



February 28, 2002

The Honorable Richard B. Cheney
President of the Senate
Washington, DC 20510-0010

Dear Mr. President:

Enclosed is a draft bill to amend the Communications Act of 1934 to authorize the Federal Communications Commission to establish an annual lease fee for use of analog television licenses by commercial broadcasters beginning in 2007. The proposal, which is included in the President's Fiscal Year (FY) 2003 Budget, is designed to facilitate the clearing of analog television broadcast spectrum and to promote efficient use of this spectrum.

Any law that would reduce receipts is subject to the pay-as-you-go requirements of the Balanced Budget and Emergency Deficit Control Act. The Office of Management and Budget (OMB) advises that preliminary scoring indicates that this proposal will increase receipts by \$500 million in FY 2007 and by \$2.2 billion from FY 2008-2012, though final scoring of enacted legislation may differ from these estimates.

We have been advised by OMB that enactment of this legislative proposal would be in accord with the program of the President.

Sincerely,

A handwritten signature in dark ink, reading "Theodore W. Kassinger", is positioned above the typed name.

Theodore W. Kassinger

Enclosure

Identical Letters to be Sent to:

The Honorable Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515-6501

The Honorable Thomas Daschle
Majority Leader
United States Senate
Washington, DC 20510-1601

The Honorable Richard Armey
Majority Leader
House of Representatives
Washington, DC 20515-6503

The Honorable Trent Lott
Minority Leader
United States Senate
Washington, DC 20510-7010

The Honorable Richard A. Gephardt
Minority Leader
House of Representatives
Washington, DC 20515-6502

The Honorable Ernest F. Hollings
Chairman, Committee on Commerce,
Science and Transportation
United States Senate
Washington, DC 20510-6125

The Honorable John McCain
Committee on Commerce,
Science and Transportation
United States Senate
Washington, DC 20510-6125

The Honorable W.J. "Billy" Tauzin
Chairman, Committee on Energy and Commerce
House of Representatives
Washington, DC 20515-6115

The Honorable John D. Dingell
Committee on Energy and Commerce
House of Representatives
Washington, DC 20515-6115

A BILL

To amend the Communications Act of 1934 to assess certain annual lease fees.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Analog Spectrum Lease Fee Act”.

5 **SEC. 2. ESTABLISHMENT OF AN ANALOG SPECTRUM LEASE FEE TO** 6 **ENCOURAGE A TIMELY RETURN AND EFFICIENT USE OF THE SPECTRUM.**

7 The Communications Act of 1934 is amended:

8 (a) by inserting after section 336 (47 U.S.C. 336) the following new section:

9 **“SEC. 336A. ANALOG TELEVISION SERVICE LICENSE LEASE FEE.**

11 **“(a) ESTABLISHMENT OF FEE.** (1) As of January 1, 2007, and every year
12 thereafter, the Commission is authorized to assess and collect annual lease fees on
13 construction permits or television station licenses used by commercial television
14 broadcasters for analog television service based on rates established by the Commission.
15 In calendar year 2007, the aggregate amount of such fees shall be \$500,000,000.

16 **“(2)** Payment of all fees is due to the Commission at the beginning of the
17 year for which the commercial broadcaster has a construction permit or station
18 license for analog television service, beginning in calendar year 2007.

19 **“(3)** The Commission shall develop rates that reasonably can be expected
20 to result in collection of the aggregate fee amount of \$500,000,000 in calendar
21 year 2007, and shall establish and apportion the fee for commercial broadcasters
22 based upon the population covered by a broadcaster’s signal, as determined by the
23 Grade B contour as defined in 47 C.F.R. 73.683(a). The rates so established and
24 apportioned in calendar year 2007 shall remain in effect for subsequent years until
25 all permits and licenses for analog television service have been returned.

26 **“(b) RETURN OF LICENSE.** A commercial broadcaster that returns its construction
27 permit or station license for analog television service to the Commission, pursuant to
28 47 U.S.C. 309, prior to the first day of the year in which the fee is due shall not be
29 required to pay the fee. Commercial broadcasters that pay for their construction permits
30 or station licenses for analog television service at the beginning of the year and return the
31 construction permits or station licenses to the Commission during the course of that year
32 shall be entitled to receive, and the Commission shall pay from the budget accounts that

1 received the payments from such broadcasters, a refund prorated according to the amount
2 of time in that year for which the commercial broadcaster no longer holds the permit or
3 license.

