

A BILL

To promote efficient use of the radio spectrum by amending the Communications Act of 1934 to provide the Federal Communications Commission with permanent authority to auction spectrum licenses, and with new authority to charge user fees for unauctioned spectrum licenses and construction permits; to clarify the Commission's authority to auction licenses for domestic satellite communications services; and to provide greater flexibility to the National Telecommunications and Information Administration in the administration of the Public Safety Interoperable Communications Program.

1 *Be it enacted by the Senate and House of Representatives of the United States of America in*

2 *Congress assembled, That*

3 **SECTION 1. PERMANENT EXTENSION OF AUCTION AUTHORITY.**

4 Section 309(j) of the Communications Act of 1934 is amended by repealing
5 paragraph (11).

6 **SECTION 2. AUTHORITY TO ESTABLISH SPECTRUM LICENSE USER FEES.**

7 Section 309 of the Communications Act of 1934 is amended by adding the following new
8 subsection at the end thereof:

9 “(m) USE OF SPECTRUM LICENSE USER FEES. – For initial licenses or construction
10 permits that are not granted through the use of competitive bidding as set forth in
11 subsection (j), and for renewals or modifications of initial licenses or other
12 authorizations, whether granted through competitive bidding or not, the Commission is
13 authorized to establish, assess, and collect annual user fees on holders of spectrum
14 licenses or construction permits, including their successors or assignees, in order to
15 promote efficient and effective use of the electromagnetic spectrum.

16 “(1) DEVELOPMENT OF SPECTRUM FEE REGULATIONS. –

17 “(A) The Commission shall, by regulation, establish a methodology for
18 assessing annual spectrum user fees and a schedule for collection of such fees on

1 classes of spectrum licenses or construction permits or other instruments of
2 authorization, consistent with the public interest, convenience and necessity. The
3 Commission may determine over time different classes of spectrum licenses or
4 construction permits upon which such fees may be assessed. In establishing the
5 fee methodology, the Commission may consider the following factors:

6 “(i) the highest value alternative spectrum use forgone;

7 “(ii) scope and type of permissible services and uses;

8 “(iii) amount of spectrum and licensed coverage area;

9 “(iv) shared versus exclusive use;

10 “(v) level of demand for spectrum licenses or construction permits

11 within a certain spectrum band or geographic area;

12 “(vi) the amount of revenue raised on comparable licenses awarded

13 through an auction; and

14 “(vii) such factors that the Commission determines, in its

15 discretion, are necessary to promote efficient and effective spectrum use.

16 “(B) In addition, the Commission shall, by regulation, establish a

17 methodology for assessing annual user fees and a schedule for collection of such

18 fees on entities holding Ancillary Terrestrial Component authority in conjunction

19 with Mobile Satellite Service spectrum licenses, where the Ancillary Terrestrial

20 Component authority was not assigned through use of competitive bidding. The

21 Commission shall not collect less from the holders of such authority than a

22 reasonable estimate of the value of such authority over its term, regardless of

1 whether terrestrial services are actually provided during this term. In determining
2 a reasonable estimate of the value of such authority, the Commission may
3 consider factors listed in subsection (A).

4 “(C) Within 60 days of enactment of this Act, the Commission shall
5 commence a rulemaking to develop the fee methodology and regulations. The
6 Commission shall take all actions necessary so that it can collect fees from the
7 first class or classes of spectrum license or construction permit holders no later
8 than September 30, 2010.

9 “(D) The Commission, from time to time, may commence further
10 rulemakings (separate from or in connection with other rulemakings or
11 proceedings involving spectrum-based services, licenses, permits and uses) and
12 modify the fee methodology or revise its rules required by paragraph (B) to add or
13 modify classes of spectrum license or construction permit holders that must pay
14 fees to reflect appropriate increases or decreases in fees as a result of the addition,
15 deletion, reclassification or other change in a spectrum-based service or use,
16 including changes in the nature of a spectrum-based service or use as a
17 consequence of Commission rulemaking proceedings or changes in law. Any
18 resulting changes in the classes of spectrum licenses, construction permits or fees
19 shall take effect upon the dates established in the Commission’s rulemaking
20 proceeding in accordance with applicable law.

