

stationary orbital arc as defined in the International Telecommunication Union Radio Regulations.

**(10) Space segment**

The term “space segment” means the satellites, and the tracking, telemetry, command, control, monitoring and related facilities and equipment used to support the operation of satellites owned or leased by INTELSAT, Inmarsat, or a separated entity or successor entity.

**(11) Non-core services**

The term “non-core services” means, with respect to INTELSAT provision, services other than public-switched network voice telephony and occasional-use television, and with respect to Inmarsat provision, services other than global maritime distress and safety services or other existing maritime or aeronautical services for which there are not alternative providers.

**(12) Additional services**

The term “additional services” means—

(A) for Inmarsat, those non-maritime or non-aeronautical mobile services in the 1.5 and 1.6 Ghz band on planned satellites or the 2 Ghz band; and

(B) for INTELSAT, direct-to-home (DTH) or direct broadcast satellite (DBS) video services, or services in the Ka or V bands.

**(13) INTELSAT Agreement**

The term “INTELSAT Agreement” means the Agreement Relating to the International Telecommunications Satellite Organization (“INTELSAT”), including all its annexes (TIAS 7532, 23 UST 3813).

**(14) Headquarters Agreement**

The term “Headquarters Agreement” means the International Telecommunication<sup>1</sup> Satellite Organization Headquarters Agreement (November 24, 1976) (TIAS 8542, 28 UST 2248).

**(15) Operating Agreement**

The term “Operating Agreement” means—

(A) in the case of INTELSAT, the agreement, including its annex but excluding all titles of articles, opened for signature at Washington on August 20, 1971, by Governments or telecommunications entities designated by Governments in accordance with the provisions of the Agreement; and

(B) in the case of Inmarsat, the Operating Agreement on the International Maritime Satellite Organization, including its annexes.

**(16) Inmarsat Convention**

The term “Inmarsat Convention” means the Convention on the International Maritime Satellite Organization (Inmarsat) (TIAS 9605, 31 UST 1).

**(17) National corporation**

The term “national corporation” means a corporation the ownership of which is held through publicly traded securities, and that is incorporated under, and subject to, the laws of a national, state, or territorial government.

**(18) COMSAT**

The term “COMSAT” means the corporation established pursuant to subchapter III of this chapter, or the successor in interest to such corporation.

**(19) ICO**

The term “ICO” means the company known, as of March 17, 2000, as ICO Global Communications, Inc.

**(20) Global maritime distress and safety services or GMDSS**

The term “global maritime distress and safety services” or “GMDSS” means the automated ship-to-shore distress alerting system which uses satellite and advanced terrestrial systems for international distress communications and promoting maritime safety in general. The GMDSS permits the worldwide alerting of vessels, coordinated search and rescue operations, and dissemination of maritime safety information.

**(21) National security agency**

The term “national security agency” means the National Security Agency, the Director of Central Intelligence and the Central Intelligence Agency, the Department of Defense, and the Coast Guard.

**(b) Common terminology**

Except as otherwise provided in subsection (a) of this section, terms used in this subchapter that are defined in section 153 of this title have the meanings provided in such section.

(Pub. L. 87-624, title VI, §681, as added Pub. L. 106-180, §3, Mar. 17, 2000, 114 Stat. 58.)

**CHAPTER 7—CAMPAIGN COMMUNICATIONS**

**§§ 801 to 805. Repealed. Pub. L. 93-443, title II, § 205(b), Oct. 15, 1974, 88 Stat. 1278**

Section 801, Pub. L. 92-225, title I, §102, Feb. 7, 1972, 86 Stat. 3, related to definitions for purposes of this chapter.

Section 802, Pub. L. 92-225, title I, §103(b), Feb. 7, 1972, 86 Stat. 4, related to nonbroadcast media rates.

Section 803, Pub. L. 92-225, title I, §104(a), (b), Feb. 7, 1972, 86 Stat. 5, related to limitations of expenditures for use of communications media.

Section 804, Pub. L. 92-225, title I, §105, Feb. 7, 1972, 86 Stat. 7, related to regulations prescribed under this chapter.

Section 805, Pub. L. 92-225, title I, §106, Feb. 7, 1972, 86 Stat. 8, related to penalties imposed under this chapter.

**EFFECTIVE DATE OF REPEAL**

Sections 801 to 805 repealed effective Jan. 1, 1975, see section 410(a) of Pub. L. 93-443, set out as an Effective Date of 1974 Amendment note under section 431 of Title 2, The Congress.

**CHAPTER 8—NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION**

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<sup>1</sup> So in original. Probably should be “Telecommunications”.

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SUBCHAPTER I—ORGANIZATION AND FUNCTIONS

**§ 901. Definitions; findings; policy**

**(a) Definitions**

In this chapter, the following definitions apply:

(1) The term “NTIA” means the National Telecommunications and Information Administration.

(2) The term “Assistant Secretary” means the Assistant Secretary for Communications and Information.

(3) The term “Secretary” means the Secretary of Commerce.

(4) The term “Commission” means the Federal Communications Commission.

(5) The term “Corporation” means the Communications Satellite Corporation authorized in title III of the Communications Satellite Act of 1962 (47 U.S.C. 731 et seq.).

**(b) Findings**

The Congress finds the following:

(1) Telecommunications and information are vital to the public welfare, national security, and competitiveness of the United States.

(2) Rapid technological advances being made in the telecommunications and information fields make it imperative that the United States maintain effective national and international policies and programs capable of taking advantage of continued advancements.

(3) Telecommunications and information policies and recommendations advancing the strategic interests and the international competitiveness of the United States are essential aspects of the Nation’s involvement in international commerce.

(4) There is a critical need for competent and effective telecommunications and information research and analysis and national and international policy development, advice, and advocacy by the executive branch of the Federal Government.

(5) As one of the largest users of the Nation’s telecommunications facilities and resources, the Federal Government must manage its radio spectrum use and other internal communications operations in the most efficient and effective manner possible.

(6) It is in the national interest to codify the authority of the National Telecommunications and Information Administration, an agency in the Department of Commerce, as the executive branch agency principally responsible for advising the President on telecommunications and information policies, and for carrying out the related functions it currently performs, as reflected in Executive Order 12046.

**(c) Policy**

The NTIA shall seek to advance the following policies:

(1) Promoting the benefits of technological development in the United States for all users of telecommunications and information facilities.

(2) Fostering national safety and security, economic prosperity, and the delivery of critical social services through telecommunications.

