER OF DEPARTMENT OF DEFENSE SPECTRUM

Pub. L. 106-65, div. A, title X, §1062(b), Oct. 5, 1999, 113 Stat. 768, provided that:

“(1) IN GENERAL.—If, in order to make available for other use a band of frequencies of which it is a primary user, the Department of Defense is required to surrender use of such band of frequencies, the Department shall not surrender use of such band of frequencies until—

“(A) the National Telecommunications and Information Administration, in consultation with the Federal Communications Commission, identifies and makes available to the Department for its primary use, if necessary, an alternative band or bands of frequencies as a replacement for the band to be so surrendered; and

“(B) the Secretary of Commerce, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff jointly certify to the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Armed Services and the Committee on Commerce [now Committee on Energy and Commerce] of the House of Representatives, that such alternative band or bands provides comparable technical characteristics to restore essential military capability that will be lost as a result of the band of frequencies to be so surrendered.

“(2) EXCEPTION.—Paragraph (1) shall not apply to a band of frequencies that has been identified for reallocation in accordance with title VI of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66; 107 Stat. 379) [enacting sections 159 and 921 to 927 of this title and amending sections 152, 153, 156, 158, 309, 332, and 903 of this title] and title III of the Balanced Budget Act of 1997 (Public Law 105-33, 111 Stat. 258) [enacting section 337 of this title, amending sections 153, 303, 309, and 923 to 925 of this title, and repealing provisions set out as a note under section 309 of this title], other than a band of frequencies that is reclaimed pursuant to subsection (c) [amending section 923 of this title and enacting provisions set out as a note below].”

[Pub. L. 108-494, title II, §206, Dec. 23, 2004, 118 Stat. 3996, provided that: “Nothing in this title [see Short Title of 2004 Amendment note set out under section 901 of this title] is intended to modify section 1062(b) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65) [set out above].”]

REASSIGNMENT TO FEDERAL GOVERNMENT FOR USE BY DEPARTMENT OF DEFENSE OF CERTAIN FREQUENCY SPECTRUM RECOMMENDED FOR REALLOCATION

Pub. L. 106-65, div. A, title X, §1062(c)(1), Oct. 5, 1999, 113 Stat. 768, provided that: “Notwithstanding any provision of the National Telecommunications and Information Administration Organization Act [47 U.S.C. 901 et seq.] or the Balanced Budget Act of 1997 [Pub. L. 105-33, see Tables for classification], the President shall reclaim for exclusive Federal Government use on a primary basis by the Department of Defense—

“(A) the bands of frequencies aggregating 3 megahertz located between 138 and 144 megahertz that were recommended for reallocation in the second reallocation report under section 113(a) of that Act [probably means 47 U.S.C. 923(a)]; and

“(B) the band of frequency aggregating 5 megahertz located between 1385 megahertz and 1390 megahertz,

inclusive, that was so recommended for reallocation.”

ASSESSMENT OF ELECTROMAGNETIC SPECTRUM REALLOCATION

Pub. L. 102-538, title I, §156, as added by Pub. L. 106-65, div. A, title X, §1062(a), Oct. 5, 1999, 113 Stat. 767, required the Secretary of Commerce to convene an interagency review and assessment of the progress made in implementation of national spectrum planning, the reallocation of Federal Government spectrum to non-Federal use, and the implications for such reallocations to the affected Federal executive agencies and to submit to the President and committees of Congress, not later than Oct. 1, 2000, a report on the assessment.

§ 922. National spectrum allocation planning

The Assistant Secretary and the Chairman of the Commission shall meet, at least biannually, to conduct joint spectrum planning with respect to the following issues:

(1) the extent to which licenses for spectrum use can be issued pursuant to section 309(j) of this title to increase Federal revenues;

(2) the future spectrum requirements for public and private uses, including State and local government public safety agencies;

(3) the spectrum allocation actions necessary to accommodate those uses; and

(4) actions necessary to promote the efficient use of the spectrum, including spectrum management techniques to promote increased shared use of the spectrum that does not cause harmful interference as a means of increasing commercial access.

(Pub. L. 102-538, title I, §112, as added Pub. L. 103-66, title VI, §6001(a)(3), Aug. 10, 1993, 107 Stat. 380.)

§ 923. Identification of reallocable frequencies

(a) Identification required

The Secretary shall, within 18 months after August 10, 1993, and within 6 months after August 5, 1997, prepare and submit to the President and the Congress a report identifying and recommending for reallocation bands of frequencies—

(1) that are allocated on a primary basis for Federal Government use;

(2) that are not required for the present or identifiable future needs of the Federal Government;

(3) that can feasibly be made available, as of the date of submission of the report or at any time during the next 15 years, for use under the 1934 Act [47 U.S.C. 151 et seq.] (other than for Federal Government stations under section 305 of the 1934 Act [47 U.S.C. 305]);

(4) the transfer of which (from Federal Government use) will not result in costs to the Federal Government, or losses of services or benefits to the public, that are excessive in relation to the benefits to the public that may be provided by non-Federal licensees; and

(5) that are most likely to have the greatest potential for productive uses and public benefits under the 1934 Act [47 U.S.C. 151 et seq.] if allocated for non-Federal use.

