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**CAN-SPAM ACT OF 2003**

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March 15, 2012

[As Amended Through P.L. 110–5, Enacted February 15, 2007]

[Checking P.L. 110–283, Enacted July 23, 2008]

### **CAN-SPAM ACT OF 2003**

AN ACT To regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet.

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

#### **SECTION 1. [15 U.S.C. 7701 note] SHORT TITLE.**

This Act may be cited as the “Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003”, or the “CAN-SPAM Act of 2003”.

#### **SEC. 2. CONGRESSIONAL FINDINGS AND POLICY.**

(a) FINDINGS.—The Congress finds the following:

(1) Electronic mail has become an extremely important and popular means of communication, relied on by millions of Americans on a daily basis for personal and commercial purposes. Its low cost and global reach make it extremely convenient and efficient, and offer unique opportunities for the development and growth of frictionless commerce.

(2) The convenience and efficiency of electronic mail are threatened by the extremely rapid growth in the volume of unsolicited commercial electronic mail. Unsolicited commercial electronic mail is currently estimated to account for over half of all electronic mail traffic, up from an estimated 7 percent in 2001, and the volume continues to rise. Most of these messages are fraudulent or deceptive in one or more respects.

(3) The receipt of unsolicited commercial electronic mail may result in costs to recipients who cannot refuse to accept such mail and who incur costs for the storage of such mail, or for the time spent accessing, reviewing, and discarding such mail, or for both.

(4) The receipt of a large number of unwanted messages also decreases the convenience of electronic mail and creates a risk that wanted electronic mail messages, both commercial and noncommercial, will be lost, overlooked, or discarded amidst the larger volume of unwanted messages, thus reducing the reliability and usefulness of electronic mail to the recipient.

(5) Some commercial electronic mail contains material that many recipients may consider vulgar or pornographic in nature.

(6) The growth in unsolicited commercial electronic mail imposes significant monetary costs on providers of Internet ac-

cess services, businesses, and educational and nonprofit institutions that carry and receive such mail, as there is a finite volume of mail that such providers, businesses, and institutions can handle without further investment in infrastructure.

(7) Many senders of unsolicited commercial electronic mail purposefully disguise the source of such mail.

(8) Many senders of unsolicited commercial electronic mail purposefully include misleading information in the messages' subject lines in order to induce the recipients to view the messages.

(9) While some senders of commercial electronic mail messages provide simple and reliable ways for recipients to reject (or "opt-out" of) receipt of commercial electronic mail from such senders in the future, other senders provide no such "opt-out" mechanism, or refuse to honor the requests of recipients not to receive electronic mail from such senders in the future, or both.

(10) Many senders of bulk unsolicited commercial electronic mail use computer programs to gather large numbers of electronic mail addresses on an automated basis from Internet websites or online services where users must post their addresses in order to make full use of the website or service.

(11) Many States have enacted legislation intended to regulate or reduce unsolicited commercial electronic mail, but these statutes impose different standards and requirements. As a result, they do not appear to have been successful in addressing the problems associated with unsolicited commercial electronic mail, in part because, since an electronic mail address does not specify a geographic location, it can be extremely difficult for law-abiding businesses to know with which of these disparate statutes they are required to comply.

(12) The problems associated with the rapid growth and abuse of unsolicited commercial electronic mail cannot be solved by Federal legislation alone. The development and adoption of technological approaches and the pursuit of cooperative efforts with other countries will be necessary as well.

(b) CONGRESSIONAL DETERMINATION OF PUBLIC POLICY.—On the basis of the findings in subsection (a), the Congress determines that—

(1) there is a substantial government interest in regulation of commercial electronic mail on a nationwide basis;

(2) senders of commercial electronic mail should not mislead recipients as to the source or content of such mail; and

(3) recipients of commercial electronic mail have a right to decline to receive additional commercial electronic mail from the same source.

### SEC. 3. [15 U.S.C. 7702] DEFINITIONS.

In this Act:

(1) AFFIRMATIVE CONSENT.—The term "affirmative consent", when used with respect to a commercial electronic mail message, means that—

(A) the recipient expressly consented to receive the message, either in response to a clear and conspicuous re-

quest for such consent or at the recipient's own initiative; and

(B) if the message is from a party other than the party to which the recipient communicated such consent, the recipient was given clear and conspicuous notice at the time the consent was communicated that the recipient's electronic mail address could be transferred to such other party for the purpose of initiating commercial electronic mail messages.

(2) COMMERCIAL ELECTRONIC MAIL MESSAGE.—

(A) IN GENERAL.—The term “commercial electronic mail message” means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).

(B) TRANSACTIONAL OR RELATIONSHIP MESSAGES.—The term “commercial electronic mail message” does not include a transactional or relationship message.

(C) REGULATIONS REGARDING PRIMARY PURPOSE.—Not later than 12 months after the date of the enactment of this Act, the Commission shall issue regulations pursuant to section 13 defining the relevant criteria to facilitate the determination of the primary purpose of an electronic mail message.

(D) REFERENCE TO COMPANY OR WEBSITE.—The inclusion of a reference to a commercial entity or a link to the website of a commercial entity in an electronic mail message does not, by itself, cause such message to be treated as a commercial electronic mail message for purposes of this Act if the contents or circumstances of the message indicate a primary purpose other than commercial advertisement or promotion of a commercial product or service.

(3) COMMISSION.—The term “Commission” means the Federal Trade Commission.

(4) DOMAIN NAME.—The term “domain name” means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.

(5) ELECTRONIC MAIL ADDRESS.—The term “electronic mail address” means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the “local part”) and a reference to an Internet domain (commonly referred to as the “domain part”), whether or not displayed, to which an electronic mail message can be sent or delivered.

(6) ELECTRONIC MAIL MESSAGE.—The term “electronic mail message” means a message sent to a unique electronic mail address.

(7) FTC ACT.—The term “FTC Act” means the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(8) HEADER INFORMATION.—The term “header information” means the source, destination, and routing information at-

tached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message.

(9) INITIATE.—The term “initiate”, when used with respect to a commercial electronic mail message, means to originate or transmit such message or to procure the origination or transmission of such message, but shall not include actions that constitute routine conveyance of such message. For purposes of this paragraph, more than one person may be considered to have initiated a message.

(10) INTERNET.—The term “Internet” has the meaning given that term in the Internet Tax Freedom Act (47 U.S.C. 151 nt).

(11) INTERNET ACCESS SERVICE.—The term “Internet access service” has the meaning given that term in section 231(e)(4) of the Communications Act of 1934 (47 U.S.C. 231(e)(4)).

(12) PROCURE.—The term “procure”, when used with respect to the initiation of a commercial electronic mail message, means intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one’s behalf.

(13) PROTECTED COMPUTER.—The term “protected computer” has the meaning given that term in section 1030(e)(2)(B) of title 18, United States Code.

(14) RECIPIENT.—The term “recipient”, when used with respect to a commercial electronic mail message, means an authorized user of the electronic mail address to which the message was sent or delivered. If a recipient of a commercial electronic mail message has one or more electronic mail addresses in addition to the address to which the message was sent or delivered, the recipient shall be treated as a separate recipient with respect to each such address. If an electronic mail address is reassigned to a new user, the new user shall not be treated as a recipient of any commercial electronic mail message sent or delivered to that address before it was reassigned.

(15) ROUTINE CONVEYANCE.—The term “routine conveyance” means the transmission, routing, relaying, handling, or storing, through an automatic technical process, of an electronic mail message for which another person has identified the recipients or provided the recipient addresses.

(16) SENDER.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term “sender”, when used with respect to a commercial electronic mail message, means a person who initiates such a message and whose product, service, or Internet web site is advertised or promoted by the message.

(B) SEPARATE LINES OF BUSINESS OR DIVISIONS.—If an entity operates through separate lines of business or divisions and holds itself out to the recipient throughout the message as that particular line of business or division rather than as the entity of which such line of business or division is a part, then the line of business or the division

shall be treated as the sender of such message for purposes of this Act.

(17) TRANSACTIONAL OR RELATIONSHIP MESSAGE.—

(A) IN GENERAL.—The term “transactional or relationship message” means an electronic mail message the primary purpose of which is—

(i) to facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;

(ii) to provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient;

(iii) to provide—

(I) notification concerning a change in the terms or features of;

(II) notification of a change in the recipient’s standing or status with respect to; or

(III) at regular periodic intervals, account balance information or other type of account statement with respect to,

a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender;

(iv) to provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled; or

(v) to deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.

(B) MODIFICATION OF DEFINITION.—The Commission by regulation pursuant to section 13 may modify the definition in subparagraph (A) to expand or contract the categories of messages that are treated as transactional or relationship messages for purposes of this Act to the extent that such modification is necessary to accommodate changes in electronic mail technology or practices and accomplish the purposes of this Act.

**SEC. 4. [15 U.S.C. 7703] PROHIBITION AGAINST PREDATORY AND ABUSIVE COMMERCIAL E-MAIL.**

(a) \* \* \*

(b) [28 U.S.C. 994 note] UNITED STATES SENTENCING COMMISSION.—

(1) DIRECTIVE.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the sentencing guidelines and policy statements to provide appropriate penalties for violations of section 1037 of title 18, United States Code, as added

by this section, and other offenses that may be facilitated by the sending of large quantities of unsolicited electronic mail.

(2) REQUIREMENTS.—In carrying out this subsection, the Sentencing Commission shall consider providing sentencing enhancements for—

(A) those convicted under section 1037 of title 18, United States Code, who—

(i) obtained electronic mail addresses through improper means, including—

(I) harvesting electronic mail addresses of the users of a website, proprietary service, or other online public forum operated by another person, without the authorization of such person; and

(II) randomly generating electronic mail addresses by computer; or

(ii) knew that the commercial electronic mail messages involved in the offense contained or advertised an Internet domain for which the registrant of the domain had provided false registration information; and

(B) those convicted of other offenses, including offenses involving fraud, identity theft, obscenity, child pornography, and the sexual exploitation of children, if such offenses involved the sending of large quantities of electronic mail.

(c) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) Spam has become the method of choice for those who distribute pornography, perpetrate fraudulent schemes, and introduce viruses, worms, and Trojan horses into personal and business computer systems; and

(2) the Department of Justice should use all existing law enforcement tools to investigate and prosecute those who send bulk commercial e-mail to facilitate the commission of Federal crimes, including the tools contained in chapters 47 and 63 of title 18, United States Code (relating to fraud and false statements); chapter 71 of title 18, United States Code (relating to obscenity); chapter 110 of title 18, United States Code (relating to the sexual exploitation of children); and chapter 95 of title 18, United States Code (relating to racketeering), as appropriate.

**SEC. 5. [15 U.S.C. 7704] OTHER PROTECTIONS FOR USERS OF COMMERCIAL ELECTRONIC MAIL.**

(a) REQUIREMENTS FOR TRANSMISSION OF MESSAGES.—

(1) PROHIBITION OF FALSE OR MISLEADING TRANSMISSION INFORMATION.—It is unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message, or a transactional or relationship message, that contains, or is accompanied by, header information that is materially false or materially misleading. For purposes of this paragraph—

(A) header information that is technically accurate but includes an originating electronic mail address, domain name, or Internet Protocol address the access to which for purposes of initiating the message was obtained by means



of false or fraudulent pretenses or representations shall be considered materially misleading;

(B) a “from” line (the line identifying or purporting to identify a person initiating the message) that accurately identifies any person who initiated the message shall not be considered materially false or materially misleading; and

(C) header information shall be considered materially misleading if it fails to identify accurately a protected computer used to initiate the message because the person initiating the message knowingly uses another protected computer to relay or retransmit the message for purposes of disguising its origin.

(2) PROHIBITION OF DECEPTIVE SUBJECT HEADINGS.—It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message if such person has actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that a subject heading of the message would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message (consistent with the criteria used in enforcement of section 5 of the Federal Trade Commission Act (15 U.S.C. 45)).

(3) INCLUSION OF RETURN ADDRESS OR COMPARABLE MECHANISM IN COMMERCIAL ELECTRONIC MAIL.—

(A) IN GENERAL.—It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message that does not contain a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that—

(i) a recipient may use to submit, in a manner specified in the message, a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

(ii) remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message.

(B) MORE DETAILED OPTIONS POSSIBLE.—The person initiating a commercial electronic mail message may comply with subparagraph (A)(i) by providing the recipient a list or menu from which the recipient may choose the specific types of commercial electronic mail messages the recipient wants to receive or does not want to receive from the sender, if the list or menu includes an option under which the recipient may choose not to receive any commercial electronic mail messages from the sender.

(C) TEMPORARY INABILITY TO RECEIVE MESSAGES OR PROCESS REQUESTS.—A return electronic mail address or other mechanism does not fail to satisfy the requirements of subparagraph (A) if it is unexpectedly and temporarily unable to receive messages or process requests due to a

technical problem beyond the control of the sender if the problem is corrected within a reasonable time period.

(4) PROHIBITION OF TRANSMISSION OF COMMERCIAL ELECTRONIC MAIL AFTER OBJECTION.—

(A) IN GENERAL.—If a recipient makes a request using a mechanism provided pursuant to paragraph (3) not to receive some or any commercial electronic mail messages from such sender, then it is unlawful—

(i) for the sender to initiate the transmission to the recipient, more than 10 business days after the receipt of such request, of a commercial electronic mail message that falls within the scope of the request;

(ii) for any person acting on behalf of the sender to initiate the transmission to the recipient, more than 10 business days after the receipt of such request, of a commercial electronic mail message with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such message falls within the scope of the request;

(iii) for any person acting on behalf of the sender to assist in initiating the transmission to the recipient, through the provision or selection of addresses to which the message will be sent, of a commercial electronic mail message with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such message would violate clause (i) or (ii); or

(iv) for the sender, or any other person who knows that the recipient has made such a request, to sell, lease, exchange, or otherwise transfer or release the electronic mail address of the recipient (including through any transaction or other transfer involving mailing lists bearing the electronic mail address of the recipient) for any purpose other than compliance with this Act or other provision of law.

(B) SUBSEQUENT AFFIRMATIVE CONSENT.—A prohibition in subparagraph (A) does not apply if there is affirmative consent by the recipient subsequent to the request under subparagraph (A).

(5) INCLUSION OF IDENTIFIER, OPT-OUT, AND PHYSICAL ADDRESS IN COMMERCIAL ELECTRONIC MAIL.—(A) It is unlawful for any person to initiate the transmission of any commercial electronic mail message to a protected computer unless the message provides—

(i) clear and conspicuous identification that the message is an advertisement or solicitation;

(ii) clear and conspicuous notice of the opportunity under paragraph (3) to decline to receive further commercial electronic mail messages from the sender; and

(iii) a valid physical postal address of the sender.

(B) Subparagraph (A)(i) does not apply to the transmission of a commercial electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

(6) **MATERIALLY.**—For purposes of paragraph (1), the term “materially”, when used with respect to false or misleading header information, includes the alteration or concealment of header information in a manner that would impair the ability of an Internet access service processing the message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to a person who initiated the electronic mail message or to investigate the alleged violation, or the ability of a recipient of the message to respond to a person who initiated the electronic message.

(b) **AGGRAVATED VIOLATIONS RELATING TO COMMERCIAL ELECTRONIC MAIL.**—

(1) **ADDRESS HARVESTING AND DICTIONARY ATTACKS.**—

(A) **IN GENERAL.**—It is unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message that is unlawful under subsection (a), or to assist in the origination of such message through the provision or selection of addresses to which the message will be transmitted, if such person had actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that—

(i) the electronic mail address of the recipient was obtained using an automated means from an Internet website or proprietary online service operated by another person, and such website or online service included, at the time the address was obtained, a notice stating that the operator of such website or online service will not give, sell, or otherwise transfer addresses maintained by such website or online service to any other party for the purposes of initiating, or enabling others to initiate, electronic mail messages; or

(ii) the electronic mail address of the recipient was obtained using an automated means that generates possible electronic mail addresses by combining names, letters, or numbers into numerous permutations.

(B) **DISCLAIMER.**—Nothing in this paragraph creates an ownership or proprietary interest in such electronic mail addresses.

(2) **AUTOMATED CREATION OF MULTIPLE ELECTRONIC MAIL ACCOUNTS.**—It is unlawful for any person to use scripts or other automated means to register for multiple electronic mail accounts or online user accounts from which to transmit to a protected computer, or enable another person to transmit to a protected computer, a commercial electronic mail message that is unlawful under subsection (a).

(3) **RELAY OR RETRANSMISSION THROUGH UNAUTHORIZED ACCESS.**—It is unlawful for any person knowingly to relay or retransmit a commercial electronic mail message that is unlawful under subsection (a) from a protected computer or computer network that such person has accessed without authorization.

(c) SUPPLEMENTARY RULEMAKING AUTHORITY.—The Commission shall by regulation, pursuant to section 13—

(1) modify the 10-business-day period under subsection (a)(4)(A) or subsection (a)(4)(B), or both, if the Commission determines that a different period would be more reasonable after taking into account—

(A) the purposes of subsection (a);

(B) the interests of recipients of commercial electronic mail; and

(C) the burdens imposed on senders of lawful commercial electronic mail; and

(2) specify additional activities or practices to which subsection (b) applies if the Commission determines that those activities or practices are contributing substantially to the proliferation of commercial electronic mail messages that are unlawful under subsection (a).

(d) REQUIREMENT TO PLACE WARNING LABELS ON COMMERCIAL ELECTRONIC MAIL CONTAINING SEXUALLY ORIENTED MATERIAL.—

(1) IN GENERAL.—No person may initiate in or affecting interstate commerce the transmission, to a protected computer, of any commercial electronic mail message that includes sexually oriented material and—

(A) fail to include in subject heading for the electronic mail message the marks or notices prescribed by the Commission under this subsection; or

(B) fail to provide that the matter in the message that is initially viewable to the recipient, when the message is opened by any recipient and absent any further actions by the recipient, includes only—

(i) to the extent required or authorized pursuant to paragraph (2), any such marks or notices;

(ii) the information required to be included in the message pursuant to subsection (a)(5); and

(iii) instructions on how to access, or a mechanism to access, the sexually oriented material.

(2) PRIOR AFFIRMATIVE CONSENT.—Paragraph (1) does not apply to the transmission of an electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

(3) PRESCRIPTION OF MARKS AND NOTICES.—Not later than 120 days after the date of the enactment of this Act, the Commission in consultation with the Attorney General shall prescribe clearly identifiable marks or notices to be included in or associated with commercial electronic mail that contains sexually oriented material, in order to inform the recipient of that fact and to facilitate filtering of such electronic mail. The Commission shall publish in the Federal Register and provide notice to the public of the marks or notices prescribed under this paragraph.

(4) DEFINITION.—In this subsection, the term “sexually oriented material” means any material that depicts sexually explicit conduct (as that term is defined in section 2256 of title 18, United States Code), unless the depiction constitutes a

small and insignificant part of the whole, the remainder of which is not primarily devoted to sexual matters.

(5) PENALTY.—Whoever knowingly violates paragraph (1) shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

**SEC. 6. [15 U.S.C. 7705] BUSINESSES KNOWINGLY PROMOTED BY ELECTRONIC MAIL WITH FALSE OR MISLEADING TRANSMISSION INFORMATION.**

(a) IN GENERAL.—It is unlawful for a person to promote, or allow the promotion of, that person's trade or business, or goods, products, property, or services sold, offered for sale, leased or offered for lease, or otherwise made available through that trade or business, in a commercial electronic mail message the transmission of which is in violation of section 5(a)(1) if that person—

(1) knows, or should have known in the ordinary course of that person's trade or business, that the goods, products, property, or services sold, offered for sale, leased or offered for lease, or otherwise made available through that trade or business were being promoted in such a message;

(2) received or expected to receive an economic benefit from such promotion; and

(3) took no reasonable action—

(A) to prevent the transmission; or

(B) to detect the transmission and report it to the Commission.

(b) LIMITED ENFORCEMENT AGAINST THIRD PARTIES.—

(1) IN GENERAL.—Except as provided in paragraph (2), a person (hereinafter referred to as the "third party") that provides goods, products, property, or services to another person that violates subsection (a) shall not be held liable for such violation.

(2) EXCEPTION.—Liability for a violation of subsection (a) shall be imputed to a third party that provides goods, products, property, or services to another person that violates subsection (a) if that third party—

(A) owns, or has a greater than 50 percent ownership or economic interest in, the trade or business of the person that violated subsection (a); or

(B)(i) has actual knowledge that goods, products, property, or services are promoted in a commercial electronic mail message the transmission of which is in violation of section 5(a)(1); and

(ii) receives, or expects to receive, an economic benefit from such promotion.

(c) EXCLUSIVE ENFORCEMENT BY FTC.—Subsections (f) and (g) of section 7 do not apply to violations of this section.

(d) SAVINGS PROVISION.—Except as provided in section 7(f)(8), nothing in this section may be construed to limit or prevent any action that may be taken under this Act with respect to any violation of any other section of this Act.

**SEC. 7. [15 U.S.C. 7706] ENFORCEMENT GENERALLY.**

(a) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR PRACTICE.—Except as provided in subsection (b), this Act shall be enforced by the

Commission as if the violation of this Act were an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) ENFORCEMENT BY CERTAIN OTHER AGENCIES.—Compliance with this Act shall be enforced—

(1) under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 and 611), and bank holding companies, by the Board;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Director of the Office of Thrift Supervision;

(2) under the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the Board of the National Credit Union Administration with respect to any Federally insured credit union;

(3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) by the Securities and Exchange Commission with respect to any broker or dealer;

(4) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) by the Securities and Exchange Commission with respect to investment companies;

(5) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) by the Securities and Exchange Commission with respect to investment advisers registered under that Act;

(6) under State insurance law in the case of any person engaged in providing insurance, by the applicable State insurance authority of the State in which the person is domiciled, subject to section 104 of the Gramm-Bliley-Leach Act<sup>1</sup> (15 U.S.C. 6701), except that in any State in which the State insurance authority elects not to exercise this power, the enforcement authority pursuant to this Act shall be exercised by the Commission in accordance with subsection (a);

(7) under part A of subtitle VII of title 49, United States Code, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;

(8) under the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act (7

<sup>1</sup>So in law. The reference in paragraph (6) to the Gramm-Bliley-Leach Act probably should be referenced to Gramm-Leach-Bliley Act.

U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act;

(9) under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association; and

(10) under the Communications Act of 1934 (47 U.S.C. 151 et seq.) by the Federal Communications Commission with respect to any person subject to the provisions of that Act.

(c) EXERCISE OF CERTAIN POWERS.—For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of this Act is deemed to be a violation of a Federal Trade Commission trade regulation rule. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.

(d) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any entity that violates any provision of that subtitle is subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of that subtitle.

