

112TH CONGRESS
2^D SESSION

H. R. 4044

To amend the National Telecommunications and Information Administration Organization Act to create a Federal Spectrum Reallocation Commission, to provide for the use of a portion of the proceeds from the auction of reallocated Federal spectrum for deficit reduction, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 2012

Mr. KINZINGER of Illinois introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the National Telecommunications and Information Administration Organization Act to create a Federal Spectrum Reallocation Commission, to provide for the use of a portion of the proceeds from the auction of reallocated Federal spectrum for deficit reduction, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Maximizing Spectrum
5 Efficiency and Value Act of 2012”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Demand for electromagnetic spectrum is
4 sharply rising due to the growing advanced network
5 of communications devices that rely on spectrum to
6 transmit and receive information.

7 (2) It is necessary for the United States to
8 maintain its investments in innovation of spectrum
9 and broadband infrastructure to ensure the United
10 States is a global leader in the wireless age.

11 (3) Spectrum is a finite resource, and in order
12 to spur innovation, the United States must provide
13 for better and more efficient spectrum management.

14 (4) Many spectrum holders do not efficiently
15 use their frequency assignments, and a restructuring
16 of the usable spectrum is a viable solution to make
17 up for this lost opportunity.

18 (5) Making available additional spectrum to
19 meet the demands of broadband technologies and
20 services will prevent dropped connections, blocked
21 service, decreased connection speed, and even higher
22 prices for certain advanced applications.

23 (6) The availability of increased spectrum will
24 allow advanced technologies such as 4G mobile serv-
25 ices, high-speed wireless, high definition television,

1 and more to continue operating without network
2 problems and interference.

3 (7) The United States public debt totals more
4 than \$14,300,000,000,000.

5 (8) Congress should look for ways to increase
6 Government revenues without creating additional
7 burdens on taxpayers.

8 (9) Auctioning spectrum is the most economi-
9 cally sound method for accurate valuation and as-
10 signment of spectrum to develop the next generation
11 of wireless technologies, expand broadband service to
12 underserved areas of the country, develop an inter-
13 operable public safety network, and reduce the def-
14 icit.

15 (10) Recent spectrum auctions in Germany and
16 India raised a combined \$20,000,000,000.

17 (11) Certain frequencies have substantial mar-
18 ket value and could raise almost \$30,000,000,000 in
19 a public auction.

20 (12) Barriers such as regulatory and adminis-
21 trative delays are not conducive to the free-market
22 approach and can hurt innovation.

23 (13) Government spectrum, while extremely im-
24 portant, is vast and should be included in any spec-
25 trum reform initiative.

1 **SEC. 3. FEDERAL SPECTRUM REALLOCATION COMMISSION.**

2 (a) IN GENERAL.—Part B of title I of the National
3 Telecommunications and Information Administration Or-
4 ganization Act (47 U.S.C. 921 et seq.) is amended by add-
5 ing at the end the following:

6 **“SEC. 119. FEDERAL SPECTRUM REALLOCATION COMMIS-**
7 **SION.**

8 “(a) DEFINITIONS.—In this section—

9 “(1) the term ‘appropriate congressional com-
10 mittees’ means—

11 “(A) the Committee on Appropriations of
12 the Senate;

13 “(B) the Committee on Appropriations of
14 the House of Representatives;

15 “(C) the Committee on Commerce,
16 Science, and Transportation of the Senate; and

17 “(D) the Committee on Energy and Com-
18 merce of the House of Representatives;

19 “(2) the term ‘Chairperson’ means the chair-
20 person of the Reallocation Commission designated
21 under subsection (b)(3)(B);

22 “(3) the term ‘Director’ means the Director of
23 the Reallocation Commission appointed under sub-
24 section (b)(5);

1 “(4) the term ‘Executive agency’ has the mean-
2 ing given the term in section 105 of title 5, United
3 States Code;

4 “(5) the term ‘Federal entity’ means any de-
5 partment, agency, or other instrumentality of the
6 Federal Government that utilizes a Government sta-
7 tion license obtained under section 305 of the Com-
8 munications Act of 1934 (47 U.S.C. 305);

9 “(6) the term ‘Reallocation Commission’ means
10 the Federal Spectrum Reallocation Commission es-
11 tablished under subsection (b)(1); and

12 “(7) the term ‘relocation costs’—

13 “(A) means the costs incurred by a Fed-
14 eral entity to achieve comparable capability of
15 systems, regardless of whether that capability is
16 achieved by relocating to a new frequency as-
17 signment or by utilizing an alternative tech-
18 nology; and

19 “(B) includes—

20 “(i) the costs of any modification or
21 replacement of equipment, software, facili-
22 ties, operating manuals, training costs, or
23 regulations that are attributable to reloca-
24 tion;

1 “(ii) the costs of all engineering,
2 equipment, software, site acquisition, and
3 construction costs, as well as any legiti-
4 mate and prudent transaction expense, in-
5 cluding outside consultants, and reasonable
6 additional costs incurred by the Federal
7 entity that are attributable to relocation,
8 including increased recurring costs associ-
9 ated with the replacement facilities;

10 “(iii) the costs of engineering studies,
11 economic analyses, or other expenses rea-
12 sonably incurred in calculating the esti-
13 mated relocation costs that are provided to
14 the Commission under subsection (e)(1)(C)
15 and approved by the Director of the Office
16 of Management and Budget under sub-
17 section (e)(1)(D);

18 “(iv) the one-time costs of any modi-
19 fication of equipment reasonably necessary
20 to accommodate commercial use of reallo-
21 cated frequencies prior to the termination
22 of the Federal entity’s primary allocation
23 or protected status, when the frequencies
24 are made available for private-sector uses
25 by competitive bidding and a Federal enti-

1 ty retains primary allocation or protected
2 status in those frequencies for a period of
3 time after the completion of the competi-
4 tive bidding process; and

5 “(v) the costs associated with the ac-
6 celerated replacement of systems and
7 equipment if such acceleration is necessary
8 to ensure the timely relocation of systems
9 to a new frequency assignment.