(3) Facilitating and contributing to the full development of competition, efficiency, and the free flow of commerce in domestic and international telecommunications markets.

(4) Fostering full and efficient use of telecommunications resources, including effective use of the radio spectrum by the Federal Government, in a manner which encourages the most beneficial uses thereof in the public interest.

(5) Furthering scientific knowledge about telecommunications and information.

(Pub. L. 102-538, title I, §102, Oct. 27, 1992, 106 Stat. 3533.)

## REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original, "this title", meaning title I of Pub. L. 102-538, Oct. 27, 1992, 106 Stat. 3533, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

The Communications Satellite Act of 1962, referred to in subsec. (a)(5), is Pub. L. 87-624, Aug. 31, 1962, 76 Stat. 419, as amended. Title III of the Act is classified generally to subchapter III (§731 et seq.) of chapter 6 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

Executive Order 12046, referred to in subsec. (b)(6), is set out as a note under section 305 of this title.

## SHORT TITLE

Section 101 of title I of Pub. L. 102-538 provided that: "This title [enacting this chapter, amending section 394 of this title, and enacting provisions set out as a note under section 254r of Title 42, The Public Health and Welfare] may be cited as the 'National Telecommunications and Information Administration Organization Act'."

**§ 902. Establishment; assigned functions****(a) Establishment****(1) Administration**

There shall be within the Department of Commerce an administration to be known as the National Telecommunications and Information Administration.

**(2) Head of administration**

The head of the NTIA shall be an Assistant Secretary of Commerce for Communications and Information, who shall be appointed by the President, by and with the advice and consent of the Senate.

**(b) Assigned functions****(1) In general**

Subject to section 904(d) of this title, the Secretary shall assign to the Assistant Secretary and the NTIA responsibility for the performance of the Secretary's communications and information functions.

**(2) Communications and information functions**

Subject to section 904(d) of this title, the functions to be assigned by the Secretary under paragraph (1) include (but are not limited to) the following functions transferred to the Secretary by Reorganization Plan Number 1 of 1977 and Executive Order 12046:

(A) The authority delegated by the President to the Secretary to assign frequencies to radio stations or classes of radio stations belonging to and operated by the United States, including the authority to amend, modify, or revoke such assignments, but not including the authority to make final disposition of appeals from frequency assignments.

(B) The authority to authorize a foreign government to construct and operate a radio station at the seat of Government of the United States, but only upon recommendation of the Secretary of State and after consultation with the Attorney General and the Chairman of the Commission.

(C) Functions relating to the communications satellite system, including authority

vested in the President by section 201(a) of the Communications Satellite Act of 1962 (47 U.S.C. 721(a)) and delegated to the Secretary under Executive Order 12046, to—

(i) aid in the planning and development of the commercial communications satellite system and the execution of a national program for the operation of such a system;

(ii) conduct a continuous review of all phases of the development and operation of such system, including the activities of the Corporation;

(iii) coordinate, in consultation with the Secretary of State, the activities of governmental agencies with responsibilities in the field of telecommunications, so as to ensure that there is full and effective compliance at all times with the policies set forth in the Communications Satellite Act of 1962 [47 U.S.C. 701 et seq.];

(iv) make recommendations to the President and others as appropriate, with respect to steps necessary to ensure the availability and appropriate utilization of the communications satellite system for general governmental purposes in consonance with section 201(a)(6) of the Communications Satellite Act of 1962 (47 U.S.C. 721(a)(6));<sup>1</sup>

(v) help attain coordinated and efficient use of the electromagnetic spectrum and the technical compatibility of the communications satellite system with existing communications facilities both in the United States and abroad;

(vi) assist in the preparation of Presidential action documents for consideration by the President as may be appropriate under section 201(a) of the Communications Satellite Act of 1962 (47 U.S.C. 721(a)), make necessary recommendations to the President in connection therewith, and keep the President informed with respect to the carrying out of the Communications Satellite Act of 1962 [47 U.S.C. 701 et seq.]; and

(vii) serve as the chief point of liaison between the President and the Corporation.

(D) The authority to serve as the President's principal adviser on telecommunications policies pertaining to the Nation's economic and technological advancement and to the regulation of the telecommunications industry.

(E) The authority to advise the Director of the Office of Management and Budget on the development of policies relating to the procurement and management of Federal telecommunications systems.

(F) The authority to conduct studies and evaluations concerning telecommunications research and development and concerning the initiation, improvement, expansion, testing, operation, and use of Federal telecommunications systems and advising agencies of the results of such studies and evaluations.

<sup>1</sup> See References in Text note below.

(G) Functions which involve—

(i) developing and setting forth, in coordination with the Secretary of State and other interested agencies, plans, policies, and programs which relate to international telecommunications issues, conferences, and negotiations;

(ii) coordinating economic, technical, operational, and related preparations for United States participation in international telecommunications conferences and negotiations; and

(iii) providing advice and assistance to the Secretary of State on international telecommunications policies to strengthen the position and serve the best interests of the United States in support of the Secretary of State's responsibility for the conduct of foreign affairs.

(H) The authority to provide for the coordination of the telecommunications activities of the executive branch and assist in the formulation of policies and standards for those activities, including (but not limited to) considerations of interoperability, privacy, security, spectrum use, and emergency readiness.

(I) The authority to develop and set forth telecommunications policies pertaining to the Nation's economic and technological advancement and to the regulation of the telecommunications industry.

(J) The responsibility to ensure that the views of the executive branch on telecommunications matters are effectively presented to the Commission and, in coordination with the Director of the Office of Management and Budget, to the Congress.

(K) The authority to establish policies concerning spectrum assignments and use by radio stations belonging to and operated by the United States.

(L) Functions which involve—

(i) developing, in cooperation with the Commission, a comprehensive long-range plan for improved management of all electromagnetic spectrum resources;

(ii) performing analysis, engineering, and administrative functions, including the maintenance of necessary files and data bases, as necessary for the performance of assigned functions for the management of electromagnetic spectrum resources;

(iii) conducting research and analysis of electromagnetic propagation, radio systems characteristics, and operating techniques affecting the utilization of the electromagnetic spectrum in coordination with specialized, related research and analysis performed by other Federal agencies in their areas of responsibility; and

(iv) conducting research and analysis in the general field of telecommunications sciences in support of assigned functions and in support of other Government agencies.

(M) The authority to conduct studies and make recommendations concerning the impact of the convergence of computer and communications technology.

