

**Calendar No. 816**

108TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 108-428

THE SAVE LIVES ACT OF 2004

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 2820



DECEMBER 7, 2004.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

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### THE SAVE LIVES ACT OF 2004

DECEMBER 7, 2004.—Ordered to be printed

Mr. MCCAIN, from the Committee on Commerce, Science, and  
Transportation, submitted the following

### R E P O R T

[To accompany S. 2820]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2820) to ensure the availability of certain spectrum for public safety entities by amending the Communications Act of 1934 to establish January 1, 2009, as the date by which the transition to digital television shall be completed, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

#### PURPOSE OF THE BILL

The purpose of the SAVE LIVES Act is to provide by January 2009 public safety professionals, such as firefighters and police officers, with spectrum for wireless emergency communications and for other purposes. In order for this to occur, the SAVE LIVES Act would require television stations currently broadcasting on this spectrum to vacate by December 31, 2008. The legislation would also authorize funding for grants to public safety organizations for training and new interoperable equipment and authorize the Department of Homeland Security's (DHS) SAFECOM program.

#### BACKGROUND AND NEEDS

In 1997, responding to a request from the public safety community for more spectrum, Congress passed legislation providing public safety professionals with 24 megahertz (MHz) in the 700 MHz

band.<sup>1</sup> The Federal Communications Commission (FCC) responded by allocating the frequencies 764–776 MHz and 794–806 MHz, broadcast television channels 63–64 and 68–69 respectively, for public safety use after the broadcasters cease using this spectrum when the Nation transitions from analog to digital television.

Full use of spectrum in the 700 MHz band can be extremely helpful to public safety organizations given the spectrum’s propagation characteristics. Signals sent over these frequencies can penetrate walls, can travel great distances and can assist multiple jurisdictions in deploying interoperable communications systems.

There are over 50,000 public safety agencies, which include 2.5 million of the Nation’s first responders (such as firefighters, police officers, and ambulance services) and a number of local, State, Federal—and in some cases—regional authorities. Communications, often wireless, are vital to these agencies’ effectiveness and to the safety of their members and the public. The Association of Public Safety Communications Officials (APCO) argues that access to spectrum in the 700 MHz band is critical to reduce commercial transmission interference to emergency communications, to expand capacity, to help achieve implementation of high-speed services, to provide interoperability, and to promote technical standardization. Interoperability, also referred to as compatibility or interconnectivity, allows different systems to readily contact each other and provides needed redundancy.

The lead program for fostering interoperability is SAFECOM, part of the DHS, while the National Telecommunications and Information Administration, part of the Department of Commerce, administers spectrum used by Federal entities. SAFECOM serves as the umbrella program within the Federal government to coordinate the efforts of local, tribal, State and Federal public safety agencies to promote effective, efficient and interoperable wireless communications. SAFECOM, however, has no authority over spectrum management decisions.

The 9/11 Commission, in its final report, discussed the immediate need for “the expedited and increased assignment of radio spectrum for public safety purposes.”<sup>2</sup> On September 8, 2004, the Committee on Commerce, Science, and Transportation held a hearing on implementing the 9/11 Commission’s recommendation. Chief Stephen T. Devine of the Missouri State Highway Patrol testified at the hearing on behalf of public safety organizations and this legislation:

The spectrum [allocated to public safety by Congress in 1997, but currently being used for television broadcasting] would nearly double the amount of spectrum available for public safety mobile voice and data communications \* \* \*. Thus, Congress needs to change existing law to establish a firm date for nationwide access to this spectrum. State and local governments need a firm date so they can proceed with planning, funding, and construction of new radio systems, safe in the knowledge that the spectrum will be there when the systems are ready to be deployed.

<sup>1</sup> See Balanced Budget Act of 1997, P.L.105–33, Title III. See Also 47 U.S.C. 337(a)(1).

<sup>2</sup> See <http://www.9-11commission.gov/report/index.htm>, page 397.

## LEGISLATIVE HISTORY

On September 8, 2004, Senator McCain introduced the SAVE LIVES Act, a bill to ensure the availability of certain spectrum for public safety, and for other purposes. That same day, the Senate Commerce, Science, and Transportation Committee held a hearing to review the 9/11 Commission's recommendation that Congress provide public safety organizations with spectrum on an expedited basis for wireless emergency communications systems.

On September 22, 2004, the Committee held an executive session at which the SAVE LIVES Act was considered. The bill was amended by Senators Burns and Lautenberg and then ordered reported.

## ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

*S. 2820—SAVE LIVES Act*

Summary: S. 2820 would amend federal laws governing the use of the electromagnetic spectrum by public safety agencies and television broadcasters. The bill would appropriate up to \$1 billion on subsidize consumer purchases of certain television products. It also would authorize the appropriation of \$117 million in funding over the 2005–2009 period for programs aimed at improving the interoperability of radio systems used by public safety agencies.

CBO estimates that enacting the bill would increase direct spending by \$500 million over the 2005–2009 period and another \$500 million thereafter. CBO estimates that implementing the legislation would add \$83 million to discretionary spending over the 2005–2009 period, assuming appropriation of the authorized amounts. Enacting S. 2820 would not affect revenues.

S. 2820 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would require seven public broadcasting stations to vacate their current television channels by January 1, 2008. CBO estimates, however, that the associated costs to state, local, and tribal governments would be small and would not exceed the threshold established in UMRA (\$60 million in 2004, adjusted annually for inflation).

S. 2820 would impose private-sector mandates as defined in UMRA on television broadcasters and manufacturers, importers, and retailers of equipment capable of receiving analog broadcast television signals. The bill would increase the local and public affairs requirements for holders of broadcast licenses. It also would require television broadcasters to vacate certain channels by January 1, 2008. Finally, the bill would require certain manufacturers, importers and retailers to place labels on their equipment regarding the end of over-the-air broadcasts of analog television signals. Based on information from the industry and the Federal Communications Commission (FCC), CBO expects that the aggregate direct cost to comply with those mandates would exceed the annual threshold established by UMRA for private-sector mandates would

exceed the annual threshold established by UMRA for private-sector mandates (\$120 million in 2004, adjusted annually for inflation).

**Estimated cost to the Federal Government:** The estimated budgetary impact of S. 2820 is shown in the following table. The costs of this legislation fall within budget functions 370 (commerce and housing credit) and 750 (administration of justice).

	By fiscal year, in million of dollars—				
	2005	2006	2007	2008	2009
CHANGES IN DIRECT SPENDING					
Estimated Budget Authority .....	0	0	0	1,000	0
Estimated Outlays .....	0	0	0	150	350
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Authorization Level .....	22	23	23	24	25
Estimated Outlays .....	3	13	20	23	24

**Basis of Estimate:** For this estimate, CBO assumes that the bill will be enacted in calendar year 2004 and that the authorized amounts will be appropriated near the start of each fiscal year. Outlay estimates are based on spending patterns of similar programs. CBO estimates that enacting S. 2820 would increase direct spending by \$1 billion over the next 10 years, but that spending would not begin until 2008. Discretionary spending also would increase by \$83 million over the 2005–2009 period, assuming appropriation of the authorized amounts.

#### *Direct spending*

S. 2820 would appropriate up to \$1 billion of the proceeds from auctioning certain spectrum for a new program to subsidize certain consumer purchases of digital television products. Under this bill, proceeds from auctions of licenses to use certain frequencies now used by television broadcasters would be deposited in a new Digital Transition Consumer Assistance Fund. The bill would direct the Secretary of Commerce to spend up to \$1 billion of the money in that fund to assist households in purchasing equipment or services that would enable them to receive digital rather than analog television signals. Under current law, the Federal Communications Commission is supposed to auction those frequencies before its auction authority expires and deposit the proceeds in the Treasury.

CBO estimates that \$1 billion would become available to the new fund in 2008 and that it would be spent over the following six years. This estimate reflects CBO's baseline assumption that auctions of the affected television frequencies are likely to occur in fiscal year 2007 (the year the FCC's auction authority expires under current law) and that proceeds would be deposited by 2008. CBO expects that the department would spend the entire \$1 billion authorized for the new program, as shown in the table below, given the large number of households that currently lack access to digital television signals.

	By fiscal year, in millions of dollars—									
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
	DIGITAL TRANSITION CONSUMER ASSISTANCE FUND									
Estimated Outlays .....	0	0	0	150	350	200	150	100	50	0

*Spending subject to appropriation*

S. 2820 would authorize funding for two new programs to enhance the interoperability of communications systems used by public safety agencies. The bill would authorize a new research and development initiative at the Department of Homeland Security (DHS) on systems, standards, and a strategic plan for interoperable communication systems. The authorized amounts range from \$22 million in 2005 to \$25 million in 2009 and would total \$117 million over the 2005–2009 period. Based on experience with similar activities, CBO estimates that outlays for these programs would total \$83 million over the 2005–2009 period.

The bill also would authorize DHS to assist state and local first-responder agencies to acquire and deploy interoperable communications systems. Funding for this program would be subject to appropriation and limited to the amounts in the Digital Transition Consumer Assistance Fund that are in excess of the amounts spent by the Department of Commerce to assist households in converting form analog to digital television. Because the Commerce program is likely to take several years to implement, CBO expects that grants for first-responders would not be made until after 2009.

Finally, S. 2820 would direct various agencies to prepare reports and implement various rulemaking proceedings. Based on information from the Office of Management and Budget and affected agencies, CBO estimates that the cost of those activities would not be significant.