10 “(b) ESTABLISHMENT AND OPERATION OF RE-
11 ALLOCATION COMMISSION.—

12 “(1) ESTABLISHMENT.—There is established an
13 independent commission to be known as the ‘Federal
14 Spectrum Reallocation Commission’.

15 “(2) DUTIES.—The Reallocation Commission
16 shall carry out the duties described in this section.

17 “(3) MEMBERSHIP.—

18 “(A) APPOINTMENTS.—

19 “(i) IN GENERAL.—The Reallocation
20 Commission shall be composed of 9 mem-
21 bers appointed by the President, with the
22 advice and consent of the Senate.

23 “(ii) REQUIREMENTS FOR MEMBER-
24 SHIP.—

1 “(I) IN GENERAL.—Of the 9
2 members appointed by the President
3 under clause (i)—

4 “(aa) not more than 1 mem-
5 ber may be a current employee or
6 contractor of the Department of
7 Defense;

8 “(bb) not more than 1 mem-
9 ber may be former employee or
10 contractor of the Department of
11 Defense;

12 “(cc) not fewer than 1 mem-
13 ber shall be a representative of
14 the commercial mobile technology
15 industry; and

16 “(dd) not fewer than 1
17 member shall be a representative
18 from a standards-setting body
19 that is accredited by the Amer-
20 ican National Standards Institute
21 to develop voluntary industry
22 standards.

23 “(II) PRIVATE-SECTOR REP-
24 RESENTATION.—In making appoint-
25 ments under clause (i), the President

1 shall ensure that there is robust pri-
2 vate-sector representation on the Re-
3 allocation Commission.

4 “(iii) TRANSMISSION OF NOMINA-
5 TIONS.—Not later than 180 days after the
6 date of enactment of this section, the
7 President shall transmit to the Senate the
8 nominations for appointment to the Com-
9 mission.

10 “(iv) CONSULTATION.—In selecting
11 individuals for nominations for appoint-
12 ments to the Reallocation Commission, the
13 President shall consult with—

14 “(I) the Speaker of the House of
15 Representatives concerning the ap-
16 pointment of 3 members;

17 “(II) the majority leader of the
18 Senate concerning the appointment of
19 3 members;

20 “(III) the minority leader of the
21 House of Representatives concerning
22 the appointment of 1 member; and

23 “(IV) the minority leader of the
24 Senate concerning the appointment of
25 1 member.

1 “(v) NONPOLITICAL NATURE OF AP-
2 POINTMENT.—No political test or quali-
3 fication may be used in selecting, appoint-
4 ing, promoting, or taking other personnel
5 actions with respect to members, officers,
6 agents, or employees of the Reallocation
7 Commission.

8 “(B) CHAIRPERSON.—At the time the
9 President nominates individuals for appoint-
10 ments under subparagraph (A), the President
11 shall designate 1 of the individuals nominated
12 to serve as the Chairperson of the Reallocation
13 Commission.

14 “(C) TERMS.—

15 “(i) IN GENERAL.—Each member of
16 the Reallocation Commission may serve
17 until the Commission sunsets under para-
18 graph (12).

19 “(ii) CHAIRPERSON.—The Chair-
20 person may serve until the confirmation of
21 a successor.

22 “(iii) VACANCIES.—Any vacancy in
23 the Reallocation Commission shall be filled
24 in the same manner as the original ap-
25 pointment.

1 “(D) COMPENSATION OF MEMBERS.—

2 “(i) IN GENERAL.—Each member of
3 the Reallocation Commission, other than
4 the Chairperson, shall be paid at a rate
5 equal to the daily equivalent of the min-
6 imum annual rate of basic pay payable for
7 level IV of the Executive Schedule under
8 section 5315 of title 5, United States
9 Code, for each day (including travel time)
10 during which the member is engaged in the
11 actual performance of duties vested in the
12 Reallocation Commission.

13 “(ii) CHAIRPERSON.—The Chair-
14 person shall be paid for each day referred
15 to in clause (i) at a rate equal to the daily
16 equivalent of the minimum annual rate of
17 basic pay payable for level III of the Exec-
18 utive Schedule under section 5314 of title
19 5, United States Code.

20 “(4) MEETINGS.—

21 “(A) IN GENERAL.—Each meeting of the
22 Reallocation Commission, other than meetings
23 in which classified information is to be dis-
24 cussed, shall be open to the public.

1 “(B) ACCESS TO INFORMATION.—All of
2 the proceedings, information, and deliberations
3 of the Commission shall be open, upon request,
4 to—

5 “(i) the Chairman and the ranking
6 member of the Subcommittee on Commu-
7 nications, Technology, and the Internet of
8 the Committee on Commerce, Science, and
9 Transportation of the Senate, or such
10 other members of the Subcommittee des-
11 ignated by the Chairman or ranking mem-
12 ber of the Subcommittee;

13 “(ii) the Chairman and the ranking
14 member of the Subcommittee on Commu-
15 nications and Technology of the Committee
16 on Energy and Commerce of the House of
17 Representatives, or such other members of
18 the Subcommittee designated by the Chair-
19 man or ranking member of the Sub-
20 committee; and

21 “(iii) the Chairmen and ranking mem-
22 bers of the Subcommittees on Commerce,
23 Justice, Science, and Related Agencies and
24 on Financial Services and General Govern-
25 ment of the Committees on Appropriations

1 of the Senate and of the House of Rep-
2 resentatives, or such other members of the
3 Subcommittees designated by such Chair-
4 men or ranking members.

5 “(5) DIRECTOR OF STAFF.—

6 “(A) IN GENERAL.—The Reallocation
7 Commission shall, without regard to the provi-
8 sions of title 5, United States Code, governing
9 appointments in the competitive service, appoint
10 a Director.

11 “(B) PAY.—The Director shall, without re-
12 gard to the provisions of chapter 51 and sub-
13 chapter III of chapter 53 of such title (relating
14 to classification and General Schedule pay
15 rates), be paid at the rate of basic pay payable
16 for level IV of the Executive Schedule under
17 section 5315 of title 5, United States Code.