(e) AVAILABILITY OF CEASE-AND-DESIST ORDERS AND INJUNCTIVE RELIEF WITHOUT SHOWING OF KNOWLEDGE.—Notwithstanding any other provision of this Act, in any proceeding or action pursuant to subsection (a), (b), (c), or (d) of this section to enforce compliance, through an order to cease and desist or an injunction, with section 5(a)(1)(C), section 5(a)(2), clause (ii), (iii), or (iv) of section 5(a)(4)(A), section 5(b)(1)(A), or section 5(b)(3), neither the Commission nor the Federal Communications Commission shall be required to allege or prove the state of mind required by such section or subparagraph.

(f) ENFORCEMENT BY STATES.—

(1) CIVIL ACTION.—In any case in which the attorney general of a State, or an official or agency of a State, has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person who violates paragraph (1) or (2) of section 5(a), who violates section 5(d), or who engages in a pattern or practice that violates paragraph (3), (4), or (5) of section 5(a), of this Act, the attorney general, official, or agency of the State, as *parens patriae*, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction—

(A) to enjoin further violation of section 5 of this Act by the defendant; or

(B) to obtain damages on behalf of residents of the State, in an amount equal to the greater of—

- (i) the actual monetary loss suffered by such residents; or
- (ii) the amount determined under paragraph (3).

(2) AVAILABILITY OF INJUNCTIVE RELIEF WITHOUT SHOWING OF KNOWLEDGE.—Notwithstanding any other provision of this Act, in a civil action under paragraph (1)(A) of this subsection, the attorney general, official, or agency of the State shall not be required to allege or prove the state of mind required by section 5(a)(1)(C), section 5(a)(2), clause (ii), (iii), or (iv) of section 5(a)(4)(A), section 5(b)(1)(A), or section 5(b)(3).

(3) STATUTORY DAMAGES.—

(A) IN GENERAL.—For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of violations (with each separately addressed unlawful message received by or addressed to such residents treated as a separate violation) by up to \$250.

(B) LIMITATION.—For any violation of section 5 (other than section 5(a)(1)), the amount determined under subparagraph (A) may not exceed \$2,000,000.

(C) AGGRAVATED DAMAGES.—The court may increase a damage award to an amount equal to not more than three times the amount otherwise available under this paragraph if—

- (i) the court determines that the defendant committed the violation willfully and knowingly; or
- (ii) the defendant's unlawful activity included one or more of the aggravating violations set forth in section 5(b).

(D) REDUCTION OF DAMAGES.—In assessing damages under subparagraph (A), the court may consider whether—

- (i) the defendant has established and implemented, with due care, commercially reasonable practices and procedures designed to effectively prevent such violations; or
- (ii) the violation occurred despite commercially reasonable efforts to maintain compliance the practices and procedures to which reference is made in clause (i).

(4) ATTORNEY FEES.—In the case of any successful action under paragraph (1), the court, in its discretion, may award the costs of the action and reasonable attorney fees to the State.

(5) RIGHTS OF FEDERAL REGULATORS.—The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission or the appropriate Federal regulator determined under subsection (b) and provide the Commission or appropriate Federal regulator with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Federal Trade Commission or appropriate Federal regulator shall have the right—



- (A) to intervene in the action;
  - (B) upon so intervening, to be heard on all matters arising therein;
  - (C) to remove the action to the appropriate United States district court; and
  - (D) to file petitions for appeal.
- (6) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this Act shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—
- (A) conduct investigations;
  - (B) administer oaths or affirmations; or
  - (C) compel the attendance of witnesses or the production of documentary and other evidence.
- (7) VENUE; SERVICE OF PROCESS.—
- (A) VENUE.—Any action brought under paragraph (1) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.
- (B) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served in any district in which the defendant—
- (i) is an inhabitant; or
  - (ii) maintains a physical place of business.
- (8) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission, or other appropriate Federal agency under subsection (b), has instituted a civil action or an administrative action for violation of this Act, no State attorney general, or official or agency of a State, may bring an action under this subsection during the pendency of that action against any defendant named in the complaint of the Commission or the other agency for any violation of this Act alleged in the complaint.
- (9) REQUISITE SCIENTER FOR CERTAIN CIVIL ACTIONS.—Except as provided in section 5(a)(1)(C), section 5(a)(2), clause (ii), (iii), or (iv) of section 5(a)(4)(A), section 5(b)(1)(A), or section 5(b)(3), in a civil action brought by a State attorney general, or an official or agency of a State, to recover monetary damages for a violation of this Act, the court shall not grant the relief sought unless the attorney general, official, or agency establishes that the defendant acted with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, of the act or omission that constitutes the violation.
- (g) ACTION BY PROVIDER OF INTERNET ACCESS SERVICE.—
- (1) ACTION AUTHORIZED.—A provider of Internet access service adversely affected by a violation of section 5(a)(1), 5(b), or 5(d), or a pattern or practice that violates paragraph (2), (3), (4), or (5) of section 5(a), may bring a civil action in any district court of the United States with jurisdiction over the defendant—
- (A) to enjoin further violation by the defendant; or

- (B) to recover damages in an amount equal to the greater of—
- (i) actual monetary loss incurred by the provider of Internet access service as a result of such violation;
  - or
  - (ii) the amount determined under paragraph (3).
- (2) SPECIAL DEFINITION OF “PROCURE”.—In any action brought under paragraph (1), this Act shall be applied as if the definition of the term “procure” in section 3(12) contained, after “behalf” the words “with actual knowledge, or by consciously avoiding knowing, whether such person is engaging, or will engage, in a pattern or practice that violates this Act”.
- (3) STATUTORY DAMAGES.—
- (A) IN GENERAL.—For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of violations (with each separately addressed unlawful message that is transmitted or attempted to be transmitted over the facilities of the provider of Internet access service, or that is transmitted or attempted to be transmitted to an electronic mail address obtained from the provider of Internet access service in violation of section 5(b)(1)(A)(i), treated as a separate violation) by—
- (i) up to \$100, in the case of a violation of section 5(a)(1); or
  - (ii) up to \$25, in the case of any other violation of section 5.
- (B) LIMITATION.—For any violation of section 5 (other than section 5(a)(1)), the amount determined under subparagraph (A) may not exceed \$1,000,000.
- (C) AGGRAVATED DAMAGES.—The court may increase a damage award to an amount equal to not more than three times the amount otherwise available under this paragraph if—
- (i) the court determines that the defendant committed the violation willfully and knowingly; or
  - (ii) the defendant’s unlawful activity included one or more of the aggravated violations set forth in section 5(b).
- (D) REDUCTION OF DAMAGES.—In assessing damages under subparagraph (A), the court may consider whether—
- (i) the defendant has established and implemented, with due care, commercially reasonable practices and procedures designed to effectively prevent such violations; or
  - (ii) the violation occurred despite commercially reasonable efforts to maintain compliance with the practices and procedures to which reference is made in clause (i).
- (4) ATTORNEY FEES.—In any action brought pursuant to paragraph (1), the court may, in its discretion, require an undertaking for the payment of the costs of such action, and assess reasonable costs, including reasonable attorneys’ fees, against any party.

**SEC. 8. [15 U.S.C. 7707] EFFECT ON OTHER LAWS.**

(a) FEDERAL LAW.—(1) Nothing in this Act shall be construed to impair the enforcement of section 223 or 231 of the Communications Act of 1934 (47 U.S.C. 223 or 231, respectively), chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, United States Code, or any other Federal criminal statute.

(2) Nothing in this Act shall be construed to affect in any way the Commission's authority to bring enforcement actions under FTC Act for materially false or deceptive representations or unfair practices in commercial electronic mail messages.

(b) STATE LAW.—

(1) IN GENERAL.—This Act supersedes any statute, regulation, or rule of a State or political subdivision of a State that expressly regulates the use of electronic mail to send commercial messages, except to the extent that any such statute, regulation, or rule prohibits falsity or deception in any portion of a commercial electronic mail message or information attached thereto.

(2) STATE LAW NOT SPECIFIC TO ELECTRONIC MAIL.—This Act shall not be construed to preempt the applicability of—

(A) State laws that are not specific to electronic mail, including State trespass, contract, or tort law; or

(B) other State laws to the extent that those laws relate to acts of fraud or computer crime.

(c) NO EFFECT ON POLICIES OF PROVIDERS OF INTERNET ACCESS SERVICE.—Nothing in this Act shall be construed to have any effect on the lawfulness or unlawfulness, under any other provision of law, of the adoption, implementation, or enforcement by a provider of Internet access service of a policy of declining to transmit, route, relay, handle, or store certain types of electronic mail messages.

**SEC. 9. [15 U.S.C. 7708] DO-NOT-E-MAIL REGISTRY.**

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce a report that—

(1) sets forth a plan and timetable for establishing a nationwide marketing Do-Not-E-Mail registry;

(2) includes an explanation of any practical, technical, security, privacy, enforceability, or other concerns that the Commission has regarding such a registry; and

(3) includes an explanation of how the registry would be applied with respect to children with e-mail accounts.

(b) AUTHORIZATION TO IMPLEMENT.—The Commission may establish and implement the plan, but not earlier than 9 months after the date of enactment of this Act.

**SEC. 10. [15 U.S.C. 7709] STUDY OF EFFECTS OF COMMERCIAL ELECTRONIC MAIL.**

(a) IN GENERAL.—Not later than 24 months after the date of the enactment of this Act, the Commission, in consultation with the Department of Justice and other appropriate agencies, shall submit a report to the Congress that provides a detailed analysis of the ef-

fectiveness and enforcement of the provisions of this Act and the need (if any) for the Congress to modify such provisions.

(b) **REQUIRED ANALYSIS.**—The Commission shall include in the report required by subsection (a)—

(1) an analysis of the extent to which technological and marketplace developments, including changes in the nature of the devices through which consumers access their electronic mail messages, may affect the practicality and effectiveness of the provisions of this Act;

(2) analysis and recommendations concerning how to address commercial electronic mail that originates in or is transmitted through or to facilities or computers in other nations, including initiatives or policy positions that the Federal Government could pursue through international negotiations, fora, organizations, or institutions; and

(3) analysis and recommendations concerning options for protecting consumers, including children, from the receipt and viewing of commercial electronic mail that is obscene or pornographic.

**SEC. 11. [15 U.S.C. 7710] IMPROVING ENFORCEMENT BY PROVIDING REWARDS FOR INFORMATION ABOUT VIOLATIONS; LABELING.**

The Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce—

(1) a report, within 9 months after the date of enactment of this Act, that sets forth a system for rewarding those who supply information about violations of this Act, including—

(A) procedures for the Commission to grant a reward of not less than 20 percent of the total civil penalty collected for a violation of this Act to the first person that—

(i) identifies the person in violation of this Act; and

(ii) supplies information that leads to the successful collection of a civil penalty by the Commission; and

(B) procedures to minimize the burden of submitting a complaint to the Commission concerning violations of this Act, including procedures to allow the electronic submission of complaints to the Commission; and

(2) a report, within 18 months after the date of enactment of this Act, that sets forth a plan for requiring commercial electronic mail to be identifiable from its subject line, by means of compliance with Internet Engineering Task Force Standards, the use of the characters “ADV” in the subject line, or other comparable identifier, or an explanation of any concerns the Commission has that cause the Commission to recommend against the plan.

\* \* \* \* \*

**SEC. 13. [15 U.S.C. 7711] REGULATIONS.**

(a) **IN GENERAL.**—The Commission may issue regulations to implement the provisions of this Act (not including the amendments made by sections 4 and 12). Any such regulations shall be

issued in accordance with section 553 of title 5, United States Code.

(b) **LIMITATION.**—Subsection (a) may not be construed to authorize the Commission to establish a requirement pursuant to section 5(a)(5)(A) to include any specific words, characters, marks, or labels in a commercial electronic mail message, or to include the identification required by section 5(a)(5)(A) in any particular part of such a mail message (such as the subject line or body).

**SEC. 14. [15 U.S.C. 7712] APPLICATION TO WIRELESS.**

(a) **EFFECT ON OTHER LAW.**—Nothing in this Act shall be interpreted to preclude or override the applicability of section 227 of the Communications Act of 1934 (47 U.S.C. 227) or the rules prescribed under section 3 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6102).

(b) **FCC RULEMAKING.**—The Federal Communications Commission, in consultation with the Federal Trade Commission, shall promulgate rules within 270 days to protect consumers from unwanted mobile service commercial messages. The Federal Communications Commission, in promulgating the rules, shall, to the extent consistent with subsection (c)—

(1) provide subscribers to commercial mobile services the ability to avoid receiving mobile service commercial messages unless the subscriber has provided express prior authorization to the sender, except as provided in paragraph (3);

(2) allow recipients of mobile service commercial messages to indicate electronically a desire not to receive future mobile service commercial messages from the sender;

(3) take into consideration, in determining whether to subject providers of commercial mobile services to paragraph (1), the relationship that exists between providers of such services and their subscribers, but if the Commission determines that such providers should not be subject to paragraph (1), the rules shall require such providers, in addition to complying with the other provisions of this Act, to allow subscribers to indicate a desire not to receive future mobile service commercial messages from the provider—

(A) at the time of subscribing to such service; and

(B) in any billing mechanism; and

(4) determine how a sender of mobile service commercial messages may comply with the provisions of this Act, considering the unique technical aspects, including the functional and character limitations, of devices that receive such messages.

(c) **OTHER FACTORS CONSIDERED.**—The Federal Communications Commission shall consider the ability of a sender of a commercial electronic mail message to reasonably determine that the message is a mobile service commercial message.

(d) **MOBILE SERVICE COMMERCIAL MESSAGE DEFINED.**—In this section, the term “mobile service commercial message” means a commercial electronic mail message that is transmitted directly to a wireless device that is utilized by a subscriber of commercial mobile service (as such term is defined in section 332(d) of the Com-

munications Act of 1934 (47 U.S.C. 332(d)) in connection with such service.

**SEC. 15. [15 U.S.C. 7713] SEPARABILITY.**

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

**SEC. 16. [15 U.S.C. 7701] EFFECTIVE DATE.**

The provisions of this Act, other than section 9, shall take effect on January 1, 2004.

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**SATELLITE HOME VIEWER EXTENSION AND  
REAUTHORIZATION ACT OF 2004**

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March 15, 2012



**SATELLITE HOME VIEWER EXTENSION AND  
REAUTHORIZATION ACT OF 2004**

**DIVISION J—OTHER MATTERS**

\* \* \* \* \*

**TITLE IX—SATELLITE HOME VIEWER EXTENSION AND  
REAUTHORIZATION ACT OF 2004<sup>1</sup>**

**SECTION 1. [17 U.S.C. 101 note] SHORT TITLES; TABLE OF CONTENTS.**

(a) **SHORT TITLES.**—This title may be cited as the “Satellite Home Viewer Extension and Reauthorization Act of 2004” or the “W. J. (Billy) Tauzin Satellite Television Act of 2004”.

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**TITLE I—STATUTORY LICENSE FOR  
SATELLITE CARRIERS**

\* \* \* \* \*

**SEC. 106. [17 U.S.C. 119 note] EFFECT ON CERTAIN PROCEEDINGS.**

Nothing in this title shall modify any remedy imposed on a party that is required by the judgment of a court in any action that was brought before May 1, 2004, against that party for a violation of section 119 of title 17, United States Code.

\* \* \* \* \*

**SEC. 109. STUDY.**

No later than June 30, 2008, the Register of Copyrights shall report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate the Register’s findings and recommendations on the operation and revision of the statutory licenses under sections 111, 119, and 122 of title 17, United States Code. The report shall include, but not be limited to, the following:

- (1) A comparison of the royalties paid by licensees under such sections, including historical rates of increases in these royalties, a comparison between the royalties under each such section and the prices paid in the marketplace for comparable programming.
- (2) An analysis of the differences in the terms and conditions of the licenses under such sections, an analysis of wheth-

<sup>1</sup>This title was enacted into law as part of Division J of the Consolidated Appropriations Act, 2005 (Public Law 108–447, 118 Stat 3393).

er these differences are required or justified by historical, technological, or regulatory differences that affect the satellite and cable industries, and an analysis of whether the cable or satellite industry is placed in a competitive disadvantage due to these terms and conditions.

(3) An analysis of whether the licenses under such sections are still justified by the bases upon which they were originally created.

(4) An analysis of the correlation, if any, between the royalties, or lack thereof, under such sections and the fees charged to cable and satellite subscribers, addressing whether cable and satellite companies have passed to subscribers any savings realized as a result of the royalty structure and amounts under such sections.

(5) An analysis of issues that may arise with respect to the application of the licenses under such sections to the secondary transmissions of the primary transmissions of network stations and superstations that originate as digital signals, including issues that relate to the application of the unserved household limitations under section 119 of title 17, United States Code, and to the determination of royalties of cable systems and satellite carriers.

**SEC. 110. ADDITIONAL STUDY.**

No later than December 31, 2005, the Register of Copyrights shall report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate the Register's findings and recommendations on the following:

(1) The extent to which the unserved household limitation for network stations contained in section 119 of title 17, United States Code, has operated efficiently and effectively and has forwarded the goal of title 17, United States Code, to protect copyright owners of over-the-air television programming, including what amendments, if any, are necessary to effectively identify the application of the limitation to individual households to receive secondary transmissions of primary digital transmissions of network stations.

(2) The extent to which secondary transmissions of primary transmissions of network stations and superstations under section 119 of title 17, United States Code, harm copyright owners of broadcast programming throughout the United States and the effect, if any, of the statutory license under section 122 of title 17, United States Code, in reducing such harm.

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**TITLE II—FEDERAL COMMUNICATIONS COMMISSION OPERATIONS**

\* \* \* \* \*

**SEC. 207. [47 U.S.C. 325 note] RECIPROCAL BARGAINING OBLIGATIONS.**

(a) \* \* \*

(b) DEADLINE.—The Federal Communications Commission shall prescribe regulations to implement the amendment made by subsection (a)(5) within 180 days after the date of enactment of this Act.

**SEC. 208. STUDY OF IMPACT ON CABLE TELEVISION SERVICE.**

(a) STUDY REQUIRED.—No later than 9 months after the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, the Federal Communications Commission shall complete an inquiry regarding the impact on competition in the multichannel video programming distribution market of the current retransmission consent, network nonduplication, syndicated exclusivity, and sports blackout rules, including the impact of those rules on the ability of rural cable operators to compete with direct broadcast satellite industry in the provision of digital broadcast television signals to consumers. Such report shall include such recommendations for changes in any statutory provisions relating to such rules as the Commission deems appropriate.

(b) REPORT REQUIRED.—The Federal Communications Commission shall submit a report on the results of the inquiry required by subsection (a) to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than 9 months after the date of the enactment of this Act.

\* \* \* \* \*

**SEC. 212. [47 U.S.C. 325 note] DIGITAL TRANSITION SAVINGS PROVISION.**

Nothing in the dates by which requirements or other provisions are effective under this Act or the amendments made by this Act shall be construed—

- (1) to impair the authority of the Federal Communications Commission to take any action with respect to the transition by television broadcasters to the digital television service; or
- (2) to require the Commission to take any such action.

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March 15, 2012



**PUBLIC LAW 108-494**



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March 15, 2012

**PUBLIC LAW 108-494**

[As Amended Through P.L. 112-74, Enacted December 23, 2011]

AN ACT To amend the National Telecommunications and Information Administration Organization Act to facilitate the reallocation of spectrum from governmental to commercial users; to improve, enhance, and promote the Nation's homeland security, public safety, and citizen activated emergency response capabilities through the use of enhanced 911 services, to further upgrade Public Safety Answering Point capabilities and related functions in receiving E-911 calls, and to support in the construction and operation of a ubiquitous and reliable citizen activated system; and to provide that funds received as universal service contributions under section 254 of the Communications Act of 1934 and the universal service support programs established pursuant thereto are not subject to certain provisions of title 31, United States Code, commonly known as the Antideficiency Act, for a period of time.

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

**TITLE I—E-911**

**SEC. 101. [47 U.S.C. 901 note] SHORT TITLE.**

This title may be cited as the “Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004” or the “ENHANCE 911 Act of 2004”.

**SEC. 102. [47 U.S.C. 942 note] FINDINGS.**

The Congress finds that—

(1) for the sake of our Nation's homeland security and public safety, a universal emergency telephone number (911) that is enhanced with the most modern and state-of-the-art telecommunications capabilities possible should be available to all citizens in all regions of the Nation;

(2) enhanced emergency communications require Federal, State, and local government resources and coordination;

(3) any funds that are collected from fees imposed on consumer bills for the purposes of funding 911 services or enhanced 911 should go only for the purposes for which the funds are collected; and

(4) enhanced 911 is a high national priority and it requires Federal leadership, working in cooperation with State and local governments and with the numerous organizations dedicated to delivering emergency communications services.

**SEC. 103. [47 U.S.C. 942 note] PURPOSES.**

The purposes of this title are—

(1) to coordinate 911 services and E-911 services, at the Federal, State, and local levels; and

(2) to ensure that funds collected on telecommunications bills for enhancing emergency 911 services are used only for the purposes for which the funds are being collected.

\* \* \* \* \*

**SEC. 105. GAO STUDY OF STATE AND LOCAL USE OF 911 SERVICE CHARGES.**

(a) IN GENERAL.—Within 60 days after the date of enactment of this Act, the Comptroller General shall initiate a study of—

(1) the imposition of taxes, fees, or other charges imposed by States or political subdivisions of States that are designated or presented as dedicated to improve emergency communications services, including 911 services or enhanced 911 services, or related to emergency communications services operations or improvements; and

(2) the use of revenues derived from such taxes, fees, or charges.

(b) REPORT.—Within 18 months after initiating the study required by subsection (a), the Comptroller General shall transmit a report on the results of the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce setting forth the findings, conclusions, and recommendations, if any, of the study, including—

(1) the identity of each State or political subdivision that imposes such taxes, fees, or other charges; and

(2) the amount of revenues obligated or expended by that State or political subdivision for any purpose other than the purposes for which such taxes, fees, or charges were designated or presented.

**SEC. 106. REPORT ON THE DEPLOYMENT OF E-911 PHASE II SERVICES BY TIER III SERVICE PROVIDERS.**

Within 90 days after the date of enactment of this Act, the Federal Communications Commission shall submit a report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate detailing—

(1) the number of tier III commercial mobile service providers that are offering phase II E-911 services;

(2) the number of requests for waivers from compliance with the Commission's phase II E-911 service requirements received by the Commission from such tier III providers;

(3) the number of waivers granted or denied by the Commission to such tier III providers;

(4) how long each waiver request remained pending before it was granted or denied;

(5) how many waiver requests are pending at the time of the filing of the report;

(6) when the pending requests will be granted or denied;

(7) actions the Commission has taken to reduce the amount of time a waiver request remains pending; and

(8) the technologies that are the most effective in the deployment of phase II E-911 services by such tier III providers.