(b) Minimum amount of spectrum recommended

(1) Initial reallocation report

In accordance with the provisions of this section, the Secretary shall recommend for re-

allocation in the initial report required by subsection (a) of this section, for use other than by Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305), bands of frequencies that in the aggregate span not less than 200 megahertz, that are located below 5 gigahertz, and that meet the criteria specified in paragraphs (1) through (5) of subsection (a) of this section. Such bands of frequencies shall include bands of frequencies, located below 3 gigahertz, that span in the aggregate not less than 100 megahertz.

(2) Mixed uses permitted to be counted

Bands of frequencies which a report of the Secretary under subsection (a) or (d)(1) of this section recommends be partially retained for use by Federal Government stations, but which are also recommended to be reallocated to be made available under the 1934 Act [47 U.S.C. 151 et seq.] for use by non-Federal stations, may be counted toward the minimum spectrum required by paragraph (1) or (3) of this subsection, except that—

(A) the bands of frequencies counted under this paragraph may not count toward more than one-half of the minimums required by paragraph (1) or (3) of this subsection;

(B) a band of frequencies may not be counted under this paragraph unless the assignments of the band to Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305) are limited by geographic area, by time, or by other means so as to guarantee that the potential use to be made by such Federal Government stations is substantially less (as measured by geographic area, time, or otherwise) than the potential use to be made by non-Federal stations; and

(C) the operational sharing permitted under this paragraph shall be subject to the interference regulations prescribed by the Commission pursuant to section 305(a) of the 1934 Act [47 U.S.C. 305(a)] and to coordination procedures that the Commission and the Secretary shall jointly establish and implement to ensure against harmful interference.

(3) Second reallocation report

In accordance with the provisions of this section, the Secretary shall recommend for reallocation in the second report required by subsection (a) of this section, for use other than by Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305), a band or bands of frequencies that—

(A) in the aggregate span not less than 12 megahertz;

(B) are located below 3 gigahertz; and

(C) meet the criteria specified in paragraphs (1) through (5) of subsection (a) of this section.

(c) Criteria for identification

(1) Needs of the Federal Government

In determining whether a band of frequencies meets the criteria specified in subsection (a)(2) of this section, the Secretary shall—

(A) consider whether the band of frequencies is used to provide a communica-

tions service that is or could be available from a commercial provider or other vendor;

(B) seek to promote—

(i) the maximum practicable reliance on commercially available substitutes;

(ii) the sharing of frequencies (as permitted under subsection (b)(2) of this section);

(iii) the development and use of new communications technologies; and

(iv) the use of nonradiating communications systems where practicable; and

(C) seek to avoid—

(i) serious degradation of Federal Government services and operations;

(ii) excessive costs to the Federal Government and users of Federal Government services; and

(iii) excessive disruption of existing use of Federal Government frequencies by amateur radio licensees.

(2) Feasibility of use

In determining whether a frequency band meets the criteria specified in subsection (a)(3) of this section, the Secretary shall—

(A) assume that the frequency will be assigned by the Commission under section 303 of the 1934 Act (47 U.S.C. 303) within 15 years;

(B) assume reasonable rates of scientific progress and growth of demand for telecommunications services;

(C) seek to include frequencies which can be used to stimulate the development of new technologies; and

(D) consider the immediate and recurring costs to reestablish services displaced by the reallocation of spectrum.

(3) Analysis of benefits

In determining whether a band of frequencies meets the criteria specified in subsection (a)(5) of this section, the Secretary shall consider—

(A) the extent to which equipment is or will be available that is capable of utilizing the band;

(B) the proximity of frequencies that are already assigned for commercial or other non-Federal use;

(C) the extent to which, in general, commercial users could share the frequency with amateur radio licensees; and

(D) the activities of foreign governments in making frequencies available for experimentation or commercial assignments in order to support their domestic manufacturers of equipment.

(4) Power agency frequencies

(A) Applicability of criteria

The criteria specified by subsection (a) of this section shall be deemed not to be met for any purpose under this subchapter with regard to any frequency assignment to, or any frequency assignment used by, a Federal power agency for the purpose of withdrawing that assignment.

(B) Mixed use eligibility

The frequencies assigned to any Federal power agency may only be eligible for mixed

use under subsection (b)(2) of this section in geographically separate areas, but in those cases where a frequency is to be shared by an affected Federal power agency and a non-Federal user, such use by the non-Federal user shall not cause harmful interference to the affected Federal power agency or adversely affect the reliability of its power system.

(C) “Federal power agency” defined

As used in this paragraph, the term “Federal power agency” means the Tennessee Valley Authority, the Bonneville Power Administration, the Western Area Power Administration, the Southwestern Power Administration, the Southeastern Power Administration, or the Alaska Power Administration.

(5) Limitation on reallocation

None of the frequencies recommended for reallocation in the reports required by this subsection shall have been recommended, prior to August 10, 1993, for reallocation to non-Federal use by international agreement.