18 “(6) STAFF.—

19 “(A) IN GENERAL.—Subject to subpara-
20 graphs (B) and (C), the Director, with the ap-
21 proval of the Reallocation Commission, may ap-
22 point and fix the pay of additional personnel as
23 may be necessary to enable the Reallocation
24 Commission to perform the duties of the Re-
25 allocation Commission.

1 “(B) LIMITATION.—The Director may
2 make such appointments without regard to the
3 provisions of title 5, United States Code, gov-
4 erning appointments in the competitive service,
5 and any personnel so appointed may be paid
6 without regard to the provisions of chapter 51
7 and subchapter III of chapter 53 of that title
8 relating to classification and General Schedule
9 pay rates, except that an individual appointed
10 under this paragraph may not receive pay in ex-
11 cess of the annual rate of basic pay payable for
12 GS–18 of the General Schedule.

13 “(C) DETAIL OF GOVERNMENT EMPLOY-
14 EES.—Upon request of the Director, the Sec-
15 retary may detail any of the personnel of the
16 Department of Commerce to the Reallocation
17 Commission to assist the Reallocation Commis-
18 sion in carrying out its duties.

19 “(D) GAO AGREEMENT.—The Comptroller
20 General of the United States shall provide as-
21 sistance, including the detailing of employees, to
22 the Reallocation Commission in accordance with
23 an agreement entered into with the Reallocation
24 Commission.

1 “(7) PROCUREMENT OF TEMPORARY AND
2 INTERMITTENT SERVICES.—The Chairperson may
3 procure temporary and intermittent services under
4 section 3109 of title 5, United States Code, at rates
5 for individuals which do not exceed the daily equiva-
6 lent of the annual rate of basic pay prescribed for
7 level V of the Executive Schedule under section 5316
8 of such title.

9 “(8) PROPERTY.—The Chairperson may lease
10 space and acquire personal property to the extent
11 funds are available.

12 “(9) POSTAL AND PRINTING SERVICES.—The
13 Reallocation Commission may use the United States
14 mails and obtain printing and binding services in the
15 same manner and under the same conditions as
16 other agencies of the United States.

17 “(10) OBTAINING INFORMATION.—The Re-
18 allocation Commission may secure directly from any
19 agency or department of the United States informa-
20 tion necessary to enable it to carry out its duties
21 under this section. Upon request of any member of
22 the Reallocation Commission, the head of that agen-
23 cy or department shall furnish that information to
24 the Reallocation Commission in a full and timely
25 manner.

1 “(11) FUNDING.—There are authorized to be
2 transferred to the Reallocation Commission
3 \$13,000,000 from the Spectrum Relocation Fund es-
4 tablished under section 118 to carry out the duties
5 of the Reallocation Commission under this section,
6 and such funds shall remain available until the term
7 of the Reallocation Commission sunsets under para-
8 graph (12). The funds remaining after the sunset of
9 the Commission shall be returned to the Treasury
10 for the sole purpose of deficit reduction.

11 “(12) SUNSET.—This subsection is repealed ef-
12 fective 60 days after the President approves the rec-
13 ommendations of the Reallocation Commission pur-
14 suant to subsection (d)(4).

15 “(c) SPECTRUM UTILIZATION PLAN.—

16 “(1) IN GENERAL.—As part of the budget jus-
17 tification documents submitted to Congress in sup-
18 port of the budget for each fiscal year, the head of
19 each Federal entity shall include a spectrum utiliza-
20 tion plan.

21 “(2) CONTENTS.—A spectrum utilization plan
22 submitted under paragraph (1) shall include—

23 “(A) the total spectrum authorized for the
24 entity (in percentage terms and in sum) in each
25 band the entity uses;

1 “(B) the approximate number of transmit-
2 ters, end-user terminals, or receivers, excluding
3 unintended radiators, that have been deployed
4 by the entity or authorized to be used by the
5 entity;

6 “(C) if such information is available—

7 “(i) the type of transmitters, end-user
8 terminals, or receivers, excluding unin-
9 tended radiators, operated by the entity
10 and whether they are space-, air-, or
11 ground-based;

12 “(ii) the type of transmitters, end-
13 user terminals, or receivers, excluding un-
14 intended radiators, authorized to be oper-
15 ated by the entity and whether they are
16 space-, air-, or ground-based;

17 “(iii) contour maps or other informa-
18 tion that illustrate the coverage area, re-
19 ceiver performance, and other parameters
20 relevant to an assessment of the avail-
21 ability of spectrum in each band used by
22 the entity;

23 “(iv) the approximate geolocation of
24 base stations or fixed transmitters used by
25 the entity;

1 “(v) the approximate extent of use, by
2 geography, of each band of frequencies
3 used by the entity, such as the amount and
4 percentage of time of use, number of end-
5 users, or other measures as appropriate to
6 the particular band;

7 “(vi) the activities, capabilities, func-
8 tions, or missions supported by the trans-
9 mitters, end-user terminals, or receivers
10 used by the entity; and

11 “(vii) the types of unlicensed devices
12 authorized to be operated by the entity;

13 “(D) the opportunity cost borne by the en-
14 tity for each spectrum band the entity uses;

15 “(E) the planned uses of technologies or
16 expanded services requiring spectrum for a pe-
17 riod of time agreed to by the entity; and

18 “(F) suggested spectrum-efficient ap-
19 proaches to meeting the spectrum requirements
20 identified under subparagraph (E).