**SEC. 107. FCC REQUIREMENTS FOR CERTAIN TIER III CARRIERS.**

(a) **IN GENERAL.**—The Federal Communications Commission shall act on any petition filed by a qualified Tier III carrier requesting a waiver of compliance with the requirements of section 20.18(g)(1)(v) of the Commission's rules (47 C.F.R. 20.18(g)(1)(v)) within 100 days after the Commission receives the petition. The Commission shall grant the waiver of compliance with the requirements of section 20.18(g)(1)(v) of the Commission's rules (47 C.F.R. 20.18(g)(1)(v)) requested by the petition if it determines that strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services.

(b) **QUALIFIED TIER III CARRIER DEFINED.**—In this section, the term “qualified Tier III carrier” means a provider of commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d))) that had 500,000 or fewer subscribers as of December 31, 2001.

**TITLE II—SPECTRUM RELOCATION****SEC. 201. [47 U.S.C. 901 note] SHORT TITLE.**

This title may be cited as the “Commercial Spectrum Enhancement Act”.

\* \* \* \* \*

**SEC. 206. [47 U.S.C. 921 note] CONSTRUCTION.**

Nothing in this title is intended to modify section 1062(b) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65).

**SEC. 207. [47 U.S.C. 928 note] ANNUAL REPORT.**

The National Telecommunications and Information Administration shall submit an annual report to the Committees on Appropriations and Energy and Commerce of the House of Representatives, the Committees on Appropriations and Commerce, Science, and Transportation of the Senate, and the Comptroller General on—

(1) the progress made in adhering to the timelines applicable to relocation from eligible frequencies required under section 118(d)(2)(A) of the National Telecommunications and Information Administration Organization Act, separately stated on a communication system-by-system basis and on an auction-by-auction basis; and

(2) with respect to each relocated communication system and auction, a statement of the estimate of relocation costs required under section 113(g)(4) of such Act, the actual relocations costs incurred, and the amount of such costs paid from the Spectrum Relocation Fund.

**SEC. 208. [47 U.S.C. 923 note] PRESERVATION OF AUTHORITY; NTIA REPORT REQUIRED.**

(a) **SPECTRUM MANAGEMENT AUTHORITY RETAINED.**—Except as provided with respect to the bands of frequencies identified in section 113(g)(2)(A) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2)(A)) as amended by this title, nothing in this title or the amendments

made by this title shall be construed as limiting the Federal Communications Commission's authority to allocate bands of frequencies that are reallocated from Federal use to non-Federal use for unlicensed, public safety, shared, or non-commercial use.

(b) **NTIA REPORT REQUIRED.**—Within 1 year after the date of enactment of this Act, the Administrator of the National Telecommunications and Information Administration shall submit to the Energy and Commerce Committee of the House of Representatives and the Commerce, Science, and Transportation Committee of the Senate a report on various policy options to compensate Federal entities for relocation costs when such entities' frequencies are allocated by the Commission for unlicensed, public safety, shared, or non-commercial use.

**SEC. 209. COMMERCIAL SPECTRUM LICENSE POLICY REVIEW.**

(a) **EXAMINATION.**—The Comptroller General shall examine national commercial spectrum license policy as implemented by the Federal Communications Commission, and shall report its findings to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce within 270 days.

(b) **CONTENT.**—The report shall address each of the following:

(1) An estimate of the respective proportions of electromagnetic spectrum capacity that have been assigned by the Federal Communications Commission—

(A) prior to enactment of section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) providing to the Commission's competitive bidding authority,

(B) after enactment of that section using the Commission's competitive bidding authority, and

(C) by means other than competitive bidding, and a description of the classes of licensees assigned under each method.

(2) The extent to which requiring entities to obtain licenses through competitive bidding places those entities at a competitive or financial disadvantage to offer services similar to entities that did not acquire licenses through competitive bidding.

(3) The effect, if any, of the use of competitive bidding and the resulting diversion of licensees' financial resources on the introduction of new services including the quality, pace, and scope of the offering of such services to the public.

(4) The effect, if any, of participation in competitive bidding by incumbent spectrum license holders as applicants or investors in an applicant, including a discussion of any additional effect if such applicant qualified for bidding credits as a designated entity.

(5) The effect on existing license holders and consumers of services offered by these providers of the Administration's Spectrum License User Fee proposal contained in the President's Budget of the United States Government for Fiscal Year 2004 (Budget, page 299; Appendix, page 1046), and an evaluation of whether the enactment of this proposal could address, either in part or in whole, any possible competitive disadvantages described in paragraph (2).

(c) FCC ASSISTANCE.—The Federal Communications Commission shall provide information and assistance, as necessary, to facilitate the completion of the examination required by subsection (a).

### **TITLE III—UNIVERSAL SERVICE**

#### **SEC. 301. SHORT TITLE.**

This title may be cited as the “Universal Service Antideficiency Temporary Suspension Act”.

#### **SEC. 302. APPLICATION OF CERTAIN TITLE 31 PROVISIONS TO UNIVERSAL SERVICE FUND.**

(a) IN GENERAL.—During the period beginning on the date of enactment of this Act and ending on December 31, 2013, section 1341 and subchapter II of chapter 15 of title 31, United States Code, do not apply—

(1) to any amount collected or received as Federal universal service contributions required by section 254 of the Communications Act of 1934 (47 U.S.C. 254), including any interest earned on such contributions; nor

(2) to the expenditure or obligation of amounts attributable to such contributions for universal service support programs established pursuant to that section.

(b) POST-2005 FULFILLMENT OF PROTECTED OBLIGATIONS.—Section 1341 and subchapter II of chapter 15 of title 31, United States Code, do not apply after December 31, 2013, to an expenditure or obligation described in subsection (a)(2) made or authorized during the period described in subsection (a).

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March 15, 2012

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**ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL  
COMMERCE ACT (ESIGN COMMERCE ACT)**

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March 15, 2012

## **ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT**

AN ACT To facilitate the use of electronic records and signatures in interstate or foreign commerce.

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

### **SECTION 1. [15 U.S.C. 7001 note] SHORT TITLE.**

This Act may be cited as the “Electronic Signatures in Global and National Commerce Act”.

## **TITLE I—ELECTRONIC RECORDS AND SIGNATURES IN COMMERCE**

### **SEC. 101. [15 U.S.C. 7001] GENERAL RULE OF VALIDITY.**

(a) IN GENERAL.—Notwithstanding any statute, regulation, or other rule of law (other than this title and title II), with respect to any transaction in or affecting interstate or foreign commerce—

(1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and

(2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

(b) PRESERVATION OF RIGHTS AND OBLIGATIONS.—This title does not—

(1) limit, alter, or otherwise affect any requirement imposed by a statute, regulation, or rule of law relating to the rights and obligations of persons under such statute, regulation, or rule of law other than a requirement that contracts or other records be written, signed, or in nonelectronic form; or

(2) require any person to agree to use or accept electronic records or electronic signatures, other than a governmental agency with respect to a record other than a contract to which it is a party.

(c) CONSUMER DISCLOSURES.—

(1) CONSENT TO ELECTRONIC RECORDS.—Notwithstanding subsection (a), if a statute, regulation, or other rule of law requires that information relating to a transaction or transactions in or affecting interstate or foreign commerce be provided or made available to a consumer in writing, the use of an electronic record to provide or make available (whichever is required) such information satisfies the requirement that such information be in writing if—

(A) the consumer has affirmatively consented to such use and has not withdrawn such consent;

(B) the consumer, prior to consenting, is provided with a clear and conspicuous statement—

(i) informing the consumer of (I) any right or option of the consumer to have the record provided or made available on paper or in nonelectronic form, and (II) the right of the consumer to withdraw the consent to have the record provided or made available in an electronic form and of any conditions, consequences (which may include termination of the parties' relationship), or fees in the event of such withdrawal;

(ii) informing the consumer of whether the consent applies (I) only to the particular transaction which gave rise to the obligation to provide the record, or (II) to identified categories of records that may be provided or made available during the course of the parties' relationship;

(iii) describing the procedures the consumer must use to withdraw consent as provided in clause (i) and to update information needed to contact the consumer electronically; and

(iv) informing the consumer (I) how, after the consent, the consumer may, upon request, obtain a paper copy of an electronic record, and (II) whether any fee will be charged for such copy;

(C) the consumer—

(i) prior to consenting, is provided with a statement of the hardware and software requirements for access to and retention of the electronic records; and

(ii) consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent; and

(D) after the consent of a consumer in accordance with subparagraph (A), if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the person providing the electronic record—

(i) provides the consumer with a statement of (I) the revised hardware and software requirements for access to and retention of the electronic records, and (II) the right to withdraw consent without the imposition of any fees for such withdrawal and without the imposition of any condition or consequence that was not disclosed under subparagraph (B)(i); and

(ii) again complies with subparagraph (C).

(2) OTHER RIGHTS.—

(A) PRESERVATION OF CONSUMER PROTECTIONS.—Nothing in this title affects the content or timing of any disclosure or other record required to be provided or made avail-



able to any consumer under any statute, regulation, or other rule of law.

(B) VERIFICATION OR ACKNOWLEDGMENT.—If a law that was enacted prior to this Act expressly requires a record to be provided or made available by a specified method that requires verification or acknowledgment of receipt, the record may be provided or made available electronically only if the method used provides verification or acknowledgment of receipt (whichever is required).

(3) EFFECT OF FAILURE TO OBTAIN ELECTRONIC CONSENT OR CONFIRMATION OF CONSENT.—The legal effectiveness, validity, or enforceability of any contract executed by a consumer shall not be denied solely because of the failure to obtain electronic consent or confirmation of consent by that consumer in accordance with paragraph (1)(C)(ii).

(4) PROSPECTIVE EFFECT.—Withdrawal of consent by a consumer shall not affect the legal effectiveness, validity, or enforceability of electronic records provided or made available to that consumer in accordance with paragraph (1) prior to implementation of the consumer's withdrawal of consent. A consumer's withdrawal of consent shall be effective within a reasonable period of time after receipt of the withdrawal by the provider of the record. Failure to comply with paragraph (1)(D) may, at the election of the consumer, be treated as a withdrawal of consent for purposes of this paragraph.

(5) PRIOR CONSENT.—This subsection does not apply to any records that are provided or made available to a consumer who has consented prior to the effective date of this title to receive such records in electronic form as permitted by any statute, regulation, or other rule of law.

(6) ORAL COMMUNICATIONS.—An oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this subsection except as otherwise provided under applicable law.

(d) RETENTION OF CONTRACTS AND RECORDS.—

(1) ACCURACY AND ACCESSIBILITY.—If a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be retained, that requirement is met by retaining an electronic record of the information in the contract or other record that—

(A) accurately reflects the information set forth in the contract or other record; and

(B) remains accessible to all persons who are entitled to access by statute, regulation, or rule of law, for the period required by such statute, regulation, or rule of law, in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise.

(2) EXCEPTION.—A requirement to retain a contract or other record in accordance with paragraph (1) does not apply to any information whose sole purpose is to enable the contract or other record to be sent, communicated, or received.

(3) ORIGINALS.—If a statute, regulation, or other rule of law requires a contract or other record relating to a transaction in or affecting interstate or foreign commerce to be provided, available, or retained in its original form, or provides consequences if the contract or other record is not provided, available, or retained in its original form, that statute, regulation, or rule of law is satisfied by an electronic record that complies with paragraph (1).

(4) CHECKS.—If a statute, regulation, or other rule of law requires the retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with paragraph (1).

(e) ACCURACY AND ABILITY TO RETAIN CONTRACTS AND OTHER RECORDS.—Notwithstanding subsection (a), if a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be in writing, the legal effect, validity, or enforceability of an electronic record of such contract or other record may be denied if such electronic record is not in a form that is capable of being retained and accurately reproduced for later reference by all parties or persons who are entitled to retain the contract or other record.

(f) PROXIMITY.—Nothing in this title affects the proximity required by any statute, regulation, or other rule of law with respect to any warning, notice, disclosure, or other record required to be posted, displayed, or publicly affixed.

(g) NOTARIZATION AND ACKNOWLEDGMENT.—If a statute, regulation, or other rule of law requires a signature or record relating to a transaction in or affecting interstate or foreign commerce to be notarized, acknowledged, verified, or made under oath, that requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable statute, regulation, or rule of law, is attached to or logically associated with the signature or record.

(h) ELECTRONIC AGENTS.—A contract or other record relating to a transaction in or affecting interstate or foreign commerce may not be denied legal effect, validity, or enforceability solely because its formation, creation, or delivery involved the action of one or more electronic agents so long as the action of any such electronic agent is legally attributable to the person to be bound.

(i) INSURANCE.—It is the specific intent of the Congress that this title and title II apply to the business of insurance.

(j) INSURANCE AGENTS AND BROKERS.—An insurance agent or broker acting under the direction of a party that enters into a contract by means of an electronic record or electronic signature may not be held liable for any deficiency in the electronic procedures agreed to by the parties under that contract if—

(1) the agent or broker has not engaged in negligent, reckless, or intentional tortious conduct;

(2) the agent or broker was not involved in the development or establishment of such electronic procedures; and

(3) the agent or broker did not deviate from such procedures.

**SEC. 102. [15 U.S.C. 7002] EXEMPTION TO PREEMPTION.**

(a) **IN GENERAL.**—A State statute, regulation, or other rule of law may modify, limit, or supersede the provisions of section 101 with respect to State law only if such statute, regulation, or rule of law—

(1) constitutes an enactment or adoption of the Uniform Electronic Transactions Act as approved and recommended for enactment in all the States by the National Conference of Commissioners on Uniform State Laws in 1999, except that any exception to the scope of such Act enacted by a State under section 3(b)(4) of such Act shall be preempted to the extent such exception is inconsistent with this title or title II, or would not be permitted under paragraph (2)(A)(ii) of this subsection; or

(2)(A) specifies the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts or other records, if—

(i) such alternative procedures or requirements are consistent with this title and title II; and

(ii) such alternative procedures or requirements do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures; and

(B) if enacted or adopted after the date of the enactment of this Act, makes specific reference to this Act.

(b) **EXCEPTIONS FOR ACTIONS BY STATES AS MARKET PARTICIPANTS.**—Subsection (a)(2)(A)(ii) shall not apply to the statutes, regulations, or other rules of law governing procurement by any State, or any agency or instrumentality thereof.

(c) **PREVENTION OF CIRCUMVENTION.**—Subsection (a) does not permit a State to circumvent this title or title II through the imposition of nonelectronic delivery methods under section 8(b)(2) of the Uniform Electronic Transactions Act.

**SEC. 103. [15 U.S.C. 7003] SPECIFIC EXCEPTIONS.**

(a) **EXCEPTED REQUIREMENTS.**—The provisions of section 101 shall not apply to a contract or other record to the extent it is governed by—

(1) a statute, regulation, or other rule of law governing the creation and execution of wills, codicils, or testamentary trusts;

(2) a State statute, regulation, or other rule of law governing adoption, divorce, or other matters of family law; or

(3) the Uniform Commercial Code, as in effect in any State, other than sections 1–107 and 1–206 and Articles 2 and 2A.

(b) **ADDITIONAL EXCEPTIONS.**—The provisions of section 101 shall not apply to—

(1) court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings;

(2) any notice of—

(A) the cancellation or termination of utility services (including water, heat, and power);

(B) default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual;

(C) the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities); or

(D) recall of a product, or material failure of a product, that risks endangering health or safety; or

(3) any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

(c) REVIEW OF EXCEPTIONS.—

(1) EVALUATION REQUIRED.—The Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall review the operation of the exceptions in subsections (a) and (b) to evaluate, over a period of 3 years, whether such exceptions continue to be necessary for the protection of consumers. Within 3 years after the date of enactment of this Act, the Assistant Secretary shall submit a report to the Congress on the results of such evaluation.

(2) DETERMINATIONS.—If a Federal regulatory agency, with respect to matter within its jurisdiction, determines after notice and an opportunity for public comment, and publishes a finding, that one or more such exceptions are no longer necessary for the protection of consumers and eliminating such exceptions will not increase the material risk of harm to consumers, such agency may extend the application of section 101 to the exceptions identified in such finding.

**SEC. 104. [15 U.S.C. 7004] APPLICABILITY TO FEDERAL AND STATE GOVERNMENTS.**

(a) FILING AND ACCESS REQUIREMENTS.—Subject to subsection (c)(2), nothing in this title limits or supersedes any requirement by a Federal regulatory agency, self-regulatory organization, or State regulatory agency that records be filed with such agency or organization in accordance with specified standards or formats.

(b) PRESERVATION OF EXISTING RULEMAKING AUTHORITY.—

(1) USE OF AUTHORITY TO INTERPRET.—Subject to paragraph (2) and subsection (c), a Federal regulatory agency or State regulatory agency that is responsible for rulemaking under any other statute may interpret section 101 with respect to such statute through—

(A) the issuance of regulations pursuant to a statute; or

(B) to the extent such agency is authorized by statute to issue orders or guidance, the issuance of orders or guidance of general applicability that are publicly available and published (in the Federal Register in the case of an order or guidance issued by a Federal regulatory agency). This paragraph does not grant any Federal regulatory agency or State regulatory agency authority to issue regulations,

orders, or guidance pursuant to any statute that does not authorize such issuance.

(2) LIMITATIONS ON INTERPRETATION AUTHORITY.—Notwithstanding paragraph (1), a Federal regulatory agency shall not adopt any regulation, order, or guidance described in paragraph (1), and a State regulatory agency is preempted by section 101 from adopting any regulation, order, or guidance described in paragraph (1), unless—

(A) such regulation, order, or guidance is consistent with section 101;

(B) such regulation, order, or guidance does not add to the requirements of such section; and

(C) such agency finds, in connection with the issuance of such regulation, order, or guidance, that—

(i) there is a substantial justification for the regulation, order, or guidance;

(ii) the methods selected to carry out that purpose—

(I) are substantially equivalent to the requirements imposed on records that are not electronic records; and

(II) will not impose unreasonable costs on the acceptance and use of electronic records; and

(iii) the methods selected to carry out that purpose do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures.

(3) PERFORMANCE STANDARDS.—

(A) ACCURACY, RECORD INTEGRITY, ACCESSIBILITY.—Notwithstanding paragraph (2)(C)(iii), a Federal regulatory agency or State regulatory agency may interpret section 101(d) to specify performance standards to assure accuracy, record integrity, and accessibility of records that are required to be retained. Such performance standards may be specified in a manner that imposes a requirement in violation of paragraph (2)(C)(iii) if the requirement (i) serves an important governmental objective; and (ii) is substantially related to the achievement of that objective. Nothing in this paragraph shall be construed to grant any Federal regulatory agency or State regulatory agency authority to require use of a particular type of software or hardware in order to comply with section 101(d).

(B) PAPER OR PRINTED FORM.—Notwithstanding subsection (c)(1), a Federal regulatory agency or State regulatory agency may interpret section 101(d) to require retention of a record in a tangible printed or paper form if—

(i) there is a compelling governmental interest relating to law enforcement or national security for imposing such requirement; and

(ii) imposing such requirement is essential to attaining such interest.

(4) EXCEPTIONS FOR ACTIONS BY GOVERNMENT AS MARKET PARTICIPANT.—Paragraph (2)(C)(iii) shall not apply to the statutes, regulations, or other rules of law governing procurement by the Federal or any State government, or any agency or instrumentality thereof.

(c) ADDITIONAL LIMITATIONS.—

(1) REIMPOSING PAPER PROHIBITED.—Nothing in subsection (b) (other than paragraph (3)(B) thereof) shall be construed to grant any Federal regulatory agency or State regulatory agency authority to impose or reimpose any requirement that a record be in a tangible printed or paper form.

(2) CONTINUING OBLIGATION UNDER GOVERNMENT PAPERWORK ELIMINATION ACT.—Nothing in subsection (a) or (b) relieves any Federal regulatory agency of its obligations under the Government Paperwork Elimination Act (title XVII of Public Law 105–277).

(d) AUTHORITY TO EXEMPT FROM CONSENT PROVISION.—

(1) IN GENERAL.—A Federal regulatory agency may, with respect to matter within its jurisdiction, by regulation or order issued after notice and an opportunity for public comment, exempt without condition a specified category or type of record from the requirements relating to consent in section 101(c) if such exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.

(2) PROSPECTUSES.—Within 30 days after the date of enactment of this Act, the Securities and Exchange Commission shall issue a regulation or order pursuant to paragraph (1) exempting from section 101(c) any records that are required to be provided in order to allow advertising, sales literature, or other information concerning a security issued by an investment company that is registered under the Investment Company Act of 1940, or concerning the issuer thereof, to be excluded from the definition of a prospectus under section 2(a)(10)(A) of the Securities Act of 1933.

(e) ELECTRONIC LETTERS OF AGENCY.—The Federal Communications Commission shall not hold any contract for telecommunications service or letter of agency for a preferred carrier change, that otherwise complies with the Commission's rules, to be legally ineffective, invalid, or unenforceable solely because an electronic record or electronic signature was used in its formation or authorization.

**SEC. 105. [15 U.S.C. 7005] STUDIES.**

(a) DELIVERY.—Within 12 months after the date of the enactment of this Act, the Secretary of Commerce shall conduct an inquiry regarding the effectiveness of the delivery of electronic records to consumers using electronic mail as compared with delivery of written records via the United States Postal Service and private express mail services. The Secretary shall submit a report to the Congress regarding the results of such inquiry by the conclusion of such 12-month period.

(b) **STUDY OF ELECTRONIC CONSENT.**—Within 12 months after the date of the enactment of this Act, the Secretary of Commerce and the Federal Trade Commission shall submit a report to the Congress evaluating any benefits provided to consumers by the procedure required by section 101(c)(1)(C)(ii); any burdens imposed on electronic commerce by that provision; whether the benefits outweigh the burdens; whether the absence of the procedure required by section 101(c)(1)(C)(ii) would increase the incidence of fraud directed against consumers; and suggesting any revisions to the provision deemed appropriate by the Secretary and the Commission. In conducting this evaluation, the Secretary and the Commission shall solicit comment from the general public, consumer representatives, and electronic commerce businesses.

**SEC. 106. [15 U.S.C. 7006] DEFINITIONS.**

For purposes of this title:

(1) **CONSUMER.**—The term “consumer” means an individual who obtains, through a transaction, products or services which are used primarily for personal, family, or household purposes, and also means the legal representative of such an individual.

(2) **ELECTRONIC.**—The term “electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) **ELECTRONIC AGENT.**—The term “electronic agent” means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part without review or action by an individual at the time of the action or response.

(4) **ELECTRONIC RECORD.**—The term “electronic record” means a contract or other record created, generated, sent, communicated, received, or stored by electronic means.

(5) **ELECTRONIC SIGNATURE.**—The term “electronic signature” means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.

(6) **FEDERAL REGULATORY AGENCY.**—The term “Federal regulatory agency” means an agency, as that term is defined in section 552(f) of title 5, United States Code.

(7) **INFORMATION.**—The term “information” means data, text, images, sounds, codes, computer programs, software, databases, or the like.