(d) Procedure for identification of reallocable bands of frequencies

(1) Submission of preliminary identification to Congress

Within 6 months after August 10, 1993, the Secretary shall prepare, make publicly available, and submit to the President, the Congress, and the Commission a report which makes a preliminary identification of reallocable bands of frequencies which meet the criteria established by this section.

(2) Public comment

The Secretary shall provide interested persons with the opportunity to submit, within 90 days after the date of its publication, written comment on the preliminary report required by paragraph (1). The Secretary shall immediately transmit a copy of any such comment to the Commission.

(3) Comment and recommendations from Commission

The Commission shall, within 90 days after the conclusion of the period for comment provided pursuant to paragraph (2), submit to the Secretary the Commission’s analysis of such comments and the Commission’s recommendations for responses to such comments, together with such other comments and recommendations as the Commission deems appropriate.

(4) Direct discussions

The Secretary shall encourage and provide opportunity for direct discussions among commercial representatives and Federal Government users of the spectrum to aid the Secretary in determining which frequencies to recommend for reallocation. The Secretary shall provide notice to the public and the Commission of any such discussions, including the name or names of any businesses or other persons represented in such discussions. A representative of the Commission (and of the Secretary at the election of the Secretary) shall

be permitted to attend any such discussions. The Secretary shall provide the public and the Commission with an opportunity to comment on the results of any such discussions prior to the submission of the initial report required by subsection (a) of this section.

(e) Timetable for reallocation and limitation

(1) Timetable required

The Secretary shall, as part of the reports required by subsections (a) and (d)(1) of this section, include a timetable that recommends effective dates by which the President shall withdraw or limit assignments of the frequencies specified in such reports.

(2) Expedited reallocation

(A) Required reallocation

The Secretary shall, as part of the report required by subsection (d)(1) of this section, specifically identify and recommend for immediate reallocation bands of frequencies that in the aggregate span not less than 50 megahertz, that meet the criteria described in subsection (a) of this section, and that can be made available for reallocation immediately upon issuance of the report required by subsection (d)(1) of this section. Such bands of frequencies shall include bands of frequencies, located below 3 gigahertz, that in the aggregate span not less than 25 megahertz.

(B) Permitted reallocation

The Secretary may, as part of such report, identify and recommend bands of frequencies for immediate reallocation for a mixed use pursuant to subsection (b)(2) of this section, but such bands of frequencies may not count toward the minimums required by subparagraph (A).

(3) Delayed effective dates

In setting the recommended delayed effective dates, the Secretary shall—

(A) consider the need to reallocate bands of frequencies as early as possible, taking into account the requirements of paragraphs (1) and (2) of section 925(b) of this title;

(B) be based on the useful remaining life of equipment that has been purchased or contracted for to operate on identified frequencies;

(C) consider the need to coordinate frequency use with other nations; and

(D) take into account the relationship between the costs to the Federal Government of changing to different frequencies and the benefits that may be obtained from commercial and other non-Federal uses of the reassigned frequencies.

(f) Additional reallocation report

If the Secretary receives a notice from the Commission pursuant to section 3002(c)(5) of the Balanced Budget Act of 1997, the Secretary shall prepare and submit to the President, the Commission, and the Congress a report recommending for reallocation for use other than by Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305), bands of frequencies that are suitable for the licensees identified in

the Commission's notice. The Commission shall, not later than one year after receipt of such report, prepare, submit to the President and the Congress, and implement, a plan for the immediate allocation and assignment of such frequencies under the 1934 Act [47 U.S.C. 151 et seq.] to incumbent licensees described in the Commission's notice.

(g) Relocation of and spectrum sharing by Federal Government stations

(1) Eligible Federal entities

Any Federal entity that operates a Federal Government station authorized to use a band of eligible frequencies described in paragraph (2) and that incurs relocation or sharing costs because of planning for an auction of spectrum frequencies or the reallocation of spectrum frequencies from Federal use to exclusive non-Federal use or to shared use shall receive payment for such relocation or sharing costs from the Spectrum Relocation Fund, in accordance with this section and section 928 of this title. For purposes of this paragraph, Federal power agencies exempted under subsection (c)(4) that choose to relocate from the frequencies identified for reallocation pursuant to subsection (a) are eligible to receive payment under this paragraph.

(2) Eligible frequencies

The bands of eligible frequencies for purposes of this section are as follows:

(A) the 216–220 megahertz band, the 1432–1435 megahertz band, the 1710–1755 megahertz band, and the 2385–2390 megahertz band of frequencies; and

(B) any other band of frequencies reallocated from Federal use to non-Federal use or to shared use after January 1, 2003, that is assigned by competitive bidding pursuant to section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)).