Estimated impact on state, local, and tribal governments: S. 2820 contains an intergovernmental mandate as defined in UMRA because it would require seven public broadcasting stations to vacate their current television channels by January 1, 2008, more quickly than under current law. Based on information from industry sources and the FCC, CBO estimates that stations affected by the bill would face costs totaling no more than \$2 million per station depending on the television market in which they currently operate, possible lost contributions from members who are no longer able to receive the station signal, and the adjustments to their broadcasting technology that they would be required to make.

Section 11 also would require the FCC to develop new guidelines for programs that originate locally. However, based on information from the Corporation for Public Broadcasting, CBO estimates that the costs of the new guidelines to public television stations would be minimal. The aggregate costs of the mandate would thus not exceed the threshold established in UMRA (\$60 million in 2004, adjusted annually for inflation).

Estimated impact on the private sector: S. 2820 contains private-sector mandates as defined in UMRA that would affect television broadcasters and manufacturers, importers, and retailers of equipment capable of receiving analog broadcast television signals. The bill would impose mandates by:

- Requiring television broadcasters to increase the amount of local and public affairs programming;
- Requiring television broadcasters to vacate certain channels by January 1, 2008; and
- Requiring certain manufacturers, importers, and retailers to post notices on their equipment regarding the termination date for over-the-air broadcasts of analog television signals.

Based on information from the industry and the FCC, CBO estimates that the aggregate direct cost to comply with those mandates would exceed the annual threshold established by UMRA for private-sector mandates (\$120 million in 2004, adjusted annually for inflation). CBO cannot estimate the total cost of mandates in the bill because some of the requirements established by the bill would depend on future regulatory action for which information is not available. However, CBO estimates that the cost associated with increasing the amount of local and public affairs programming that broadcast licensees would have to carry is likely to be above the UMRA threshold.

#### *Minimum requirements for public interest programming*

Section 11 would direct the FCC to establish “minimum quantitative guidelines for locally originating programming, local electoral and public affairs programming, and independently produced programming” for television broadcast licensees. Under the bill, the FCC would have to consider the extent to which licensees have complied with those guidelines when reviewing an application for renewal of a digital broadcast license. The bill would impose a private-sector mandate by effectively increasing the requirements for renewal of television broadcast licenses. Television stations already broadcast many public service announcements. Such announcements may not fulfill the requirements under the new guidelines, however, since those announcements are typically not locally oriented or locally produced nor do they typically deal with local electoral politics.

To comply with the mandate, television stations would be required to reschedule or not transmit certain programs and produce other programs that qualify under the new guidelines. The cost of the mandate for licensees in the private sector would be:

- The loss in net advertising revenues (net income) associated with rescheduling or not transmitting some commercial programming, and
- The production costs of creating locally and independently produced programming.

Based on information from industry sources and the FCC, CBO expects that the cost of complying with the new guidelines would be greater than UMRA’s annual threshold for private-sector mandates.

#### *Termination of broadcast television licenses for 24 megahertz of spectrum*

Current law requires all television broadcasters to give up their analog spectrum by December 31, 2006. TV broadcasters can receive an unlimited extension of this deadline for several reasons; most notably, an extension may be granted to broadcasters until at least 85 percent of households in their service areas are capable of

receiving a digital signal. Most experts agree that the 2006 deadline for vacating the analog channels will not be met by broadcasters in most markets under the current rules. The FCC has been considering a proposal that would require broadcasters to give up their analog broadcast licenses by January 1, 2009. Of the spectrum released as part of the transition to digital television, current law requires that 24 megahertz (4 channels) in the 700 megahertz band be turned over for use by public safety agencies.

Section 3 of S. 2820 would require broadcasters operating on channels 63, 64, 68, and 69 to clear their analog and digital spectrum for public safety use by January 1, 2008. The bill would prohibit the FCC from extending broadcast licenses for those channels beyond the 2008 deadline. The bill also would authorize the FCC to modify or reassign the licenses of entities operating in the adjacent bands of the electromagnetic spectrum, if necessary, for the operations of the public safety services. The FCC could waive those requirements under the bill in two circumstances: first, if there is no substantive request by relevant first-responders in a designated market area, and second, “to the extent necessary to avoid consumer disruption while maximizing the ability of relevant public safety entities to use the frequencies described \* \* \*.”

CBO is uncertain how the FCC would implement the provisions of section 3. The authority to waive the requirements of the bill under certain conditions increases the uncertainty about the scope of the mandate on broadcasters. The FCC could interpret the “consumer disruption” clause broadly and clear few, if any, channels before the general transition to digital television, which currently appears to be set for sometime in 2009. Alternatively, the bill would allow the FCC to completely clear out the four relevant channels while permitting other television broadcasters to continue broadcasting on other analog channels through 2009.

For purposes of this estimate, CBO assumes that the FCC would let the current 2006 deadline pass without clearing many of the channels, but that, following this bill, it would clear all the public safety channels by January 1, 2008. Further, CBO assumes that few of the adjacent channels would be cleared before the general transition to digital broadcasting. Clearing television broadcasters from the initial four channels could affect 31 analog broadcast stations and four digital broadcast stations in the United States, including Puerto Rico.

For purposes of this estimate, CBO assumes that the FCC would require television stations to cease over-the-air broadcasts on the four designated channels, while still requiring their programs to be “retransmitted” to households by cable, satellite, and other multivideo services (enforcing the “must-carry” rules on cable companies and “carry one, carry all” rules on satellite companies). Some analysts have suggested this as a viable option since most households view television through cable, satellite, or other multivideo services. In this scenario, the cost to stations transmitting analog signals would end, but their over-the-air audience would also largely disappear. With the loss of that audience segment, the value of their advertising revenue would be reduced.

Based on information from FCC and industry sources, CBO estimates that the costs to comply with the mandate facing the affected broadcasters would be small—substantially less than the

UMRA threshold. The TV stations using the designated channels do not have large audiences and so do not command much in the way of advertising revenues. Some of the broadcasters might also face the additional costs of buying the necessary equipment to ensure that their signals get to the cable networks that are carrying their programs. However, most of the stations involved already have the digital transmitters in operation that can be used by the cable systems.

*Warning requirements for analog equipment*

Section 9 would require manufacturers, importers, and retailers to display a label (or notice) on all television apparatus (mainly TV sets and VCRs) involved in interstate commerce and incapable of receiving digital television signals. A label (or printed notice, in the case of retailers) would state that the equipment “will be incapable of displaying over-the-air television broadcast signals received after December 31, 2008, without the purchase of additional equipment.” While requiring such a warning would appear to constitute an enforceable duty, the bill would not establish a 2008 deadline for television broadcast conversion to digital signals, nor is there such a deadline in current law. Because such a label would be inconsistent with current law, CBO is uncertain how to measure the potential costs of compliance.

Estimate prepared by: Federal Costs: Kathleen Gramp. Impact on State, Local, and Tribal Governments: Sarah Puro. Impact on the Private Sector: Philip Webre.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

The SAVE LIVES Act would have no additional regulatory impact and would result in no additional reporting requirements because the FCC is already taking action to move the Nation from analog to digital television.

NUMBER OF PERSONS COVERED

The SAVE LIVES Act would impact a majority of the Nation’s citizens by allowing public safety organizations to communicate with each other and adjacent communities’ public safety organizations. This would provide citizens with a more secure community.

ECONOMIC IMPACT

The SAVE LIVES Act would authorize funds to support grants to public safety organizations for new interoperable communications equipment and to assist citizens who may lose their ability to view some television stations. These funds would be raised from the auction of the returned analog television broadcast spectrum.

## PRIVACY

The SAVE LIVES Act is not expected to have an adverse effect on the personal privacy of any individuals that will be impacted by this legislation.

## PAPERWORK

The SAVE LIVES Act would have a minimal impact on current paperwork levels as the FCC is already managing the Nation's transition to digital television and accepting information from broadcast television licensees about their public interest programming.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

Section 1 would provide that the act may be cited as "The Spectrum Availability for Emergency-Response and Law-Enforcement To Improve Vital Emergency Services Act," to be known as The SAVE LIVES Act.

*Section 2. Findings*

Section 2 would provide Congress' findings in support of the legislation.

*Section 3. Prevention of delay in the reassignment of 24 megahertz for public safety purposes*

Section 3 would provide spectrum in the frequencies of 764–776 megahertz and 794–806 megahertz, currently being used to broadcast television channels 63–64 and 68–69 respectively, to public safety organizations by January 1, 2008. This section would also allow the FCC to modify or re-assign licenses assigned to the frequencies surrounding these channels as necessary to permit operations by public safety organizations. However, the legislation would allow the FCC to waive this requirement if a public safety organization fails to make a bona fide request for the spectrum in the affected area and the removal of the broadcast television stations would create widespread consumer disruption because the station and the public safety organizations can not operate together on the spectrum due to interference.

The Committee believes a bona fide request is one where a public safety organization can show that it has the need for the spectrum for interoperable emergency wireless communications, and has the funding and ability to begin using the spectrum upon the broadcaster vacating this spectrum. If there is disagreement as to whether the public safety organization has made a bona fide request, the Committee believes the parties should file with the FCC for a determination. Congress' intention is for this spectrum never to lay vacant, but rather to be used either for broadcasting or emergency wireless communications as needed in each community. It is also Congress' intention that in such a review public safety's need for the spectrum should be permanent.