(N) The authority to coordinate Federal telecommunications assistance to State and local governments.

(O) The authority to conduct and coordinate economic and technical analyses of telecommunications policies, activities, and opportunities in support of assigned functions.

(P) The authority to contract for studies and reports relating to any aspect of assigned functions.

(Q) The authority to participate, as appropriate, in evaluating the capability of telecommunications resources, in recommending remedial actions, and in developing policy options.

(R) The authority to participate with the National Security Council and the Director of the Office of Science and Technology Policy as they carry out their responsibilities under sections 4-1, 4-2, and 4-3 of Executive Order 12046, with respect to emergency functions, the national communication system, and telecommunications planning functions.

(S) The authority to establish coordinating committees pursuant to section 10 of Executive Order 11556.

(T) The authority to establish, as permitted by law, such interagency committees and working groups composed of representatives of interested agencies and consulting with such departments and agencies as may be necessary for the effective performance of assigned functions.

### (3) Additional communications and information functions

In addition to the functions described in paragraph (2), the Secretary under paragraph (1)—

(A) may assign to the NTIA the performance of functions under section 504(a) of the Communications Satellite Act of 1962 (47 U.S.C. 753(a)); and

(B) shall assign to the NTIA the administration of the Public Telecommunications Facilities Program under sections 390 through 393 of this title, and the National Endowment for Children's Educational Television under section 394 of this title.

(Pub. L. 102-538, title I, §103, Oct. 27, 1992, 106 Stat. 3534.)

#### REFERENCES IN TEXT

Reorganization Plan Number 1 of 1977, referred to in subsec. (b)(2), is set out in the Appendix to Title 5, Government Organization and Employees.

Executive Order 12046, referred to in subsec. (b)(2), is set out as a note under section 305 of this title.

The Communications Satellite Act of 1962, referred to in subsec. (b)(2)(C)(iii), (vi), is Pub. L. 87-624, Aug. 31, 1962, 76 Stat. 419, as amended, which is classified generally to chapter 6 (§701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

Section 201(a)(6) of the Communications Satellite Act of 1962, referred to in subsec. (b)(2)(C)(iv), was classified to section 721(a)(6) of this title and was omitted from the Code.

Executive Order 11556, referred to in subsec. (b)(2)(S), which was formerly set out as a note under section 305 of this title was revoked by Ex. Ord. No. 12046, set out

as a note under section 305 of this title. Section 10 of Ex. Ord. No. 11556 related to advisory committees established by the Director of the former Office of Telecommunications Policy.

#### STUDY OF TECHNOLOGY PROTECTION MEASURES

Pub. L. 106-554, §1(a)(4) [div. B, title XVII, §1703], Dec. 21, 2000, 114 Stat. 2763, 2763A-336, provided that:

“(a) IN GENERAL.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the National Telecommunications and Information Administration shall initiate a notice and comment proceeding for purposes of—

“(1) evaluating whether or not currently available technology protection measures, including commercial Internet blocking and filtering software, adequately addresses the needs of educational institutions;

“(2) making recommendations on how to foster the development of measures that meet such needs; and

“(3) evaluating the development and effectiveness of local Internet safety policies that are currently in operation after community input.

“(b) DEFINITIONS.—In this section:

“(1) TECHNOLOGY PROTECTION MEASURE.—The term ‘technology protection measure’ means a specific technology that blocks or filters Internet access to visual depictions that are—

“(A) obscene, as that term is defined in section 1460 of title 18, United States Code;

“(B) child pornography, as that term is defined in section 2256 of title 18, United States Code; or

“(C) harmful to minors.

“(2) HARMFUL TO MINORS.—The term ‘harmful to minors’ means any picture, image, graphic image file, or other visual depiction that—

“(A) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

“(B) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

“(C) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

“(3) SEXUAL ACT; SEXUAL CONTACT.—The terms ‘sexual act’ and ‘sexual contact’ have the meanings given such terms in section 2246 of title 18, United States Code.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 903, 904 of this title.

### § 903. Spectrum management activities

#### (a) Revision of regulations

Within 180 days after October 27, 1992, the Secretary of Commerce and the NTIA shall amend the Department of Commerce spectrum management document entitled “Manual of Regulations and Procedures for Federal Radio Frequency Management” to improve Federal spectrum management activities and shall publish in the Federal Register any changes in the regulations in such document.

#### (b) Requirements for revisions

The amendments required by subsection (a) of this section shall—

(1) provide for a period at the beginning of each meeting of the Interdepartmental Radio Advisory Committee to be open to the public to make presentations and receive advice, and provide the public with other meaningful op-

portunities to make presentations and receive advice;

(2) include provisions that will require (A) publication in the Federal Register of major policy proposals that are not classified and that involve spectrum management, and (B) adequate opportunity for public review and comment on those proposals;

(3) include provisions that will require publication in the Federal Register of major policy decisions that are not classified and that involve spectrum management;

(4) include provisions that will require that nonclassified spectrum management information be made available to the public, including access to electronic databases; and

(5) establish procedures that provide for the prompt and impartial consideration of requests for access to Government spectrum by the public, which procedures shall include provisions that will require the disclosure of the status and ultimate disposition of any such request.

#### (c) Certification to Congress

Not later than 180 days after October 27, 1992, the Secretary of Commerce shall certify to Congress that the Secretary has complied with this section.

#### (d) Radio services

##### (1) Assignments for radio services

In assigning frequencies for mobile radio services and other radio services, the Secretary of Commerce shall promote efficient and cost-effective use of the spectrum to the maximum extent feasible.

##### (2) Authority to withhold assignments

The Secretary of Commerce shall have the authority to withhold or refuse to assign frequencies for mobile radio service or other radio service in order to further the goal of making efficient and cost-effective use of the spectrum.

##### (3) Spectrum plan

By October 1, 1993, the Secretary of Commerce shall adopt and commence implementation of a plan for Federal agencies with existing mobile radio systems to use more spectrum-efficient technologies that are at least as spectrum-efficient and cost-effective as readily available commercial mobile radio systems. The plan shall include a time schedule for implementation.

##### (4) Report to Congress

By October 1, 1993, the Secretary of Commerce shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report summarizing the plan adopted under paragraph (3), including the implementation schedule for the plan.