(8) **PERSON.**—The term “person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

(9) **RECORD.**—The term “record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) **REQUIREMENT.**—The term “requirement” includes a prohibition.

(11) **SELF-REGULATORY ORGANIZATION.**—The term “self-regulatory organization” means an organization or entity that is

not a Federal regulatory agency or a State, but that is under the supervision of a Federal regulatory agency and is authorized under Federal law to adopt and administer rules applicable to its members that are enforced by such organization or entity, by a Federal regulatory agency, or by another self-regulatory organization.

(12) STATE.—The term “State” includes the District of Columbia and the territories and possessions of the United States.

(13) TRANSACTION.—The term “transaction” means an action or set of actions relating to the conduct of business, consumer, or commercial affairs between two or more persons, including any of the following types of conduct—

(A) the sale, lease, exchange, licensing, or other disposition of (i) personal property, including goods and intangibles, (ii) services, and (iii) any combination thereof; and

(B) the sale, lease, exchange, or other disposition of any interest in real property, or any combination thereof.

**SEC. 107. [15 U.S.C. 7001, note] EFFECTIVE DATE.**

(a) IN GENERAL.—Except as provided in subsection (b), this title shall be effective on October 1, 2000.

(b) EXCEPTIONS.—

(1) RECORD RETENTION.—

(A) IN GENERAL.—Subject to subparagraph (B), this title shall be effective on March 1, 2001, with respect to a requirement that a record be retained imposed by—

(i) a Federal statute, regulation, or other rule of law, or

(ii) a State statute, regulation, or other rule of law administered or promulgated by a State regulatory agency.

(B) DELAYED EFFECT FOR PENDING RULEMAKINGS.—If on March 1, 2001, a Federal regulatory agency or State regulatory agency has announced, proposed, or initiated, but not completed, a rulemaking proceeding to prescribe a regulation under section 104(b)(3) with respect to a requirement described in subparagraph (A), this title shall be effective on June 1, 2001, with respect to such requirement.

(2) CERTAIN GUARANTEED AND INSURED LOANS.—With regard to any transaction involving a loan guarantee or loan guarantee commitment (as those terms are defined in section 502 of the Federal Credit Reform Act of 1990), or involving a program listed in the Federal Credit Supplement, Budget of the United States, FY 2001, this title applies only to such transactions entered into, and to any loan or mortgage made, insured, or guaranteed by the United States Government thereunder, on and after one year after the date of enactment of this Act.

(3) STUDENT LOANS.—With respect to any records that are provided or made available to a consumer pursuant to an application for a loan, or a loan made, pursuant to title IV of



the Higher Education Act of 1965, section 101(c) of this Act shall not apply until the earlier of—

(A) such time as the Secretary of Education publishes revised promissory notes under section 432(m) of the Higher Education Act of 1965; or

(B) one year after the date of enactment of this Act.

## TITLE II—TRANSFERABLE RECORDS

### SEC. 201. [15 U.S.C. 7021] TRANSFERABLE RECORDS.

(a) DEFINITIONS.—For purposes of this section:

(1) TRANSFERABLE RECORD.—The term “transferable record” means an electronic record that—

(A) would be a note under Article 3 of the Uniform Commercial Code if the electronic record were in writing;

(B) the issuer of the electronic record expressly has agreed is a transferable record; and

(C) relates to a loan secured by real property.

A transferable record may be executed using an electronic signature.

(2) OTHER DEFINITIONS.—The terms “electronic record”, “electronic signature”, and “person” have the same meanings provided in section 106 of this Act.

(b) CONTROL.—A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) CONDITIONS.—A system satisfies subsection (b), and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that—

(1) a single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as—

(A) the person to which the transferable record was issued; or

(B) if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) STATUS AS HOLDER.—Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section 1–201(20) of the Uniform Commercial Code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under section 3–302(a), 9–308, or revised section 9–330 of the Uniform Commercial Code are satisfied, the rights and defenses of a holder in due course or a purchaser, respectively. Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection.

(e) OBLIGOR RIGHTS.—Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the Uniform Commercial Code.

(f) PROOF OF CONTROL.—If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

(g) UCC REFERENCES.—For purposes of this subsection, all references to the Uniform Commercial Code are to the Uniform Commercial Code as in effect in the jurisdiction the law of which governs the transferable record.

**SEC. 202. [15 U.S.C. 7021 note] EFFECTIVE DATE.**

This title shall be effective 90 days after the date of enactment of this Act.

## **TITLE III—PROMOTION OF INTERNATIONAL ELECTRONIC COMMERCE**

**SEC. 301. [15 U.S.C. 7031] PRINCIPLES GOVERNING THE USE OF ELECTRONIC SIGNATURES IN INTERNATIONAL TRANSACTIONS.**

(a) PROMOTION OF ELECTRONIC SIGNATURES.—

(1) REQUIRED ACTIONS.—The Secretary of Commerce shall promote the acceptance and use, on an international basis, of electronic signatures in accordance with the principles specified in paragraph (2) and in a manner consistent with section 101 of this Act. The Secretary of Commerce shall take all actions necessary in a manner consistent with such principles to eliminate or reduce, to the maximum extent possible, the impediments to commerce in electronic signatures, for the purpose of facilitating the development of interstate and foreign commerce.

(2) PRINCIPLES.—The principles specified in this paragraph are the following:

(A) Remove paper-based obstacles to electronic transactions by adopting relevant principles from the Model Law on Electronic Commerce adopted in 1996 by the United Nations Commission on International Trade Law.

(B) Permit parties to a transaction to determine the appropriate authentication technologies and implementation models for their transactions, with assurance that those technologies and implementation models will be recognized and enforced.

(C) Permit parties to a transaction to have the opportunity to prove in court or other proceedings that their authentication approaches and their transactions are valid.

(D) Take a nondiscriminatory approach to electronic signatures and authentication methods from other jurisdictions.

(b) CONSULTATION.—In conducting the activities required by this section, the Secretary shall consult with users and providers of electronic signature products and services and other interested persons.

(c) DEFINITIONS.—As used in this section, the terms “electronic record” and “electronic signature” have the same meanings provided in section 106 of this Act.

## **TITLE IV—COMMISSION ON ONLINE CHILD PROTECTION**

### **SEC. 401. AUTHORITY TO ACCEPT GIFTS.**

【Section 401 amended section 1405 of the Child Online Protection Act (47 U.S.C. 231 note). See footnote to section 231 of the Communications Act of 1934.】

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**LAUNCHING OUR COMMUNITIES' ACCESS TO LOCAL  
TELEVISION ACT OF 2000**

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March 15, 2012

**LAUNCHING OUR COMMUNITIES' ACCESS TO LOCAL  
TELEVISION ACT OF 2000**

(Title X of Departments of Commerce, Justice, and State, the Judiciary, and Related  
Agencies Appropriations Act, 2001)

[As Amended Through P.L. 110–289, Enacted July 30, 2008]

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**TITLE X—LOCAL TV ACT**

**SECTION 1001. [47 U.S.C. 1101 note] SHORT TITLE.**

This title may be cited as the “Launching Our Communities’  
Access to Local Television Act of 2000”.

**SEC. 1002. [47 U.S.C. 1101] PURPOSE.**

The purpose of this Act is to facilitate access, on a techno-  
logically neutral basis and by December 31, 2006, to signals of local  
television stations for households located in nonserved areas and  
underserved areas.

**SEC. 1003. [47 U.S.C. 1102] LOCAL TELEVISION LOAN GUARANTEE  
BOARD.**

(a) **ESTABLISHMENT.**—There is established the LOCAL Tele-  
vision Loan Guarantee Board (in this Act referred to as the  
“Board”).

(b) **MEMBERS.**—

(1) **IN GENERAL.**—Subject to paragraph (2), the Board shall  
consist of the following members:

(A) The Secretary of the Treasury, or the designee of  
the Secretary.

(B) The Chairman of the Board of Governors of the  
Federal Reserve System, or the designee of the Chairman.

(C) The Secretary of Agriculture, or the designee of the  
Secretary.

(D) The Secretary of Commerce, or the designee of the  
Secretary.

(2) **REQUIREMENT AS TO DESIGNEES.**—An individual may  
not be designated a member of the Board under paragraph (1)  
unless the individual is an officer of the United States pursu-  
ant to an appointment by the President, by and with the ad-  
vice and consent of the Senate.

(c) **FUNCTIONS OF THE BOARD.**—

(1) **IN GENERAL.**—The Board shall determine whether or  
not to approve loan guarantees under this Act. The Board shall  
make such determinations consistent with the purpose of this  
Act and in accordance with this subsection and section 4.

(2) **CONSULTATION AUTHORIZED.**—

(A) IN GENERAL.—In carrying out its functions under this Act, the Board shall consult with such departments and agencies of the Federal Government as the Board considers appropriate, including the Department of Commerce, the Department of Agriculture, the Department of the Treasury, the Department of Justice, the Department of the Interior, the Board of Governors of the Federal Reserve System, the Federal Communications Commission, the Federal Trade Commission, and the National Aeronautics and Space Administration.

(B) RESPONSE.—A department or agency consulted by the Board under subparagraph (A) shall provide the Board such expertise and assistance as the Board requires to carry out its functions under this Act.

(3) APPROVAL BY MAJORITY VOTE.—The determination of the Board to approve a loan guarantee under this Act shall be by an affirmative vote of not less than three members of the Board.

**SEC. 1004. [47 U.S.C. 1103] APPROVAL OF LOAN GUARANTEES.**

(a) AUTHORITY TO APPROVE LOAN GUARANTEES.—Subject to the provisions of this section and consistent with the purpose of this Act, the Board may approve loan guarantees under this Act.

(b) REGULATIONS.—

(1) REQUIREMENTS.—The Administrator (as defined in section 1005), under the direction of and for approval by the Board, shall prescribe regulations to implement the provisions of this Act and shall do so not later than 120 days after funds authorized to be appropriated under section 1011 have been appropriated in a bill signed into law.

(2) ELEMENTS.—The regulations prescribed under paragraph (1) shall—

(A) set forth the form of any application to be submitted to the Board under this Act;

(B) set forth time periods for the review and consideration by the Board of applications to be submitted to the Board under this Act, and for any other action to be taken by the Board with respect to such applications;

(C) provide appropriate safeguards against the evasion of the provisions of this Act;

(D) set forth the circumstances in which an applicant, together with any affiliate of an applicant, shall be treated as an applicant for a loan guarantee under this Act;

(E) include requirements that appropriate parties submit to the Board any documents and assurances that are required for the administration of the provisions of this Act; and

(F) include such other provisions consistent with the purpose of this Act as the Board considers appropriate.

(3) CONSTRUCTION.—(A) Nothing in this Act shall be construed to prohibit the Board from requiring, to the extent and under circumstances considered appropriate by the Board, that affiliates of an applicant be subject to certain obligations of the



applicant as a condition to the approval or maintenance of a loan guarantee under this Act.

(B) If any provision of this Act or the application of such provision to any person or entity or circumstance is held to be invalid by a court of competent jurisdiction, the remainder of this Act, or the application of such provision to such person or entity or circumstance other than those as to which it is held invalid, shall not be affected thereby.

(c) **AUTHORITY LIMITED BY APPROPRIATIONS ACTS.**—The Board may approve loan guarantees under this Act only to the extent provided for in advance in appropriations Acts.

(d) **REQUIREMENTS AND CRITERIA APPLICABLE TO APPROVAL.**—

(1) **IN GENERAL.**—The Board shall utilize the underwriting criteria developed under subsection (g), and any relevant information provided by the departments and agencies with which the Board consults under section 1003, to determine which loans may be eligible for a loan guarantee under this Act.

(2) **PREREQUISITES.**—In addition to meeting the underwriting criteria under paragraph (1), a loan may not be guaranteed under this Act unless—

(A) the loan is made to finance the acquisition, improvement, enhancement, construction, deployment, launch, or rehabilitation of the means by which local television broadcast signals will be delivered to a nonserved area or underserved area;

(B) the proceeds of the loan will not be used for operating, advertising, or promotion expenses, or for the acquisition of licenses for the use of spectrum in any competitive bidding under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j));

(C) the proposed project, as determined by the Board in consultation with the National Telecommunications and Information Administration, is not likely to have a substantial adverse impact on competition that outweighs the benefits of improving access to the signals of a local television station in a nonserved area or underserved area and is commercially viable;

(D)(i) the loan—

(I) is provided by any entity engaged in the business of commercial lending—

(aa) if the loan is made in accordance with loan-to-one-borrower and affiliate transaction restrictions to which the entity is subject under applicable law; or

(bb) if item (aa) does not apply, the loan is made only to a borrower that is not an affiliate of the entity and only if the amount of the loan and all outstanding loans by that entity to that borrower and any of its affiliates does not exceed 10 percent of the net equity of the entity; or

(II) is provided by a nonprofit corporation, including the National Rural Utilities Cooperative Finance Corporation, engaged primarily in commercial lending, if the Board determines that such nonprofit corpora-

tion has one or more issues of outstanding long-term debt that is rated within the highest three rating categories of a nationally recognized statistical rating organization;

(ii) if the loan is provided by a lender described in clause (i)(II) and the Board determines that the making of the loan by such lender will cause a decline in such lender's debt rating as described in that clause, the Board at its discretion may disapprove the loan guarantee on this basis;

(iii) no loan may be made for purposes of this Act by a governmental entity or affiliate thereof, or by the Federal Agricultural Mortgage Corporation, or any institution supervised by the Federal Housing Finance Agency, or any affiliate of such entities;

(iv) any loan must have terms, in the judgment of the Board, that are consistent in material respects with the terms of similar obligations in the private capital market;

(v) for purposes of clause (i)(I)(bb), the term "net equity" means the value of the total assets of the entity, less the total liabilities of the entity, as recorded under generally accepted accounting principles for the fiscal quarter ended immediately prior to the date on which the subject loan is approved;

(E) repayment of the loan is required to be made within a term of the lesser of—

(i) 25 years from the date of the execution of the loan; or

(ii) the economically useful life, as determined by the Board or in consultation with persons or entities deemed appropriate by the Board, of the primary assets to be used in the delivery of the signals concerned; and

(F) the loan meets any additional criteria developed under subsection (g).

(3) PROTECTION OF UNITED STATES FINANCIAL INTERESTS.—  
The Board may not approve the guarantee of a loan under this Act unless—

(A) the Board has been given documentation, assurances, and access to information, persons, and entities necessary, as determined by the Board, to address issues relevant to the review of the loan by the Board for purposes of this Act; and

(B) the Board makes a determination in writing that—

(i) to the best of its knowledge upon due inquiry, the assets, facilities, or equipment covered by the loan will be utilized economically and efficiently;

(ii) the terms, conditions, security, and schedule and amount of repayments of principal and the payment of interest with respect to the loan protect the financial interests of the United States and are reasonable;

(iii) the value of collateral provided by an applicant is at least equal to the unpaid balance of the loan

amount covered by the loan guarantee (the “Amount” for purposes of this clause); and if the value of collateral provided by an applicant is less than the Amount, the additional required collateral is provided by any affiliate of the applicant;

(iv) all necessary and required regulatory and other approvals, spectrum licenses, and delivery permissions have been received for the loan and the project under the loan;

(v) the loan would not be available on reasonable terms and conditions without a loan guarantee under this Act; and

(vi) repayment of the loan can reasonably be expected.

(e) CONSIDERATIONS.—

(1) TYPE OF MARKET.—

(A) PRIORITY CONSIDERATIONS.—To the maximum extent practicable, the Board shall give priority in the approval of loan guarantees under this Act in the following order:

(i) First, to projects that will serve households in nonserved areas. In considering such projects, the Board shall balance projects that will serve the largest number of households with projects that will serve remote, isolated communities (including noncontiguous States) in areas that are unlikely to be served through market mechanisms.

(ii) Second, to projects that will serve households in underserved areas. In considering such projects, the Board shall balance projects that will serve the largest number of households with projects that will serve remote, isolated communities (including noncontiguous States) in areas that are unlikely to be served through market mechanisms.

Within each category, the Board shall consider the project’s estimated cost per household and shall give priority to those projects that provide the highest quality service at the lowest cost per household.

(B) ADDITIONAL CONSIDERATION.—The Board should give additional consideration to projects that also provide high-speed Internet service.

(C) PROHIBITIONS.—The Board may not approve a loan guarantee under this Act for a project that—

(i) is designed primarily to serve one or more of the top 40 designated market areas (as that term is defined in section 122(j) of title 17, United States Code); or

(ii) would alter or remove National Weather Service warnings from local broadcast signals.

(2) OTHER CONSIDERATIONS.—The Board shall consider other factors, which shall include projects that would—

(A) offer a separate tier of local broadcast signals, but for applicable Federal, State, or local laws or regulations;

- (B) provide lower projected costs to consumers of such separate tier; and
- (C) enable the delivery of local broadcast signals consistent with the purpose of this Act by a means reasonably compatible with existing systems or devices predominantly in use.
- (3) FURTHER CONSIDERATION.—In implementing this Act, the Board shall support the use of loan guarantees for projects that would serve households not likely to be served in the absence of loan guarantees under this Act.
- (f) GUARANTEE LIMITS.—
- (1) LIMITATION ON AGGREGATE VALUE OF LOANS.—The aggregate value of all loans for which loan guarantees are issued under this Act (including the unguaranteed portion of such loans) may not exceed \$1,250,000,000.
- (2) GUARANTEE LEVEL.—A loan guarantee issued under this Act may not exceed an amount equal to 80 percent of a loan meeting in its entirety the requirements of subsection (d)(2)(A). If only a portion of a loan meets the requirements of that subsection, the Board shall determine that percentage of the loan meeting such requirements (the “applicable portion”) and may issue a loan guarantee in an amount not exceeding 80 percent of the applicable portion.
- (g) UNDERWRITING CRITERIA.—Within the period provided for under subsection (b)(1), the Board shall, in consultation with the Director of the Office of Management and Budget and an independent public accounting firm, develop underwriting criteria relating to the guarantee of loans that are consistent with the purpose of this Act, including appropriate collateral and cash flow levels for loans guaranteed under this Act, and such other matters as the Board considers appropriate.
- (h) CREDIT RISK PREMIUMS.—
- (1) ESTABLISHMENT AND ACCEPTANCE.—
- (A) IN GENERAL.—The Board may establish and approve the acceptance of credit risk premiums with respect to a loan guarantee under this Act in order to cover the cost, as defined in section 502(5) of the Federal Credit Reform Act of 1990, of the loan guarantee.
- (B) AUTHORITY LIMITED BY APPROPRIATIONS ACTS.—Credit risk premiums under this subsection shall be imposed only to the extent provided for in advance in appropriations Acts. To the extent that appropriations of budget authority are insufficient to cover the cost, as so defined, of a loan guarantee under this Act, credit risk premiums shall be accepted from a non-Federal source under this subsection on behalf of the applicant for the loan guarantee.
- (2) CREDIT RISK PREMIUM AMOUNT.—
- (A) IN GENERAL.—The Board shall determine the amount of any credit risk premium to be accepted with respect to a loan guarantee under this Act on the basis of—
- (i) the financial and economic circumstances of the applicant for the loan guarantee, including the amount of collateral offered;

- (ii) the proposed schedule of loan disbursements;
- (iii) the business plans of the applicant for providing service;
- (iv) any financial commitment from a broadcast signal provider; and
- (v) the concurrence of the Director of the Office of Management and Budget as to the amount of the credit risk premium.

(B) **PROPORTIONALITY.**—To the extent that appropriations of budget authority are sufficient to cover the cost, as determined under section 502(5) of the Federal Credit Reform Act of 1990, of loan guarantees under this Act, the credit risk premium with respect to each loan guarantee shall be reduced proportionately.

(C) **PAYMENT OF PREMIUMS.**—Credit risk premiums under this subsection shall be paid to an account (the “Escrow Account”) established in the Treasury which shall accrue interest and such interest shall be retained by the account, subject to subparagraph (D).

(D) **DEDUCTIONS FROM ESCROW ACCOUNT.**—If a default occurs with respect to any loan guaranteed under this Act and the default is not cured in accordance with the terms of the underlying loan or loan guarantee agreement, the Administrator, in accordance with subsections (i) and (j) of section 1005, shall liquidate, or shall cause to be liquidated, all assets collateralizing such loan as to which it has a lien or security interest. Any shortfall between the proceeds of the liquidation net of costs and expenses relating to the liquidation, and the guarantee amount paid pursuant to this Act shall be deducted from funds in the Escrow Account and credited to the Administrator for payment of such shortfall. At such time as determined under subsection (d)(2)(E) of this section when all loans guaranteed under this Act have been repaid or otherwise satisfied in accordance with this Act and the regulations promulgated hereunder, remaining funds in the Escrow Account, if any, shall be refunded, on a pro rata basis, to applicants whose loans guaranteed under this Act were not in default, or where any default was cured in accordance with the terms of the underlying loan or loan guarantee agreement.

(i) **LIMITATIONS ON GUARANTEES FOR CERTAIN CABLE OPERATORS.**—Notwithstanding any other provision of this Act, no loan guarantee under this Act may be granted or used to provide funds for a project that upgrades or enhances the services provided over any cable system, nor for a project that extends the services provided by a cable operator, or its successor or assignee, over any cable system to an area that, as of the date of enactment of this Act, is covered by a cable franchise agreement that obligates a cable system operator to serve such area.

(j) **JUDICIAL REVIEW.**—The decision of the Board to approve or disapprove the making of a loan guarantee under this Act shall not be subject to judicial review.

(k) **APPLICABILITY OF APA.**—Except as otherwise provided in subsection (j), the provisions of subchapter II of chapter 5 and chapter 7 of title 5, United States Code (commonly referred to as the Administrative Procedure Act), shall apply to actions taken under this Act.

**SEC. 1005. [47 U.S.C. 1104] ADMINISTRATION OF LOAN GUARANTEES.**

(a) **IN GENERAL.**—The Administrator of the Rural Utilities Service (in this Act referred to as the “Administrator”) shall issue and otherwise administer loan guarantees that have been approved by the Board in accordance with sections 1003 and 1004.

(b) **SECURITY FOR PROTECTION OF UNITED STATES FINANCIAL INTERESTS.**—

(1) **TERMS AND CONDITIONS.**—An applicant shall agree to such terms and conditions as are satisfactory, in the judgment of the Board, to ensure that, as long as any principal or interest is due and payable on a loan guaranteed under this Act, the applicant—

(A) shall maintain assets, equipment, facilities, and operations on a continuing basis;

(B) shall not make any discretionary dividend payments that impair its ability to repay obligations guaranteed under this Act;

(C) shall remain sufficiently capitalized; and

(D) shall submit to, and cooperate fully with, any audit of the applicant under section 1006(a)(2).

(2) **COLLATERAL.**—

(A) **EXISTENCE OF ADEQUATE COLLATERAL.**—An applicant shall provide the Board such documentation as is necessary, in the judgment of the Board, to provide satisfactory evidence that appropriate and adequate collateral secures a loan guaranteed under this Act.