21 “(3) REQUIREMENT.—The head of each Fed-
22 eral entity required to submit a spectrum utilization
23 plan under paragraph (1) shall submit a copy of
24 each plan submitted under such paragraph to the

1 Reallocation Commission, the Secretary, and the
2 NTIA.

3 “(4) NATIONAL SECURITY; CLASSIFIED INFOR-
4 MATION.—

5 “(A) NATIONAL SECURITY.—If the head of
6 a Federal entity determines that disclosure of
7 information required under paragraph (1)
8 would be harmful to the national security of the
9 United States, such head shall—

10 “(i) notify the Secretary of such de-
11 termination; and

12 “(ii) provide to the Secretary—

13 “(I) the other publicly releasable
14 information required by paragraph
15 (1);

16 “(II) to the maximum extent
17 practicable, a summary description of
18 the information with respect to which
19 the determination was made; and

20 “(III) an annex containing the
21 information with respect to which the
22 determination was made.

23 “(B) CLASSIFIED INFORMATION.—If the
24 head of a Federal entity determines that any
25 information required by paragraph (1) is classi-

1 fied in accordance with Executive Order 13526
2 of December 29, 2009, or any successor Execu-
3 tive order establishing or modifying the uniform
4 system for classifying, safeguarding, and declas-
5 sifying national security information, such head
6 shall—

7 “(i) notify the Secretary of such de-
8 termination; and

9 “(ii) provide to the Secretary—

10 “(I) the information required by
11 paragraph (1) that is not classified;

12 “(II) to the maximum extent
13 practicable, a summary description of
14 the information that is classified; and

15 “(III) an annex containing the
16 information that is classified.

17 “(C) ANNEX RESTRICTION.—The Sec-
18 retary shall make an annex described in sub-
19 paragraph (A)(ii)(III) or (B)(ii)(III) available
20 to the NTIA and the Relocation Commission.
21 The NTIA, the Secretary, and the Relocation
22 Commission shall not make any such annex
23 available to the public or to any unauthorized
24 person through any means.

1 “(d) PROCEDURE FOR MAKING RECOMMENDATIONS
2 FOR SPECTRUM REALLOCATION.—

3 “(1) RECOMMENDATIONS BY SECRETARY OF
4 COMMERCE.—Not later than 18 months after the
5 President submits the budget documents that in-
6 clude spectrum utilization plans described in sub-
7 section (c) to Congress for the first fiscal year fol-
8 lowing the date of enactment of this section, the
9 Secretary shall prepare and submit to the appro-
10 priate congressional committees, the Comptroller
11 General of the United States, and the Reallocation
12 Commission a report identifying and recommending
13 for reallocation bands of frequencies—

14 “(A) that are allocated on a primary basis
15 for Federal Government use;

16 “(B) that—

17 “(i) are not required for the needs of
18 the Federal Government at the time the
19 report is submitted; or

20 “(ii) will not be required for such
21 needs in the identifiable future; and

22 “(C) that can feasibly be made available,
23 as of the date of submission of the report or at
24 any time during the 5-year period beginning on
25 such date, for assignment through a system of

1 competitive bidding under section 309(j) of the
2 Communications Act of 1934 (47 U.S.C.
3 309(j)).

4 “(2) CRITERIA FOR IDENTIFICATION.—

5 “(A) NEEDS OF THE FEDERAL GOVERN-
6 MENT.—In determining whether a band of fre-
7 quencies meets one of the criteria specified in
8 paragraph (1)(B), the Secretary shall—

9 “(i) consider whether the band of fre-
10 quencies is used to provide a communica-
11 tions service that is or could be available
12 from a commercial provider or other ven-
13 dor, or whether the communications serv-
14 ices provided on such frequencies could be
15 relocated to other frequencies used by the
16 Federal Government;

17 “(ii) seek to promote—

18 “(I) the maximum practicable re-
19 liance on commercially available sub-
20 stitutes;

21 “(II) the efficient use of spec-
22 trum by Federal Government stations;

23 “(III) the development and use
24 of new communications technologies;
25 and

1 “(IV) the use of nonradiating
2 communications systems where prac-
3 ticable; and

4 “(iii) seek to avoid—

5 “(I) serious degradation of Fed-
6 eral Government services and oper-
7 ations;

8 “(II) excessive costs to the Fed-
9 eral Government and users of Federal
10 Government services; and

11 “(III) excessive disruption of ex-
12 isting use of Federal Government fre-
13 quencies by amateur radio licensees.

14 “(B) DIRECT DISCUSSIONS.—

15 “(i) IN GENERAL.—The Secretary
16 shall encourage and provide opportunities
17 for direct discussions among commercial
18 representatives and Federal Government
19 users of the spectrum to aid the Secretary
20 in determining which frequencies to rec-
21 ommend for reallocation under paragraph
22 (1).

23 “(ii) HEARINGS AND PUBLIC COM-
24 MENT.—As part of the discussions re-
25 quired under clause (i), the Secretary shall

1 conduct public hearings and accept public
2 comment on the recommendations. All tes-
3 timony before the Secretary at a public
4 hearing conducted under this clause shall
5 be presented under oath. All testimony and
6 public comments collected under this
7 clause shall be made available on a public
8 website.

9 “(iii) REPRESENTATION.—A rep-
10 resentative of the Reallocation Commis-
11 sion, and of the Secretary at the election
12 of the Secretary, may attend any discus-
13 sion held under clause (i).

14 “(iv) FURTHER COMMENT.—The Sec-
15 retary shall provide the public and the Re-
16 allocation Commission with an opportunity
17 to comment on the results of a discussion
18 held under clause (i) before the Secretary
19 submits the recommendation required
20 under paragraph (1).

21 “(3) REVIEW AND RECOMMENDATIONS BY THE
22 REALLOCATION COMMISSION.—

23 “(A) REVIEW.—

24 “(i) IN GENERAL.—After receiving the
25 recommendations from the Secretary under

1 paragraph (1), the Reallocation Commis-
2 sion shall review and analyze the rec-
3 ommendations.

4 “(ii) HEARINGS.—As part of the re-
5 view and analysis required under clause (i),
6 the Reallocation Commission shall conduct
7 public hearings on the recommendations.
8 All testimony before the Reallocation Com-
9 mission at a public hearing conducted
10 under this clause shall be presented under
11 oath.