#### (e) Proof of compliance with FCC licensing requirements

##### (1) Amendment to manual required

Within 90 days after August 10, 1993, the Secretary and the NTIA shall amend the spectrum

management document described in subsection (a) of this section to require that—

(A) no person or entity (other than an agency or instrumentality of the United States) shall be permitted, after 1 year after August 10, 1993, to operate a radio station utilizing a frequency that is authorized for the use of government stations pursuant to section 902(b)(2)(A) of this title for any non-government application unless such person or entity has submitted to the NTIA proof, in a form prescribed by such manual, that such person or entity has obtained a license from the Commission; and

(B) no person or entity (other than an agency or instrumentality of the United States) shall be permitted, after 1 year after August 10, 1993, to utilize a radio station belonging to the United States for any non-government application unless such person or entity has submitted to the NTIA proof, in a form prescribed by such manual, that such person or entity has obtained a license from the Commission.

### (2) Retention of forms

The NTIA shall maintain on file the proofs submitted under paragraph (1), or facsimiles thereof.

### (3) Certification

Within 1 year after August 10, 1993, the Secretary and the NTIA shall certify to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate that—

(A) the amendments required by paragraph (1) have been accomplished; and

(B) the requirements of subparagraphs (A) and (B) of such paragraph are being enforced.

(Pub. L. 102-538, title I, §104, Oct. 27, 1992, 106 Stat. 3537; Pub. L. 103-66, title VI, §6001(b), Aug. 10, 1993, 107 Stat. 387.)

#### AMENDMENTS

1993—Subsec. (e). Pub. L. 103-66 added subsec. (e).

#### CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

#### AUTHORIZATION OF USE OF SPECTRUM BY, AND PROVISION OF SPECTRUM FUNCTIONS TO, FEDERAL ENTITY; REIMBURSEMENT

Pub. L. 106-553, §1(a)(2) [title II], Dec. 21, 2000, 114 Stat. 2762, 2762A-72, provided in part: “That hereafter, notwithstanding any other provision of law, NTIA [National Telecommunications and Information Administration] shall not authorize spectrum use or provide any spectrum functions pursuant to the National Telecommunications and Information Administration Organization Act, 47 U.S.C. 902-903 [47 U.S.C. 901 et seq.], to

any Federal entity without reimbursement as required by NTIA for such spectrum management costs, and Federal entities withholding payment of such cost shall not use spectrum”.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 106-113, div. B, §1000(a)(1) [title II], Nov. 29, 1999, 113 Stat. 1535, 1501A-26.

Pub. L. 105-277, div. A, §101(b) [title II], Oct. 21, 1998, 112 Stat. 2681-50, 2681-80.

Pub. L. 105-119, title II, Nov. 26, 1997, 111 Stat. 2474.

Pub. L. 104-208, div. A, title I, §101(a) [title II], Sept. 30, 1996, 110 Stat. 3009, 3009-35.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 927 of this title.

## § 904. General administrative provisions

### (a) Interagency functions

#### (1) Agency consultation

Federal agencies shall consult with the Assistant Secretary and the NTIA to ensure that the conduct of telecommunications activities by such agencies is consistent with the policies developed under section 902(b)(2)(K) of this title.

#### (2) Report to President

The Secretary shall timely submit to the President each year the report (including evaluations and recommendations) provided for in section 744(a)<sup>1</sup> of this title.

#### (3) Coordination with Secretary of State

The Secretary shall coordinate with the Secretary of State the performance of the functions described in section 902(b)(2)(C) of this title. The Corporation and concerned executive agencies shall provide the Secretary with such assistance, documents, and other cooperation as will enable the Secretary to carry out those functions.

### (b) Advisory committees and informal consultations with industry

To the extent the Assistant Secretary deems it necessary to continue the Interdepartmental Radio Advisory Committee, such Committee shall serve as an advisory committee to the Assistant Secretary and the NTIA. As permitted by law, the Assistant Secretary may establish one or more telecommunications or information advisory committees (or both) composed of experts in the telecommunications and/or information areas outside the Government. The NTIA may also informally consult with industry as appropriate to carry out the most effective performance of its functions.

### (c) General provisions

#### (1) Regulations

The Secretary and NTIA shall issue such regulations as may be necessary to carry out the functions assigned under this chapter.

#### (2) Support and assistance from other agencies

All executive agencies are authorized and directed to cooperate with the NTIA and to furnish it with such information, support, and assistance, not inconsistent with law, as it may require in the performance of its functions.

<sup>1</sup> See References in Text note below.

**(3) Effect on vested functions**

Nothing in this chapter reassigns any function that is, on October 27, 1992, vested by law or executive order in the Commission, or the Department of State, or any officer thereof.

**(d) Reorganization****(1) Authority to reorganize**

Subject to paragraph (2), the Secretary may reassign to another unit of the Department of Commerce a function (or portion thereof) required to be assigned to the NTIA by section 902(b) of this title.

**(2) Limitation on authority**

The Secretary may not make any reassignment of a function (or portion thereof) required to be assigned to the NTIA by section 902(b) of this title unless the Secretary submits to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a statement describing the proposed reassignment and containing an explanation of the reasons for the reassignment. No reassignment of any such function (or portion thereof) shall be effective until 90 legislative days after the Secretary submits that statement to such Committees. For purposes of this paragraph, the term “legislative days” includes only days on which both Houses of Congress are in session.

**(e) Limitation on solicitations**

Notwithstanding section 1522 of title 15, neither the Secretary, the Assistant Secretary, nor any officer or employee of the NTIA shall solicit any gift or bequest of property, both real and personal, from any entity for the purpose of furthering the authorized functions of the NTIA if such solicitation would create a conflict of interest or an appearance of a conflict of interest. (Pub. L. 102-538, title I, §105, Oct. 27, 1992, 106 Stat. 3538.)

## REFERENCES IN TEXT

Section 744(a) of this title, referred to in subsec. (a)(2), was repealed by Pub. L. 103-414, title III, §304(b)(4)(A), Oct. 25, 1994, 108 Stat. 4297.

## CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

## TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by Congress, its duration is

otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 902 of this title.

**§ 905. Omitted**

## CODIFICATION

Section, Pub. L. 95-567, title IV, §402, Nov. 2, 1978, 92 Stat. 2424, which required the National Telecommunications and Information Administration to submit an annual report to Congress on activities of the Administration with respect to domestic communications, international communications, Federal Government communications, spectrum plans and policies, and other matters, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, 1st item on page 55 of House Document No. 103-7.