*Section 4. Study of public safety communications capabilities and needs and spectrum uses*

Section 4 would require the FCC, in consultation with the Department of Homeland Security (DHS), to conduct a study to assess public safety's communications needs over the next ten years, including the need for additional spectrum, the ability of broadband and narrowband applications to be performed on public safety spectrum, and whether other first responders such as hospitals and health care workers should be included in an interoperable national communications system. Additionally, this section would ask the FCC to study the feasibility of reallocating some of the spectrum in the 700 MHz band for unlicensed broadband use. The FCC would be required to report back to the Senate Commerce, Science and Transportation Committee and House Energy and Commerce Committee within one year of the bill's enactment.

*Section 5. Statutory authority for the Department of Homeland Security's "SAFECOM" program*

Section 5 would authorize DHS' SAFECOM program for five years. SAFECOM serves as the umbrella program within the Federal government to coordinate the efforts of local, tribal, State and Federal public safety agencies to promote effective, efficient and interoperable wireless communications. In pursuit of this goal, SAFECOM has begun an inventory of all Federal grants to public safety organizations to better understand the amount of Federal funding to localities for emergency communications systems. This inventory is expected to be complete by October 2005.

SAFECOM has also served as a consultant to many States and localities assisting with the development of their interoperable emergency communications systems. However, most importantly, SAFECOM has completed the development of critical standards for public safety communications equipment mandating interoperability, which is now included as a condition on all monies provided to localities by the Federal government for public safety communications equipment. This should provide for greater national interoperability and decreased costs for localities. Recognizing the need for a centralized office to handle all aspects of emergency communications planning, the Administration created SAFECOM and this section would recognize SAFECOM's necessity and authorize it.

*Section 6. Grant program to provide enhanced interoperability of communications for first responders*

Section 6 would authorize the Office for Domestic Preparedness in DHS to establish a grant program to assist State, local, tribal and regional public safety organization with the purchase and training costs of acquiring new wireless emergency communications system.

*Section 7. Digital transition public safety communications grant and consumer assistance fund*

Section 7 would authorize the appropriation of auction revenues from the sale of returned analog broadcast spectrum to be used for two programs. The first program, and the priority use for these funds, would allocate \$1 billion to create a subsidy to limit the disruption of broadcast services to the public, especially for those who

rely exclusively on over-the-air broadcast television. This total cost of this subsidy program is not to exceed \$1 billion. When the New America Foundation testified before the Senate Commerce Committee in June 2004, it testified that the cost to assist these 17.4 million over-the-air consumers is slightly less than \$1 billion dollars for equipment, assuming that digital-to-analog converter boxes retail for approximately \$75 per box. At that same hearing, Motorola testified that they will introduce a digital-to-analog converter box for \$67 per unit in 2005. Motorola calculated that such a price per unit would cap the cost of providing converters at less than \$840 million nationwide to all over-the-air consumers. The same month of the hearing, Zenith Electronics announced that the company intends to retail digital-to-analog converter boxes at \$50 to \$70 per unit within four years.

The Committee believes that the auction revenues should provide sufficient funds to cover the cost of equipment to ensure those who rely exclusively on over-the-air broadcast television will not have their television sets “go dark” on December 31, 2008. The New America Foundation expects the auction of the analog spectrum to yield \$30-to-\$40 billion in revenue to the Treasury, which equates roughly to less than 3 percent of the Federal revenue likely from the auction of the analog television spectrum. In testimony before the Senate Commerce Committee, FCC Chairman Powell stated that some estimates go as high as \$70 billion.

After funding the consumer subsidy program, the legislation would authorize the appropriation of such sums as required to support a grant program to provide public safety organizations with emergency communications equipment so these groups can begin using the 24 MHz of spectrum. The amount would be determined by the Director of the Office of Management and Budget (OMB) and be based on a National Baseline Interoperability study currently being conducted by the DHS. This study is currently being performed to determine the precise amount that is already being provided by the Federal government to local and regional public safety organizations for the purchase of new communications equipment and for the funding of emergency communications training. There are numerous grant programs throughout the Federal government, however no agency has ever studied how many grants are being provided and for what amount. After this study is completed, as required by this legislation by December 31, 2005, the Federal government will best know how much money is needed to ensure that public safety organizations have the equipment necessary to immediately begin using the 700 MHz spectrum January 1, 2009.

At the September 8, 2004 hearing, a public safety representative testified, “There also needs to be expanded funding for equipment, and more extensive planning and cooperation among public safety personnel at all levels of government. This includes local governments who must interoperate with their neighbors and with overlapping jurisdictions, regional authorities covering large metropolitan areas and sometimes crossing State borders, States through their State Interoperability Executive Committees (SIECs), and the Federal government.” This section was drafted in response to such requests from public safety organizations and localities.

*Section 8. Digital transition program*

Section 8 would establish the program to assist the over-the-air viewers with the purchase or acquisition of digital-to-analog converter devices, or other equipment or services to ensure they are able to view television after December 31, 2008. The program would be developed by the Department of Commerce in conjunction with the OMB and established no later than January 1, 2008. This section would require the program to give priority to funding equipment or services to low income viewers, to offer these viewers technology neutral options and to be conducted at the lowest feasible administrative cost.

*Section 9. Label requirement for analog television sets*

Section 9 would require, after September 30, 2005, the labeling of all analog television sets to communicate to buyers that the television sets will be incapable of displaying over-the-air television broadcast signals after December 31, 2008 without the purchase of additional equipment. This section would also require retailers to post the same information at their retail outlets.

*Section 10. Report on consumer education program requirements*

Section 10 would require, within one year of enactment, that the Department of Commerce report back to the Senate Commerce, Science and Transportation Committee and House Energy and Commerce Committee any recommendations on an effective program to educate consumers about the digital television transition; the need, if any, for Federal funding, and the duration of such a program.

*Section 11. FCC to issue decision in certain proceedings*

Section 11 would require the FCC to issue a decision by a date certain in some of its open DTV proceedings, including a proceeding on whether cable or satellite companies should be required to carry broadcasters' multi-cast channels, and a proceeding on what public interest obligations broadcasters should have for the digital television service. Additionally, this section would require the FCC to set forth specific guidelines on the amount of locally originated programming, local electoral and public affairs programming, and independently produced programming for television broadcast licensees. After setting forth such guidelines, the FCC is then required in its review of any application for renewal of a commercial or noncommercial digital television broadcast license, to consider the extent to which the applicant or licensee has complied with such guidelines.

*Section 12. Definitions*

Section 12 sets forth definitions for this Act.

ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following description of the record votes during its consideration of S. 1963:

Senator Lautenberg offered an amendment to require the FCC to publish minimum quantitative guidelines for locally originated pro-

gramming. By a rollcall vote of 13 yeas and 8 nays as follows, the amendment was adopted:

YEAS—13	NAYS—8
Ms. Snowe	Mr. Stevens <sup>1</sup>
Mr. Fitzgerald	Mr. Burns
Mr. Hollings	Mr. Lott
Mr. Inouye <sup>1</sup>	Mrs. Hutchison <sup>1</sup>
Mr. Rockefeller <sup>1</sup>	Mr. Smith <sup>1</sup>
Mr. Breaux	Mr. Ensign
Mr. Dorgan	Mr. Allen <sup>1</sup>
Mr. Wyden	Mr. Sununu <sup>1</sup>
Mrs. Boxer <sup>1</sup>	
Mr. Nelson	
Ms. Cantwell	
Mr. Lautenberg	
Mr. McCain	

<sup>1</sup>By proxy

Mr. McCain, for himself and Mr. Hollings, offered a second degree amendment to the amendment proposed by Mr. Burns to modify the exception provided for the December 31, 2008, deadline. By a rollcall vote of 9 yeas and 13 nays, the amendment was not agreed to.

YEAS—9	NAYS—13
Mr. Brownback	Mr. Stevens <sup>1</sup>
Mr. Fitzgerald	Mr. Burns
Mr. Ensign	Mr. Lott
Mr. Sununu <sup>1</sup>	Mrs. Hutchison
Mr. Wyden	Ms. Snowe
Mrs. Boxer	Mr. Smith
Mr. Nelson	Mr. Allen <sup>1</sup>
Mr. Lautenberg	Mr. Hollings
Mr. McCain	Mr. Inouye <sup>1</sup>
	Mr. Rockefeller <sup>1</sup>
	Mr. Breaux
	Mr. Dorgan
	Ms. Cantwell

<sup>1</sup>By proxy

Mr. Burns, for himself and Mr. Hollings, offered an amendment to prevent delay in the reassignment of 24 megaHertz for public safety purposes. By a rollcall vote of 13 yeas and 9 nays as follows, the amendment was adopted:

YEAS—13	NAYS—9
Mr. Stevens <sup>1</sup>	Mr. Brownback
Mr. Burns	Mr. Fitzgerald
Mr. Lott	Mr. Ensign
Mrs. Hutchison	Mr. Sununu
Ms. Snowe	Mr. Wyden
Mr. Smith	Mrs. Boxer
Mr. Allen <sup>1</sup>	Mr. Nelson
Mr. Hollings	Mr. Lautenberg
Mr. Inouye <sup>1</sup>	Mr. McCain

Mr. Rockefeller<sup>1</sup>  
 Mr. Breaux  
 Mr. Dorgan  
 Ms. Cantwell

<sup>1</sup>By proxy

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

#### HOMELAND SECURITY ACT OF 2002

##### TITLE III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY

#### SEC. 302. RESPONSIBILITIES AND AUTHORITIES OF THE UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.

[6 U.S.C. 182]

(a) *IN GENERAL.*—The Secretary, acting through the Under Secretary for Science and Technology, shall have the responsibility for—