(B) **FORM OF COLLATERAL.**—Collateral required by subparagraph (A) shall consist solely of assets of the applicant, any affiliate of the applicant, or both (whichever the Board considers appropriate), including primary assets to be used in the delivery of signals for which the loan is guaranteed.

(C) **REVIEW OF VALUATION.**—The value of collateral securing a loan guaranteed under this Act may be reviewed by the Board, and may be adjusted downward by the Board if the Board reasonably believes such adjustment is appropriate.

(3) **LIEN ON INTERESTS IN ASSETS.**—Upon the Board’s approval of a loan guarantee under this Act, the Administrator shall have liens on assets securing the loan, which shall be superior to all other liens on such assets, and the value of the assets (based on a determination satisfactory to the Board) subject to the liens shall be at least equal to the unpaid balance of the loan amount covered by the loan guarantee, or that value approved by the Board under section 1004(d)(3)(B)(iii).

(4) **PERFECTED SECURITY INTEREST.**—With respect to a loan guaranteed under this Act, the Administrator and the lender shall have a perfected security interest in assets securing the

loan that are fully sufficient to protect the financial interests of the United States and the lender.

(5) INSURANCE.—In accordance with practices in the private capital market, as determined by the Board, the applicant for a loan guarantee under this Act shall obtain, at its expense, insurance sufficient to protect the financial interests of the United States, as determined by the Board.

(c) ASSIGNMENT OF LOAN GUARANTEES.—The holder of a loan guarantee under this Act may assign the loan guaranteed under this Act in whole or in part, subject to such requirements as the Board may prescribe.

(d) EXPIRATION OF LOAN GUARANTEE UPON STRIPPING.—Notwithstanding subsections (c), (e), and (h), a loan guarantee under this Act shall have no force or effect if any part of the guaranteed portion of the loan is transferred separate and apart from the unguaranteed portion of the loan.

(e) ADJUSTMENT.—The Board may approve the adjustment of any term or condition of a loan guarantee or a loan guaranteed under this Act, including the rate of interest, time of payment of principal or interest, or security requirements only if—

(1) the adjustment is consistent with the financial interests of the United States;

(2) consent has been obtained from the parties to the loan agreement;

(3) the adjustment is consistent with the underwriting criteria developed under section 1004(g);

(4) the adjustment does not adversely affect the interest of the Federal Government in the assets or collateral of the applicant;

(5) the adjustment does not adversely affect the ability of the applicant to repay the loan; and

(6) the National Telecommunications and Information Administration has been consulted by the Board regarding the adjustment.

(f) PERFORMANCE SCHEDULES.—

(1) PERFORMANCE SCHEDULES.—An applicant for a loan guarantee under this Act for a project covered by section 4(e)(1) shall enter into stipulated performance schedules with the Administrator with respect to the signals to be provided through the project.

(2) PENALTY.—The Administrator may assess against and collect from an applicant described in paragraph (1) a penalty not to exceed three times the interest due on the guaranteed loan of the applicant under this Act if the applicant fails to meet its stipulated performance schedule under that paragraph.

(g) COMPLIANCE.—The Administrator, in cooperation with the Board and as the regulations of the Board may provide, shall enforce compliance by an applicant, and any other party to a loan guarantee for whose benefit assistance under this Act is intended, with the provisions of this Act, any regulations under this Act, and the terms and conditions of the loan guarantee, including through the submittal of such reports and documents as the Board may re-

quire in regulations prescribed by the Board and through regular periodic inspections and audits.

(h) COMMERCIAL VALIDITY.—A loan guarantee under this Act shall be incontestable—

(1) in the hands of an applicant on whose behalf the loan guarantee is made, unless the applicant engaged in fraud or misrepresentation in securing the loan guarantee; and

(2) as to any person or entity (or their respective successor in interest) who makes or contracts to make a loan to the applicant for the loan guarantee in reliance thereon, unless such person or entity (or respective successor in interest) engaged in fraud or misrepresentation in making or contracting to make such loan.

(i) DEFAULTS.—The Board shall prescribe regulations governing defaults on loans guaranteed under this Act, including the administration of the payment of guaranteed amounts upon default.

(j) RECOVERY OF PAYMENTS.—

(1) IN GENERAL.—The Administrator shall be entitled to recover from an applicant for a loan guarantee under this Act the amount of any payment made to the holder of the guarantee with respect to the loan.

(2) SUBROGATION.—Upon making a payment described in paragraph (1), the Administrator shall be subrogated to all rights of the party to whom the payment is made with respect to the guarantee which was the basis for the payment.

(3) DISPOSITION OF PROPERTY.—

(A) SALE OR DISPOSAL.—The Administrator shall, in an orderly and efficient manner, sell or otherwise dispose of any property or other interests obtained under this Act in a manner that maximizes taxpayer return and is consistent with the financial interests of the United States.

(B) MAINTENANCE.—The Administrator shall maintain in a cost-effective and reasonable manner any property or other interests pending sale or disposal of such property or other interests under subparagraph (A).

(k) ACTION AGAINST OBLIGOR.—

(1) AUTHORITY TO BRING CIVIL ACTION.—The Administrator may bring a civil action in an appropriate district court of the United States in the name of the United States or of the holder of the obligation in the event of a default on a loan guaranteed under this Act. The holder of a loan guarantee shall make available to the Administrator all records and evidence necessary to prosecute the civil action.

(2) FULLY SATISFYING OBLIGATIONS OWED THE UNITED STATES.—The Administrator may accept property in satisfaction of any sums owed the United States as a result of a default on a loan guaranteed under this Act, but only to the extent that any cash accepted by the Administrator is not sufficient to satisfy fully the sums owed as a result of the default.

(l) BREACH OF CONDITIONS.—The Administrator shall commence a civil action in a court of appropriate jurisdiction to enjoin any activity which the Board finds is in violation of this Act, the regulations under this Act, or any conditions which were duly



agreed to, and to secure any other appropriate relief, including relief against any affiliate of the applicant.

(m) ATTACHMENT.—No attachment or execution may be issued against the Administrator or any property in the control of the Administrator pursuant to this Act before the entry of a final judgment (as to which all rights of appeal have expired) by a Federal, State, or other court of competent jurisdiction against the Administrator in a proceeding for such action.

(n) FEES.—

(1) APPLICATION FEE.—The Board shall charge and collect from an applicant for a loan guarantee under this Act a fee to cover the cost of the Board in making necessary determinations and findings with respect to the loan guarantee application under this Act. The amount of the fee shall be reasonable.

(2) LOAN GUARANTEE ORIGINATION FEE.—The Board shall charge, and the Administrator may collect, a loan guarantee origination fee with respect to the issuance of a loan guarantee under this Act.

(3) USE OF FEES COLLECTED.—

(A) IN GENERAL.—Any fee collected under this subsection shall be used, subject to subparagraph (B), to offset administrative costs under this Act, including costs of the Board and of the Administrator.

(B) SUBJECT TO APPROPRIATIONS.—The authority provided by this subsection shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(C) LIMITATION ON FEES.—The aggregate amount of fees imposed by this subsection shall not exceed the actual amount of administrative costs under this Act.

(o) REQUIREMENTS RELATING TO AFFILIATES.—

(1) INDEMNIFICATION.—The United States shall be indemnified by any affiliate (acceptable to the Board) of an applicant for a loan guarantee under this Act for any losses that the United States incurs as a result of—

(A) a judgment against the applicant or any of its affiliates;

(B) any breach by the applicant or any of its affiliates of their obligations under the loan guarantee agreement;

(C) any violation of the provisions of this Act, and the regulations prescribed under this Act, by the applicant or any of its affiliates;

(D) any penalties incurred by the applicant or any of its affiliates for any reason, including violation of a stipulated performance schedule under subsection (f); and

(E) any other circumstances that the Board considers appropriate.

(2) LIMITATION ON TRANSFER OF LOAN PROCEEDS.—An applicant for a loan guarantee under this Act may not transfer any part of the proceeds of the loan to an affiliate.

(p) EFFECT OF BANKRUPTCY.—

(1) Notwithstanding any other provision of law, whenever any person or entity is indebted to the United States as a result of any loan guarantee issued under this Act and such per-

son or entity is insolvent or is a debtor in a case under title 11, United States Code, the debts due to the United States shall be satisfied first.

(2) A discharge in bankruptcy under title 11, United States Code, shall not release a person or entity from an obligation to the United States in connection with a loan guarantee under this Act.

**SEC. 1006. [47 U.S.C. 1105] ANNUAL AUDIT.**

(a) REQUIREMENT.—The Comptroller General of the United States shall conduct on an annual basis an audit of—

(1) the administration of the provisions of this Act; and

(2) the financial position of each applicant who receives a loan guarantee under this Act, including the nature, amount, and purpose of investments made by the applicant.

(b) REPORT.—The Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking and Financial Services of the House of Representatives a report on each audit conducted under subsection (a).

**SEC. 1007. [47 U.S.C. 1106] IMPROVED CELLULAR SERVICE IN RURAL AREAS.**

(a) REINSTATEMENT OF APPLICANTS AS TENTATIVE SELECTEES.—

(1) IN GENERAL.—Notwithstanding the order of the Federal Communications Commission in the proceeding described in paragraph (3), the Commission shall—

(A) reinstate each applicant as a tentative selectee under the covered rural service area licensing proceeding; and

(B) permit each applicant to amend its application, to the extent necessary to update factual information and to comply with the rules of the Commission, at any time before the Commission's final licensing action in the covered rural service area licensing proceeding.

(2) EXEMPTION FROM PETITIONS TO DENY.—For purposes of the amended applications filed pursuant to paragraph (1)(B), the provisions of section 309(d)(1) of the Communications Act of 1934 (47 U.S.C. 309(d)(1)) shall not apply.

(3) PROCEEDING.—The proceeding described in this paragraph is the proceeding of the Commission In re Applications of Cellwave Telephone Services L.P., Futurewave General Partners L.P., and Great Western Cellular Partners, 7 FCC Rcd No. 19 (1992).

(b) CONTINUATION OF LICENSE PROCEEDING; FEE ASSESSMENT.—

(1) AWARD OF LICENSES.—The Commission shall award licenses under the covered rural service area licensing proceeding within 90 days after the date of the enactment of this Act.

(2) SERVICE REQUIREMENTS.—The Commission shall provide that, as a condition of an applicant receiving a license pursuant to the covered rural service area licensing proceeding, the applicant shall provide cellular radiotelephone service to

subscribers in accordance with sections 22.946 and 22.947 of the Commission's rules (47 CFR 22.946, 22.947); except that the time period applicable under section 22.947 of the Commission's rules (or any successor rule) to the applicants identified in subparagraphs (A) and (B) of subsection (d)(1) shall be 3 years rather than 5 years and the waiver authority of the Commission shall apply to such 3-year period.

(3) CALCULATION OF LICENSE FEE.—

(A) FEE REQUIRED.—The Commission shall establish a fee for each of the licenses under the covered rural service area licensing proceeding. In determining the amount of the fee, the Commission shall consider—

(i) the average price paid per person served in the Commission's Cellular Unserved Auction (Auction No. 12); and

(ii) the settlement payments required to be paid by the permittees pursuant to the consent decree set forth in the Commission's order, *In re the Tellesis Partners* (7 FCC Rcd 3168 (1992)), multiplying such payments by two.

(B) NOTICE OF FEE.—Within 30 days after the date an applicant files the amended application permitted by subsection (a)(1)(B), the Commission shall notify each applicant of the fee established for the license associated with its application.

(4) PAYMENT FOR LICENSES.—No later than 18 months after the date that an applicant is granted a license, each applicant shall pay to the Commission the fee established pursuant to paragraph (3) for the license granted to the applicant under paragraph (1).

(5) AUCTION AUTHORITY.—If, after the amendment of an application pursuant to subsection (a)(1)(B), the Commission finds that the applicant is ineligible for grant of a license to provide cellular radiotelephone services for a rural service area or the applicant does not meet the requirements under paragraph (2) of this subsection, the Commission shall grant the license for which the applicant is the tentative selectee (pursuant to subsection (a)(1)(B) by competitive bidding pursuant to section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)).

(c) PROHIBITION OF TRANSFER.—During the 5-year period that begins on the date that an applicant is granted any license pursuant to subsection (a), the Commission may not authorize the transfer or assignment of that license under section 310 of the Communications Act of 1934 (47 U.S.C. 310). Nothing in this Act may be construed to prohibit any applicant granted a license pursuant to subsection (a) from contracting with other licensees to improve cellular telephone service.

(d) DEFINITIONS.—For the purposes of this section, the following definitions shall apply:

(1) APPLICANT.—The term "applicant" means—

(A) Great Western Cellular Partners, a California general partnership chosen by the Commission as tentative selectee for RSA #492 on May 4, 1989;

(B) Monroe Telephone Services L.P., a Delaware limited partnership chosen by the Commission as tentative selectee for RSA #370 on August 24, 1989 (formerly Cellwave Telephone Services L.P.); and

(C) FutureWave General Partners L.P., a Delaware limited partnership chosen by the Commission as tentative selectee for RSA #615 on May 25, 1990.

(2) COMMISSION.—The term “Commission” means the Federal Communications Commission.

(3) COVERED RURAL SERVICE AREA LICENSING PROCEEDING.—The term “covered rural service area licensing proceeding” means the proceeding of the Commission for the grant of cellular radiotelephone licenses for rural service areas #492 (Minnesota 11), #370 (Florida 11), and #615 (Pennsylvania 4).

(4) TENTATIVE SELECTEE.—The term “tentative selectee” means a party that has been selected by the Commission under a licensing proceeding for grant of a license, but has not yet been granted the license because the Commission has not yet determined whether the party is qualified under the Commission’s rules for grant of the license.

**SEC. 1008. TECHNICAL AMENDMENT.**

Section 339(c) of the Communications Act of 1934 (47 U.S.C. 339(c)) is amended by adding at the end the following new paragraph:

“(5) DEFINITION.—Notwithstanding subsection (d)(4), for purposes of paragraphs (2) and (4) of this subsection, the term ‘satellite carrier’ includes a distributor (as defined in section 119(d)(1) of title 17, United States Code), but only if the satellite distributor’s relationship with the subscriber includes billing, collection, service activation, and service deactivation.”.

**SEC. 1009. [47 U.S.C. 1107] SUNSET.**

No loan guarantee may be approved under this Act after December 31, 2006.

**SEC. 1010. [47 U.S.C. 1108] DEFINITIONS.**

In this Act:

(1) AFFILIATE.—The term “affiliate”—

(A) means any person or entity that controls, or is controlled by, or is under common control with, another person or entity; and

(B) may include any individual who is a director or senior management officer of an affiliate, a shareholder controlling more than 25 percent of the voting securities of an affiliate, or more than 25 percent of the ownership interest in an affiliate not organized in stock form.

(2) NONSERVED AREA.—The term “nonserved area” means any area that—

(A) is outside the grade B contour (as determined using standards employed by the Federal Communications Commission) of the local television broadcast signals serving a particular designated market area; and

(B) does not have access to such signals by any commercial, for profit, multichannel video provider.

(3) **UNDERSERVED AREA.**—The term “underserved area” means any area that—

(A) is outside the grade A contour (as determined using standards employed by the Federal Communications Commission) of the local television broadcast signals serving a particular designated market area; and

(B) has access to local television broadcast signals from not more than one commercial, for-profit multi-channel video provider.

(4) **COMMON TERMS.**—Except as provided in paragraphs (1) through (3), any term used in this Act that is defined in the Communications Act of 1934 (47 U.S.C. 151 et seq.) has the meaning given that term in the Communications Act of 1934.

**SEC. 1011. [47 U.S.C. 1109] AUTHORIZATIONS OF APPROPRIATIONS.**

(a) **COST OF LOAN GUARANTEES.**—

(1) **AUTHORIZATION OF APPROPRIATIONS.**—For the cost of the loans guaranteed under this Act, including the cost of modifying the loans, as defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661(a)), there are authorized to be appropriated for fiscal years 2001 through 2006, such amounts as may be necessary.

(2) **COMMODITY CREDIT CORPORATION FUNDS.**—

(A) **IN GENERAL.**—Notwithstanding any other provision of law, subject to subparagraph (B), in addition to amounts made available under paragraph (1), of the funds of the Commodity Credit Corporation, the Secretary of Agriculture shall make available for loan guarantees to carry out this title \$80,000,000 for the period beginning on the date of enactment of this paragraph and ending on December 31, 2006, to remain available until expended.

(B) **BROADBAND LOANS AND LOAN GUARANTEES.**—

(i) **IN GENERAL.**—Amounts made available under subparagraph (A) that are not obligated as of the release date described in clause (ii) shall be available to the Secretary to make loans and loan guarantees under section 601 of the Rural Electrification Act of 1936.

(ii) **RELEASE DATE.**—For purposes of clause (i), the release date is the date that is the earlier of—

(I) the date the Secretary determines that at least 75 percent of the designated market areas (as defined in section 122(j) of title 17, United States Code) not in the top 40 designated market areas described in section 1004(e)(1)(C)(i) of the Launching Our Communities' Access to Local Television Act of 2000 (47 U.S.C. 1103(e)(1)(C)(i)) have access to local television broadcast signals for virtually all households (as determined by the Secretary); or

(II) December 31, 2006.

(C) **ADVANCED APPROPRIATIONS.**—Subsections (c) and (h)(1)(B) of section 1004 and section 1005(n)(3)(B) shall not apply to amounts made available under this paragraph.

(b) **COST OF ADMINISTRATION.**—There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, other than to cover costs under subsection (a).

(c) **AVAILABILITY.**—Any amounts appropriated pursuant to the authorizations of appropriations in subsections (a) and (b) shall remain available until expended.

**SEC. 1012. [47 U.S.C. 1110] PREVENTION OF INTERFERENCE TO DIRECT BROADCAST SATELLITE SERVICES.**

(a) **TESTING FOR HARMFUL INTERFERENCE.**—The Federal Communications Commission shall provide for an independent technical demonstration of any terrestrial service technology proposed by any entity that has filed an application to provide terrestrial service in the direct broadcast satellite frequency band to determine whether the terrestrial service technology proposed to be provided by that entity will cause harmful interference to any direct broadcast satellite service.

(b) **TECHNICAL DEMONSTRATION.**—In order to satisfy the requirement of subsection (a) for any pending application, the Commission shall select an engineering firm or other qualified entity independent of any interested party based on a recommendation made by the Institute of Electrical and Electronics Engineers (IEEE), or a similar independent professional organization, to perform the technical demonstration or analysis. The demonstration shall be concluded within 60 days after the date of enactment of this Act and shall be subject to public notice and comment for not more than 30 days thereafter.

(c) **DEFINITIONS.**—As used in this section:

(1) **DIRECT BROADCAST SATELLITE FREQUENCY BAND.**—The term “direct broadcast satellite frequency band” means the band of frequencies at 12.2 to 12.7 gigahertz.

(2) **DIRECT BROADCAST SATELLITE SERVICE.**—The term “direct broadcast satellite service” means any direct broadcast satellite system operating in the direct broadcast satellite frequency band.



**INTERNET TAX FREEDOM ACT**



F:\COMP\FCC\FCCMISC

March 15, 2012



## INTERNET TAX FREEDOM ACT

(Titles XI and XII of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999)

[As Amended Through P.L. 110–108, Enacted October 31, 2007]

\* \* \* \* \*

### TITLE XI—MORATORIUM ON CERTAIN TAXES

**SEC. 1100. [47 U.S.C. 151 note] SHORT TITLE.**

This title may be cited as the “Internet Tax Freedom Act”.

**SEC. 1101. [47 U.S.C. 151 note] MORATORIUM.**

(a) MORATORIUM.—No State or political subdivision thereof may impose any of the following taxes during the period beginning November 1, 2003, and ending November 1, 2014:

- (1) Taxes on Internet access.
- (2) Multiple or discriminatory taxes on electronic commerce.

(b) PRESERVATION OF STATE AND LOCAL TAXING AUTHORITY.—Except as provided in this section, nothing in this title shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or superseding of, any State or local law pertaining to taxation that is otherwise permissible by or under the Constitution of the United States or other Federal law and in effect on the date of enactment of this Act.

(c) LIABILITIES AND PENDING CASES.—Nothing in this title affects liability for taxes accrued and enforced before the date of enactment of this Act, nor does this title affect ongoing litigation relating to such taxes.

(d) EXCEPTION TO MORATORIUM.—

(1) IN GENERAL.—Subsection (a) shall also not apply in the case of any person or entity who knowingly and with knowledge of the character of the material, in interstate or foreign commerce by means of the World Wide Web, makes any communication for commercial purposes that is available to any minor and that includes any material that is harmful to minors unless such person or entity has restricted access by minors to material that is harmful to minors—

(A) by requiring use of a credit card, debit account, adult access code, or adult personal identification number;

(B) by accepting a digital certificate that verifies age;

or

(C) by any other reasonable measures that are feasible under available technology.

(2) SCOPE OF EXCEPTION.—For purposes of paragraph (1), a person shall not be considered to making a communication

for commercial purposes of material to the extent that the person is—

(A) a telecommunications carrier engaged in the provision of a telecommunications service;

(B) a person engaged in the business of providing an Internet access service;

(C) a person engaged in the business of providing an Internet information location tool; or

(D) similarly engaged in the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication made by another person, without selection or alteration of the communication.

(3) DEFINITIONS.—In this subsection:

(A) BY MEANS OF THE WORLD WIDE WEB.—The term “by means of the World Wide Web” means by placement of material in a computer server-based file archive so that it is publicly accessible, over the Internet, using hypertext transfer protocol, file transfer protocol, or other similar protocols.

(B) COMMERCIAL PURPOSES; ENGAGED IN THE BUSINESS.—

(i) COMMERCIAL PURPOSES.—A person shall be considered to make a communication for commercial purposes only if such person is engaged in the business of making such communications.

(ii) ENGAGED IN THE BUSINESS.—The term “engaged in the business” means that the person who makes a communication, or offers to make a communication, by means of the World Wide Web, that includes any material that is harmful to minors, devotes time, attention, or labor to such activities, as a regular course of such person’s trade or business, with the objective of earning a profit as a result of such activities (although it is not necessary that the person make a profit or that the making or offering to make such communications be the person’s sole or principal business or source of income). A person may be considered to be engaged in the business of making, by means of the World Wide Web, communications for commercial purposes that include material that is harmful to minors, only if the person knowingly causes the material that is harmful to minors to be posted on the World Wide Web or knowingly solicits such material to be posted on the World Wide Web.

(C) INTERNET.—The term “Internet” means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(D) INTERNET ACCESS SERVICE.—The term “Internet access service” means a service that enables users to ac-

cess content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. The term "Internet access service" does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.

(E) INTERNET INFORMATION LOCATION TOOL.—The term "Internet information location tool" means a service that refers or links users to an online location on the World Wide Web. Such term includes directories, indices, references, pointers, and hypertext links.