(3) Relocation or sharing costs defined

(A) In general

For purposes of this section and section 928 of this title, the term "relocation or sharing costs" means the costs incurred by a Federal entity in connection with the auction of spectrum frequencies previously assigned to such entity or the sharing of spectrum frequencies assigned to such entity (including the auction or a planned auction of the rights to use spectrum frequencies on a shared basis with such entity) in order to achieve comparable capability of systems as before the relocation or sharing arrangement. Such term includes, with respect to relocation or sharing, as the case may be—

(i) the costs of any modification or replacement of equipment, spares, associated ancillary equipment, software, facilities, operating manuals, training, or compliance with regulations that are attributable to relocation or sharing;

(ii) the costs of all engineering, equipment, software, site acquisition, and construction, as well as any legitimate and prudent transaction expense, including term-limited Federal civil servant and

contractor staff necessary to carry out the relocation or sharing activities of a Federal entity, and reasonable additional costs incurred by the Federal entity that are attributable to relocation or sharing, including increased recurring costs associated with the replacement of facilities;

(iii) the costs of research, engineering studies, economic analyses, or other expenses reasonably incurred in connection with—

(I) calculating the estimated relocation or sharing costs that are provided to the Commission pursuant to paragraph (4)(A);

(II) determining the technical or operational feasibility of relocation to 1 or more potential relocation bands; or

(III) planning for or managing a relocation or sharing arrangement (including spectrum coordination with auction winners);

(iv) the one-time costs of any modification of equipment reasonably necessary—

(I) to accommodate non-Federal use of shared frequencies; or

(II) in the case of eligible frequencies reallocated for exclusive non-Federal use and assigned through a system of competitive bidding under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) but with respect to which a Federal entity retains primary allocation or protected status for a period of time after the completion of the competitive bidding process, to accommodate shared Federal and non-Federal use of such frequencies for such period; and

(v) the costs associated with the accelerated replacement of systems and equipment if the acceleration is necessary to ensure the timely relocation of systems to a new frequency assignment or the timely accommodation of sharing of Federal frequencies.

(B) Comparable capability of systems

For purposes of subparagraph (A), comparable capability of systems—

(i) may be achieved by relocating a Federal Government station to a new frequency assignment, by relocating a Federal Government station to a different geographic location, by modifying Federal Government equipment to mitigate interference or use less spectrum, in terms of bandwidth, geography, or time, and thereby permitting spectrum sharing (including sharing among relocated Federal entities and incumbents to make spectrum available for non-Federal use) or relocation, or by utilizing an alternative technology; and

(ii) includes the acquisition of state-of-the-art replacement systems intended to meet comparable operational scope, which may include incidental increases in functionality.

(4) Notice to Commission of estimated relocation or sharing costs

(A) The Commission shall notify the NTIA at least 18 months prior to the commencement

of any auction of eligible frequencies defined in paragraph (2). At least 6 months prior to the commencement of any such auction, the NTIA, on behalf of the Federal entities and after review by the Office of Management and Budget, shall notify the Commission of estimated relocation or sharing costs and timelines for such relocation or sharing.

(B) Upon timely request of a Federal entity, the NTIA shall provide such entity with information regarding an alternative frequency assignment or assignments to which their radiocommunications operations could be relocated for purposes of calculating the estimated relocation or sharing costs and timelines to be submitted to the Commission pursuant to subparagraph (A).

(C) To the extent practicable and consistent with national security considerations, the NTIA shall provide the information required by subparagraphs (A) and (B) by the geographic location of the Federal entities' facilities or systems and the frequency bands used by such facilities or systems.

(5) Notice to congressional committees and GAO

The NTIA shall, at the time of providing an initial estimate of relocation or sharing costs to the Commission under paragraph (4)(A), submit to¹ 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 copy of such estimate and the timelines for relocation or sharing. Unless disapproved within 30 days, the estimate shall be approved. If disapproved, the NTIA may resubmit a revised initial estimate.

(6) Implementation of procedures

The NTIA shall take such actions as necessary to ensure the timely relocation of Federal entities' spectrum-related operations from frequencies described in paragraph (2) to frequencies or facilities of comparable capability and to ensure the timely implementation of arrangements for the sharing of frequencies described in such paragraph. Upon a finding by the NTIA that a Federal entity has achieved comparable capability of systems, the NTIA shall terminate or limit the entity's authorization and notify the Commission that the entity's relocation has been completed or sharing arrangement has been implemented. The NTIA shall also terminate such entity's authorization if the NTIA determines that the entity has unreasonably failed to comply with the timeline for relocation or sharing submitted by the Director of the Office of Management and Budget under section 928(d)(2)(C) of this title.

(h) Development and publication of relocation or sharing transition plans

(1) Development of transition plan by Federal entity

Not later than 240 days before the commencement of any auction of eligible fre-

quencies described in subsection (g)(2), a Federal entity authorized to use any such frequency shall submit to the NTIA and to the Technical Panel established by paragraph (3) a transition plan for the implementation by such entity of the relocation or sharing arrangement. The NTIA shall specify, after public input, a common format for all Federal entities to follow in preparing transition plans under this paragraph.

(2) Contents of transition plan

The transition plan required by paragraph (1) shall include the following information:

(A) The use by the Federal entity of the eligible frequencies to be auctioned, current as of the date of the submission of the plan.

(B) The geographic location of the facilities or systems of the Federal entity that use such frequencies.

(C) The frequency bands used by such facilities or systems, described by geographic location.

(D) The steps to be taken by the Federal entity to relocate its spectrum use from such frequencies or to share such frequencies, including timelines for specific geographic locations in sufficient detail to indicate when use of such frequencies at such locations will be discontinued by the Federal entity or shared between the Federal entity and non-Federal users.

