

# APPENDIX A

## NTIA ORGANIZATION ACT (AS AMENDED BY THE BALANCED BUDGET ACT OF 1997)

This appendix contains the NTIA Organization Act as amended by The Balanced Budget Act of 1997. All of the modifications in this text were made by NTIA personnel.

### U.S.C. TITLE 47 - TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS CHAPTER 8 - NATIONAL TELECOMMUNICATIONS AND INFORMATION 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.

**§ 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));
- (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.

(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.

### **§ 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 opportunities 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.

**§ 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) (FOOTNOTE 1) of this title.

(FOOTNOTE 1) See References in Text note below.

**(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.

**(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.

## **§ 905. ANNUAL REPORT TO CONGRESS**

The National Telecommunications and Information Administration shall submit an annual report to the Congress not later than January 31 of each calendar year, beginning with calendar year 1980. Each such report shall relate to the preceding calendar year and shall contain information on the activities of the Administration with respect to domestic communications, international communications, Federal Government communications, spectrum plans and policies, and any other matters.

## **SUBCHAPTER II - TRANSFER OF AUCTIONABLE FREQUENCIES**

### **§ 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.).

### **§ 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.

### **§ 923. Identification of reallocable frequencies**

**(a) Identification required**

The Secretary shall, within 18 months after August 10, 1993 and within 6 months after the date of enactment of the Balanced Budget Act of 1997, prepare and submit to the President and the Congress a report identifying and recommending for reallocation bands of frequencies -

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

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

**(1) Initial Reallocation Report**

In accordance with the provisions of this section, the Secretary shall recommend for reallocation in the initial report required by subsection (a), for use other than by Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305), bands of frequencies that in the aggregate span not less than 200 megahertz, that are located below 5 gigahertz, and that meet the criteria specified in paragraphs (1) through (5) of subsection (a) 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), 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 20 megahertz;

(B) are located below 3 gigahertz; and

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

**(c) Criteria for identification**

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

In determining whether a band of frequencies meets the criteria specified in subsection (a)(2) 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 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 to incumbent licensees described in the Commission's notice.

**(g) RELOCATION OF FEDERAL GOVERNMENT STATIONS-**

**(1) IN GENERAL-** In order to expedite the commercial use of the electromagnetic spectrum and notwithstanding section 3302(b) of title 31, United States Code, 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. 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.

**(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) 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) DEFINITION-** 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).'

## **§ 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 withdraw (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.

**§ 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 THE SECOND REALLOCATION REPORT-

(1) PLAN AND IMPLEMENTATION- With respect to the frequencies made available for reallocation pursuant to section 113(b)(3), the Commission shall, not later than one year after receipt of the second reallocation report required by section 113(a), prepare, submit to the President and the Congress, and implement, a plan for the immediate allocation and assignment under the 1934 Act of all such frequencies in accordance with section 309(j) of such Act.

(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.'.

**§ 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).

**§ 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.