(F) MATERIAL THAT IS HARMFUL TO MINORS.—The term "material that is harmful to minors" means any communication, picture, image, graphic image file, article, recording, writing, or other matter of any kind that is obscene or that—

(i) the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, is designed to appeal to, or is designed to pander to, the prurient interest;

(ii) depicts, describes, or represents, in a manner patently offensive with respect to minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post-pubescent female breast; and

(iii) taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(G) MINOR.—The term "minor" means any person under 17 years of age.

(H) TELECOMMUNICATIONS CARRIER; TELECOMMUNICATIONS SERVICE.—The terms "telecommunications carrier" and "telecommunications service" have the meanings given such terms in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

(e) ADDITIONAL EXCEPTION TO MORATORIUM.—

(1) IN GENERAL.—Subsection (a) shall also not apply with respect to an Internet access provider, unless, at the time of entering into an agreement with a customer for the provision of Internet access services, such provider offers such customer (either for a fee or at no charge) screening software that is designed to permit the customer to limit access to material on the Internet that is harmful to minors.

(2) DEFINITIONS.—In this subsection:

(A) INTERNET ACCESS PROVIDER.—The term "Internet access provider" means a person engaged in the business of providing a computer and communications facility through which a customer may obtain access to the Internet, but does not include a common carrier to the extent that it provides only telecommunications services.

(B) **INTERNET ACCESS SERVICES.**—The term “Internet access services” means the provision of computer and communications services through which a customer using a computer and a modem or other communications device may obtain access to the Internet, but does not include telecommunications services provided by a common carrier.

(C) **SCREENING SOFTWARE.**—The term “screening software” means software that is designed to permit a person to limit access to material on the Internet that is harmful to minors.

(3) **APPLICABILITY.**—Paragraph (1) shall apply to agreements for the provision of Internet access services entered into on or after the date that is 6 months after the date of enactment of this Act.

**SEC. 1102. [47 U.S.C. 151 note] ADVISORY COMMISSION ON ELECTRONIC COMMERCE.**

(a) **ESTABLISHMENT OF COMMISSION.**—There is established a commission to be known as the Advisory Commission on Electronic Commerce (in this title referred to as the “Commission”). The Commission shall—

(1) be composed of 19 members appointed in accordance with subsection (b), including the chairperson who shall be selected by the members of the Commission from among themselves; and

(2) conduct its business in accordance with the provisions of this title.

(b) **MEMBERSHIP.**—

(1) **IN GENERAL.**—The Commissioners shall serve for the life of the Commission. The membership of the Commission shall be as follows:

(A) 3 representatives from the Federal Government, comprised of the Secretary of Commerce, the Secretary of the Treasury, and the United States Trade Representative (or their respective delegates).

(B) 8 representatives from State and local governments (one such representative shall be from a State or local government that does not impose a sales tax and one representative shall be from a State that does not impose an income tax).

(C) 8 representatives of the electronic commerce industry (including small business), telecommunications carriers, local retail businesses, and consumer groups, comprised of—

(i) 5 individuals appointed by the Majority Leader of the Senate;

(ii) 3 individuals appointed by the Minority Leader of the Senate;

(iii) 5 individuals appointed by the Speaker of the House of Representatives; and

(iv) 3 individuals appointed by the Minority Leader of the House of Representatives.

(2) **APPOINTMENTS.**—Appointments to the Commission shall be made not later than 45 days after the date of the en-

actment of this Act. The chairperson shall be selected not later than 60 days after the date of the enactment of this Act.

(3) VACANCIES.—Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(c) ACCEPTANCE OF GIFTS AND GRANTS.—The Commission may accept, use, and dispose of gifts or grants of services or property, both real and personal, for purposes of aiding or facilitating the work of the Commission. Gifts or grants not used at the expiration of the Commission shall be returned to the donor or grantor.

(d) OTHER RESOURCES.—The Commission shall have reasonable access to materials, resources, data, and other information from the Department of Justice, the Department of Commerce, the Department of State, the Department of the Treasury, and the Office of the United States Trade Representative. The Commission shall also have reasonable access to use the facilities of any such Department or Office for purposes of conducting meetings.

(e) SUNSET.—The Commission shall terminate 18 months after the date of the enactment of this Act.

(f) RULES OF THE COMMISSION.—

(1) QUORUM.—Nine members of the Commission shall constitute a quorum for conducting the business of the Commission.

(2) MEETINGS.—Any meetings held by the Commission shall be duly noticed at least 14 days in advance and shall be open to the public.

(3) OPPORTUNITIES TO TESTIFY.—The Commission shall provide opportunities for representatives of the general public, taxpayer groups, consumer groups, and State and local government officials to testify.

(4) ADDITIONAL RULES.—The Commission may adopt other rules as needed.

(g) DUTIES OF THE COMMISSION.—

(1) IN GENERAL.—The Commission shall conduct a thorough study of Federal, State and local, and international taxation and tariff treatment of transactions using the Internet and Internet access and other comparable intrastate, interstate or international sales activities.

(2) ISSUES TO BE STUDIED.—The Commission may include in the study under subsection (a)—

(A) an examination of—

(i) barriers imposed in foreign markets on United States providers of property, goods, services, or information engaged in electronic commerce and on United States providers of telecommunications services; and

(ii) how the imposition of such barriers will affect United States consumers, the competitiveness of United States citizens providing property, goods, services, or information in foreign markets, and the growth and maturing of the Internet;

(B) an examination of the collection and administration of consumption taxes on electronic commerce in other countries and the United States, and the impact of such collection on the global economy, including an examination

of the relationship between the collection and administration of such taxes when the transaction uses the Internet and when it does not;

(C) an examination of the impact of the Internet and Internet access (particularly voice transmission) on the revenue base for taxes imposed under section 4251 of the Internal Revenue Code of 1986;

(D) an examination of model State legislation that—

(i) would provide uniform definitions of categories of property, goods, service, or information subject to or exempt from sales and use taxes; and

(ii) would ensure that Internet access services, on-line services, and communications and transactions using the Internet, Internet access service, or online services would be treated in a tax and technologically neutral manner relative to other forms of remote sales;

(E) an examination of the effects of taxation, including the absence of taxation, on all interstate sales transactions, including transactions using the Internet, on retail businesses and on State and local governments, which examination may include a review of the efforts of State and local governments to collect sales and use taxes owed on in-State purchases from out-of-State sellers; and

(F) the examination of ways to simplify Federal and State and local taxes imposed on the provision of telecommunications services.

(3) EFFECT ON THE COMMUNICATIONS ACT OF 1934.—Nothing in this section shall include an examination of any fees or charges imposed by the Federal Communications Commission or States related to—

(A) obligations under the Communications Act of 1934 (47 U.S.C. 151 et seq.); or

(B) the implementation of the Telecommunications Act of 1996 (or of amendments made by that Act).

(h) NATIONAL TAX ASSOCIATION COMMUNICATIONS AND ELECTRONIC COMMERCE TAX PROJECT.—The Commission shall, to the extent possible, ensure that its work does not undermine the efforts of the National Tax Association Communications and Electronic Commerce Tax Project.

**SEC. 1103. [47 U.S.C. 151 note] REPORT.**

Not later than 18 months after the date of the enactment of this Act, the Commission shall transmit to Congress for its consideration a report reflecting the results, including such legislative recommendations as required to address the findings of the Commission's study under this title. Any recommendation agreed to by the Commission shall be tax and technologically neutral and apply to all forms of remote commerce. No finding or recommendation shall be included in the report unless agreed to by at least two-thirds of the members of the Commission serving at the time the finding or recommendation is made.

**SEC. 1104. [47 U.S.C. 151 note] GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.****(a) PRE-OCTOBER 1998 TAXES.—**

(1) **IN GENERAL.**—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced prior to October 1, 1998, if, before that date—

(A) the tax was authorized by statute; and

(B) either—

(i) a provider of Internet access services had a reasonable opportunity to know, by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

(ii) a State or political subdivision thereof generally collected such tax on charges for Internet access.

**(2) TERMINATION.—**

(A) **IN GENERAL.**—Except as provided in subparagraph

(B), this subsection shall not apply after November 1, 2014.

(B) **STATE TELECOMMUNICATIONS SERVICE TAX.—**

(i) **DATE FOR TERMINATION.**—This subsection shall not apply after November 1, 2006, with respect to a State telecommunications service tax described in clause (ii).

(ii) **DESCRIPTION OF TAX.**—A State telecommunications service tax referred to in subclause (i) is a State tax—

(I) enacted by State law on or after October 1, 1991, and imposing a tax on telecommunications service; and

(II) applied to Internet access through administrative code or regulation issued on or after December 1, 2002.

(3) **EXCEPTION.**—Paragraphs (1) and (2) shall not apply to any State that has, more than 24 months prior to the date of enactment of this paragraph, enacted legislation to repeal the State's taxes on Internet access or issued a rule or other proclamation made by the appropriate agency of the State that such State agency has decided to no longer apply such tax to Internet access.

**(b) PRE-NOVEMBER 2003 TAXES.—**

(1) **IN GENERAL.**—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced as of November 1, 2003, if, as of that date, the tax was authorized by statute and—

(A) a provider of Internet access services had a reasonable opportunity to know by virtue of a public rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; and

(B) a State or political subdivision thereof generally collected such tax on charges for Internet access.

(2) TERMINATION.—This subsection shall not apply after November 1, 2005.

(c) APPLICATION OF DEFINITION.—

(1) IN GENERAL.—Effective as of November 1, 2003—

(A) for purposes of subsection (a), the term “Internet access” shall have the meaning given such term by section 1104(5) of this Act, as enacted on October 21, 1998; and

(B) for purposes of subsection (b), the term “Internet access” shall have the meaning given such term by section 1104(5) of this Act as enacted on October 21, 1998, and amended by section 2(c) of the Internet Tax Non-discrimination Act (Public Law 108–435).

(2) EXCEPTIONS.—Paragraph (1) shall not apply until June 30, 2008, to a tax on Internet access that is—

(A) generally imposed and actually enforced on telecommunications service purchased, used, or sold by a provider of Internet access, but only if the appropriate administrative agency of a State or political subdivision thereof issued a public ruling prior to July 1, 2007, that applied such tax to such service in a manner that is inconsistent with paragraph (1); or

(B) the subject of litigation instituted in a judicial court of competent jurisdiction prior to July 1, 2007, in which a State or political subdivision is seeking to enforce, in a manner that is inconsistent with paragraph (1), such tax on telecommunications service purchased, used, or sold by a provider of Internet access.

(3) NO INFERENCE.—No inference of legislative construction shall be drawn from this subsection or the amendments to section 1105(5) made by the Internet Tax Freedom Act Amendments Act of 2007 for any period prior to June 30, 2008, with respect to any tax subject to the exceptions described in subparagraphs (A) and (B) of paragraph (2).

**SEC. 1105. [47 U.S.C. 151 note] DEFINITIONS.**

For the purposes of this title:

(1) BIT TAX.—The term “bit tax” means any tax on electronic commerce expressly imposed on or measured by the volume of digital information transmitted electronically, or the volume of digital information per unit of time transmitted electronically, but does not include taxes imposed on the provision of telecommunications.

(2) DISCRIMINATORY TAX.—The term “discriminatory tax” means—

(A) any tax imposed by a State or political subdivision thereof on electronic commerce that—

(i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

(ii) is not generally imposed and legally collectible at the same rate by such State or such political sub-



division on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;

(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means;

(iv) establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means; or

(B) any tax imposed by a State or political subdivision thereof, if—

(i) the sole ability to access a site on a remote seller's out-of-State computer server is considered a factor in determining a remote seller's tax collection obligation; or

(ii) a provider of Internet access service or online services is deemed to be the agent of a remote seller for determining tax collection obligations solely as a result of—

(I) the display of a remote seller's information or content on the out-of-State computer server of a provider of Internet access service or online services; or

(II) the processing of orders through the out-of-State computer server of a provider of Internet access service or online services.

(3) **ELECTRONIC COMMERCE.**—The term “electronic commerce” means any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration, and includes the provision of Internet access.

(4) **INTERNET.**—The term “Internet” means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(5) **INTERNET ACCESS.**—The term “Internet access”—

(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;

(B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold—

(i) to provide such service; or

(ii) to otherwise enable users to access content, information or other services offered over the Internet;

(C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity;

(D) does not include voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), (C), or (E)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), (C), or (E); and

(E) includes a homepage, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity, that are provided independently or not packaged with Internet access.

(6) MULTIPLE TAX.—

(A) IN GENERAL.—The term “multiple tax” means any tax that is imposed by one State or political subdivision thereof on the same or essentially the same electronic commerce that is also subject to another tax imposed by another State or political subdivision thereof (whether or not at the same rate or on the same basis), without a credit (for example, a resale exemption certificate) for taxes paid in other jurisdictions.

(B) EXCEPTION.—Such term shall not include a sales or use tax imposed by a State and 1 or more political subdivisions thereof on the same electronic commerce or a tax on persons engaged in electronic commerce which also may have been subject to a sales or use tax thereon.

(C) SALES OR USE TAX.—For purposes of subparagraph (B), the term “sales or use tax” means a tax that is imposed on or incident to the sale, purchase, storage, consumption, distribution, or other use of tangible personal property or services as may be defined by laws imposing such tax and which is measured by the amount of the sales price or other charge for such property or service.

(7) STATE.—The term “State” means any of the several States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

(8) TAX.—

(A) IN GENERAL.—The term “tax” means—

(i) any charge imposed by any governmental entity for the purpose of generating revenues for governmental purposes, and is not a fee imposed for a specific privilege, service, or benefit conferred; or

(ii) the imposition on a seller of an obligation to collect and to remit to a governmental entity any sales

or use tax imposed on a buyer by a governmental entity.

(B) EXCEPTION.—Such term does not include any franchise fee or similar fee imposed by a State or local franchising authority, pursuant to section 622 or 653 of the Communications Act of 1934 (47 U.S.C. 542, 573), or any other fee related to obligations or telecommunications carriers under the Communications Act of 1934 (47 U.S.C. 151 et seq.).

(9) TELECOMMUNICATIONS.—The term “telecommunications” means “telecommunications” as such term is defined in section 3(43) of the Communications Act of 1934 (47 U.S.C. 153(43)) and “telecommunications service” as such term is defined in section 3(46) of such Act (47 U.S.C. 153(46)), and includes communications services (as defined in section 4251 of the Internal Revenue Code of 1986 (26 U.S.C. 4251)).

(10) TAX ON INTERNET ACCESS.—

(A) IN GENERAL.—The term “tax on Internet access” means a tax on Internet access, regardless of whether such tax is imposed on a provider of Internet access or a buyer of Internet access and regardless of the terminology used to describe the tax.

(B) GENERAL EXCEPTION.—The term “tax on Internet access” does not include a tax levied upon or measured by net income, capital stock, net worth, or property value.

(C) SPECIFIC EXCEPTION.—

(i) SPECIFIED TAXES.—Effective November 1, 2007, the term “tax on Internet access” also does not include a State tax expressly levied on commercial activity, modified gross receipts, taxable margin, or gross income of the business, by a State law specifically using one of the foregoing terms, that—

(I) was enacted after June 20, 2005, and before November 1, 2007 (or, in the case of a State business and occupation tax, was enacted after January 1, 1932, and before January 1, 1936);

(II) replaced, in whole or in part, a modified value-added tax or a tax levied upon or measured by net income, capital stock, or net worth (or, is a State business and occupation tax that was enacted after January 1, 1932 and before January 1, 1936);

(III) is imposed on a broad range of business activity; and

(IV) is not discriminatory in its application to providers of communication services, Internet access, or telecommunications.

(ii) MODIFICATIONS.—Nothing in this subparagraph shall be construed as a limitation on a State’s ability to make modifications to a tax covered by clause (i) of this subparagraph after November 1, 2007, as long as the modifications do not substantially narrow the range of business activities on which the

tax is imposed or otherwise disqualify the tax under clause (i).

(iii) NO INFERENCE.—No inference of legislative construction shall be drawn from this subparagraph regarding the application of subparagraph (A) or (B) to any tax described in clause (i) for periods prior to November 1, 2007.

**SEC. 1106. [47 U.S.C. 151 note] ACCOUNTING RULE.**

(a) IN GENERAL.—If charges for Internet access are aggregated with and not separately stated from charges for telecommunications or other charges that are subject to taxation, then the charges for Internet access may be subject to taxation unless the Internet access provider can reasonably identify the charges for Internet access from its books and records kept in the regular course of business.

(b) DEFINITIONS.—In this section:

(1) CHARGES FOR INTERNET ACCESS.—The term “charges for Internet access” means all charges for Internet access as defined in section 1105(5).

(2) CHARGES FOR TELECOMMUNICATIONS.—The term “charges for telecommunications” means all charges for telecommunications, except to the extent such telecommunications are purchased, used, or sold by a provider of Internet access to provide Internet access or to otherwise enable users to access content, information or other services offered over the Internet.

**SEC. 1107. [47 U.S.C. 151 note] EFFECT ON OTHER LAWS.**

(a) UNIVERSAL SERVICE.—Nothing in this Act shall prevent the imposition or collection of any fees or charges used to preserve and advance Federal universal service or similar State programs—

(1) authorized by section 254 of the Communications Act of 1934 (47 U.S.C. 254); or

(2) in effect on February 8, 1996.

(b) 911 AND E-911 SERVICES.—Nothing in this Act shall prevent the imposition or collection, on a service used for access to 911 or E-911 services, of any fee or charge specifically designated or presented as dedicated by a State or political subdivision thereof for the support of 911 or E-911 services if no portion of the revenue derived from such fee or charge is obligated or expended for any purpose other than support of 911 or E-911 services.

(c) NON-TAX REGULATORY PROCEEDINGS.—Nothing in this Act shall be construed to affect any Federal or State regulatory proceeding that is not related to taxation.

**[SEC. 1108. Repealed.]**

**SEC. 1109. [47 U.S.C. 151 note] EXCEPTION FOR TEXAS MUNICIPAL ACCESS LINE FEE.**

Nothing in this Act shall prohibit Texas or a political subdivision thereof from imposing or collecting the Texas municipal access line fee pursuant to Texas Local Govt. Code Ann. ch. 283 (Vernon 2005) and the definition of access line as determined by the Public Utility Commission of Texas in its “Order Adopting Amendments to Section 26.465 As Approved At The February 13, 2003 Public Hearing”, issued March 5, 2003, in Project No. 26412.

## TITLE XII—OTHER PROVISIONS

**SEC. 1201. DECLARATION THAT INTERNET SHOULD BE FREE OF NEW FEDERAL TAXES.**

It is the sense of Congress that no new Federal taxes similar to the taxes described in section 1101(a) should be enacted with respect to the Internet and Internet access during the moratorium provided in such section.

**SEC. 1202. NATIONAL TRADE ESTIMATE.**

Section 181 of the Trade Act of 1974 (19 U.S.C. 2241) is amended—

- (1) in subsection (a)(1)—
  - (A) in subparagraph (A)—
    - (i) by striking “and” at the end of clause (i);
    - (ii) by inserting “and” at the end of clause (ii); and
    - (iii) by inserting after clause (ii) the following new clause:
 

“(iii) United States electronic commerce,”; and
  - (B) in subparagraph (C)—
    - (i) by striking “and” at the end of clause (i);
    - (ii) by inserting “and” at the end of clause (ii);
    - (iii) by inserting after clause (ii) the following new clause:
 

“(iii) the value of additional United States electronic commerce,”; and
    - (iv) by inserting “or transacted with,” after “or invested in”;
- (2) in subsection (a)(2)(E)—
  - (A) by striking “and” at the end of clause (i);
  - (B) by inserting “and” at the end of clause (ii); and
  - (C) by inserting after clause (ii) the following new clause:
 

“(iii) the value of electronic commerce transacted with,”; and
- (3) by adding at the end the following new subsection:
 

“(d) ELECTRONIC COMMERCE.—For purposes of this section, the term ‘electronic commerce’ has the meaning given that term in section 1104(3) of the Internet Tax Freedom Act.”.

**SEC. 1203. [19 U.S.C. 2241 note] DECLARATION THAT THE INTERNET SHOULD BE FREE OF FOREIGN TARIFFS, TRADE BARRIERS, AND OTHER RESTRICTIONS.**

(a) **IN GENERAL.**—It is the sense of Congress that the President should seek bilateral, regional, and multilateral agreements to remove barriers to global electronic commerce through the World Trade Organization, the Organization for Economic Cooperation and Development, the Trans-Atlantic Economic Partnership, the Asia Pacific Economic Cooperation forum, the Free Trade Area of the Americas, the North American Free Trade Agreement, and other appropriate venues.

(b) **NEGOTIATING OBJECTIVES.**—The negotiating objectives of the United States shall be—

- (1) to assure that electronic commerce is free from—
  - (A) tariff and nontariff barriers;

- (B) burdensome and discriminatory regulation and standards; and
- (C) discriminatory taxation; and
- (2) to accelerate the growth of electronic commerce by expanding market access opportunities for—
  - (A) the development of telecommunications infrastructure;
  - (B) the procurement of telecommunications equipment;
  - (C) the provision of Internet access and telecommunications services; and
  - (D) the exchange of goods, services, and digitalized information.

(c) **ELECTRONIC COMMERCE.**—For purposes of this section, the term “electronic commerce” has the meaning given that term in section 1104(3).

**SEC. 1204. [19 U.S.C. 2241 note] NO EXPANSION OF TAX AUTHORITY.**

Nothing in this title shall be construed to expand the duty of any person to collect or pay taxes beyond that which existed immediately before the date of the enactment of this Act.

**SEC. 1205. [19 U.S.C. 2241 note] PRESERVATION OF AUTHORITY.**

Nothing in this title shall limit or otherwise affect the implementation of the Telecommunications Act of 1996 (Public Law 104–104) or the amendments made by such Act.

**SEC. 1206. [19 U.S.C. 2241 note] SEVERABILITY.**

If any provision of this title, or any amendment made by this title, or the application of that provision to any person or circumstance, is held by a court of competent jurisdiction to violate any provision of the Constitution of the United States, then the other provisions of that title, and the application of that provision to other persons and circumstances, shall not be affected.

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**CHILDREN'S ONLINE PRIVACY PROTECTION ACT OF  
1998**

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March 15, 2012



**CHILDREN'S ONLINE PRIVACY PROTECTION ACT OF  
1998**

(Title XIII of the Omnibus Consolidated and Emergency Supplemental  
Appropriations Act, 1999)

\* \* \* \* \*

**TITLE XIII—CHILDREN'S ONLINE PRIVACY PROTECTION**

**SEC. 1301. [15 U.S.C. 6501 note] SHORT TITLE.**

This title may be cited as the "Children's Online Privacy Protection Act of 1998".

**SEC. 1302. [15 U.S.C. 6501] DEFINITIONS.**

In this title:

(1) **CHILD.**—The term "child" means an individual under the age of 13.