12 “(B) RECOMMENDATIONS.—

13 “(i) IN GENERAL.—Not later than
14 180 days after the Secretary submits rec-
15 ommendations under paragraph (1) to the
16 Reallocation Commission, the Reallocation
17 Commission shall submit to the President
18 and the appropriate congressional commit-
19 tees a report on the findings and conclu-
20 sions of the Reallocation Commission from
21 the review and analysis conducted under
22 subparagraph (A), including any rec-
23 ommendations for Federal spectrum re-
24 allocation.

1 “(ii) REQUIREMENT.—A report sub-
2 mitted under clause (i) shall contain an ex-
3 planation and justification of any rec-
4 ommendation for Federal spectrum re-
5 allocation included in the report that is dif-
6 ferent from the recommendations sub-
7 mitted by the Secretary under paragraph
8 (1).

9 “(C) TRANSMISSION OF INFORMATION TO
10 CONGRESS.—After the Reallocation Commission
11 submits recommendations to the President
12 under subparagraph (B), upon request by a
13 Member of Congress, the Reallocation Commis-
14 sion shall provide to the Member of Congress
15 any information used by the Reallocation Com-
16 mission in making the recommendations.

17 “(D) GAO REQUIREMENTS.—The Comp-
18 troller General of the United States shall—

19 “(i) assist the Reallocation Commis-
20 sion, to the extent requested, in the review
21 and analysis under subparagraph (A); and

22 “(ii) not later than 90 days after the
23 Secretary makes recommendations under
24 paragraph (1), submit to Congress and to
25 the Reallocation Commission a report that

1 contains a detailed analysis of the rec-
2 ommendations and selection process of the
3 Secretary.

4 “(4) REVIEW BY THE PRESIDENT.—

5 “(A) IN GENERAL.—Not later than 30
6 days after the Reallocation Commission submits
7 recommendations for Federal spectrum realloca-
8 tion under paragraph (3)(B), the President
9 shall—

10 “(i) determine whether to approve the
11 recommendations made by the Reallocation
12 Commission; and

13 “(ii) submit to Congress and the Re-
14 allocation Commission a report that de-
15 scribes the determination made under
16 clause (i).

17 “(B) APPROVAL.—If the President ap-
18 proves the recommendations under subpara-
19 graph (A)(i), the President shall transmit a
20 copy of the recommendations to Congress.

21 “(C) DISAPPROVAL.—

22 “(i) IN GENERAL.—If the President
23 disapproves the recommendations under
24 subparagraph (A)(i), the President shall
25 submit to Congress and to the Reallocation

1 Commission a report that describes the
2 reasons that the President disapproves of
3 the recommendations.

4 “(ii) REALLOCATION COMMISSION RE-
5 VISIONS.—Not later than 60 days after the
6 President submits to the Reallocation
7 Commission a report under clause (i), the
8 Reallocation Commission shall submit to
9 the President a revised list of recommenda-
10 tions for reallocation of Federal spectrum.

11 “(iii) APPROVAL AND DISAPPROVAL
12 OF REVISIONS.—

13 “(I) APPROVAL.—If the Presi-
14 dent approves the revised list of rec-
15 ommendations submitted by the Re-
16 allocation Commission under clause
17 (ii), the President shall submit the re-
18 vised list to Congress.

19 “(II) DISAPPROVAL.—If the
20 President disapproves the revised list
21 of recommendations submitted by the
22 Reallocation Commission under clause
23 (ii), the President and the Realloca-
24 tion Commission shall complete the
25 requirements described in clauses (i)

1 and (ii) until the President approves
2 recommendations from the Realloca-
3 tion Commission.

4 “(5) PUBLIC DISCLOSURE AND NONDISCLO-
5 SURE.—

6 “(A) IN GENERAL.—If the head of an Ex-
7 ecutive agency or Federal entity, the Chair-
8 person, or the President determines that public
9 disclosure of any information contained in the
10 reports, recommendations, testimony, or com-
11 ments required under this section would reveal
12 classified national security information or other
13 information for which there is a legal basis for
14 nondisclosure and such public disclosure would
15 be detrimental to national security, homeland
16 security, or public safety or would jeopardize
17 law enforcement investigations, the head of the
18 Executive agency or Federal entity, the Chair-
19 person, or the President shall notify the Sec-
20 retary of that determination prior to release of
21 such information.

22 “(B) ANNEX.—

23 “(i) IN GENERAL.—If the head of an
24 Executive agency or Federal entity, the
25 Chairperson, or the President notified the

1 Secretary of a determination under sub-
2 paragraph (A), the information required to
3 be disclosed under this section shall be in-
4 cluded in a separate classified annex, as
5 needed.

6 “(ii) REQUIREMENT.—A classified
7 annex described under clause (i)—

8 “(I) shall be provided to the sub-
9 committees of primary jurisdiction of
10 the committees of primary jurisdiction
11 of the Senate and House of Rep-
12 resentatives in accordance with appro-
13 priate national security stipulations;
14 and

15 “(II) shall not be disclosed to the
16 public or provided to any unauthor-
17 ized person through any means.

18 “(e) REALLOCATION OF FEDERAL SPECTRUM.—

19 “(1) AGENCY ACTION.—

20 “(A) NTIA REQUIREMENT.—Not later
21 than 180 days after the date on which the
22 President submits approved recommendations
23 for the reallocation of Federal spectrum to Con-
24 gress under subparagraph (B) or (C)(iii)(I) of
25 subsection (d)(4), the NTIA shall provide to

1 each Federal entity that is required to take ac-
2 tion under the recommendations information re-
3 garding an alternative frequency assignment to
4 which the radio communications operations of
5 the Federal entity could be relocated for pur-
6 poses of calculating the estimated relocation
7 costs and timeline required under subparagraph
8 (C).

9 “(B) REQUIREMENT.—To the extent prac-
10 ticable and consistent with national security
11 considerations, the NTIA shall provide the in-
12 formation described in subparagraph (A) by the
13 geographic location of the facilities or systems
14 of the Federal entity and the frequency bands
15 used by the facilities or systems.