SUBCHAPTER II—TRANSFER OF  
AUCTIONABLE FREQUENCIES

## SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 309 of this title.

**§ 921. Definitions**

As used in this subchapter:

(1) The term “allocation” means an entry in the National Table of Frequency Allocations of a given frequency band for the purpose of its use by one or more radiocommunication services.

(2) The term “assignment” means an authorization given to a station licensee to use specific frequencies or channels.

(3) The term “the 1934 Act” means the Communications Act of 1934 (47 U.S.C. 151 et seq.).

(Pub. L. 102-538, title I, §111, as added Pub. L. 103-66, title VI, §6001(a)(3), Aug. 10, 1993, 107 Stat. 379.)

## REFERENCES IN TEXT

The Communications Act of 1934, referred to in par. (3), is act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, which is classified principally to chapter 5 (§151 et seq.) of this title. For complete classification of this Act to the Code, see section 609 of this title and Tables.

STUDY AND REPORT ON CURRENT AND FUTURE  
SPECTRUM USE

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

## REPORT ON PROGRESS ON SPECTRUM SHARING

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

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

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

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

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

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

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

#### SURRENDER OF DEPARTMENT OF DEFENSE SPECTRUM

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

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

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

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

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

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

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

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

“(B) the band of frequency aggregating 5 megahertz located between 1385 megahertz and 1390 megahertz, inclusive, that was so recommended for reallocation.”

#### ASSESSMENT OF ELECTROMAGNETIC SPECTRUM REALLOCATION

Pub. L. 102-538, title I, §156, as added by Pub. L. 106-65, div. A, title X, §1062(a), Oct. 5, 1999, 113 Stat. 767, provided that:

#### “(a) REVIEW AND ASSESSMENT OF ELECTROMAGNETIC SPECTRUM REALLOCATION.—

“(1) REVIEW AND ASSESSMENT REQUIRED.—The Secretary of Commerce, acting through the Assistant Secretary and in coordination with the Chairman of the Federal Communications Commission, shall convene an interagency review and assessment of—

“(A) the progress made in implementation of national spectrum planning;

“(B) the reallocation of Federal Government spectrum to non-Federal use, in accordance with the amendments made by title VI of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66; 107 Stat. 379) [enacting sections 159 and 921 to 927 of this title and amending sections 152, 153, 156, 158, 309, 332, and 903 of this title] and title III of the Balanced Budget Act of 1997 (Public Law 105-33; 111 Stat. 258) [enacting section 337 of this title, amending sections 153, 303, 309, and 923 to 925 of this title, and repealing provisions set out as a note under section 309 of this title]; and

“(C) the implications for such reallocations to the affected Federal executive agencies.

“(2) COORDINATION.—The assessment shall be conducted in coordination with affected Federal executive agencies through the Interdepartmental Radio Advisory Committee.

“(3) COOPERATION AND ASSISTANCE.—Affected Federal executive agencies shall cooperate with the Assistant Secretary in the conduct of the review and assessment and furnish the Assistant Secretary with such information, support, and assistance, not inconsistent with law, as the Assistant Secretary may consider necessary in the performance of the review and assessment.

“(4) ATTENTION TO PARTICULAR SUBJECTS REQUIRED.—In the conduct of the review and assessment, particular attention shall be given to—

“(A) the effect on critical military and intelligence capabilities, civil space programs, and other Federal Government systems used to protect public safety of the reallocated spectrum described in paragraph (1)(B) of this subsection;

“(B) the anticipated impact on critical military and intelligence capabilities, future military and intelligence operational requirements, national defense modernization programs, and civil space programs, and other Federal Government systems used to protect public safety, of future potential reallocations to non-Federal use of bands of the electromagnetic spectrum that are currently allocated for use by the Federal Government; and

“(C) future spectrum requirements of agencies in the Federal Government.

“(b) SUBMISSION OF REPORT.—The Secretary of Commerce, in coordination with the heads of the affected Federal executive agencies, and the Chairman of the Federal Communications Commission shall submit to the President, the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Armed Services, the Committee on Commerce [now Committee on Energy and Commerce], and the Committee on Science of the House of Representatives, not later than October 1, 2000, a report providing the results of the assessment required by subsection (a).”

### § 922. National spectrum allocation planning

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

- (1) the extent to which licenses for spectrum use can be issued pursuant to section 309(j) of this title to increase Federal revenues;
- (2) the future spectrum requirements for public and private uses, including State and local government public safety agencies;
- (3) the spectrum allocation actions necessary to accommodate those uses; and
- (4) actions necessary to promote the efficient use of the spectrum, including spectrum management techniques to promote increased shared use of the spectrum that does not cause harmful interference as a means of increasing commercial access.

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

### § 923. Identification of reallocable frequencies

#### (a) Identification required

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

- (1) that are allocated on a primary basis for Federal Government use;
- (2) that are not required for the present or identifiable future needs of the Federal Government;
- (3) that can feasibly be made available, as of the date of submission of the report or at any time during the next 15 years, for use under the 1934 Act [47 U.S.C. 151 et seq.] (other than for Federal Government stations under section 305 of the 1934 Act [47 U.S.C. 305]);
- (4) the transfer of which (from Federal Government use) will not result in costs to the Federal Government, or losses of services or benefits to the public, that are excessive in relation to the benefits to the public that may be provided by non-Federal licensees; and
- (5) that are most likely to have the greatest potential for productive uses and public benefits under the 1934 Act [47 U.S.C. 151 et seq.] if allocated for non-Federal use.

#### (b) Minimum amount of spectrum recommended

##### (1) Initial reallocation report

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

#### (2) Mixed uses permitted to be counted

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

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

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

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

#### (3) Second reallocation report

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

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

(B) are located below 3 gigahertz; and

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

#### (c) Criteria for identification

##### (1) Needs of the Federal Government

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

- (A) consider whether the band of frequencies is used to provide a communications service that is or could be available from a commercial provider or other vendor;
- (B) seek to promote—

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

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

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

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

(C) seek to avoid—

- (i) serious degradation of Federal Government services and operations;
- (ii) excessive costs to the Federal Government and users of Federal Government services; and
- (iii) excessive disruption of existing use of Federal Government frequencies by amateur radio licensees.

**(2) Feasibility of use**

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

- (A) assume that the frequency will be assigned by the Commission under section 303 of the 1934 Act (47 U.S.C. 303) within 15 years;
- (B) assume reasonable rates of scientific progress and growth of demand for telecommunications services;
- (C) seek to include frequencies which can be used to stimulate the development of new technologies; and
- (D) consider the immediate and recurring costs to reestablish services displaced by the reallocation of spectrum.