(E) The specific interactions between the eligible Federal entity and the NTIA needed to implement the transition plan.

(F) The name of the officer or employee of the Federal entity who is responsible for the relocation or sharing efforts of the entity and who is authorized to meet and negotiate with non-Federal users regarding the transition.

(G) The plans and timelines of the Federal entity for—

(i) using funds received from the Spectrum Relocation Fund established by section 928 of this title;

(ii) procuring new equipment and additional personnel needed for relocation or sharing;

(iii) field-testing and deploying new equipment needed for relocation or sharing; and

(iv) hiring and relying on contract personnel, if any, needed for relocation or sharing.

(H) Factors that could hinder fulfillment of the transition plan by the Federal entity.

(3) Technical Panel

(A) Establishment

There is established within the NTIA a panel to be known as the Technical Panel.

(B) Membership

(i) Number and appointment

The Technical Panel shall be composed of 3 members, to be appointed as follows:

(I) One member to be appointed by the Director of the Office of Management and Budget (in this subsection referred to as "OMB").

¹ So in original. Probably should be followed by "the".

(II) One member to be appointed by the Assistant Secretary.

(III) One member to be appointed by the Chairman of the Commission.

(ii) Qualifications

Each member of the Technical Panel shall be a radio engineer or a technical expert.

(iii) Initial appointment

The initial members of the Technical Panel shall be appointed not later than 180 days after February 22, 2012.

(iv) Terms

The term of a member of the Technical Panel shall be 18 months, and no individual may serve more than 1 consecutive term.

(v) Vacancies

Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy shall be filled in the manner in which the original appointment was made.

(vi) No compensation

The members of the Technical Panel shall not receive any compensation for service on the Technical Panel. If any such member is an employee of the agency of the official that appointed such member to the Technical Panel, compensation in the member's capacity as such an employee shall not be considered compensation under this clause.

(C) Administrative support

The NTIA shall provide the Technical Panel with the administrative support services necessary to carry out its duties under this subsection and subsection (i).

(D) Regulations

Not later than 180 days after February 22, 2012, the NTIA shall, after public notice and comment and subject to approval by the Director of OMB, adopt regulations to govern the workings of the Technical Panel.

(E) Certain requirements inapplicable

The Federal Advisory Committee Act (5 U.S.C. App.) and sections 552 and 552b of title 5 shall not apply to the Technical Panel.

(4) Review of plan by Technical Panel

(A) In general

Not later than 30 days after the submission of the plan under paragraph (1), the Technical Panel shall submit to the NTIA and to the Federal entity a report on the sufficiency of the plan, including whether the plan includes the information required by paragraph (2) and an assessment of the reasonableness of the proposed timelines and estimated relocation or sharing costs, including the costs of any proposed expansion

of the capabilities of a Federal system in connection with relocation or sharing.

(B) Insufficiency of plan

If the Technical Panel finds the plan insufficient, the Federal entity shall, not later than 90 days after the submission of the report by the Technical Panel under subparagraph (A), submit to the Technical Panel a revised plan. Such revised plan shall be treated as a plan submitted under paragraph (1).

(5) Publication of transition plan

Not later than 120 days before the commencement of the auction described in paragraph (1), the NTIA shall make the transition plan publicly available on its website.

(6) Updates of transition plan

As the Federal entity implements the transition plan, it shall periodically update the plan to reflect any changed circumstances, including changes in estimated relocation or sharing costs or the timeline for relocation or sharing. The NTIA shall make the updates available on its website.

(7) Classified and other sensitive information

(A) Classified information

If any of the information required to be included in the transition plan of a Federal entity is classified information (as defined in section 798(b) of title 18), the entity shall—

(i) include in the plan—

(I) an explanation of the exclusion of any such information, which shall be as specific as possible; and

(II) all relevant non-classified information that is available; and

(ii) discuss as a factor under paragraph (2)(H) the extent of the classified information and the effect of such information on the implementation of the relocation or sharing arrangement.

(B) Regulations

Not later than 180 days after February 22, 2012, the NTIA, in consultation with the Director of OMB and the Secretary of Defense, shall adopt regulations to ensure that the information publicly released under paragraph (5) or (6) does not contain classified information or other sensitive information.

(i) Dispute resolution process

(1) In general

If a dispute arises between a Federal entity and a non-Federal user regarding the execution, timing, or cost of the transition plan submitted by the Federal entity under subsection (h)(1), the Federal entity or the non-Federal user may request that the NTIA establish a dispute resolution board to resolve the dispute.

(2) Establishment of board

(A) In general

If the NTIA receives a request under paragraph (1), it shall establish a dispute resolution board.

(B) Membership and appointment

The dispute resolution board shall be composed of 3 members, as follows:

(i) A representative of the Office of Management and Budget (in this subsection referred to as “OMB”), to be appointed by the Director of OMB.

(ii) A representative of the NTIA, to be appointed by the Assistant Secretary.

(iii) A representative of the Commission, to be appointed by the Chairman of the Commission.

(C) Chair

The representative of OMB shall be the Chair of the dispute resolution board.