(2) **OPERATOR.**—The term "operator"—

(A) means any person who operates a website located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such website or online service, or on whose behalf such information is collected or maintained, where such website or online service is operated for commercial purposes, including any person offering products or services for sale through that website or online service, involving commerce—

(i) among the several States or with 1 or more foreign nations;

(ii) in any territory of the United States or in the District of Columbia, or between any such territory and—

(I) another such territory; or

(II) any State or foreign nation; or

(iii) between the District of Columbia and any State, territory, or foreign nation; but

(B) does not include any nonprofit entity that would otherwise be exempt from coverage under section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

(3) **COMMISSION.**—The term "Commission" means the Federal Trade Commission.

(4) **DISCLOSURE.**—The term "disclosure" means, with respect to personal information—

(A) the release of personal information collected from a child in identifiable form by an operator for any purpose, except where such information is provided to a person other than the operator who provides support for the inter-

nal operations of the website and does not disclose or use that information for any other purpose; and

(B) making personal information collected from a child by a website or online service directed to children or with actual knowledge that such information was collected from a child, publicly available in identifiable form, by any means including by a public posting, through the Internet, or through—

- (i) a home page of a website;
- (ii) a pen pal service;
- (iii) an electronic mail service;
- (iv) a message board; or
- (v) a chat room.

(5) FEDERAL AGENCY.—The term “Federal agency” means an agency, as that term is defined in section 551(1) of title 5, United States Code.

(6) INTERNET.—The term “Internet” means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(7) PARENT.—The term “parent” includes a legal guardian.

(8) PERSONAL INFORMATION.—The term “personal information” means individually identifiable information about an individual collected online, including—

- (A) a first and last name;
- (B) a home or other physical address including street name and name of a city or town;
- (C) an e-mail address;
- (D) a telephone number;
- (E) a Social Security number;
- (F) any other identifier that the Commission determines permits the physical or online contacting of a specific individual; or

(G) information concerning the child or the parents of that child that the website collects online from the child and combines with an identifier described in this paragraph.

(9) VERIFIABLE PARENTAL CONSENT.—The term “verifiable parental consent” means any reasonable effort (taking into consideration available technology), including a request for authorization for future collection, use, and disclosure described in the notice, to ensure that a parent of a child receives notice of the operator’s personal information collection, use, and disclosure practices, and authorizes the collection, use, and disclosure, as applicable, of personal information and the subsequent use of that information before that information is collected from that child.

(10) WEBSITE OR ONLINE SERVICE DIRECTED TO CHILDREN.—

(A) IN GENERAL.—The term “website or online service directed to children” means—

(i) a commercial website or online service that is targeted to children; or

(ii) that portion of a commercial website or online service that is targeted to children.

(B) LIMITATION.—A commercial website or online service, or a portion of a commercial website or online service, shall not be deemed directed to children solely for referring or linking to a commercial website or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link.

(11) PERSON.—The term “person” means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

(12) ONLINE CONTACT INFORMATION.—The term “online contact information” means an e-mail address or another substantially similar identifier that permits direct contact with a person online.

**SEC. 1303. [15 U.S.C. 6502] REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH THE COLLECTION AND USE OF PERSONAL INFORMATION FROM AND ABOUT CHILDREN ON THE INTERNET.**

(a) ACTS PROHIBITED.—

(1) IN GENERAL.—It is unlawful for an operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting personal information from a child, to collect personal information from a child in a manner that violates the regulations prescribed under subsection (b).

(2) DISCLOSURE TO PARENT PROTECTED.—Notwithstanding paragraph (1), neither an operator of such a website or online service nor the operator's agent shall be held to be liable under any Federal or State law for any disclosure made in good faith and following reasonable procedures in responding to a request for disclosure of personal information under subsection (b)(1)(B)(iii) to the parent of a child.

(b) REGULATIONS.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Commission shall promulgate under section 553 of title 5, United States Code, regulations that—

(A) require the operator of any website or online service directed to children that collects personal information from children or the operator of a website or online service that has actual knowledge that it is collecting personal information from a child—

(i) to provide notice on the website of what information is collected from children by the operator, how the operator uses such information, and the operator's disclosure practices for such information; and

(ii) to obtain verifiable parental consent for the collection, use, or disclosure of personal information from children;

(B) require the operator to provide, upon request of a parent under this subparagraph whose child has provided personal information to that website or online service, upon proper identification of that parent, to such parent—

(i) a description of the specific types of personal information collected from the child by that operator;

(ii) the opportunity at any time to refuse to permit the operator's further use or maintenance in retrievable form, or future online collection, of personal information from that child; and

(iii) notwithstanding any other provision of law, a means that is reasonable under the circumstances for the parent to obtain any personal information collected from that child;

(C) prohibit conditioning a child's participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in such activity; and

(D) require the operator of such a website or online service to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.

(2) WHEN CONSENT NOT REQUIRED.—The regulations shall provide that verifiable parental consent under paragraph (1)(A)(ii) is not required in the case of—

(A) online contact information collected from a child that is used only to respond directly on a one-time basis to a specific request from the child and is not used to recontact the child and is not maintained in retrievable form by the operator;

(B) a request for the name or online contact information of a parent or child that is used for the sole purpose of obtaining parental consent or providing notice under this section and where such information is not maintained in retrievable form by the operator if parental consent is not obtained after a reasonable time;

(C) online contact information collected from a child that is used only to respond more than once directly to a specific request from the child and is not used to recontact the child beyond the scope of that request—

(i) if, before any additional response after the initial response to the child, the operator uses reasonable efforts to provide a parent notice of the online contact information collected from the child, the purposes for which it is to be used, and an opportunity for the parent to request that the operator make no further use of the information and that it not be maintained in retrievable form; or

(ii) without notice to the parent in such circumstances as the Commission may determine are appropriate, taking into consideration the benefits to the child of access to information and services, and risks to the security and privacy of the child, in regulations promulgated under this subsection;

(D) the name of the child and online contact information (to the extent reasonably necessary to protect the safety of a child participant on the site)—

(i) used only for the purpose of protecting such safety;

(ii) not used to recontact the child or for any other purpose; and

(iii) not disclosed on the site,

if the operator uses reasonable efforts to provide a parent notice of the name and online contact information collected from the child, the purposes for which it is to be used, and an opportunity for the parent to request that the operator make no further use of the information and that it not be maintained in retrievable form; or

(E) the collection, use, or dissemination of such information by the operator of such a website or online service necessary—

(i) to protect the security or integrity of its website;

(ii) to take precautions against liability;

(iii) to respond to judicial process; or

(iv) to the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on a matter related to public safety.

(3) **TERMINATION OF SERVICE.**—The regulations shall permit the operator of a website or an online service to terminate service provided to a child whose parent has refused, under the regulations prescribed under paragraph (1)(B)(ii), to permit the operator's further use or maintenance in retrievable form, or future online collection, of personal information from that child.

(c) **ENFORCEMENT.**—Subject to sections 1304 and 1306, a violation of a regulation prescribed under subsection (a) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(d) **INCONSISTENT STATE LAW.**—No State or local government may impose any liability for commercial activities or actions by operators in interstate or foreign commerce in connection with an activity or action described in this title that is inconsistent with the treatment of those activities or actions under this section.

**SEC. 1304. [15 U.S.C. 6503] SAFE HARBORS.**

(a) **GUIDELINES.**—An operator may satisfy the requirements of regulations issued under section 1303(b) by following a set of self-regulatory guidelines, issued by representatives of the marketing or online industries, or by other persons, approved under subsection (b).

(b) **INCENTIVES.**—

(1) **SELF-REGULATORY INCENTIVES.**—In prescribing regulations under section 1303, the Commission shall provide incentives for self-regulation by operators to implement the protec-

tions afforded children under the regulatory requirements described in subsection (b) of that section.

(2) DEEMED COMPLIANCE.—Such incentives shall include provisions for ensuring that a person will be deemed to be in compliance with the requirements of the regulations under section 1303 if that person complies with guidelines that, after notice and comment, are approved by the Commission upon making a determination that the guidelines meet the requirements of the regulations issued under section 1303.

(3) EXPEDITED RESPONSE TO REQUESTS.—The Commission shall act upon requests for safe harbor treatment within 180 days of the filing of the request, and shall set forth in writing its conclusions with regard to such requests.

(c) APPEALS.—Final action by the Commission on a request for approval of guidelines, or the failure to act within 180 days on a request for approval of guidelines, submitted under subsection (b) may be appealed to a district court of the United States of appropriate jurisdiction as provided for in section 706 of title 5, United States Code.

**SEC. 1305. [15 U.S.C. 6504] ACTIONS BY STATES.**

(a) IN GENERAL.—

(1) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that violates any regulation of the Commission prescribed under section 1303(b), the State, as *parens patriae*, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

(B) enforce compliance with the regulation;

(C) obtain damage, restitution, or other compensation on behalf of residents of the State; or

(D) obtain such other relief as the court may consider to be appropriate.

(2) NOTICE.—

(A) IN GENERAL.—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission—

(i) written notice of that action; and

(ii) a copy of the complaint for that action.

(B) EXEMPTION.—

(i) IN GENERAL.—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before the filing of the action.

(ii) NOTIFICATION.—In an action described in clause (i), the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

## (b) INTERVENTION.—

(1) IN GENERAL.—On receiving notice under subsection (a)(2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) EFFECT OF INTERVENTION.—If the Commission intervenes in an action under subsection (a), it shall have the right—

(A) to be heard with respect to any matter that arises in that action; and

(B) to file a petition for appeal.

(3) AMICUS CURIAE.—Upon application to the court, a person whose self-regulatory guidelines have been approved by the Commission and are relied upon as a defense by any defendant to a proceeding under this section may file amicus curiae in that proceeding.

(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this title shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) ACTIONS BY THE COMMISSION.—In any case in which an action is instituted by or on behalf of the Commission for violation of any regulation prescribed under section 1303, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action for violation of that regulation.

(e) VENUE; SERVICE OF PROCESS.—

(1) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(2) SERVICE OF PROCESS.—In an action brought under subsection (a), process may be served in any district in which the defendant—

(A) is an inhabitant; or

(B) may be found.

**SEC. 1306. [15 U.S.C. 6505] ADMINISTRATION AND APPLICABILITY OF ACT.**

(a) IN GENERAL.—Except as otherwise provided, this title shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(b) PROVISIONS.—Compliance with the requirements imposed under this title shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies,

and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act (12 U.S.C. 601 et seq. and 611 et seq.), by the Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;

(3) the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the National Credit Union Administration Board with respect to any Federal credit union;

(4) part A of subtitle VII of title 49, United States Code, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;

(5) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act; and

(6) the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

(c) EXERCISE OF CERTAIN POWERS.—For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

(d) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating a rule of the Commission under section 1303 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this title. Any entity that violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this title.



(e) EFFECT ON OTHER LAWS.—Nothing contained in the Act shall be construed to limit the authority of the Commission under any other provisions of law.

**SEC. 1307. [15 U.S.C. 6506] REVIEW.**

Not later than 5 years after the effective date of the regulations initially issued under section 1303, the Commission shall—

(1) review the implementation of this title, including the effect of the implementation of this title on practices relating to the collection and disclosure of information relating to children, children's ability to obtain access to information of their choice online, and on the availability of websites directed to children; and

(2) prepare and submit to Congress a report on the results of the review under paragraph (1).

**SEC. 1308. [15 U.S.C. 6501 note] EFFECTIVE DATE.**

Sections 1303(a), 1305, and 1306 of this title take effect on the later of—

(1) the date that is 18 months after the date of enactment of this Act; or

(2) the date on which the Commission rules on the first application filed for safe harbor treatment under section 1304 if the Commission does not rule on the first such application within one year after the date of enactment of this Act, but in no case later than the date that is 30 months after the date of enactment of this Act.

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March 15, 2012



**TITLE III OF THE BALANCED BUDGET ACT OF 1997**



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March 15, 2012

**BALANCED BUDGET ACT OF 1997**

**TITLE III—COMMUNICATIONS AND SPECTRUM ALLOCATION PROVISIONS**

**SEC. 3001. [47 U.S.C. 153 nt] DEFINITIONS.**

(a) [47 U.S.C. 153 nt] COMMON TERMINOLOGY.—Except as otherwise provided in this title, the terms used in this title have the meanings provided in section 3 of the Communications Act of 1934 (47 U.S.C. 153), as amended by this section.

\* \* \* \* \*

**SEC. 3002. SPECTRUM AUCTIONS.**

(a) \* \* \*

(b) [47 U.S.C. 925 nt] ACCELERATED AVAILABILITY FOR AUCTION OF 1,710–1,755 MEGAHERTZ FROM INITIAL REALLOCATION REPORT.—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, 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)).

(c) [47 U.S.C. 925 nt] COMMISSION OBLIGATION TO MAKE ADDITIONAL SPECTRUM AVAILABLE BY AUCTION.—

(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—

(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 (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, 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).

\* \* \* \* \*

**SEC. 3006. [47 U.S.C. 254 nt] UNIVERSAL SERVICE FUND PAYMENT SCHEDULE.**

(a) APPROPRIATIONS TO THE UNIVERSAL SERVICE FUND.—

(1) APPROPRIATION.—There is hereby appropriated to the Commission \$3,000,000,000 in fiscal year 2001, which shall be disbursed on October 1, 2000, to the Administrator of the Federal universal service support programs established pursuant to section 254 of the Communications Act of 1934 (47 U.S.C. 254), and which may be expended by the Administrator in support of such programs as provided pursuant to the rules implementing that section.

(2) RETURN TO TREASURY.—The Administrator shall transfer \$3,000,000,000 from the funds collected for such support programs to the General Fund of the Treasury on October 1, 2001.

(b) FEE ADJUSTMENTS.—The Commission shall direct the Administrator to adjust payments by telecommunications carriers and other providers of interstate telecommunications so that the \$3,000,000,000 of the total payments by such carriers or providers to the Administrator for fiscal year 2001 shall be deferred until October 1, 2001.

(c) PRESERVATION OF AUTHORITY.—Nothing in this section shall affect the Administrator's authority to determine the amounts that should be expended for universal service support programs pursuant to section 254 of the Communications Act of 1934 and the rules implementing that section.

(d) DEFINITION.—For purposes of this section, the term "Administrator" means the Administrator designated by the Federal Communications Commission to administer Federal universal service support programs pursuant to section 254 of the Communications Act of 1934.

[Section 3007 repealed by section 3(b)(2) of the Auction Reform Act of 2002 (Public Law 107-195; 116 Stat. 717).]

**SEC. 3008. [47 U.S.C. 309 nt] ADMINISTRATIVE PROCEDURES FOR SPECTRUM AUCTIONS.**

Notwithstanding section 309(b) of the Communications Act of 1934 (47 U.S.C. 309(b)), no application for an instrument of authorization for frequencies assigned under this title (or amendments made by this title) shall be granted by the Commission earlier than 7 days following issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereto. Notwithstanding section 309(d)(1) of such Act (47 U.S.C. 309(d)(1)), the Commission may specify a period (no less than 5 days following issuance of such public notice) for the filing of petitions to deny any application for an instrument of authorization for such frequencies.





**TELECOMMUNICATIONS ACT OF 1996**



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March 15, 2012

**TELECOMMUNICATIONS ACT OF 1996<sup>1</sup>**

[As Amended Through P.L. 110–385, Enacted October 10, 2008]

AN ACT To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.

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**SEC. 3. DEFINITIONS.**

(a) \* \* \*

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(b) **[47 U.S.C. 153 nt] COMMON TERMINOLOGY.**—Except as otherwise provided in this Act, the terms used in this Act have the meanings provided in section 3 of the Communications Act of 1934 (47 U.S.C. 153), as amended by this section.

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**TITLE II—BROADCAST SERVICES**

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**SEC. 202. BROADCAST OWNERSHIP.**

(a) **NATIONAL RADIO STATION OWNERSHIP RULE CHANGES REQUIRED.**—The Commission shall modify section 73.3555 of its regulations (47 C.F.R. 73.3555) by eliminating any provisions limiting the number of AM or FM broadcast stations which may be owned or controlled by one entity nationally.

(b) **LOCAL RADIO DIVERSITY.**—

(1) **APPLICABLE CAPS.**—The Commission shall revise section 73.3555(a) of its regulations (47 C.F.R. 73.3555) to provide that—

(A) in a radio market with 45 or more commercial radio stations, a party may own, operate, or control up to 8 commercial radio stations, not more than 5 of which are in the same service (AM or FM);

(B) in a radio market with between 30 and 44 (inclusive) commercial radio stations, a party may own, operate, or control up to 7 commercial radio stations, not more than 4 of which are in the same service (AM or FM);

(C) in a radio market with between 15 and 29 (inclusive) commercial radio stations, a party may own, operate, or control up to 6 commercial radio stations, not more than 4 of which are in the same service (AM or FM); and

<sup>1</sup>In general, the Telecommunications Act of 1996 contained amendments to the Communications Act of 1934 that are incorporated elsewhere in this compilation. This portion of this compilation contains the provisions of the Telecommunications Act of 1996 that did not amend other statutes.

(D) in a radio market with 14 or fewer commercial radio stations, a party may own, operate, or control up to 5 commercial radio stations, not more than 3 of which are in the same service (AM or FM), except that a party may not own, operate, or control more than 50 percent of the stations in such market.

(2) EXCEPTION.—Notwithstanding any limitation authorized by this subsection, the Commission may permit a person or entity to own, operate, or control, or have a cognizable interest in, radio broadcast stations if the Commission determines that such ownership, operation, control, or interest will result in an increase in the number of radio broadcast stations in operation.

(c) TELEVISION OWNERSHIP LIMITATIONS.—

(1) NATIONAL OWNERSHIP LIMITATIONS.—The Commission shall modify its rules for multiple ownership set forth in section 73.3555 of its regulations (47 C.F.R. 73.3555)—

(A) by eliminating the restrictions on the number of television stations that a person or entity may directly or indirectly own, operate, or control, or have a cognizable interest in, nationwide; and

(B) by increasing the national audience reach limitation for television stations to 39 percent.

(2) LOCAL OWNERSHIP LIMITATIONS.—The Commission shall conduct a rulemaking proceeding to determine whether to retain, modify, or eliminate its limitations on the number of television stations that a person or entity may own, operate, or control, or have a cognizable interest in, within the same television market.

(3) DIVESTITURE.—A person or entity that exceeds the 39 percent national audience reach limitation for television stations in paragraph (1)(B) through grant, transfer, or assignment of an additional license for a commercial television broadcast station shall have not more than 2 years after exceeding such limitation to come into compliance with such limitation. This divestiture requirement shall not apply to persons or entities that exceed the 39 percent national audience reach limitation through population growth.

(4) FORBEARANCE.—Section 10 of the Communications Act of 1934 (47 U.S.C. 160) shall not apply to any person or entity that exceeds the 39 percent national audience reach limitation for television stations in paragraph (1)(B);

(d) RELAXATION OF ONE-TO-A-MARKET.—With respect to its enforcement of its one-to-a-market ownership rules under section 73.3555 of its regulations, the Commission shall extend its waiver policy to any of the top 50 markets, consistent with the public interest, convenience, and necessity.

(e) DUAL NETWORK CHANGES.—The Commission shall revise section 73.658(g) of its regulations (47 C.F.R. 658(g)) to permit a television broadcast station to affiliate with a person or entity that maintains 2 or more networks of television broadcast stations unless such dual or multiple networks are composed of—

(1) two or more persons or entities that, on the date of enactment of the Telecommunications Act of 1996, are “networks”

as defined in section 73.3613(a)(1) of the Commission's regulations (47 C.F.R. 73.3613(a)(1)); or

(2) any network described in paragraph (1) and an English-language program distribution service that, on such date, provides 4 or more hours of programming per week on a national basis pursuant to network affiliation arrangements with local television broadcast stations in markets reaching more than 75 percent of television homes (as measured by a national ratings service).

(f) CABLE CROSS OWNERSHIP.—

(1) ELIMINATION OF RESTRICTIONS.—The Commission shall revise section 76.501 of its regulations (47 C.F.R. 76.501) to permit a person or entity to own or control a network of broadcast stations and a cable system.

(2) SAFEGUARDS AGAINST DISCRIMINATION.—The Commission shall revise such regulations if necessary to ensure carriage, channel positioning, and nondiscriminatory treatment of nonaffiliated broadcast stations by a cable system described in paragraph (1).

(g) LOCAL MARKETING AGREEMENTS.—Nothing in this section shall be construed to prohibit the origination, continuation, or renewal of any television local marketing agreement that is in compliance with the regulations of the Commission.

(h) FURTHER COMMISSION REVIEW.—The Commission shall review its rules adopted pursuant to this section and all of its ownership rules quadrennially as part of its regulatory reform review under section 11 of the Communications Act of 1934 and shall determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest.

This subsection does not apply to any rules relating to the 39 percent national audience reach limitation in subsection (c)(1)(B).

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**SEC. 207. [47 U.S.C. 303 nt] RESTRICTIONS ON OVER-THE-AIR RECEPTION DEVICES.**

Within 180 days after the date of enactment of this Act, the Commission shall, pursuant to section 303 of the Communications Act of 1934, promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services.

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**TITLE III—CABLE SERVICES**

\* \* \* \* \*

**SEC. 302. CABLE SERVICE PROVIDED BY TELEPHONE COMPANIES.**

(a) \* \* \*

\* \* \* \* \*

(b) CONFORMING AND TECHNICAL AMENDMENTS.—

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(3) TERMINATION OF VIDEO-DIALTONE REGULATIONS.—The Commission’s regulations and policies with respect to video dialtone requirements issued in CC Docket No. 87–266 shall cease to be effective on the date of enactment of this Act. This paragraph shall not be construed to require the termination of any video-dialtone system that the Commission has approved before the date of enactment of this Act.

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**TITLE IV—REGULATORY REFORM**

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**SEC. 402. BIENNIAL REVIEW OF REGULATIONS; REGULATORY RELIEF.**

(a) \* \* \*

\* \* \* \* \*

(b) REGULATORY RELIEF.—

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(2) [47 U.S.C. 214 nt] EXTENSIONS OF LINES UNDER SECTION 214; ARMIS REPORTS.—The Commission shall permit any common carrier—

(A) to be exempt from the requirements of section 214 of the Communications Act of 1934 for the extension of any line; and

(B) to file cost allocation manuals and ARMIS reports annually, to the extent such carrier is required to file such manuals or reports.

(3) [47 U.S.C. 204 nt] FORBEARANCE AUTHORITY NOT LIMITED.—Nothing in this subsection shall be construed to limit the authority of the Commission to waive, modify, or forbear from applying any of the requirements to which reference is made in paragraph (1)<sup>1</sup> under any other provision of this Act or other law.

(4) [47 U.S.C. 204 nt] EFFECTIVE DATE OF AMENDMENTS.—The amendments made by paragraph (1) of this subsection<sup>1</sup> shall apply with respect to any charge, classification, regulation, or practice filed on or after one year after the date of enactment of this Act.

