

COMMISSION OBLIGATION TO MAKE ADDITIONAL  
SPECTRUM AVAILABLE BY AUCTION

Pub. L. 105-33, title III, §3002(c), Aug. 5, 1997, 111 Stat. 261, provided that:

“(1) IN GENERAL.—The Commission shall complete all actions necessary to permit the assignment by September 30, 2002, by competitive bidding pursuant to section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)), of licenses for the use of bands of frequencies that—

“(A) in the aggregate span not less than 55 megahertz;

“(B) are located below 3 gigahertz;

“(C) have not, as of the date of enactment of this Act [Aug. 5, 1997]—

“(i) been designated by Commission regulation for assignment pursuant to such section;

“(ii) been identified by the Secretary of Commerce pursuant to section 113 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923);

“(iii) been allocated for Federal Government use pursuant to section 305 of the Communications Act of 1934 (47 U.S.C. 305);

“(iv) been designated for reallocation under section 337 of the Communications Act of 1934 [47 U.S.C. 337] (as added by this Act); or

“(v) been allocated or authorized for unlicensed use pursuant to part 15 of the Commission’s regulations (47 C.F.R. Part 15), if the operation of services licensed pursuant to competitive bidding would interfere with operation of end-user products permitted under such regulations;

“(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 section 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) Use of funds**

The amounts in the Fund from auctions of eligible frequencies are authorized to be used to pay relocation or sharing costs of an eligible Federal entity incurring such costs with respect to relocation from or sharing of those frequencies.

**(d) Fund availability****(1) Appropriation**

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

**(2) Transfer conditions**

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

(A) unless the eligible Federal entity has submitted a transition plan to the NTIA as required by paragraph (1) of section 923(h) of this title, the Technical Panel has found such plan sufficient under paragraph (4) of such section, and the NTIA has made available such plan on its website as required by paragraph (5) of such section;

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

(C) 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 or sharing costs in accordance with such subsection and the timeline for such relocation or sharing.

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) Transfers for pre-auction costs****(A) In general**

Subject to subparagraph (B), the Director of OMB may transfer to an eligible Federal entity, at any time (including prior to a scheduled auction), such sums as may be available in the Fund to pay relocation or sharing costs related to pre-auction estimates or research, as such costs are described in section 923(g)(3)(A)(iii) of this title.

**(B) Notification**

No funds may be transferred pursuant to subparagraph (A) unless—

(i) the notification provided under paragraph (2)(C) includes a certification from the Director of OMB that—

(I) funds transferred before an auction will likely allow for timely implementation of relocation or sharing, thereby increasing net expected auction proceeds by an amount not less than the time value of the amount of funds transferred; and

(II) the auction is intended to occur not later than 5 years after transfer of funds; and

(ii) the transition plan submitted by the eligible Federal entity under section 923(h)(1) of this title provides—