**(3) Analysis of benefits**

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

- (A) the extent to which equipment is or will be available that is capable of utilizing the band;
- (B) the proximity of frequencies that are already assigned for commercial or other non-Federal use;
- (C) the extent to which, in general, commercial users could share the frequency with amateur radio licensees; and
- (D) the activities of foreign governments in making frequencies available for experimentation or commercial assignments in order to support their domestic manufacturers of equipment.

**(4) Power agency frequencies**

**(A) Applicability of criteria**

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

**(B) Mixed use eligibility**

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

**(C) “Federal power agency” defined**

As used in this paragraph, the term “Federal power agency” means the Tennessee

Valley Authority, the Bonneville Power Administration, the Western Area Power Administration, the Southwestern Power Administration, the Southeastern Power Administration, or the Alaska Power Administration.

**(5) Limitation on reallocation**

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

**(d) Procedure for identification of reallocable bands of frequencies**

**(1) Submission of preliminary identification to Congress**

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

**(2) Public comment**

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

**(3) Comment and recommendations from Commission**

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

**(4) Direct discussions**

The Secretary shall encourage and provide opportunity for direct discussions among commercial representatives and Federal Government users of the spectrum to aid the Secretary in determining which frequencies to recommend for reallocation. The Secretary shall provide notice to the public and the Commission of any such discussions, including the name or names of any businesses or other persons represented in such discussions. A representative of the Commission (and of the Secretary at the election of the Secretary) shall be permitted to attend any such discussions. The Secretary shall provide the public and the Commission with an opportunity to comment on the results of any such discussions prior to the submission of the initial report required by subsection (a) of this section.

**(e) Timetable for reallocation and limitation**

**(1) Timetable required**

The Secretary shall, as part of the reports required by subsections (a) and (d)(1) of this section, include a timetable that recommends

effective dates by which the President shall withdraw or limit assignments of the frequencies specified in such reports.

**(2) Expedited reallocation**

**(A) Required reallocation**

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

**(B) Permitted reallocation**

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

**(3) Delayed effective dates**

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

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

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

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

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

**(f) Additional reallocation report**

If the Secretary receives a notice from the Commission pursuant to section 3002(c)(5) of the Balanced Budget Act of 1997, the Secretary shall prepare and submit to the President, the Commission, and the Congress a report recommending for reallocation for use other than by Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305), bands of frequencies that are suitable for the licensees identified in the Commission's notice. The Commission shall, not later than one year after receipt of such report, prepare, submit to the President and the Congress, and implement, a plan for the immediate allocation and assignment of such frequencies under the 1934 Act [47 U.S.C. 151 et seq.] to incumbent licensees described in the Commission's notice.

**(g) Relocation of Federal Government stations**

**(1) In general**

**(A) Authority of Federal entities to accept compensation**

In order to expedite the commercial use of the electromagnetic spectrum and notwithstanding section 3302(b) of title 31, any Federal entity which operates a Federal Government station may accept from any person payment of the expenses of relocating the Federal entity's operations from one or more frequencies to another frequency or frequencies, including the costs of any modification, replacement, or reissuance of equipment, facilities, operating manuals, or regulations incurred by that entity. Any such Federal entity which proposes to so relocate shall notify the NTIA, which in turn shall notify the Commission, before the auction concerned of the marginal costs anticipated to be associated with such relocation or with modifications necessary to accommodate prospective licensees. The Commission in turn shall notify potential bidders of the estimated relocation or modification costs based on the geographic area covered by the proposed licenses before the auction.

**(B) Requirement to compensate Federal entities**

Any person on whose behalf a Federal entity incurs costs under subparagraph (A) shall compensate the Federal entity in advance for such costs. Such compensation may take the form of a cash payment or in-kind compensation.

**(C) Disposition of payments**

**(i) Payment by electronic funds transfer**

A person making a cash payment under this paragraph shall make the cash payment by depositing the amount of the payment by electronic funds transfer in the account of the Federal entity concerned in the Treasury of the United States or in another account as authorized by law.

**(ii) Availability**

Subject to the provisions of authorization Acts and appropriations Acts, amounts deposited under this subparagraph shall be available to the Federal entity concerned to pay directly the costs of relocation under this paragraph, to repay or make advances to appropriations or funds which do or will initially bear all or part of such costs, or to refund excess sums when necessary.

**(D) Application to certain other relocations**

The provisions of this paragraph also apply to any Federal entity that operates a Federal Government station assigned to used<sup>1</sup> electromagnetic spectrum identified for reallocation under subsection (a) of this section if before August 5, 1997, the Commission has not identified that spectrum for service

<sup>1</sup> So in original.

or assigned licenses or otherwise authorized service for that spectrum.

**(E) Implementation procedures**

The NTIA and the Commission shall develop procedures for the implementation of this paragraph, which procedures shall include a process for resolving any differences that arise between the Federal Government and commercial licensees regarding estimates of relocation or modification costs under this paragraph.

**(F) Inapplicability to certain relocations**

With the exception of the band of frequencies located at 1710–1755 megahertz, the provisions of this paragraph shall not apply to Federal spectrum identified for reallocation in the first reallocation report submitted to the President and Congress under subsection (a) of this section.

**(2) Process for relocation**

Any person seeking to relocate a Federal Government station that has been assigned a frequency within a band that has been allocated for mixed Federal and non-Federal use, or that has been scheduled for reallocation to non-Federal use, may submit a petition for such relocation to NTIA. The NTIA shall limit or terminate the Federal Government station's operating license within 6 months after receiving the petition if the following requirements are met:

(A) the person seeking relocation of the Federal Government station has guaranteed to pay all relocation costs incurred by the Federal entity, including all engineering, equipment, site acquisition and construction, and regulatory fee costs;

(B) all activities necessary for implementing the relocation have been completed, including construction of replacement facilities (if necessary and appropriate) and identifying and obtaining new frequencies for use by the relocated Federal Government station (where such station is not relocating to spectrum reserved exclusively for Federal use);

(C) any necessary replacement facilities, equipment modifications, or other changes have been implemented and tested to ensure that the Federal Government station is able to successfully accomplish its purposes; and

(D) NTIA has determined that the proposed use of the spectrum frequency band to which the Federal entity will relocate its operations is—

(i) consistent with obligations undertaken by the United States in international agreements and with United States national security and public safety interests; and

(ii) suitable for the technical characteristics of the band and consistent with other uses of the band.