16 “(C) IMPLEMENTATION PLAN.—

17 “(i) IN GENERAL.—Not later than 1
18 year after the date on which the President
19 submits approved recommendations for the
20 reallocation of Federal spectrum to Con-
21 gress under subparagraph (B) or (C)(iii)(I)
22 of subsection (d)(4), the head of each Fed-
23 eral entity required to relocate spectrum
24 under the recommendations shall prepare
25 and submit to the President, the appro-

1 appropriate congressional committees, the
2 NTIA, the Federal Communications Com-
3 mission, the Director of the Office of Man-
4 agement and Budget, and the Comptroller
5 General of the United States a plan for
6 implementation of the recommendations re-
7 lated to the Federal entity.

8 “(ii) CONTENTS.—An implementation
9 plan submitted under clause (i) shall in-
10 clude—

11 “(I) a description of how the
12 Federal entity will comply with the
13 approved recommendations for the re-
14 allocation of Federal spectrum sub-
15 mitted to Congress under subpara-
16 graph (B) or (C)(iii)(I) of subsection
17 (d)(4);

18 “(II) any statutory or regulatory
19 barriers that will prohibit the Federal
20 entity from complying with the rec-
21 ommendations described in subclause
22 (I);

23 “(III) the estimated cost to the
24 Federal entity of frequency with-
25 drawal or relocation; and

1 “(IV) the estimated timeline of
2 the Federal entity for frequency with-
3 drawal or relocation.

4 “(D) REVIEW OF IMPLEMENTATION
5 PLAN.—

6 “(i) IN GENERAL.—Not later than 30
7 days after the date on which the plan is
8 submitted under subparagraph (C), the Di-
9 rector of the Office of Management and
10 Budget shall review the implementation
11 plan and determine whether to approve the
12 plan.

13 “(ii) DISAPPROVAL.—If an implemen-
14 tation plan submitted under subparagraph
15 (C) is disapproved by the Director of the
16 Office of Management and Budget, the
17 Federal entity shall submit a revised imple-
18 mentation plan under such subparagraph,
19 and the submission and review process
20 shall continue until an implementation
21 plan is approved.

22 “(iii) APPROVAL OF ALL PLANS.—Not
23 later than 7 days after the date on which
24 the Director of the Office of Management
25 and Budget approves the plans submitted

1 under subparagraph (C), the Director shall
2 notify the Federal Communications Com-
3 mission of the estimated relocation costs
4 and timelines of all Federal entities re-
5 quired to submit a plan under such sub-
6 paragraph.

7 “(iv) REVIEW OF PROGRESS.—At the
8 beginning of each fiscal year following ap-
9 proval of a plan required under subpara-
10 graph (C), the Director of the Office of
11 Management and Budget shall review the
12 progress of the Federal entity in meeting
13 the cost and timelines of the implementa-
14 tion plan. If, at any point, the Director de-
15 termines the Federal entity will not meet
16 the implementation plan timelines or cost,
17 the Director shall take action to enforce
18 the approved plan.

19 “(E) COMPLIANCE.—

20 “(i) INITIATION OF REQUIRED AC-
21 TION.—Not later than 2 years after the
22 date on which the President submits ap-
23 proved recommendations for the realloca-
24 tion of Federal spectrum to Congress
25 under subparagraph (B) or (C)(iii)(I) of

1 subsection (d)(4), the head of each Federal
2 entity shall initiate all such actions re-
3 quired to comply with the approved rec-
4 ommendations.

5 “(ii) COMPLETION OF REQUIRED AC-
6 TION.—Not later than 5 years after the
7 date on which the President submits ap-
8 proved recommendations for the realloca-
9 tion of Federal spectrum to Congress
10 under subparagraph (B) or (C)(iii)(I) of
11 subsection (d)(4), the head of each Federal
12 entity shall complete all such actions re-
13 quired to comply with the approved rec-
14 ommendations.

15 “(2) CONGRESSIONAL DISAPPROVAL.—

16 “(A) IN GENERAL.—No Federal entity
17 may initiate any action in accordance with the
18 approved recommendations for the reallocation
19 of Federal spectrum submitted to Congress by
20 the President under subparagraph (B) or
21 (C)(iii)(I) of subsection (d)(4) if there is en-
22 acted a joint resolution disapproving the rec-
23 ommendations before the earlier of—

24 “(i) the end of the 45-day period be-
25 ginning on the date on which the President

1 submits the recommendations to Congress
2 under subparagraph (B) or (C)(iii)(I) of
3 subsection (d)(4); or

4 “(ii) the adjournment of Congress
5 sine die for the session during which the
6 recommendations described in clause (i)
7 are submitted.

8 “(B) COMPUTATION OF TIME PERIOD.—
9 The days on which either the Senate or the
10 House of Representatives is not in session be-
11 cause of an adjournment for more than 3 days
12 to a day certain shall be excluded in the com-
13 putation of the time period described in sub-
14 paragraph (A)(i).

15 “(3) NOTIFICATION OF SUCCESSFUL RELOCA-
16 TION.—The President shall terminate the authoriza-
17 tion of a Federal entity and notify the Secretary and
18 the Federal Communications Commission of the ter-
19 mination if—

20 “(A) the NTIA determines that a Federal
21 entity has achieved comparable capability of
22 systems by relocating to a new frequency as-
23 signment or by utilizing an alternative tech-
24 nology; or

1 “(B) the Federal entity has unreasonably
2 failed to comply with the timeline for relocation
3 approved by the Director of the Office of Man-
4 agement and Budget under paragraph (1)(D).

5 “(f) AUCTION OF AVAILABLE FREQUENCIES.—

6 “(1) IN GENERAL.—Not later than 18 months
7 after the date on which the President submits ap-
8 proved recommendations for the reallocation of Fed-
9 eral spectrum to Congress under subparagraph (B)
10 or (C)(iii)(I) of subsection (d)(4), the Federal Com-
11 munications Commission shall establish rules for the
12 conduct of auctions of frequencies that will be made
13 available according to such recommendations for as-
14 signment of new initial licenses subject to new serv-
15 ice rules or for other purposes.