(1) advising the Secretary regarding research and development efforts and priorities in support of the Department's missions;

(2) developing, in consultation with other appropriate executive agencies, a national policy and strategic plan for, identifying priorities, goals, objectives and policies for, and coordinating the Federal Government's civilian efforts to identify and develop countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats, including the development of comprehensive, research-based definable goals for such efforts and development of annual measurable objectives and specific targets to accomplish and evaluate the goals for such efforts;

(3) supporting the Under Secretary for Information Analysis and Infrastructure Protection, by assessing and testing homeland security vulnerabilities and possible threats;

(4) conducting basic and applied research, development, demonstration, testing, and evaluation activities that are relevant to any or all elements of the Department, through both intramural and extramural programs, except that such responsibility does not extend to human health-related research and development activities;

(5) establishing priorities for, directing, funding, and conducting national research, development, test and evaluation, and procurement of technology and systems for—

(A) preventing the importation of chemical, biological, radiological, nuclear, and related weapons and material; and

(B) detecting, preventing, protecting against, and responding to terrorist attacks;

(6) establishing a system for transferring homeland security developments or technologies to Federal, State, local government, and private sector entities;

(7) entering into work agreements, joint sponsorships, contracts, or any other agreements with the Department of Energy regarding the use of the national laboratories or sites and support of the science and technology base at those facilities;

(8) collaborating with the Secretary of Agriculture and the Attorney General as provided in section 212 of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401), as amended by section 1709(b);

(9) collaborating with the Secretary of Health and Human Services and the Attorney General in determining any new biological agents and toxins that shall be listed as "select agents" in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act (42 U.S.C. 262a);

(10) supporting United States leadership in science and technology;

(11) establishing and administering the primary research and development activities of the Department, including the long-term research and development needs and capabilities for all elements of the Department;

(12) coordinating and integrating all research, development, demonstration, testing, and evaluation activities of the Department;

(13) coordinating with other appropriate executive agencies in developing and carrying out the science and technology agenda of the Department to reduce duplication and identify unmet needs; and

(14) developing and overseeing the administration of guidelines for merit review of research and development projects throughout the Department, and for the dissemination of research conducted or sponsored by the Department.

(b) *SAFECOM AUTHORIZED.*—

(1) *IN GENERAL.*—*In carrying out subsection (a), the Under Secretary shall establish a program to address the interoperability of communications devices used by Federal, State, tribal, and local first responders, to be known as the Wireless Public Safety Interoperability Communications Program, or 'SAFECOM'. The Under Secretary shall coordinate the program with the Director of the Department of Justice's Office of Science and Technology and all other Federal programs engaging in communications interoperability research, development, and funding activities to ensure that the program takes into account, and does not duplicate, those programs or activities.*

(2) *COMPONENTS.*—*The program established under paragraph (1) shall be designed—*

*(A) to provide research on the development of a communications system architecture that would ensure the interoperability of communications devices among Federal, State, tribal, and local officials that would enhance the potential for a coordinated response to a national emergency;*

*(B) to support the completion and promote the adoption of mutually compatible voluntary consensus standards de-*

*veloped by a standards development organization accredited by the American National Standards Institute to ensure such interoperability; and*

*(C) to provide for the development of a model strategic plan that could be used by any State or region in developing its communications interoperability plan.*

(3) *AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this subsection—*

- (A) \$22,105,000 for fiscal year 2005;*
- (B) \$22,768,000 for fiscal year 2006;*
- (C) \$23,451,000 for fiscal year 2007;*
- (D) \$24,155,000 for fiscal year 2008; and*
- (E) \$24,879,000 for fiscal year 2009.*

*(c) NATIONAL BASELINE STUDY OF PUBLIC SAFETY COMMUNICATIONS INTEROPERABILITY.—By December 31, 2005, the Under Secretary of Homeland Security for Science and Technology shall complete a study to develop a national baseline for communications interoperability and develop common grant guidance for all Federal grant programs that provide communications-related resources or assistance to State and local agencies, any Federal programs conducting demonstration projects, providing technical assistance, providing outreach services, providing standards development assistance, or conducting research and development with the public safety community with respect to wireless communications. The Under Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce containing the Under Secretary’s findings, conclusions, and recommendations from the study.*

COMMUNICATIONS ACT OF 1934

TITLE III—PROVISIONS RELATING TO RADIO

PART I—GENERAL PROVISIONS

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**SEC. 303. POWERS AND DUTIES OF COMMISSION.**

[47 U.S.C. 303]

Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires, shall—

- (a) Classify radio stations;
- (b) Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class;
- (c) Assign bands of frequencies to the various classes of stations, and assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate;
- (d) Determine the location of classes of stations or individual stations;
- (e) Regulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein;

(f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act: Provided, however, That changes in the frequencies, authorized power, or in the times of operation of any station, shall not be made without the consent of the station licensee unless the Commission shall determine that such changes will promote public convenience or interest or will serve public necessity, or the provisions of this Act will be more fully complied with;

(g) Study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest;

(h) Have authority to establish areas or zones to be served by any station;

(i) Have authority to make special regulations applicable to radio stations engaged in chain broadcasting;

(j) Have authority to make general rules and regulations requiring stations to keep such records of programs, transmissions of energy, communications, or signals as it may deem desirable;

(k) Have authority to exclude from the requirements of any regulations in whole or in part any radio station upon railroad rolling stock, or to modify such regulations in its discretion;

(1)(1) Have authority to prescribe the qualifications of station operators, to classify them according to the duties to be performed, to fix the forms of such licenses, and to issue them to persons who are found to be qualified by the Commission and who otherwise are legally eligible for employment in the United States; except that such requirement relating to eligibility for employment in the United States shall not apply in the case of licenses issued by the Commission to (A) persons holding United States pilot certificates; or (B) persons holding foreign aircraft pilot certificates which are valid in the United States, if the foreign government involved has entered into a reciprocal agreement under which such foreign government does not impose any similar requirement relating to eligibility for employment upon citizens of the United States;

(2) Notwithstanding paragraph (1) of this subsection, an individual to whom a radio station is licensed under the provisions of this Act may be issued an operator's license to operate that station.

(3) In addition to amateur operator licenses which the Commission may issue to aliens pursuant to paragraph (2) of this subsection, and notwithstanding section 301 of this Act and paragraph (1) of this subsection, the Commission may issue authorizations, under such conditions and terms as it may prescribe, to permit an alien licensed by his government as an amateur radio operator to operate his amateur radio station licensed by his government in the United States, its possessions, and the Commonwealth of Puerto Rico provided there is in effect a multilateral or bilateral agreement, to which the United States and the alien's government are parties, for such operation on a reciprocal basis by United States amateur radio operators. Other provisions of this Act and of the Administrative Procedure Act shall not be applicable to any request or applica-

tion for or modification, suspension, or cancellation of any such authorization.

(m)(1) Have authority to suspend the license of any operator upon proof sufficient to satisfy the Commission that the licensee—

(A) has violated, or caused, aided, or abetted the violation of, any provision of any Act, treaty, or convention binding on the United States, which the Commission is authorized to administer, or any regulation made by the Commission under any such Act, treaty, or convention; or

(B) has failed to carry out a lawful order of the master or person lawfully in charge of the ship or aircraft on which he is employed; or

(C) has willfully damaged or permitted radio apparatus or installations to be damaged; or

(D) has transmitted superfluous radio communications or signals or communications containing profane or obscene words, language, or meaning, or has knowingly transmitted—

(i) false or deceptive signals or communications, or

(ii) a call signal or letter which has not been assigned by proper authority to the station he is operating; or

(E) has willfully or maliciously interfered with any other radio communications or signals; or

(F) has obtained or attempted to obtain, or has assisted another to obtain or attempt to obtain, an operator's license by fraudulent means.

(2) No order of suspension of any operator's license shall take effect until fifteen days' notice in writing thereof, stating the cause for the proposed suspension, has been given to the operator licensee who may make written application to the Commission at any time within said fifteen days for a hearing upon such order. The notice to the operator licensee shall not be effective until actually received by him, and from that time he shall have fifteen days in which to mail the said application. In the event that physical conditions prevent mailing of the application at the expiration of the fifteen-day period, the application shall then be mailed as soon as possible thereafter, accompanied by a satisfactory explanation of the delay. Upon receipt by the Commission of such application for hearing, said order of suspension shall be held in abeyance until the conclusion of the hearing which shall be conducted under such rules as the Commission may prescribe. Upon the conclusion of said hearing the Commission may affirm, modify, or revoke said order of suspension.

(n) Have authority to inspect all radio installations associated with stations required to be licensed by any Act, or which the Commission by rule has authorized to operate without a license under section 307(e)(1); or which are subject to the provisions of any Act, treaty, or convention binding on the United States, to ascertain whether in construction, installation, and operation they conform to the requirements of the rules and regulations of the Commission, the provisions of any Act, the terms of any treaty or convention binding on the United

States, and the conditions of the license or other instrument of authorization under which they are constructed, installed, or operated.

(o) Have authority to designate call letters of all stations;

(p) Have authority to cause to be published such call letters and such other announcements and data as in the judgment of the Commission may be required for the efficient operation of radio stations subject to the jurisdiction of the United States and for the proper enforcement of this Act;

(q) Have authority to require the painting and/or illumination of radio towers if and when in its judgment such towers constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation. The permittee or licensee, and the tower owner in any case in which the owner is not the permittee or licensee, shall maintain the painting and/or illumination of the tower as prescribed by the Commission pursuant to this section. In the event that the tower ceases to be licensed by the Commission for the transmission of radio energy, the owner of the tower shall maintain the prescribed painting and/or illumination of such tower until it is dismantled, and the Commission may require the owner to dismantle and remove the tower when the Administrator of the Federal Aviation Agency determines that there is a reasonable possibility that it may constitute a menace to air navigation.