In exercising its authority under clause (i) of this subparagraph, NTIA shall consult with the Secretary of Defense, the Secretary of State, or other appropriate officers of the Federal Government.

**(3) Right to reclaim**

If within one year after the relocation the Federal entity demonstrates to the Commission that the new facilities or spectrum are not comparable to the facilities or spectrum from which the Federal Government station was relocated, the person who filed the petition under paragraph (2) for such relocation shall take reasonable steps to remedy any defects or pay the Federal entity for the expenses incurred in returning the Federal Government station to the spectrum from which such station was relocated.

**(h) Federal action to expedite spectrum transfer**

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

**(i) "Federal entity" defined**

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

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

REFERENCES IN TEXT

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

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

AMENDMENTS

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

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

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

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

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

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

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

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

#### REPORTS ON COSTS OF RELOCATIONS

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

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 309, 924, 925 of this title.

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

#### (a) In general

The President shall—

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

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

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

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

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

#### (b) Exceptions

##### (1) Authority to substitute

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

(A) may substitute an alternative frequency or frequencies for the frequency that is subject to such determination and with-

draw (or limit) the assignment of that alternative frequency in the manner required by subsection (a) of this section; and

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

#### (2) Grounds for substitution

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

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

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

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

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

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

#### (3) Criteria for substituted frequencies

For purposes of paragraph (1), a frequency may not be substituted for a frequency identified and recommended by the report of the Secretary under section 923(a) of this title unless the substituted frequency also meets each of the criteria specified by section 923(a) of this title.

#### (4) Delays in implementation

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

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

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

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

#### AMENDMENTS

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

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

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 309, 926 of this title.

**§ 925. Distribution of frequencies by Commission**

**(a) Allocation and assignment of immediately available frequencies**

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

**(b) Allocation and assignment of remaining available frequencies**

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

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

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

(B) to reserve a significant portion of such frequencies for allocation and assignment beginning after the end of such 10-year period;

(2) contain appropriate provisions to ensure—

(A) the availability of frequencies for new technologies and services in accordance with the policies of section 7 of the 1934 Act (47 U.S.C. 157);

(B) the availability of frequencies to stimulate the development of such technologies; and

(C) the safety of life and property in accordance with the policies of section 1 of the 1934 Act (47 U.S.C. 151);

(3) address (A) the feasibility of reallocating portions of the spectrum from current commercial and other non-Federal uses to provide for more efficient use of the spectrum, and (B) innovation and marketplace developments that may affect the relative efficiencies of different spectrum allocations;

(4) not prevent the Commission from allocating frequencies, and assigning licenses to use frequencies, not included in the plan; and

(5) not preclude the Commission from making changes to the plan in future proceedings.

**(c) Allocation and assignment of frequencies identified in second reallocation report**

**(1) Plan and implementation**

With respect to the frequencies made available for reallocation pursuant to section 923(b)(3) of this title, the Commission shall, not later than one year after receipt of the second reallocation report required by section 923(a) of this title, prepare, submit to the

President and the Congress, and implement, a plan for the immediate allocation and assignment under the 1934 Act [47 U.S.C. §151 et seq.] of all such frequencies in accordance with section 309(j) of such Act [47 U.S.C. 309(j)].

**(2) Contents**

The plan prepared by the Commission under paragraph (1) shall consist of a schedule of allocation and assignment of those frequencies in accordance with section 309(j) of the 1934 Act in time for the assignment of those licenses or permits by September 30, 2002.

(Pub. L. 102-538, title I, §115, as added Pub. L. 103-66, title VI, §6001(a)(3), Aug. 10, 1993, 107 Stat. 385; amended Pub. L. 105-33, title III, §3002(e)(4), Aug. 5, 1997, 111 Stat. 265.)

REFERENCES IN TEXT

For definition of the 1934 Act, referred to in subsecs. (b) and (c)(1), see section 921(3) of this title.

AMENDMENTS

1997—Subsec. (b). Pub. L. 105-33, §3002(e)(4)(A), substituted “the initial reallocation report required” for “the report required” in introductory provisions.

Subsec. (c). Pub. L. 105-33, §3002(e)(4)(B), added subsec. (c).

ACCELERATED AVAILABILITY FOR AUCTION OF 1,710-1,755 MEGAHERTZ FROM INITIAL REALLOCATION REPORT

Section 3002(b) of Pub. L. 105-33 provided that: “The band of frequencies located at 1,710-1,755 megahertz identified in the initial reallocation report under section 113(a) of the National Telecommunications and Information Administration Act (47 U.S.C. 923(a)) shall, notwithstanding the timetable recommended under section 113(e) of such Act and section 115(b)(1) of such Act [47 U.S.C. 925(b)(1)], be available in accordance with this subsection for assignment for commercial use. The Commission shall assign licenses for such use by competitive bidding commenced after January 1, 2001, pursuant to section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)).”

COMMISSION OBLIGATION TO MAKE ADDITIONAL SPECTRUM AVAILABLE BY AUCTION

Section 3002(c) of Pub. L. 105-33 provided that:

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

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

“(B) are located below 3 gigahertz;

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

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

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

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

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

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

“(D) include frequencies at 2,110–2,150 megahertz; and

“(E) include 15 megahertz from within the bands of frequencies at 1,990–2,110 megahertz.

“(2) CRITERIA FOR REASSIGNMENT.—In making available bands of frequencies for competitive bidding pursuant to paragraph (1), the Commission shall—

“(A) seek to promote the most efficient use of the electromagnetic spectrum;

“(B) consider the cost of relocating existing uses to other bands of frequencies or other means of communication;

“(C) consider the needs of existing public safety radio services (as such services are described in section 309(j)(2)(A) of the Communications Act of 1934, as amended by this Act);

“(D) comply with the requirements of international agreements concerning spectrum allocations; and

“(E) coordinate with the Secretary of Commerce when there is any impact on Federal Government spectrum use.

“(3) USE OF BANDS AT 2,110–2,150 MEGAHERTZ.—The Commission shall reallocate spectrum located at 2,110–2,150 megahertz for assignment by competitive bidding unless the Commission determines that auction of other spectrum (A) better serves the public interest, convenience, and necessity, and (B) can reasonably be expected to produce greater receipts. If the Commission makes such a determination, then the Commission shall, within 2 years after the date of enactment of this Act [Aug. 5, 1997], identify an alternative 40 megahertz, and report to the Congress an identification of such alternative 40 megahertz for assignment by competitive bidding.