4 “(c) **PUBLIC INTEREST EXCEPTION.** The Commission may waive, reduce, or
5 defer payment of a fee in any specific instance for a good cause shown, where such action
6 would promote the public interest. Such public interest determination should take into
7 account whether the commercial broadcaster obtained its construction permit or station
8 license for analog television service via competitive bidding.

9 “(d) **PENALTIES.** The Commission shall prescribe by regulation an additional
10 charge which shall be assessed as a penalty for late payment of fees. Such penalty shall
11 be 25 percent of the amount of the fee which was not paid in a timely manner.

12 “(e) **TREATMENT OF REVENUES.** (1) Except as provided in subparagraph (2), all
13 proceeds obtained pursuant to the regulations required by this subsection shall be
14 deposited in the general fund of the Treasury as an offsetting receipt.

15 “(2) Notwithstanding subparagraph (1), for fiscal year 2007 only, the
16 Commission shall retain as offsetting receipts an amount not to exceed \$2,000,000
17 from such proceeds for the costs of developing and implementing the program
18 required by this section. Such amounts may be transferred to the salaries and
19 expenses account of the Commission, and shall be available until expended
20 without further appropriation, subject to the terms and conditions of the receiving
21 appropriations account.”;

22 (b) in section 309(j)(14)(B), by adding “has paid to the Commission any fee
23 required under regulations implementing section 336A of this title and” after the words
24 “The Commission shall extend the date described in subparagraph (A) for any station
25 that”; and

26 (c) in section 337(e)(1), by replacing the words “the digital television service
27 transition period terminates, as determined by the Commission” with “its license
28 expires”.

SECTIONAL ANALYSIS

This legislative proposal implements the Analog Spectrum Lease Fee proposal in the President's FY 2003 Budget to facilitate clearing of the analog television broadcast spectrum and to promote efficient use of this spectrum. The proposal authorizes the Federal Communications Commission (FCC) to establish a lease fee on the use of analog television spectrum by commercial television broadcasters.

Section 1 of the proposal provides that the Act may be cited as the "Analog Spectrum Lease Fee Act."

Section 2(a) amends the Communications Act of 1934 to add a new section 336A to establish the analog television service license lease fee. Paragraph (a)(1) of new section 336A requires the FCC to promulgate a rulemaking to apportion the aggregate fee amount among commercial broadcasters. For calendar year 2007, the FCC shall ensure that the aggregate amount of such fees will be \$500 million. Paragraph (a)(2) provides that payment of the fees will be first due in 2007 and requires that the fees be paid at the beginning of each calendar year, as of 2007. Paragraph (a)(3) requires the FCC to develop rates that reasonably can be expected to generate \$500 million in fee collections in 2007 and requires the FCC to apportion the fee based on the population covered by a commercial broadcaster's signal, as determined by the Grade B contour as defined by regulation. These rates will remain in effect until all construction permits or station licenses for analog television service have been returned.

Subsection (b) of new section 336A provides that no fee is due if a broadcaster returns its construction permit or station license for analog television service before the first day of the year in which the fee is due. If a construction permit or station license is returned after the first day of the year in which the fee is due, then the FCC shall pay the broadcaster a prorated refund of its fee payment for that year. Subsection (c) provides discretion to the FCC to waive, reduce, or defer payment of a fee in any specific instance for good cause, where such action would promote the public interest, including whether a broadcaster had obtained its construction permit or station license by competitive bidding. In the event of a late payment of a fee, subsection (d) requires the FCC to provide by regulation for the assessment of a penalty in the amount of 25 percent of the amount the fee that was not paid in a timely manner.

Subsection (e) of new section 336A provides for deposit of the proceeds of the fee in the Treasury, with the FCC able to retain up \$2 million of the fee proceeds in fiscal year 2007 to cover the costs of developing and implementing the fee program.

Sections 2(b) and (c) of the proposal amend the Communications Act to clarify that payment of the analog spectrum lease fee is a necessary condition for continuing to use existing analog broadcast licenses after January 1, 2007.