(r) Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act, or any international radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party.

(s) Have authority to require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting when such apparatus is shipped in interstate commerce, or is imported from any foreign country into the United States, for sale or resale to the public.

(t) Notwithstanding the provisions of section 301(e), have authority, in any case in which an aircraft registered in the United States is operated (pursuant to a lease, charter, or similar arrangement) by an aircraft operator who is subject to regulation by the government of a foreign nation, to enter into an agreement with such government under which the Commission shall recognize and accept any radio station licenses and radio operator licenses issued by such government with respect to such aircraft.

(u) Require that apparatus designed to receive television pictures broadcast simultaneously with sound be equipped with built-in decoder circuitry designed to display closed-captioned television transmissions when such apparatus is manufactured in the United States or imported for use in the United States, and its television picture screen is 13 inches or greater in size.

(v) Have exclusive jurisdiction to regulate the provision of direct-to-home satellite services. As used in this subsection, the

term “direct-to-home satellite services” means the distribution or broadcasting of programming or services by satellite directly to the subscriber’s premises without the use of ground receiving or distribution equipment, except at the subscriber’s premises or in the uplink process to the satellite.

(w) [Omitted]

(x) Require, in the case of an apparatus designed to receive television signals that are shipped in interstate commerce or manufactured in the United States and that have a picture screen 13 inches or greater in size (measured diagonally), that such apparatus be equipped with a feature designed to enable viewers to block display of all programs with a common rating, except as otherwise permitted by regulations pursuant to section 330(c)(4).

(y) Have authority to allocate electromagnetic spectrum so as to provide flexibility of use, if—

(1) such use is consistent with international agreements to which the United States is a party; and

(2) the Commission finds, after notice and an opportunity for public comment, that—

(A) such an allocation would be in the public interest;

(B) such use would not deter investment in communications services and systems, or technology development; and

(C) such use would not result in harmful interference among users.

(z) *Require that any apparatus described in paragraph (s) sold or offered for sale in or affecting interstate commerce after September 30, 2005, that is incapable of receiving and displaying a digital television broadcast signal without the use of an external device that translates digital television broadcast signals into analog television broadcast signals have affixed to it and, if it is sold or offered for sale in a container, affixed to that container, a label that states that the apparatus will be incapable of displaying over-the-air television broadcast signals received after December 31, 2008, without the purchase of additional equipment.*

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#### SEC. 309. APPLICATION FOR LICENSE.

[47 U.S.C. 309]

(a) CONSIDERATIONS IN GRANTING APPLICATION.—Subject to the provisions of this section, the Commission shall determine, in the case of each application filed with it to which section 308 applies, whether the public interest, convenience, and necessity will be served by the granting of such application, and, if the Commission, upon examination of such application and upon consideration of such other matters as the Commission may officially notice, shall find that public interest, convenience, and necessity would be served by the granting thereof, it shall grant such application.

(b) TIME OF GRANTING APPLICATION.—Except as provided in subsection (c) of this section, no such application—

(1) for an instrument of authorization in the case of a station in the broadcasting or common carrier services, or

(2) for an instrument of authorization in the case of a station in any of the following categories:

- (A) industrial radio positioning stations for which frequencies are assigned on an exclusive basis,
  - (B) aeronautical en route stations,
  - (C) aeronautical advisory stations,
  - (D) airdrome control stations,
  - (E) aeronautical fixed stations, and
  - (F) such other stations or classes of stations, not in the broadcasting or common carrier services, as the Commission shall by rule prescribe, shall be granted by the Commission earlier than thirty days following issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereof.
- (c) APPLICATIONS NOT AFFECTED BY SUBSECTION (B).—Subsection (b) of this section shall not apply—
- (1) to any minor amendment of an application to which such subsection is applicable, or
  - (2) to any application for—
    - (A) a minor change in the facilities of an authorized station,
    - (B) consent to an involuntary assignment or transfer under section 310(b) or to an assignment or transfer thereunder which does not involve a substantial change in ownership or control,
    - (C) a license under section 319(c) or, pending application for or grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license,
    - (D) extension of time to complete construction of authorized facilities,
    - (E) an authorization of facilities for remote pickups, studio links and similar facilities for use in the operation of a broadcast station,
    - (F) authorizations pursuant to section 325(c) where the programs to be transmitted are special events not of a continuing nature,
    - (G) a special temporary authorization for nonbroadcast operation not to exceed thirty days where no application for regular operation is contemplated to be filed or not to exceed sixty days pending the filing of an application for such regular operation, or
    - (H) an authorization under any of the proviso clauses of section 308(a).

(d) PETITION TO DENY APPLICATION; TIME; CONTENTS; REPLY; FINDINGS.—

- (1) Any party in interest may file with the Commission a petition to deny any application (whether as originally filed or as amended) to which subsection (b) of this section applies at any time prior to the day of Commission grant thereof without hearing or the day of formal designation thereof for hearing; except that with respect to any classification of applications, the Commission from time to time by rule may specify a short-

er period (no less than thirty days following the issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereof), which shorter period shall be reasonably related to the time when the applications would normally be reached for processing. The petitioner shall serve a copy of such petition on the applicant. The petition shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with subsection (a) (or subsection (k) in the case of renewal of any broadcast station license). Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof. The applicant shall be given the opportunity to file a reply in which allegations of fact or denials thereof shall similarly be supported by affidavit.

(2) If the Commission finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there are no substantial and material questions of fact and that a grant of the application would be consistent with subsection (a) (or subsection (k) in the case of renewal of any broadcast station license), it shall make the grant, deny the petition, and issue a concise statement of the reasons for denying the petition, which statement shall dispose of all substantial issues raised by the petition. If a substantial and material question of fact is presented or if the Commission for any reason is unable to find that grant of the application would be consistent with subsection (a) (or subsection (k) in the case of renewal of any broadcast station license), it shall proceed as provided in subsection (e).

(e) HEARINGS; INTERVENTION; EVIDENCE; BURDEN OF PROOF.—If, in the case of any application to which subsection (a) of this section applies, a substantial and material question of fact is presented or the Commission for any reason is unable to make the finding specified in such subsection, it shall formally designate the application for hearing on the ground or reasons then obtaining and shall forthwith notify the applicant and all other known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things in issue but not including issues or requirements phrased generally. When the Commission has so designated an application for hearing the parties in interest, if any, who are not notified by the Commission of such action may acquire the status of a party to the proceeding thereon by filing a petition for intervention showing the basis for their interest not more than thirty days after publication of the hearing issues or any substantial amendment thereto in the Federal Register. Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate. The burden of proceeding with the introduction of evidence and the burden of proof shall be upon the applicant, except that with respect to any issue presented by a petition to deny or a petition to enlarge the issues, such burdens shall be as determined by the Commission.

(f) TEMPORARY AUTHORIZATION OF OPERATIONS UNDER SUBSECTION (b).—When an application subject to subsection (b) has

been filed, the Commission, notwithstanding the requirements of such subsection, may, if the grant of such application is otherwise authorized by law and if it finds that there are extraordinary circumstances requiring temporary operations in the public interest and that delay in the institution of such temporary operations would seriously prejudice the public interest, grant a temporary authorization, accompanied by a statement of its reasons therefor, to permit such temporary operations for a period not exceeding 180 days, and upon making like findings may extend such temporary authorization for additional periods not to exceed 180 days. When any such grant of a temporary authorization is made, the Commission shall give expeditious treatment to any timely filed petition to deny such application and to any petition for rehearing of such grant filed under section 405.

(g) CLASSIFICATION OF APPLICATIONS.—The Commission is authorized to adopt reasonable classifications of applications and amendments in order to effectuate the purposes of this section.

(h) FORM AND CONDITIONS OF STATION LICENSES.—Such station licenses as the Commission may grant shall be in such general form as it may prescribe, but each license shall contain, in addition to other provisions, a statement of the following conditions to which such license shall be subject:

(1) The station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein;

(2) neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of this Act;

(3) every license issued under this Act shall be subject in terms to the right of use or control conferred by section 706 of this Act.

(i) RANDOM SELECTION.—

(1) GENERAL AUTHORITY.—Except as provided in paragraph (5), if there is more than one application for any initial license or construction permit, then the Commission shall have the authority to grant such license or permit to a qualified applicant through the use of a system of random selection.

(2) No license or construction permit shall be granted to an applicant selected pursuant to paragraph (1) unless the Commission determines the qualifications of such applicant pursuant to subsection (a) and section 308(b). When substantial and material questions of fact exist concerning such qualifications, the Commission shall conduct a hearing in order to make such determinations. For the purpose of making such determinations, the Commission may, by rule, and notwithstanding any other provision of law—

(A) adopt procedures for the submission of all or part of the evidence in written form;

(B) delegate the function of presiding at the taking of the evidence to Commission employees other than administrative law judges; and

(C) omit the determination required by subsection (a) with respect to any application other than the one selected pursuant to paragraph (1).

(3)(A) The Commission shall establish rules and procedures to ensure that, in the administration of any system of random selection under this subsection used for granting licenses or construction permits for any media of mass communications, significant preferences will be granted to applicants or groups of applicants, the grant to which of the license or permit would increase the diversification of ownership of the media of mass communications. To further diversify the ownership of the media of mass communications, an additional significant preference shall be granted to any applicant controlled by a member or members of a minority group.