“(4) USE OF 15 MEGAHERTZ FROM BANDS AT 1,990–2,110 MEGAHERTZ.—The Commission shall reallocate 15 megahertz from spectrum located at 1,990–2,110 megahertz for assignment by competitive bidding unless the President determines such spectrum cannot be reallocated due to the need to protect incumbent Federal systems from interference, and that allocation of other spectrum (A) better serves the public interest, convenience, and necessity, and (B) can reasonably be expected to produce comparable receipts. If the President makes such a determination, then the President shall, within 2 years after the date of enactment of this Act, identify alternative bands of frequencies totalling 15 megahertz, and report to the Congress an identification of such alternative bands for assignment by competitive bidding.

“(5) NOTIFICATION TO THE SECRETARY OF COMMERCE.—The Commission shall attempt to accommodate incumbent licensees displaced under this section by relocating them to other frequencies available for allocation by the Commission. The Commission shall notify the Secretary of Commerce whenever the Commission is not able to provide for the effective relocation of an incumbent licensee to a band of frequencies available to the Commission for assignment. The notification shall include—

“(A) specific information on the incumbent licensee;

“(B) the bands the Commission considered for relocation of the licensee;

“(C) the reasons the licensee cannot be accommodated in such bands; and

“(D) the bands of frequencies identified by the Commission that are—

“(i) suitable for the relocation of such licensee; and

“(ii) allocated for Federal Government use, but that could be reallocated pursuant to part B of the National Telecommunications and Information Administration Organization Act (as amended by this Act) [part B (§§131–135) of title I of Pub. L. 102–538, see Tables for classification].”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 309, 923, 924 of this title.

## § 926. Authority to recover reassigned frequencies

### (a) Authority of President

Subsequent to the withdrawal of assignment to Federal Government stations pursuant to section 924 of this title, the President may reclaim reassigned frequencies for reassignment to Federal Government stations in accordance with this section.

### (b) Procedure for reclaiming frequencies

#### (1) Unallocated frequencies

If the frequencies to be reclaimed have not been allocated or assigned by the Commission pursuant to the 1934 Act [47 U.S.C. 151 et seq.], the President shall follow the procedures for substitution of frequencies established by section 924(b) of this title.

#### (2) Allocated frequencies

If the frequencies to be reclaimed have been allocated or assigned by the Commission, the President shall follow the procedures for substitution of frequencies established by section 924(b) of this title, except that the statement required by section 924(b)(1)(B) of this title shall include—

(A) a timetable to accommodate an orderly transition for licensees to obtain new frequencies and equipment necessary for its utilization; and

(B) an estimate of the cost of displacing spectrum users licensed by the Commission.

### (c) Costs of reclaiming frequencies

The Federal Government shall bear all costs of reclaiming frequencies pursuant to this section, including the cost of equipment which is rendered unusable, the cost of relocating operations to a different frequency, and any other costs that are directly attributable to the reclaiming of the frequency pursuant to this section, and there are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

### (d) Effective date of reclaimed frequencies

The Commission shall not withdraw licenses for any reclaimed frequencies until the end of the fiscal year following the fiscal year in which a statement under section 924(b)(1)(B) of this title pertaining to such frequencies is received by the Commission.

### (e) Effect on other law

Nothing in this section shall be construed to limit or otherwise affect the authority of the President under section 706 of the 1934 Act (47 U.S.C. 606).

(Pub. L. 102–538, title I, §116, as added Pub. L. 103–66, title VI, §6001(a)(3), Aug. 10, 1993, 107 Stat. 386.)

#### REFERENCES IN TEXT

For definition of the 1934 Act, referred to in subsec. (b)(1), see section 921(3) of this title.

## § 927. Existing allocation and transfer authority retained

### (a) Additional reallocation

Nothing in this subchapter prevents or limits additional reallocation of spectrum from the Federal Government to other users.

**(b) Implementation of new technologies and services**

Notwithstanding any other provision of this subchapter—

(1) the Secretary may, consistent with section 903(e) of this title, at any time allow frequencies allocated on a primary basis for Federal Government use to be used by non-Federal licensees on a mixed-use basis for the purpose of facilitating the prompt implementation of new technologies or services and for other purposes; and

(2) the Commission shall make any allocation and licensing decisions with respect to such frequencies in a timely manner and in no event later than the date required by section 157 of this title.

(Pub. L. 102-538, title I, §117, as added Pub. L. 103-66, title VI, §6001(a)(3), Aug. 10, 1993, 107 Stat. 386.)

**CHAPTER 9—INTERCEPTION OF DIGITAL AND OTHER COMMUNICATIONS**

**SUBCHAPTER I—INTERCEPTION OF DIGITAL AND OTHER COMMUNICATIONS**

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**SUBCHAPTER I—INTERCEPTION OF DIGITAL AND OTHER COMMUNICATIONS**

**SUBCHAPTER REFERRED TO IN OTHER SECTIONS**

This subchapter is referred to in sections 229, 1021 of this title; title 18 sections 2518, 2522, 3124.

**§ 1001. Definitions**

For purposes of this subchapter—

(1) The terms defined in section 2510 of title 18 have, respectively, the meanings stated in that section.

(2) The term “call-identifying information” means dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber by means of any equipment, facility, or service of a telecommunications carrier.

(3) The term “Commission” means the Federal Communications Commission.

(4) The term “electronic messaging services” means software-based services that enable the sharing of data, images, sound, writing, or other information among computing devices controlled by the senders or recipients of the messages.

(5) The term “government” means the government of the United States and any agency or instrumentality thereof, the District of Columbia, any commonwealth, territory, or possession of the United States, and any State or political subdivision thereof authorized by law to conduct electronic surveillance.

(6) The term “information services”—

(A) means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications; and

(B) includes—

(i) a service that permits a customer to retrieve stored information from, or file information for storage in, information storage facilities;

(ii) electronic publishing; and

(iii) electronic messaging services; but

(C) does not include any capability for a telecommunications carrier’s internal management, control, or operation of its telecommunications network.

(7) The term “telecommunications support services” means a product, software, or service used by a telecommunications carrier for the internal signaling or switching functions of its telecommunications network.

(8) The term “telecommunications carrier”—

(A) means a person or entity engaged in the transmission or switching of wire or