21 “(E) The Commission shall exempt from such fees holders of licenses for
22 public safety radio services, including emergency response providers. The term

1 “emergency response providers” includes State, local, and tribal, emergency
2 public safety, law enforcement, firefighter, emergency response, emergency
3 medical (including hospital emergency facilities), and related personnel, agencies
4 and authorities.

5 “(2) PENALTIES FOR LATE PAYMENT. – The Commission shall prescribe by
6 regulation an additional charge which shall be assessed as a penalty for late payment of
7 fees required by this subsection.

8 “(3) REVOCATION OF LICENSE OR PERMIT. – The Commission may revoke any
9 spectrum license or construction permit for a licensee’s or permittee’s failure to pay in a
10 timely manner any fee or penalty to the Commission under this subsection. Such
11 revocation action may be taken by the Commission after notice of the Commission’s
12 intent to take such action is sent to the licensee by registered mail, return receipt
13 requested, at the licensee’s last known address. The notice will provide the licensee at
14 least 30 days to either pay the fee or show cause why the fee does not apply to the
15 licensee or should otherwise be waived or payment deferred. A hearing is not required
16 under this subsection unless the licensee’s response presents a substantial and material
17 question of fact. In any case where a hearing is conducted pursuant to this section, the
18 hearing shall be based on written evidence only, and the burden of proceeding with the
19 introduction of evidence and the burden of proof shall be on the licensee. Unless the
20 licensee substantially prevails in the hearing, the Commission may assess the licensee for
21 the costs of such hearing. Any Commission order adopted pursuant to this subsection
22 shall determine the amount due, if any, and provide the licensee with at least 30 days to

1 pay that amount or have its authorization revoked. No order of revocation under this
2 subsection shall become final until the licensee has exhausted its right to judicial review
3 of such order under section 402(b)(5) of this title.

4 “(4) TREATMENT OF REVENUES. – There is established a Spectrum License User
5 Fee account in the Treasury of the United States. All proceeds obtained pursuant to the
6 regulations required by this subsection shall be deposited in such account and shall be
7 credited as offsetting receipts.”

8 **SECTION 3. AUTHORITY TO AUCTION LICENSES FOR DOMESTIC SATELLITE SERVICES.**

9 Section 309(j) of the Communications Act of 1934 is amended by adding the following
10 new subsections at the end thereof:

11 “(17) Notwithstanding any other provision of law, the Commission shall use competitive
12 bidding under this subsection to assign any license, construction permit, reservation, or
13 similar authorization or modification thereof, that it may be used solely or predominantly
14 for domestic satellite communications services, including satellite-based television or
15 radio services. A service is defined to be predominantly for domestic satellite
16 communications services if the majority of customers that may be served are located
17 within the geographic boundaries of the United States. The Commission may, however,
18 use an alternative approach to assignment of such licenses or similar authorities if it finds
19 that such an alternative to competitive bidding would serve the public interest,
20 convenience, and necessity. This paragraph shall be effective on the date of its
21 enactment and shall apply to all Commission assignments or reservations of spectrum for
22 domestic satellite services, including, but not limited to, all assignments or reservations

1 for satellite-based television or radio services as of the effective date.

2 **SECTION 4. PUBLIC SAFETY INTEROPERABLE COMMUNICATIONS GRANTS.**

3 Notwithstanding section 3006(a)(2) of Pub. L. No. 109-171 (47 U.S.C. § 309 note), sums
4 made available to administer the Public Safety Interoperable Communications Grant Program
5 shall remain available until expended; and provided further that, the Assistant Secretary may
6 extend, on a case-by-case basis, the period of performance for any investment approved under
7 the Program, provided however that such extension is not to exceed a period of two years.