(B) The Commission shall have authority to require each qualified applicant seeking a significant preference under subparagraph (A) to submit to the Commission such information as may be necessary to enable the Commission to make a determination regarding whether such applicant shall be granted such preference. Such information shall be submitted in such form, at such times, and in accordance with such procedures, as the Commission may require.

(C) For purposes of this paragraph:

(i) The term “media of mass communications” includes television, radio, cable television, multipoint distribution service, direct broadcast satellite service, and other services, the licensed facilities of which may be substantially devoted toward providing programming or other information services within the editorial control of the licensee.

(ii) The term “minority group” includes Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders.

(4)(A) The Commission shall, after notice and opportunity for hearing, prescribe rules establishing a system of random selection for use by the Commission under this subsection in any instance in which the Commission, in its discretion, determines that such use is appropriate for the granting of any license or permit in accordance with paragraph (1).

(B) The Commission shall have authority to amend such rules from time to time to the extent necessary to carry out the provisions of this subsection. Any such amendment shall be made after notice and opportunity for hearing.

(C) Not later than 180 days after the date of enactment of this subparagraph, the Commission shall prescribe such transfer disclosures and antitrafficking restrictions and payment schedules as are necessary to prevent the unjust enrichment of recipients of licenses or permits as a result of the methods employed to issue licenses under this subsection.

(5) TERMINATION OF AUTHORITY.—

(A) Except as provided in subparagraph (B), the Commission shall not issue any license or permit using a system of random selection under this subsection after July 1, 1997.

(B) Subparagraph (A) of this paragraph shall not apply with respect to licenses or permits for stations described in section 397(6) of this Act.

(j) USE OF COMPETITIVE BIDDING.—

(1) GENERAL AUTHORITY.—If, consistent with the obligations described in paragraph (6)(E), mutually exclusive applications are accepted for any initial license or construction permit, then, except as provided in paragraph (2), the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding that meets the requirements of this subsection.

(2) EXEMPTIONS.—The competitive bidding authority granted by this subsection shall not apply to licenses or construction permits issued by the Commission—

(A) for public safety radio services, including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations, that—

- (i) are used to protect the safety of life, health, or property; and
- (ii) are not made commercially available to the public;

(B) for initial licenses or construction permits for digital television service given to existing terrestrial broadcast licenses to replace their analog television service licenses; or

(C) for stations described in section 397(6) of this Act.

(3) DESIGN OF SYSTEMS OF COMPETITIVE BIDDING.—For each class of licenses or permits that the Commission grants through the use of a competitive bidding system, the Commission shall, by regulation, establish a competitive bidding methodology. The Commission shall seek to design and test multiple alternative methodologies under appropriate circumstances. The Commission shall, directly or by contract, provide for the design and conduct (for purposes of testing) of competitive bidding using a contingent combinatorial bidding system that permits prospective bidders to bid on combinations or groups of licenses in a single bid and to enter multiple alternative bids within a single bidding round. In identifying classes of licenses and permits to be issued by competitive bidding, in specifying eligibility and other characteristics of such licenses and permits, and in designing the methodologies for use under this subsection, the Commission shall include safeguards to protect the public interest in the use of the spectrum and shall seek to promote the purposes specified in section 1 of this Act and the following objectives:

(A) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays;

(B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women;

(C) recovery for the public of a portion of the value of the public spectrum resource made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource;

(D) efficient and intensive use of the electromagnetic spectrum; and

(E) ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed—

(i) before issuance of bidding rules, to permit notice and comment on proposed auction procedures; and

(ii) after issuance of bidding rules, to ensure that interested parties have a sufficient time to develop business plans, assess market conditions, and evaluate the availability of equipment for the relevant services.

(4) CONTENTS OF REGULATIONS.—In prescribing regulations pursuant to paragraph (3), the Commission shall—

(A) consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods that promote the objectives described in paragraph (3)(B), and combinations of such schedules and methods;

(B) include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services;

(C) consistent with the public interest, convenience, and necessity, the purposes of this Act, and the characteristics of the proposed service, prescribe area designations and bandwidth assignments that promote (i) an equitable distribution of licenses and services among geographic areas, (ii) economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, and (iii) investment in and rapid deployment of new technologies and services;

(D) ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures;

(E) require such transfer disclosures and antitrafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits; and

(F) prescribe methods by which a reasonable reserve price will be required, or a minimum bid will be established, to obtain any license or permit being assigned pursuant to the competitive bidding, unless the Commission determines that such a reserve price or minimum bid is not in the public interest.

(5) **BIDDER AND LICENSEE QUALIFICATION.**—No person shall be permitted to participate in a system of competitive bidding pursuant to this subsection unless such bidder submits such information and assurances as the Commission may require to demonstrate that such bidder’s application is acceptable for filing. No license shall be granted to an applicant selected pursuant to this subsection unless the Commission determines that the applicant is qualified pursuant to subsection (a) and sections 308(b) and 310. Consistent with the objectives described in paragraph (3), the Commission shall, by regulation, prescribe expedited procedures consistent with the procedures authorized by subsection (i)(2) for the resolution of any substantial and material issues of fact concerning qualifications.

(6) **RULES OF CONSTRUCTION.**—Nothing in this subsection, or in the use of competitive bidding, shall—

(A) alter spectrum allocation criteria and procedures established by the other provisions of this Act;

(B) limit or otherwise affect the requirements of subsection (h) of this section, section 301, 304, 307, 310, or 706, or any other provision of this Act (other than subsections (d)(2) and (e) of this section);

(C) diminish the authority of the Commission under the other provisions of this Act to regulate or reclaim spectrum licenses;

(D) be construed to convey any rights, including any expectation of renewal of a license, that differ from the rights that apply to other licenses within the same service that were not issued pursuant to this subsection;

(E) be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings;

(F) be construed to prohibit the Commission from issuing nationwide, regional, or local licenses or permits;

(G) be construed to prevent the Commission from awarding licenses to those persons who make significant contributions to the development of a new telecommunications service or technology; or

(H) be construed to relieve any applicant for a license or permit of the obligation to pay charges imposed pursuant to section 8 of this Act.

(7) **CONSIDERATION OF REVENUES IN PUBLIC INTEREST DETERMINATIONS.**—

(A) **CONSIDERATION PROHIBITED.**—In making a decision pursuant to section 303(c) to assign a band of frequencies to a use for which licenses or permits will be issued pursuant to this subsection, and in prescribing regulations pursuant to paragraph (4)(C) of this subsection, the Commission may not base a finding of public interest, convenience, and necessity on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.

(B) **CONSIDERATION LIMITED.**—In prescribing regulations pursuant to paragraph (4)(A) of this subsection, the Com-

mission may not base a finding of public interest, convenience, and necessity solely or predominantly on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.

(C) CONSIDERATION OF DEMAND FOR SPECTRUM NOT AFFECTED.—Nothing in this paragraph shall be construed to prevent the Commission from continuing to consider consumer demand for spectrum-based services.

(8) TREATMENT OF REVENUES.—

(A) GENERAL RULE.—Except as provided in subparagraph (B) or subparagraph (D), all proceeds from the use of a competitive bidding system under this subsection shall be deposited in the Treasury in accordance with chapter 33 of title 31, United States Code.

(B) RETENTION OF REVENUES.—Notwithstanding subparagraph (A), the salaries and expenses account of the Commission shall retain as an offsetting collection such sums as may be necessary from such proceeds for the costs of developing and implementing the program required by this subsection. Such offsetting collections shall be available for obligation subject to the terms and conditions of the receiving appropriations account, and shall be deposited in such accounts on a quarterly basis. Such offsetting collections are authorized to remain available until expended. No sums may be retained under this subparagraph during any fiscal year beginning after September 30, 1998, if the annual report of the Commission under section 4(k) for the second preceding fiscal year fails to include in the itemized statement required by paragraph (3) of such section a statement of each expenditure made for purposes of conducting competitive bidding under this subsection during such second preceding fiscal year.

(C) DEPOSIT AND USE OF AUCTION ESCROW ACCOUNTS.—Any deposits the Commission may require for the qualification of any person to bid in a system of competitive bidding pursuant to this subsection shall be deposited in an interest bearing account at a financial institution designated for purposes of this subsection by the Commission (after consultation with the Secretary of the Treasury). Within 45 days following the conclusion of the competitive bidding—

(i) the deposits of successful bidders shall be paid to the Treasury;

(ii) the deposits of unsuccessful bidders shall be returned to such bidders; and

(iii) the interest accrued to the account shall be transferred to the Telecommunications Development Fund established pursuant to section 714 of this Act.

(D) DISPOSITION OF CASH PROCEEDS FROM AUCTION OF CHANNELS 52 THROUGH 69.—*Cash proceeds attributable to the auction of any eligible frequencies between 698 and 806 megaHertz on the electromagnetic spectrum conducted after the date of enactment of the SAVE LIVES Act shall be deposited in the Digital Transition Consumer Assistance Fund established under section 7 of that Act.*

(9) USE OF FORMER GOVERNMENT SPECTRUM.—The Commission shall, not later than 5 years after the date of enactment of this subsection, issue licenses and permits pursuant to this subsection for the use of bands of frequencies that—

(A) in the aggregate span not less than 10 megahertz; and

(B) have been reassigned from Government use pursuant to part B of the National Telecommunications and Information Administration Organization Act.