16 “(2) REQUIREMENT.—In promulgating rules
17 under paragraph (1), the Federal Communications
18 Commission shall—

19 “(A) minimize the cost to the taxpayer of
20 the transition of the spectrum to be auctioned
21 to its newly identified use; and

22 “(B) ensure that any licensing conditions
23 established are restricted to interference protec-
24 tions and ethical, geographic, and financial
25 qualifications of licensees.

1 “(3) SCHEDULE FOR AUCTIONS.—Not later
2 than 2 years after the date on which the President
3 submits approved recommendations for the realloca-
4 tion of Federal spectrum to Congress under sub-
5 paragraph (B) or (C)(iii)(I) of subsection (d)(4), the
6 Federal Communications Commission shall com-
7 mence auctions under this subsection.

8 “(g) RELOCATION OF FEDERAL GOVERNMENT STA-
9 TIONS.—

10 “(1) RELOCATION COSTS.—Any Federal entity
11 that operates a Federal Government station assigned
12 to a band of frequencies and that incurs relocation
13 costs because of the reallocation of frequencies from
14 Federal use to non-Federal use pursuant to this sec-
15 tion shall receive payment for such costs from the
16 Spectrum Relocation Fund, in accordance with sec-
17 tion 118.

18 “(2) FEDERAL ACTION TO EXPEDITE SPEC-
19 TRUM TRANSFER.—Any Federal Government station
20 which operates on electromagnetic spectrum that has
21 been identified in the approved recommendations for
22 the reallocation of Federal spectrum submitted to
23 Congress by the President under subparagraph (B)
24 or (C)(iii)(I) of subsection (d)(4) shall, to the max-
25 imum extent practicable through the use of the au-

1 thority granted under this section and any other ap-
2 plicable provision of law, take action to relocate its
3 spectrum use to other frequencies that are allocated
4 for Federal use or to consolidate its spectrum use
5 with other Federal Government stations in a manner
6 that maximizes the spectrum available for non-Fed-
7 eral use.

8 “(3) FAILURE TO COMPLY.—If a Federal entity
9 does not comply with the timeline established in the
10 implementation plan of the entity that was approved
11 under subsection (e)(1)(D), Congress may decrease
12 the amount appropriated to the entity in the fol-
13 lowing fiscal year by up to $\frac{1}{2}$ of 1 percent.

14 “(4) EQUIPMENT UPGRADES FOR DEPARTMENT
15 OF DEFENSE.—If a band of frequencies assigned to
16 the Department of Defense is reallocated from Fed-
17 eral use to non-Federal use pursuant to this section,
18 the relocation costs for which the Department may
19 receive payment from the Spectrum Relocation Fund
20 under section 118 shall include the costs of replace-
21 ment with state-of-the-art equipment of any of the
22 equipment used for relocated operations, whether or
23 not such replacement is necessary to achieve com-
24 parable capability of systems, if the Secretary of De-
25 fense considers such replacement appropriate.

1 “(h) TREATMENT OF CERTAIN SPECTRUM SUBJECT
2 TO OTHER REALLOCATION PROCESSES.—In the case of
3 spectrum that has been identified for reallocation, is in
4 the process of being reallocated, or has been reallocated
5 from Federal to non-Federal use under any other provi-
6 sion of law or administrative process, but with respect to
7 relocation from which the Federal entity being relocated
8 has not received payment for relocation costs, such spec-
9 trum shall be treated as spectrum allocated for Federal
10 use that may be recommended for reallocation by the Sec-
11 retary, the Reallocation Commission, or the President
12 under this section.”.

13 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

14 (1) AUCTION PROCEEDS.—Section 309(j) of the
15 Communications Act of 1934 (47 U.S.C. 309(j)) is
16 amended—

17 (A) in paragraph (3), by amending sub-
18 paragraph (F) to read as follows:

19 “(F) for any auction of eligible frequencies
20 described in section 113(g)(2) of the National
21 Telecommunications and Information Adminis-
22 tration Organization Act (47 U.S.C. 923(g)(2))
23 or frequencies described in section 119(f)(1) of
24 such Act, the recovery of 110 percent of esti-
25 mated relocation costs as provided to the Com-

1 mission under section 113(g)(4) or
2 119(e)(1)(D)(iii), respectively, of such Act.”;

3 (B) in paragraph (8)(D)—

4 (i) by striking the header and insert-
5 ing “PROCEEDS FROM REALLOCATED FED-
6 ERAL SPECTRUM”;

7 (ii) by striking “Cash” and inserting
8 the following:

9 “(i) IN GENERAL.—Cash”; and

10 (iii) by adding at the end the fol-
11 lowing:

12 “(ii) EXCEPTION.—With respect to
13 each auction of frequencies described in
14 section 119(f)(1) of such Act, an amount
15 of the proceeds equal to the estimated relo-
16 cation costs provided to the Commission
17 under section 119(e)(1)(D)(iii) for reloca-
18 tion of Federal entities from the fre-
19 quencies being assigned through such auc-
20 tion shall be deposited in the Spectrum Re-
21 location Fund. The remainder shall be de-
22 posited in the general fund of the Treasury
23 for the sole purpose of deficit reduction.”;
24 and

25 (C) in paragraph (16)—

1 (i) in the header, by striking “ELIGI-
2 BLE FREQUENCIES” and inserting “RE-
3 ALLOCATED FEDERAL SPECTRUM”;

4 (ii) by amending subparagraphs (A)
5 and (B) to read as follows:

6 “(A) SPECIAL REGULATIONS.—The Com-
7 mission shall revise the regulations prescribed
8 under paragraph (4)(F) to prescribe methods
9 by which—

10 “(i) the total cash proceeds from any
11 auction of eligible frequencies described in
12 section 113(g)(2) of the National Tele-
13 communications and Information Adminis-
14 tration Organization Act (47 U.S.C.
15 923(g)(2)) shall at least equal 110 percent
16 of the total estimated relocation costs pro-
17 vided to the Commission pursuant to sec-
18 tion 113(g)(4) of such Act; and

19 “(ii) the total cash proceeds from any
20 auction of frequencies described in section
21 119(f)(1) of such Act shall at least equal
22 110 percent of the total estimated reloca-
23 tion costs provided to the Commission pur-
24 suant to section 119(e)(1)(D)(iii) of such
25 Act.