(D) Vacancies

Any vacancy in the dispute resolution board shall be filled in the manner in which the original appointment was made.

(E) No compensation

The members of the dispute resolution board shall not receive any compensation for service on the board. If any such member is an employee of the agency of the official that appointed such member to the board, compensation in the member’s capacity as such an employee shall not be considered compensation under this subparagraph.

(F) Termination of board

The dispute resolution board shall be terminated after it rules on the dispute that it was established to resolve and the time for appeal of its decision under paragraph (7) has expired, unless an appeal has been taken under such paragraph. If such an appeal has been taken, the board shall continue to exist until the appeal process has been exhausted and the board has completed any action required by a court hearing the appeal.

(3) Procedures

The dispute resolution board shall meet simultaneously with representatives of the Federal entity and the non-Federal user to discuss the dispute. The dispute resolution board may require the parties to make written submissions to it.

(4) Deadline for decision

The dispute resolution board shall rule on the dispute not later than 30 days after the request was made to the NTIA under paragraph (1).

(5) Assistance from Technical Panel

The Technical Panel established under subsection (h)(3) shall provide the dispute resolution board with such technical assistance as the board requests.

(6) Administrative support

The NTIA shall provide the dispute resolution board with the administrative support services necessary to carry out its duties under this subsection.

(7) Appeals

A decision of the dispute resolution board may be appealed to the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal with that court not later than 30 days after the date of such decision. Each party shall bear its own costs and

expenses, including attorneys’ fees, for any appeal under this paragraph.

(8) Regulations

Not later than 180 days after February 22, 2012, the NTIA shall, after public notice and comment and subject to approval by OMB, adopt regulations to govern the working of any dispute resolution boards established under paragraph (2)(A) and the role of the Technical Panel in assisting any such board.

(9) Certain requirements inapplicable

The Federal Advisory Committee Act (5 U.S.C. App.) and sections 552 and 552b of title 5 shall not apply to a dispute resolution board established under paragraph (2)(A).

(j) Relocation prioritized over sharing

(1) In general

In evaluating a band of frequencies for possible reallocation for exclusive non-Federal use or shared use, the NTIA shall give priority to options involving reallocation of the band for exclusive non-Federal use and shall choose options involving shared use only when it determines, in consultation with the Director of the Office of Management and Budget, that relocation of a Federal entity from the band is not feasible because of technical or cost constraints.

(2) Notification of Congress when sharing chosen

If the NTIA determines under paragraph (1) that relocation of a Federal entity from the band is not feasible, the NTIA shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives of the determination, including the specific technical or cost constraints on which the determination is based.

(k) Federal action to expedite spectrum transfer

Any Federal Government station which operates on electromagnetic spectrum that has been identified in any reallocation report under this section shall, to the maximum extent practicable through the use of the authority granted under subsection (g) of this section and any other applicable provision of law, take action to relocate its spectrum use to other frequencies that are reserved for Federal use or to consolidate its spectrum use with other Federal Government stations in a manner that maximizes the spectrum available for non-Federal use.

(l) “Federal entity” defined

For purposes of this section, the term “Federal entity” means any department, agency, or other instrumentality of the Federal Government that utilizes a Government station license obtained under section 305 of the 1934 Act (47 U.S.C. 305).

(Pub. L. 102-538, title I, §113, as added Pub. L. 103-66, title VI, §6001(a)(3), Aug. 10, 1993, 107 Stat. 380; amended Pub. L. 105-33, title III, §3002(d)(1), (e)(1)-(3), Aug. 5, 1997, 111 Stat. 262, 264, 265; Pub. L. 105-261, div. A, title X, §1064(c), Oct. 17, 1998, 112 Stat. 2132; Pub. L. 106-65, div. A, title X, §1062(c)(2), Oct. 5, 1999, 113 Stat. 768; Pub. L.

108-494, title II, §202, Dec. 23, 2004, 118 Stat. 3991; Pub. L. 112-96, title VI, §6701(a), Feb. 22, 2012, 126 Stat. 245.)

REFERENCES IN TEXT

For definition of the 1934 Act, referred to in subsecs. (a)(3), (5), (b)(2), and (f), see section 921(3) of this title.

Section 3002(c)(5) of the Balanced Budget Act of 1997, referred to in subsec. (f), is section 3002(c)(5) of Pub. L. 105-33, which is set out as a note under section 925 of this title.

The Federal Advisory Committee Act, referred to in subsecs. (h)(3)(E) and (i)(9), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2012—Subsec. (g). Pub. L. 112-96, §6701(a)(1)(A), substituted “Relocation of and spectrum sharing by Federal Government stations” for “Relocation of Federal Government stations” in heading.

Subsec. (g)(1). Pub. L. 112-96, §6701(a)(1)(B), amended par. (1) generally. Prior to amendment, text read as follows: “Any Federal entity that operates a Federal Government station assigned to a band of frequencies specified in paragraph (2) and that incurs relocation costs because of the reallocation of frequencies from Federal use to non-Federal use shall receive payment for such costs from the Spectrum Relocation Fund, in accordance with section 928 of this title. For purposes of this paragraph, Federal power agencies exempted under subsection (c)(4) of this section that choose to relocate from the frequencies identified for reallocation pursuant to subsection (a) of this section, are eligible to receive payment under this paragraph.”