(10) AUTHORITY CONTINGENT ON AVAILABILITY OF ADDITIONAL SPECTRUM.—

(A) INITIAL CONDITIONS.—The Commission's authority to issue licenses or permits under this subsection shall not take effect unless—

(i) the Secretary of Commerce has submitted to the Commission the report required by section 113(d)(1) of the National Telecommunications and Information Administration Organization Act;

(ii) such report recommends for immediate reallocation bands of frequencies that, in the aggregate, span not less than 50 megahertz;

(iii) such bands of frequencies meet the criteria required by section 113(a) of such Act; and

(iv) the Commission has completed the rulemaking required by section 332(c)(1)(D) of this Act.

(B) SUBSEQUENT CONDITIONS.—The Commission's authority to issue licenses or permits under this subsection on and after 2 years after the date of the enactment of this subsection shall cease to be effective if—

(i) the Secretary of Commerce has failed to submit the report required by section 113(a) of the National Telecommunications and Information Administration Organization Act;

(ii) the President has failed to withdraw and limit assignments of frequencies as required by paragraphs (1) and (2) of section 114(a) of such Act;

(iii) the Commission has failed to issue the regulations required by section 115(a) of such Act;

(iv) the Commission has failed to complete and submit to Congress, not later than 18 months after the date of enactment of this subsection, a study of current and future spectrum needs of State and local government public safety agencies through the year 2010, and a specific plan to ensure that adequate frequencies are made available to public safety licensees; or

(v) the Commission has failed under section 332(c)(3) to grant or deny within the time required by such section any petition that a State has filed within 90 days after the date of enactment of this subsection; until such failure has been corrected.

(11) TERMINATION.—The authority of the Commission to grant a license or permit under this subsection shall expire September 30, 2007.

(12) EVALUATION.—Not later than September 30, 1997, the Commission shall conduct a public inquiry and submit to the Congress a report—

(A) containing a statement of the revenues obtained, and a projection of the future revenues, from the use of competitive bidding systems under this subsection;

(B) describing the methodologies established by the Commission pursuant to paragraphs (3) and (4);

(C) comparing the relative advantages and disadvantages of such methodologies in terms of attaining the objectives described in such paragraphs;

(D) evaluating whether and to what extent—

(i) competitive bidding significantly improved the efficiency and effectiveness of the process for granting radio spectrum licenses;

(ii) competitive bidding facilitated the introduction of new spectrum-based technologies and the entry of new companies into the telecommunications market;

(iii) competitive bidding methodologies have secured prompt delivery of service to rural areas and have adequately addressed the needs of rural spectrum users; and

(iv) small businesses, rural telephone companies, and businesses owned by members of minority groups and women were able to participate successfully in the competitive bidding process; and

(E) recommending any statutory changes that are needed to improve the competitive bidding process.

(13) RECOVERY OF VALUE OF PUBLIC SPECTRUM IN CONNECTION WITH PIONEER PREFERENCES.—

(A) IN GENERAL.—Notwithstanding paragraph (6)(G), the Commission shall not award licenses pursuant to a preferential treatment accorded by the Commission to persons who make significant contributions to the development of a new telecommunications service or technology, except in accordance with the requirements of this paragraph.

(B) RECOVERY OF VALUE.—The Commission shall recover for the public a portion of the value of the public spectrum resource made available to such person by requiring such person, as a condition for receipt of the license, to agree to pay a sum determined by—

(i) identifying the winning bids for the licenses that the Commission determines are most reasonably comparable in terms of bandwidth, scope of service area, usage restrictions, and other technical characteristics to the license awarded to such person, and excluding licenses that the Commission determines are subject to bidding anomalies due to the award of preferential treatment;

(ii) dividing each such winning bid by the population of its service area (hereinafter referred to as the per capita bid amount);

(iii) computing the average of the per capita bid amounts for the licenses identified under clause (i);

(iv) reducing such average amount by 15 percent;  
and

(v) multiplying the amount determined under clause (iv) by the population of the service area of the license obtained by such person.

(C) **INSTALLMENTS PERMITTED.**—The Commission shall require such person to pay the sum required by subparagraph (B) in a lump sum or in guaranteed installment payments, with or without royalty payments, over a period of not more than 5 years.

(D) **RULEMAKING ON PIONEER PREFERENCES.**—Except with respect to pending applications described in clause (iv) of this subparagraph, the Commission shall prescribe regulations specifying the procedures and criteria by which the Commission will evaluate applications for preferential treatment in its licensing processes (by precluding the filing of mutually exclusive applications) for persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service. Such regulations shall—

(i) specify the procedures and criteria by which the significance of such contributions will be determined, after an opportunity for review and verification by experts in the radio sciences drawn from among persons who are not employees of the Commission or by any applicant for such preferential treatment;

(ii) include such other procedures as may be necessary to prevent unjust enrichment by ensuring that the value of any such contribution justifies any reduction in the amounts paid for comparable licenses under this subsection;

(iii) be prescribed not later than 6 months after the date of enactment of this paragraph;

(iv) not apply to applications that have been accepted for filing on or before September 1, 1994; and

(v) cease to be effective on the date of the expiration of the Commission's authority under subparagraph (F).

(E) **IMPLEMENTATION WITH RESPECT TO PENDING APPLICATIONS.**—In applying this paragraph to any broadband licenses in the personal communications service awarded pursuant to the preferential treatment accorded by the Federal Communications Commission in the Third Report and Order in General Docket 90-314 (FCC 93-550, released February 3, 1994)—

(i) the Commission shall not reconsider the award of preferences in such Third Report and Order, and the Commission shall not delay the grant of licenses based on such awards more than 15 days following the date of enactment of this paragraph, and the award of such preferences and licenses shall not be subject to administrative or judicial review;

(ii) the Commission shall not alter the bandwidth or service areas designated for such licenses in such Third Report and Order;

(iii) except as provided in clause (v), the Commission shall use, as the most reasonably comparable licenses for purposes of subparagraph (B)(i), the broadband licenses in the personal communications service for blocks A and B for the 20 largest markets (ranked by population) in which no applicant has obtained preferential treatment;

(iv) for purposes of subparagraph (C), the Commission shall permit guaranteed installment payments over a period of 5 years, subject to—

(I) the payment only of interest on unpaid balances during the first 2 years, commencing not later than 30 days after the award of the license (including any preferential treatment used in making such award) is final and no longer subject to administrative or judicial review, except that no such payment shall be required prior to the date of completion of the auction of the comparable licenses described in clause (iii); and

(II) payment of the unpaid balance and interest thereon after the end of such 2 years in accordance with the regulations prescribed by the Commission; and

(v) the Commission shall recover with respect to broadband licenses in the personal communications service an amount under this paragraph that is equal to not less than \$400,000,000, and if such amount is less than \$400,000,000, the Commission shall recover an amount equal to \$400,000,000 by allocating such amount among the holders of such licenses based on the population of the license areas held by each licensee. The Commission shall not include in any amounts required to be collected under clause (v) the interest on unpaid balances required to be collected under clause (iv).

(F) EXPIRATION.—The authority of the Commission to provide preferential treatment in licensing procedures (by precluding the filing of mutually exclusive applications) to persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service shall expire on the date of enactment of the Balanced Budget Act of 1997.

(G) EFFECTIVE DATE.—This paragraph shall be effective on the date of its enactment and apply to any licenses issued on or after August 1, 1994, by the Federal Communications Commission pursuant to any licensing procedure that provides preferential treatment (by precluding the filing of mutually exclusive applications) to persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service.

(14) AUCTION OF RECAPTURED BROADCAST TELEVISION SPECTRUM.—

(A) LIMITATIONS ON TERMS OF TERRESTRIAL TELEVISION BROADCAST LICENSES.—A television broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond December 31, 2006.

(B) EXTENSION.—The Commission shall extend the date described in subparagraph (A) for any station that requests such extension in any television market if the Commission finds that—

(i) one or more of the stations in such market that are licensed to or affiliated with one of the four largest national television networks are not broadcasting a digital television service signal, and the Commission finds that each such station has exercised due diligence and satisfies the conditions for an extension of the Commission's applicable construction deadlines for digital television service in that market;

(ii) digital-to-analog converter technology is not generally available in such market; or

(iii) in any market in which an extension is not available under clause (i) or (ii), 15 percent or more of the television households in such market—

(I) do not subscribe to a multichannel video programming distributor (as defined in section 602) that carries one of the digital television service programming channels of each of the television stations broadcasting such a channel in such market; and

(II) do not have either—

(a) at least one television receiver capable of receiving the digital television service signals of the television stations licensed in such market; or

(b) at least one television receiver of analog television service signals equipped with digital-to-analog converter technology capable of receiving the digital television service signals of the television stations licensed in such market.

(C) SPECTRUM REVERSION AND RESALE.—

(i) The Commission shall—

(I) ensure that, as licenses for analog television service expire pursuant to subparagraph (A) or (B), each licensee shall cease using electromagnetic spectrum assigned to such service according to the Commission's direction; and

(II) reclaim and organize the electromagnetic spectrum in a manner consistent with the objectives described in paragraph (3) of this subsection.

(ii) Licensees for new services occupying spectrum reclaimed pursuant to clause (i) shall be assigned in accordance with this subsection.

