

“(2) PROCEEDS TO COVER 110 PERCENT OF FEDERAL REALLOCATION OR SHARING COSTS.—Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of section 309(j)(16)(B) of the Communications Act of 1934 (47 U.S.C. 309(j)(16)(B)).

“(d) PROTECTION OF CERTAIN FEDERAL SPECTRUM OPERATIONS.—If the report required by subsection (a) determines that reallocation and auction of the spectrum described in the report would harm national security by impacting existing terrestrial Federal spectrum operations at the Nevada Test and Training Range, the Commission, in coordination with the Secretary shall, prior to the auction described in subsection (c)(1)(B), establish rules for licensees in such spectrum sufficient to mitigate harmful interference to such operations.

“(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect any requirement under section 1062(b) of the National Defense Authorization Act for Fiscal Year 2000 (47 U.S.C. 921 note; Public Law 106-65).”

#### STUDY AND REPORT ON CURRENT AND FUTURE SPECTRUM USE

Pub. L. 106-553, §1(a)(2) [title II], Dec. 21, 2000, 114 Stat. 2762, 2762A-73, provided in part: “That the Administrator shall, after consultation with other federal departments and agencies responsible for regulating the core operations of entities engaged in the provision of energy, water and railroad services, complete and submit to Congress, not later than twelve months after date of enactment of this subsection, a study of the current and future use of spectrum by these entities to protect and maintain the nation’s critical infrastructure: *Provided further*, That within six months after the release of this study, the Chairman of the Federal Communications Commission shall submit a report to Congress on the actions that could be taken by the Commission to address any needs identified in the Administrator’s study.”

#### REPORT ON PROGRESS ON SPECTRUM SHARING

Pub. L. 106-398, §1 [(div. A), title XVII, §1705], Oct. 30, 2000, 114 Stat. 1654, 1654A-366, provided that:

“(a) STUDY REQUIRED.—The Secretary of Defense, in consultation with the Attorney General and the Secretary of Commerce, shall provide for the conduct of an engineering study to identify—

“(1) any portion of the 138-144 megahertz band that the Department of Defense can share in various geographic regions with public safety radio services;

“(2) any measures required to prevent harmful interference between Department of Defense systems and the public safety systems proposed for operation on those frequencies; and

“(3) a reasonable schedule for implementation of such sharing of frequencies.

“(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 Fed-

eral 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 reallocation in the initial report required by subsection (a), 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). 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) 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), 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).

#### (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), the Secretary shall—

(A) consider whether the band of frequencies is used to provide a communications 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));

(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.