Subsec. (g)(2)(B). Pub. L. 112-96, §6701(a)(1)(C), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “any other band of frequencies reallocated from Federal use to non-Federal use after January 1, 2003, that is assigned by competitive bidding pursuant to section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)), except for bands of frequencies previously identified by the National Telecommunications and Information Administration in the Spectrum Reallocation Final Report, NTIA Special Publication 95-32 (1995).”

Subsec. (g)(3). Pub. L. 112-96, §6701(a)(1)(D), amended par. (3) generally. Prior to amendment, par. (3) defined relocation costs.

Subsec. (g)(4). Pub. L. 112-96, §6701(a)(1)(E)(i), which directed substitution of “relocation or sharing costs” for “relocations costs” in heading, was executed by making the substitution for “relocation costs” to reflect the probable intent of Congress.

Subsec. (g)(4)(A). Pub. L. 112-96, §6701(a)(1)(E)(ii), (iii), substituted “relocation or sharing costs” for “relocation costs” and inserted “or sharing” after “such relocation”.

Subsec. (g)(4)(B). Pub. L. 112-96, §6701(a)(1)(E)(ii), substituted “relocation or sharing costs” for “relocation costs”.

Subsec. (g)(5). Pub. L. 112-96, §6701(a)(1)(F), substituted “relocation or sharing costs” for “relocation costs” and inserted “or sharing” after “for relocation”.

Subsec. (g)(6). Pub. L. 112-96, §6701(a)(1)(G), amended par. (6) generally. Prior to amendment, text read as follows: “The NTIA shall take such actions as necessary to ensure the timely relocation of Federal entities’ spectrum-related operations from frequencies defined in paragraph (2) to frequencies or facilities of comparable capability. Upon a finding by the NTIA that a Federal entity has achieved comparable capability of systems by relocating to a new frequency assignment or by utilizing an alternative technology, the NTIA shall terminate the entity’s authorization and notify the Commission that the entity’s relocation has been completed. The NTIA shall also terminate such entity’s authorization if the NTIA determines that the entity has unreasonably failed to comply with the timeline

for relocation submitted by the Director of the Office of Management and Budget under section 928(d)(2)(B) of this title.”

Subsecs. (h) to (l). Pub. L. 112-96, §6701(a)(2), (3), added subsecs. (h) to (j) and redesignated former subsecs. (h) and (i) as (k) and (l), respectively.

2004—Subsec. (g). Pub. L. 108-494 added pars. (1) to (6) and struck out former pars. (1) to (3) which related to relocation of Federal Government stations in general, process for relocation, and right to reclaim.

1999—Subsec. (b)(3)(A). Pub. L. 106-65 substituted “12 megahertz” for “20 megahertz”.

1998—Subsec. (g)(1). Pub. L. 105-261 designated existing provisions as subpar. (A), inserted subpar. heading, substituted “Any such Federal entity which proposes to so relocate shall notify the NTIA, which in turn shall notify the Commission, before the auction concerned of the marginal costs anticipated to be associated with such relocation or with modifications necessary to accommodate prospective licensees. The Commission in turn shall notify potential bidders of the estimated relocation or modification costs based on the geographic area covered by the proposed licenses before the auction.” for “Such payments may be in advance of relocation and may be in cash or in kind. Any such payment in cash shall be deposited in the account of such Federal entity in the Treasury of the United States or in a separate account authorized by law. Funds deposited according to this paragraph shall be available, without appropriation or fiscal year limitation, only for such expenses of the Federal entity for which such funds were deposited under this paragraph.”, and added subpars. (B) to (F).

1997—Subsec. (a). Pub. L. 105-33, §3002(e)(1), inserted “and within 6 months after August 5, 1997” after “August 10, 1993,” in introductory provisions.

Subsec. (b)(1). Pub. L. 105-33, §3002(e)(2)(A), (B), substituted “Initial reallocation report” for “In general” in heading and inserted “in the initial report required by subsection (a) of this section” after “recommend for reallocation” in text.

Subsec. (b)(2). Pub. L. 105-33, §3002(e)(2)(C), inserted “or (3)” after “paragraph (1)” in two places.

Subsec. (b)(3). Pub. L. 105-33, §3002(e)(2)(D), added par. (3).

Subsec. (d)(4). Pub. L. 105-33, §3002(e)(3), substituted “initial report” for “final report”.

Subsecs. (f) to (i). Pub. L. 105-33, §3002(d)(1), added subsecs. (f) to (i).

SPECTRUM MANAGEMENT AUTHORITY RETAINED

Pub. L. 108-494, title II, §208(a), Dec. 23, 2004, 118 Stat. 3996, provided that: “Except as provided with respect to the bands of frequencies identified in section 113(g)(2)(A) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2)(A)) as amended by this title, nothing in this title [see Short Title of 2004 Amendment note set out under section 901 of this title] or the amendments made by this title shall be construed as limiting the Federal Communications Commission’s authority to allocate bands of frequencies that are reallocated from Federal use to non-Federal use for unlicensed, public safety, shared, or non-commercial use.”