(D) CERTAIN LIMITATIONS ON QUALIFIED BIDDERS PROHIBITED.—In prescribing any regulations relating to the qualification of bidders for spectrum reclaimed pursuant to subparagraph (C)(i), the Commission, for any license that may be used for any digital television service where the grade A contour of the station is projected to encompass the entirety of a city with a population in excess of 400,000 (as determined using the 1990 decennial census), shall not—

(i) preclude any party from being a qualified bidder for such spectrum on the basis of—

(I) the Commission's duopoly rule (47 C.F.R. 73.3555(b)); or

(II) the Commission's newspaper cross-ownership rule (47 C.F.R. 73.3555(d)); or

(ii) apply either such rule to preclude such a party that is a winning bidder in a competitive bidding for such spectrum from using such spectrum for digital television service.

(E) EXCEPTION TO 2006 DEADLINE.—

(i) *Notwithstanding subparagraph (B), the Commission shall not grant any extension under such subparagraph from the limitation of subparagraph (A) with respect to the frequencies assigned, pursuant to section 337(a)(1), for public safety services. The Commission shall take all actions necessary to complete assignment of the electromagnetic spectrum between 764 and 776 megahertz and between 794 and 806 megahertz for public safety services and to permit operations by public safety services on those frequencies commencing no later than January 1, 2008.*

(ii) *Beginning January 1, 2008, the Commission may modify or reassign the licenses of licensees assigned to frequencies between 758 and 764 megahertz, 776 and 782 megahertz, and 788 and 794 megahertz as necessary to permit operations by public safety services on frequencies between 764 and 776 megahertz and between 794 and 806 megahertz.*

(iii) *The Commission may waive the requirements of clauses (i) and (ii) and such other rules as necessary—*

(I) *in the absence of a bona fide request from relevant first responders in the affected designated market area (as that term is defined in section 122(j) of title 17, United States Code); and*

(II) *to the extent necessary to avoid consumer disruption while maximizing the ability of relevant public safety entities to use frequencies described in this subparagraph in the affected designated market area (as so defined).*

(15) COMMISSION TO DETERMINE TIMING OF AUCTIONS.—

(A) COMMISSION AUTHORITY.—Subject to the provisions of this subsection (including paragraph (11)), but notwithstanding any other provision of law, the Commission shall determine the timing of and deadlines for the conduct of competitive bidding under this subsection, including the timing of and deadlines for qualifying for bidding; con-

ducting auctions; collecting, depositing, and reporting revenues; and completing licensing processes and assigning licenses.

(B) TERMINATION OF PORTIONS OF AUCTIONS 31 AND 44.—Except as provided in subparagraph (C), the Commission shall not commence or conduct auctions 31 and 44 on June 19, 2002, as specified in the public notices of March 19, 2002, and March 20, 2002 (DA 02-659 and DA 02-563).

(C) EXCEPTION.—

(i) BLOCKS EXCEPTED.—Subparagraph (B) shall not apply to the auction of—

(I) the C-block of licenses on the bands of frequencies located at 710-716 megahertz, and 740-746 megahertz; or

(II) the D-block of licenses on the bands of frequencies located at 716-722 megahertz.

(ii) ELIGIBLE BIDDERS.—The entities that shall be eligible to bid in the auction of the C-block and D-block licenses described in clause (i) shall be those entities that were qualified entities, and that submitted applications to participate in auction 44, by May 8, 2002, as part of the original auction 44 short form filing deadline.

(iii) AUCTION DEADLINES FOR EXCEPTED BLOCKS.—Notwithstanding subparagraph (B), the auction of the C-block and D-block licenses described in clause (i) shall be commenced no earlier than August 19, 2002, and no later than September 19, 2002, and the proceeds of such auction shall be deposited in accordance with paragraph (8) not later than December 31, 2002.

(iv) REPORT.—Within one year after the date of enactment of this paragraph, the Commission shall submit a report to Congress—

(I) specifying when the Commission intends to reschedule auctions 31 and 44 (other than the blocks excepted by clause (i)); and

(II) describing the progress made by the Commission in the digital television transition and in the assignment and allocation of additional spectrum for advanced mobile communications services that warrants the scheduling of such auctions.

(D) RETURN OF PAYMENTS.—Within one month after the date of enactment of this paragraph, the Commission shall return to the bidders for licenses in the A-block, B-block, and E-block of auction 44 the full amount of all upfront payments made by such bidders for such licenses.

(k) BROADCAST STATION RENEWAL PROCEDURES.—

(1) STANDARDS FOR RENEWAL.—If the licensee of a broadcast station submits an application to the Commission for renewal of such license, the Commission shall grant the application if it finds, with respect to that station, during the preceding term of its license—

(A) the station has served the public interest, convenience, and necessity;

(B) there have been no serious violations by the licensee of this Act or the rules and regulations of the Commission; and

(C) there have been no other violations by the licensee of this Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.

(2) CONSEQUENCE OF FAILURE TO MEET STANDARD.—If any licensee of a broadcast station fails to meet the requirements of this subsection, the Commission may deny the application for renewal in accordance with paragraph (3), or grant such application on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.

(3) Standards for denial. If the Commission determines, after notice and opportunity for a hearing as provided in subsection (e), that a licensee has failed to meet the requirements specified in paragraph (1) and that no mitigating factors justify the imposition of lesser sanctions, the Commission shall—

(A) issue an order denying the renewal application filed by such licensee under section 308; and

(B) only thereafter accept and consider such applications for a construction permit as may be filed under section 308 specifying the channel or broadcasting facilities of the former licensee.

(4) COMPETITOR CONSIDERATION PROHIBITED.—In making the determinations specified in paragraph (1) or (2), the Commission shall not consider whether the public interest, convenience, and necessity might be served by the grant of a license to a person other than the renewal applicant.

(1) APPLICABILITY OF COMPETITIVE BIDDING TO PENDING COMPARATIVE LICENSING CASES.—With respect to competing applications for initial licenses or construction permits for commercial radio or television stations that were filed with the Commission before July 1, 1997, the Commission shall—

(1) have the authority to conduct a competitive bidding proceeding pursuant to subsection (j) to assign such license or permit;

(2) treat the persons filing such applications as the only persons eligible to be qualified bidders for purposes of such proceeding; and

(3) waive any provisions of its regulations necessary to permit such persons to enter an agreement to procure the removal of a conflict between their applications during the 180-day period beginning on the date of enactment of the Balanced Budget Act of 1997.

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[47 U.S.C. 330]

**SEC. 330. PROHIBITION AGAINST SHIPMENT OF CERTAIN TELEVISION RECEIVERS.**

(a) No person shall ship in interstate commerce, or import from any foreign country into the United States, for sale or resale to the public, apparatus described in paragraph (s) of section 303 unless it complies with rules prescribed by the Commission pursuant to

the authority granted by that paragraph: Provided, That this section shall not apply to carriers transporting such apparatus without trading in it.

(b) No person shall ship in interstate commerce, manufacture, assemble, or import from any foreign country into the United States, any apparatus described in section 303(u) of this Act except in accordance with rules prescribed by the Commission pursuant to the authority granted by that section. Such rules shall provide performance and display standards for such built-in decoder circuitry. Such rules shall further require that all such apparatus be able to receive and display closed captioning which have been transmitted by way of line 21 of the vertical blanking interval and which conform to the signal and display specifications set forth in the Public Broadcasting System engineering report numbered E-7709-C dated May 1980, as amended by the Telecaption II Decoder Module Performance Specification published by the National Captioning Institute, November 1985. As new video technology is developed, the Commission shall take such action as the Commission determines appropriate to ensure that closed-captioning service continues to be available to consumers. This subsection shall not apply to carriers transporting such apparatus without trading it.

(c)(1) Except as provided in paragraph (2), no person shall ship in interstate commerce or manufacture in the United States any apparatus described in section 303(x) of this Act except in accordance with rules prescribed by the Commission pursuant to the authority granted by that section.

(2) This subsection shall not apply to carriers transporting apparatus referred to in paragraph (1) without trading in it.

(3) The rules prescribed by the Commission under this subsection shall provide for the oversight by the Commission of the adoption of standards by industry for blocking technology. Such rules shall require that all such apparatus be able to receive the rating signals which have been transmitted by way of line 21 of the vertical blanking interval and which conform to the signal and blocking specifications established by industry under the supervision of the Commission.

(4) As new video technology is developed, the Commission shall take such action as the Commission determines appropriate to ensure that blocking service continues to be available to consumers. If the Commission determines that an alternative blocking technology exists that—

(A) enables parents to block programming based on identifying programs without ratings,

(B) is available to consumers at a cost which is comparable to the cost of technology that allows parents to block programming based on common ratings, and

(C) will allow parents to block a broad range of programs on a multichannel system as effectively and as easily as technology that allows parents to block programming based on common ratings, the Commission shall amend the rules prescribed pursuant to section 303(x) to require that the apparatus described in such section be equipped with either the blocking technology described in such section or the alternative blocking technology described in this paragraph.

*(d) SHIPMENT OF UNLABELED OBSOLESCECENT TELEVISION SETS.—No person shall ship in interstate commerce or manufacture in the United States any apparatus described in section 303(s) of this Act except in accordance with rules prescribed by the Commission under section 303(z) of this Act.*

**[(d)]** *(e) For the purposes of this section, and sections 303(s), 303(u), and 303(x)—*

(1) The term “interstate commerce” means (A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States and any place outside thereof which is within the United States, (B) commerce between points in the same State, the District of Columbia, the Commonwealth of Puerto Rico, or possession of the United States but through any place outside thereof, or (C) commerce wholly within the District of Columbia or any possession of the United States.

(2) The term “United States” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States, but does not include the Canal Zone.