1 “(B) CONCLUSION OF AUCTIONS CONTIN-
2 GENT ON MINIMUM PROCEEDS.—

3 “(i) IN GENERAL.—The Commission
4 may not conclude any auction—

5 “(I) of eligible frequencies de-
6 scribed in section 113(g)(2) of the
7 National Telecommunications and In-
8 formation Administration Organiza-
9 tion Act (47 U.S.C. 923(g)(2)) if the
10 total cash proceeds attributable to
11 such spectrum are less than 110 per-
12 cent of the total estimated relocation
13 costs provided to the Commission pur-
14 suant to section 113(g)(4) of such
15 Act; or

16 “(II) of frequencies described in
17 section 119(f)(1) of such Act if the
18 total cash proceeds attributable to
19 such spectrum are less than 110 per-
20 cent of the total estimated relocation
21 costs provided to the Commission pur-
22 suant to section 119(e)(1)(D)(iii) of
23 such Act.

24 “(ii) INABILITY TO CONCLUDE AUC-
25 TION.—If the Commission is unable to

1 conclude an auction because of the require-
2 ment of subclause (I) or (II) of clause (i),
3 the Commission shall cancel the auction,
4 return within 45 days after the auction
5 cancellation date any deposits from partici-
6 pating bidders held in escrow, and absolve
7 such bidders from any obligation to the
8 United States to bid in any subsequent re-
9 auction of such spectrum.”; and

10 (iii) in subparagraph (C)—

11 (I) by striking “eligible fre-
12 quencies” and inserting “frequencies”;
13 and

14 (II) by striking “an eligible Fed-
15 eral entity’s” and inserting “a Federal
16 entity’s”.

17 (2) SEPARATION FROM RELOCATION PROCESS
18 UNDER SECTION 113 OF THE NTIA ORGANIZATION
19 ACT.—Section 113(g)(2)(B) of the National Tele-
20 communications and Information Administration Or-
21 ganization Act (47 U.S.C. 923(g)(2)(B)) is amended
22 by inserting before the period at the end the fol-
23 lowing: “, or frequencies described in section
24 119(f)(1)”.

1 (3) SPECTRUM RELOCATION FUND.—Section
2 118 of the National Telecommunications and Infor-
3 mation Administration Organization Act (47 U.S.C.
4 928) is amended—

5 (A) by amending subsection (c) to read as
6 follows:

7 “(c) USED TO PAY RELOCATION COSTS.—The
8 amounts in the Fund—

9 “(1) from auctions of eligible frequencies de-
10 scribed in section 113(g)(2) are authorized to be
11 used to pay relocation costs, as defined in section
12 113(g)(3), of an eligible Federal entity incurring
13 such costs with respect to relocation from those fre-
14 quencies; and

15 “(2) from auctions of frequencies described in
16 section 119(f)(1) are authorized to be used to pay
17 relocation costs, as defined in section 119(a)(7), of
18 a Federal entity incurring such costs with respect to
19 relocation from those frequencies.”;

20 (B) in subsection (d)(2)—

21 (i) in the matter before subparagraph
22 (A), by striking “eligible”;

23 (ii) in subparagraph (B), by striking
24 “for approval” each place it appears; and

1 (iii) in the matter after subparagraph
2 (B), by striking “Unless disapproved” and
3 all that follows and inserting “In the case
4 of an initial transfer to a Federal entity in-
5 ccurring relocation costs with respect to re-
6 location from frequencies described in sec-
7 tion 119(f)(1), approval of the implementa-
8 tion plan of the entity under section
9 119(e)(1)(D) constitutes approval under
10 subparagraph (A).”; and

11 (C) in subsection (e)—

12 (i) in the header, by striking “ELIGI-
13 BLE”;

14 (ii) in paragraph (1)—

15 (I) in subparagraph (A), by strik-
16 ing “section 113(g)(1) of this Act”
17 and inserting “section 113(g)(1), or
18 Federal entities incurring relocation
19 costs with respect to relocation from
20 frequencies described in section
21 119(f)(1)”;

22 (II) in subparagraph (B), by
23 striking “An eligible Federal entity”
24 and inserting “A Federal entity”; and

1 (III) in subparagraph (C), by
2 striking “eligible”; and

3 (iii) in paragraph (2), by striking “An
4 eligible Federal entity” and inserting “A
5 Federal entity”.

6 **SEC. 4. PROHIBITION AGAINST CERTAIN CONDITIONS ON**
7 **LICENSURE AND AUCTION PARTICIPATION.**

8 Section 309(j) of the Communications Act of 1934,
9 as amended by section 3(b)(1), is further amended by add-
10 ing at the end the following:

11 “(17) PROHIBITION AGAINST CERTAIN CONDI-
12 TIONS ON LICENSURE AND AUCTION PARTICIPA-
13 TION.—The Commission may not—

14 “(A) establish on a license for the use of
15 spectrum frequencies any condition relating to
16 its Report and Order with regard to Preserving
17 the Open Internet; Broadband Industry Prac-
18 tices (GN Docket No. 09–191, WC Docket No.
19 07–52) (adopted December 21, 2010);

20 “(B) restrict the number or type of bidders
21 or any specific bidder from participating in any
22 public auction for the assignment of licenses for
23 the use of spectrum frequencies;

1 “(C) prescribe the rates or terms of or oth-
2 erwise condition services that may be offered by
3 successful bidders in any such auction; or

4 “(D) notwithstanding section 316, impose
5 any additional license requirements or rules on
6 successful bidders once any such auction has
7 been completed.”.

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