REPORTS ON COSTS OF RELOCATIONS

Pub. L. 105-261, div. A, title X, §1064(d), Oct. 17, 1998, 112 Stat. 2133, provided that: “The head of each department or agency of the Federal Government shall include in the annual budget submission of such department or agency to the Director of the Office of Management and Budget a report assessing the costs to be incurred by such department or agency as a result of any frequency relocations of such department or agency that are anticipated under section 113 of the National Telecommunications [and] Information Administration Organization Act (47 U.S.C. 923) as of the date of such report.”

§ 924. Withdrawal or limitation of assignment to Federal Government stations

(a) In general

The President shall—

(1) within 6 months after receipt of a report by the Secretary under subsection (a), (d)(1), or (f) of section 923 of this title, withdraw the assignment to a Federal Government station of any frequency which the report recommends for immediate reallocation;

(2) within any such 6-month period, limit the assignment to a Federal Government station of any frequency which the report recommends be made immediately available for mixed use under section 923(b)(2) of this title;

(3) by the delayed effective date recommended by the Secretary under section 923(e) of this title (except as provided in subsection (b)(4) of this section), withdraw or limit the assignment to a Federal Government station of any frequency which the report recommends be reallocated or made available for mixed use on such delayed effective date;

(4) assign or reassign other frequencies to Federal Government stations as necessary to adjust to such withdrawal or limitation of assignments; and

(5) transmit a notice and description to the Commission and each House of Congress of the actions taken under this subsection.

(b) Exceptions

(1) Authority to substitute

If the President determines that a circumstance described in paragraph (2) exists, the President—

(A) may substitute an alternative frequency or frequencies for the frequency that is subject to such determination and withdraw (or limit) the assignment of that alternative frequency in the manner required by subsection (a) of this section; and

(B) shall submit a statement of the reasons for taking the action described in subparagraph (A) to the Commission, Committee on Energy and Commerce of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.

(2) Grounds for substitution

For purposes of paragraph (1), the following circumstances are described in this paragraph:

(A) the reassignment would seriously jeopardize the national defense interests of the United States;

(B) the frequency proposed for reassignment is uniquely suited to meeting important governmental needs;

(C) the reassignment would seriously jeopardize public health or safety;

(D) the reassignment will result in costs to the Federal Government that are excessive in relation to the benefits that may be obtained from commercial or other non-Federal uses of the reassigned frequency; or

(E) the reassignment will disrupt the existing use of a Federal Government band of frequencies by amateur radio licensees.

(3) Criteria for substituted frequencies

For purposes of paragraph (1), a frequency may not be substituted for a frequency identi-

fied and recommended by the report of the Secretary under section 923(a) of this title unless the substituted frequency also meets each of the criteria specified by section 923(a) of this title.

(4) Delays in implementation

If the President determines that any action cannot be completed by the delayed effective date recommended by the Secretary pursuant to section 923(e) of this title, or that such an action by such date would result in a frequency being unused as a consequence of the Commission's plan under section 925 of this title, the President may—

(A) withdraw or limit the assignment to Federal Government stations on a later date that is consistent with such plan, except that the President shall notify each committee specified in paragraph (1)(B) and the Commission of the reason that withdrawal or limitation at a later date is required; or

(B) substitute alternative frequencies pursuant to the provisions of this subsection.

(Pub. L. 102-538, title I, §114, as added Pub. L. 103-66, title VI, §6001(a)(3), Aug. 10, 1993, 107 Stat. 384; amended Pub. L. 105-33, title III, §3002(d)(2), Aug. 5, 1997, 111 Stat. 264.)

AMENDMENTS

1997—Subsec. (a)(1). Pub. L. 105-33, §3002(d)(2)(A), substituted “subsection (a), (d)(1), or (f)” for “subsection (a) or (d)(1)”.

Subsec. (a)(2). Pub. L. 105-33, §3002(d)(2)(B), substituted “any such 6-month period” for “either such 6-month period”.

§ 925. Distribution of frequencies by Commission

(a) Allocation and assignment of immediately available frequencies

With respect to the frequencies made available for immediate reallocation pursuant to section 923(e)(2) of this title, the Commission, not later than 18 months after August 10, 1993, shall issue regulations to allocate such frequencies and shall propose regulations to assign such frequencies.

(b) Allocation and assignment of remaining available frequencies

With respect to the frequencies made available for reallocation pursuant to section 923(e)(3) of this title, the Commission shall, not later than 1 year after receipt of the initial reallocation report required by section 923(a) of this title, prepare, submit to the President and the Congress, and implement, a plan for the allocation and assignment under the 1934 Act [47 U.S.C. 151 et seq.] of such frequencies. Such plan shall—

(1) not propose the immediate allocation and assignment of all such frequencies but, taking into account the timetable recommended by the Secretary pursuant to section 923(e) of this title, shall propose—

(A) gradually to allocate and assign the frequencies remaining, after making the reservation required by subparagraph (B), over the course of 10 years beginning on the date of submission of such plan; and

(B) to reserve a significant portion of such frequencies for allocation and assignment