(c) CLASSIFICATION OF CARRIERS.—In classifying carriers according to section 32.11 of its regulations (47 C.F.R. 32.11) and in establishing reporting requirements pursuant to part 43 of its regulations (47 C.F.R. part 43) and section 64.903 of its regulations (47 C.F.R. 64.903), the Commission shall adjust the revenue requirements to account for inflation as of the release date of the Commission’s Report and Order in CC Docket No. 91–141, and annually

<sup>1</sup> Paragraph (1) contained amendments to sections 204(a) and 208(b) of the Communications Act of 1934.

thereafter. This subsection shall take effect on the date of enactment of this Act.

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## TITLE V—OBSCENITY AND VIOLENCE

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### Subtitle B—Violence

#### SEC. 551. PARENTAL CHOICE IN TELEVISION PROGRAMMING.

(a) [47 U.S.C. 303 nt] FINDINGS.—The Congress makes the following findings:

(1) Television influences children's perception of the values and behavior that are common and acceptable in society.

(2) Television station operators, cable television system operators, and video programmers should follow practices in connection with video programming that take into consideration that television broadcast and cable programming has established a uniquely pervasive presence in the lives of American children.

(3) The average American child is exposed to 25 hours of television each week and some children are exposed to as much as 11 hours of television a day.

(4) Studies have shown that children exposed to violent video programming at a young age have a higher tendency for violent and aggressive behavior later in life than children not so exposed, and that children exposed to violent video programming are prone to assume that acts of violence are acceptable behavior.

(5) Children in the United States are, on average, exposed to an estimated 8,000 murders and 100,000 acts of violence on television by the time the child completes elementary school.

(6) Studies indicate that children are affected by the pervasiveness and casual treatment of sexual material on television, eroding the ability of parents to develop responsible attitudes and behavior in their children.

(7) Parents express grave concern over violent and sexual video programming and strongly support technology that would give them greater control to block video programming in the home that they consider harmful to their children.

(8) There is a compelling governmental interest in empowering parents to limit the negative influences of video programming that is harmful to children.

(9) Providing parents with timely information about the nature of upcoming video programming and with the technological tools that allow them easily to block violent, sexual, or other programming that they believe harmful to their children is a nonintrusive and narrowly tailored means of achieving that compelling governmental interest.

(b) ESTABLISHMENT OF TELEVISION RATING CODE.—

(1) \* \* \*

\* \* \* \* \*

(2) **[47 U.S.C. 303 nt] ADVISORY COMMITTEE REQUIREMENTS.**—In establishing an advisory committee for purposes of the amendment made by paragraph (1)<sup>1</sup> of this subsection, the Commission shall—

(A) ensure that such committee is composed of parents, television broadcasters, television programming producers, cable operators, appropriate public interest groups, and other interested individuals from the private sector and is fairly balanced in terms of political affiliation, the points of view represented, and the functions to be performed by the committee;

(B) provide to the committee such staff and resources as may be necessary to permit it to perform its functions efficiently and promptly; and

(C) require the committee to submit a final report of its recommendations within one year after the date of the appointment of the initial members.

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(e) **[47 U.S.C. 303 nt] APPLICABILITY AND EFFECTIVE DATES.**—

(1) **APPLICABILITY OF RATING PROVISION.**—The amendment made by subsection (b)<sup>1</sup> of this section shall take effect 1 year after the date of enactment of this Act, but only if the Commission determines, in consultation with appropriate public interest groups and interested individuals from the private sector, that distributors of video programming have not, by such date—

(A) established voluntary rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children, and such rules are acceptable to the Commission; and

(B) agreed voluntarily to broadcast signals that contain ratings of such programming.

(2) **EFFECTIVE DATE OF MANUFACTURING PROVISION.**—In prescribing regulations to implement the amendment made by subsection (c),<sup>2</sup> the Federal Communications Commission shall, after consultation with the television manufacturing industry, specify the effective date for the applicability of the requirement to the apparatus covered by such amendment, which date shall not be less than two years after the date of enactment of this Act.

**SEC. 552. [47 U.S.C. 303 nt] TECHNOLOGY FUND.**

It is the policy of the United States to encourage broadcast television, cable, satellite, syndication, other video programming distributors, and relevant related industries (in consultation with appropriate public interest groups and interested individuals from the private sector) to—

<sup>1</sup>Paragraph (1) of subsection (b) added subsection (w) to section 303 of the Communications Act of 1934.

<sup>2</sup>Subsection (c) added subsection (x) to section 303 of the Communications Act of 1934.



(1) establish a technology fund to encourage television and electronics equipment manufacturers to facilitate the development of technology which would empower parents to block programming they deem inappropriate for their children and to encourage the availability thereof to low income parents;

(2) report to the viewing public on the status of the development of affordable, easy to use blocking technology; and

(3) establish and promote effective procedures, standards, systems, advisories, or other mechanisms for ensuring that users have easy and complete access to the information necessary to effectively utilize blocking technology and to encourage the availability thereof to low income parents.

### **Subtitle C—Judicial Review**

#### **SEC. 561. [47 U.S.C. 223 nt] EXPEDITED REVIEW.**

(a) **THREE-JUDGE DISTRICT COURT HEARING.**—Notwithstanding any other provision of law, any civil action challenging the constitutionality, on its face, of this title or any amendment made by this title, or any provision thereof, shall be heard by a district court of 3 judges convened pursuant to the provisions of section 2284 of title 28, United States Code.

(b) **APPELLATE REVIEW.**—Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of 3 judges in an action under subsection (a) holding this title or an amendment made by this title, or any provision thereof, unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be filed not more than 20 days after entry of such judgment, decree, or order.

### **TITLE VI—EFFECT ON OTHER LAWS**

#### **SEC. 601. [47 U.S.C. 152 nt] APPLICABILITY OF CONSENT DECREES AND OTHER LAW.**

(a) **APPLICABILITY OF AMENDMENTS TO FUTURE CONDUCT.**—

(1) **AT&T CONSENT DECREE.**—Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the AT&T Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and shall not be subject to the restrictions and the obligations imposed by such Consent Decree.

(2) **GTE CONSENT DECREE.**—Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the GTE Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and shall not be subject to the restrictions and the obligations imposed by such Consent Decree.

(3) **MCCAW CONSENT DECREE.**—Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the McCaw Consent Decree shall, on and after such date, be subject to the restric-

tions and obligations imposed by the Communications Act of 1934 as amended by this Act and subsection (d) of this section and shall not be subject to the restrictions and the obligations imposed by such Consent Decree.

(b) ANTITRUST LAWS.—

(1) SAVINGS CLAUSE.—Except as provided in paragraphs (2) and (3), nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws.

(2) REPEAL.—Subsection (a) of section 221 (47 U.S.C. 221(a)) is repealed.

(3) CLAYTON ACT.—Section 7 of the Clayton Act (15 U.S.C. 18) is amended in the last paragraph by striking “Federal Communications Commission,”.

(c) FEDERAL, STATE, AND LOCAL LAW.—

(1) NO IMPLIED EFFECT.—This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments.

(2) STATE TAX SAVINGS PROVISION.—Notwithstanding paragraph (1), nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or supersession of, any State or local law pertaining to taxation, except as provided in sections 622 and 653(c) of the Communications Act of 1934 and section 602 of this Act.

(d) COMMERCIAL MOBILE SERVICE JOINT MARKETING.—Notwithstanding section 22.903 of the Commission’s regulations (47 C.F.R. 22.903) or any other Commission regulation, a Bell operating company or any other company may, except as provided in sections 271(e)(1) and 272 of the Communications Act of 1934 as amended by this Act as they relate to wireline service, jointly market and sell commercial mobile services in conjunction with telephone exchange service, exchange access, intraLATA telecommunications service, interLATA telecommunications service, and information services.

(e) DEFINITIONS.—As used in this section:

(1) AT&T CONSENT DECREE.—The term “AT&T Consent Decree” means the order entered August 24, 1982, in the antitrust action styled *United States v. Western Electric*, Civil Action No. 82–0192, in the United States District Court for the District of Columbia, and includes any judgment or order with respect to such action entered on or after August 24, 1982.

(2) GTE CONSENT DECREE.—The term “GTE Consent Decree” means the order entered December 21, 1984, as restated January 11, 1985, in the action styled *United States v. GTE Corp.*, Civil Action No. 83–1298, in the United States District Court for the District of Columbia, and any judgment or order with respect to such action entered on or after December 21, 1984.

(3) MCCAW CONSENT DECREE.—The term “McCaw Consent Decree” means the proposed consent decree filed on July 15, 1994, in the antitrust action styled *United States v. AT&T Corp. and McCaw Cellular Communications, Inc.*, Civil Action

No. 94-01555, in the United States District Court for the District of Columbia. Such term includes any stipulation that the parties will abide by the terms of such proposed consent decree until it is entered and any order entering such proposed consent decree.

(4) **ANTITRUST LAWS.**—The term “antitrust laws” has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes the Act of June 19, 1936 (49 Stat. 1526; 15 U.S.C. 13 et seq.), commonly known as the Robinson-Patman Act, and section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 applies to unfair methods of competition.

**SEC. 602. [47 U.S.C. 152 nt] PREEMPTION OF LOCAL TAXATION WITH RESPECT TO DIRECT-TO-HOME SERVICES.**

(a) **PREEMPTION.**—A provider of direct-to-home satellite service shall be exempt from the collection or remittance, or both, of any tax or fee imposed by any local taxing jurisdiction on direct-to-home satellite service.

(b) **DEFINITIONS.**—For the purposes of this section—

(1) **DIRECT-TO-HOME SATELLITE SERVICE.**—The term “direct-to-home satellite service” means only programming transmitted or broadcast by satellite directly to the subscribers’ premises without the use of ground receiving or distribution equipment, except at the subscribers’ premises or in the uplink process to the satellite.

(2) **PROVIDER OF DIRECT-TO-HOME SATELLITE SERVICE.**—For purposes of this section, a “provider of direct-to-home satellite service” means a person who transmits, broadcasts, sells, or distributes direct-to-home satellite service.

(3) **LOCAL TAXING JURISDICTION.**—The term “local taxing jurisdiction” means any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other local jurisdiction in the territorial jurisdiction of the United States with the authority to impose a tax or fee, but does not include a State.

(4) **STATE.**—The term “State” means any of the several States, the District of Columbia, or any territory or possession of the United States.

(5) **TAX OR FEE.**—The terms “tax” and “fee” mean any local sales tax, local use tax, local intangible tax, local income tax, business license tax, utility tax, privilege tax, gross receipts tax, excise tax, franchise fees, local telecommunications tax, or any other tax, license, or fee that is imposed for the privilege of doing business, regulating, or raising revenue for a local taxing jurisdiction.

(c) **PRESERVATION OF STATE AUTHORITY.**—This section shall not be construed to prevent taxation of a provider of direct-to-home satellite service by a State or to prevent a local taxing jurisdiction from receiving revenue derived from a tax or fee imposed and collected by a State.

**TITLE VII—MISCELLANEOUS PROVISIONS**

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**SEC. 704. FACILITIES SITING; RADIO FREQUENCY EMISSION STANDARDS.**

(a) \* \* \*

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(b) RADIO FREQUENCY EMISSIONS.—Within 180 days after the enactment of this Act, the Commission shall complete action in ET Docket 93–62 to prescribe and make effective rules regarding the environmental effects of radio frequency emissions.

(c) [47 U.S.C. 332 nt] AVAILABILITY OF PROPERTY.—Within 180 days of the enactment of this Act, the President or his designee shall prescribe procedures by which Federal departments and agencies may make available on a fair, reasonable, and nondiscriminatory basis, property, rights-of-way, and easements under their control for the placement of new telecommunications services that are dependent, in whole or in part, upon the utilization of Federal spectrum rights for the transmission or reception of such services. These procedures may establish a presumption that requests for the use of property, rights-of-way, and easements by duly authorized providers should be granted absent unavoidable direct conflict with the department or agency’s mission, or the current or planned use of the property, rights-of-way, and easements in question. Reasonable fees may be charged to providers of such telecommunications services for use of property, rights-of-way, and easements. The Commission shall provide technical support to States to encourage them to make property, rights-of-way, and easements under their jurisdiction available for such purposes.

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**SEC. 706. [47 U.S.C. 157 nt] ADVANCED TELECOMMUNICATIONS INCENTIVES.**

(a) IN GENERAL.—The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.

(b) INQUIRY.—The Commission shall, within 30 months after the date of enactment of this Act, and annually thereafter, initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) and shall complete the inquiry within 180 days after its initiation. In the inquiry, the Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in

a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.

(c) **DEMOGRAPHIC INFORMATION FOR UNSERVED AREAS.**—As part of the inquiry required by subsection (b), the Commission shall compile a list of geographical areas that are not served by any provider of advanced telecommunications capability (as defined by section 706(c)(1) of the Telecommunications Act of 1996 (47 U.S.C. 157 note)) and to the extent that data from the Census Bureau is available, determine, for each such unserved area—

- (1) the population;
- (2) the population density; and
- (3) the average per capita income.

(d) **DEFINITIONS.**—For purposes of this subsection:

(1) **ADVANCED TELECOMMUNICATIONS CAPABILITY.**—The term “advanced telecommunications capability” is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.

(2) **ELEMENTARY AND SECONDARY SCHOOLS.**—The term “elementary and secondary schools” means elementary and secondary schools, as defined in section 9101 of the Elementary and Secondary Education Act of 1965.

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**SEC. 708. NATIONAL EDUCATION TECHNOLOGY FUNDING CORPORATION.**

(a) **FINDINGS; PURPOSE.**—

(1) **FINDINGS.**—The Congress finds as follows:

(A) **CORPORATION.**—There has been established in the District of Columbia a private, nonprofit corporation known as the National Education Technology Funding Corporation which is not an agency or independent establishment of the Federal Government.

(B) **BOARD OF DIRECTORS.**—The Corporation is governed by a Board of Directors, as prescribed in the Corporation's articles of incorporation, consisting of 15 members, of which—

- (i) five members are representative of public agencies representative of schools and public libraries;
- (ii) five members are representative of State government, including persons knowledgeable about State finance, technology and education; and
- (iii) five members are representative of the private sector, with expertise in network technology, finance and management.

(C) **CORPORATE PURPOSES.**—The purposes of the Corporation, as set forth in its articles of incorporation, are—

- (i) to leverage resources and stimulate private investment in education technology infrastructure;

(ii) to designate State education technology agencies to receive loans, grants or other forms of assistance from the Corporation;

(iii) to establish criteria for encouraging States to—

(I) create, maintain, utilize and upgrade interactive high capacity networks capable of providing audio, visual and data communications for elementary schools, secondary schools and public libraries;

(II) distribute resources to assure equitable aid to all elementary schools and secondary schools in the State and achieve universal access to network technology; and

(III) upgrade the delivery and development of learning through innovative technology-based instructional tools and applications;

(iv) to provide loans, grants and other forms of assistance to State education technology agencies, with due regard for providing a fair balance among types of school districts and public libraries assisted and the disparate needs of such districts and libraries;

(v) to leverage resources to provide maximum aid to elementary schools, secondary schools and public libraries; and

(vi) to encourage the development of education telecommunications and information technologies through public-private ventures, by serving as a clearinghouse for information on new education technologies, and by providing technical assistance, including assistance to States, if needed, to establish State education technology agencies.

(2) PURPOSE.—The purpose of this section is to recognize the Corporation as a nonprofit corporation operating under the laws of the District of Columbia, and to provide authority for Federal departments and agencies to provide assistance to the Corporation.

(b) DEFINITIONS.—For the purpose of this section—

(1) the term “Corporation” means the National Education Technology Funding Corporation described in subsection (a)(1)(A);

(2) the terms “elementary school” and “secondary school” have the same meanings given such terms in section 14101 of the Elementary and Secondary Education Act of 1965; and

(3) the term “public library” has the same meaning given such term in section 3 of the Library Services and Construction Act.

(c) ASSISTANCE FOR EDUCATION TECHNOLOGY PURPOSES.—

(1) RECEIPT BY CORPORATION.—Notwithstanding any other provision of law, in order to carry out the corporate purposes described in subsection (a)(1)(C), the Corporation shall be eligible to receive discretionary grants, contracts, gifts, contributions, or technical assistance from any Federal department or agency, to the extent otherwise permitted by law.

(2) AGREEMENT.—In order to receive any assistance described in paragraph (1) the Corporation shall enter into an agreement with the Federal department or agency providing such assistance, under which the Corporation agrees—

(A) to use such assistance to provide funding and technical assistance only for activities which the Board of Directors of the Corporation determines are consistent with the corporate purposes described in subsection (a)(1)(C);

(B) to review the activities of State education technology agencies and other entities receiving assistance from the Corporation to assure that the corporate purposes described in subsection (a)(1)(C) are carried out;

(C) that no part of the assets of the Corporation shall accrue to the benefit of any member of the Board of Directors of the Corporation, any officer or employee of the Corporation, or any other individual, except as salary or reasonable compensation for services;

(D) that the Board of Directors of the Corporation will adopt policies and procedures to prevent conflicts of interest;

(E) to maintain a Board of Directors of the Corporation consistent with subsection (a)(1)(B);

(F) that the Corporation, and any entity receiving the assistance from the Corporation, are subject to the appropriate oversight procedures of the Congress; and

(G) to comply with—

(i) the audit requirements described in subsection

(d); and

(ii) the reporting and testimony requirements described in subsection (e).

(3) CONSTRUCTION.—Nothing in this section shall be construed to establish the Corporation as an agency or independent establishment of the Federal Government, or to establish the members of the Board of Directors of the Corporation, or the officers and employees of the Corporation, as officers or employees of the Federal Government.

(d) AUDITS.—

(1) AUDITS BY INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS.—

(A) IN GENERAL.—The Corporation's financial statements shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of a State or other political subdivision of the United States. The audits shall be conducted at the place or places where the accounts of the Corporation are normally kept. All books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation and necessary to facilitate the audit shall be made available to the person or persons conducting the audits, and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians shall be afforded to such person or persons.

(B) REPORTING REQUIREMENTS.—The report of each annual audit described in subparagraph (A) shall be included in the annual report required by subsection (e)(1).

(2) RECORDKEEPING REQUIREMENTS; AUDIT AND EXAMINATION OF BOOKS.—

(A) RECORDKEEPING REQUIREMENTS.—The Corporation shall ensure that each recipient of assistance from the Corporation keeps—

(i) separate accounts with respect to such assistance;

(ii) such records as may be reasonably necessary to fully disclose—

(I) the amount and the disposition by such recipient of the proceeds of such assistance;

(II) the total cost of the project or undertaking in connection with which such assistance is given or used; and

(III) the amount and nature of that portion of the cost of the project or undertaking supplied by other sources; and

(iii) such other records as will facilitate an effective audit.

(B) AUDIT AND EXAMINATION OF BOOKS.—The Corporation shall ensure that the Corporation, or any of the Corporation's duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of any recipient of assistance from the Corporation that are pertinent to such assistance. Representatives of the Comptroller General shall also have such access for such purpose.

(e) ANNUAL REPORT; TESTIMONY TO THE CONGRESS.—

(1) ANNUAL REPORT.—Not later than April 30 of each year, the Corporation shall publish an annual report for the preceding fiscal year and submit that report to the President and the Congress. The report shall include a comprehensive and detailed evaluation of the Corporation's operations, activities, financial condition, and accomplishments under this section and may include such recommendations as the Corporation deems appropriate.

(2) TESTIMONY BEFORE CONGRESS.—The members of the Board of Directors, and officers, of the Corporation shall be available to testify before appropriate committees of the Congress with respect to the report described in paragraph (1), the report of any audit made by the Comptroller General pursuant to this section, or any other matter which any such committee may determine appropriate.

**SEC. 709. REPORT ON THE USE OF ADVANCED TELECOMMUNICATIONS SERVICES FOR MEDICAL PURPOSES.**

The Secretary of Commerce, in consultation with the Secretary of Health and Human Services and other appropriate departments and agencies, shall submit a report to the Committee on Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate concerning the activities of the Joint Working Group on Telemedicine, together with any



findings reached in the studies and demonstrations on telemedicine funded by the Public Health Service or other Federal agencies. The report shall examine questions related to patient safety, the efficacy and quality of the services provided, and other legal, medical, and economic issues related to the utilization of advanced telecommunications services for medical purposes. The report shall be submitted to the respective committees by January 31, 1997.

**SEC. 710. AUTHORIZATION OF APPROPRIATIONS.**

(a) **[47 U.S.C. 156 nt] IN GENERAL.**—In addition to any other sums authorized by law, there are authorized to be appropriated to the Federal Communications Commission such sums as may be necessary to carry out this Act and the amendments made by this Act.

(b) **[47 U.S.C. 156 nt] EFFECT ON FEES.**—For the purposes of section 9(b)(2) (47 U.S.C. 159(b)(2)), additional amounts appropriated pursuant to subsection (a) shall be construed to be changes in the amounts appropriated for the performance of activities described in section 9(a) of the Communications Act of 1934.

(c) **FUNDING AVAILABILITY.**—Section 309(j)(8)(B) (47 U.S.C. 309(j)(8)(B)) is amended by adding at the end the following new sentence: “Such offsetting collections are authorized to remain available until expended.”

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March 15, 2012

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**COMMUNICATIONS ASSISTANCE FOR LAW  
ENFORCEMENT ACT**

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March 15, 2012

## COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT

AN ACT To amend title 18, United States Code, to make clear a telecommunications carrier's duty to cooperate in the interception of communications for law enforcement purposes, and for other purposes.

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

### TITLE I—INTERCEPTION OF DIGITAL AND OTHER COMMUNICATIONS

**SEC. 101. [47 U.S.C. 1001 note] SHORT TITLE.**

This title may be cited as the “Communications Assistance for Law Enforcement Act”.

**SEC. 102. [47 U.S.C. 1001] DEFINITIONS.**

For purposes of this title—

(1) The terms defined in section 2510 of title 18, United States Code, 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 electronic communications as a common carrier for hire; and
  - (B) includes—
    - (i) a person or entity engaged in providing commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d))); or
    - (ii) a person or entity engaged in providing wire or electronic communication switching or transmission service to the extent that the Commission finds that such service is a replacement for a substantial portion of the local telephone exchange service and that it is in the public interest to deem such a person or entity to be a telecommunications carrier for purposes of this title; but
  - (C) does not include—
    - (i) persons or entities insofar as they are engaged in providing information services; and
    - (ii) any class or category of telecommunications carriers that the Commission exempts by rule after consultation with the Attorney General.

**SEC. 103. [47 U.S.C. 1002] ASSISTANCE CAPABILITY REQUIREMENTS.**

(a) CAPABILITY REQUIREMENTS.—Except as provided in subsections (b), (c), and (d) of this section and sections 108(a) and 109(b) and (d), a telecommunications carrier shall ensure that its equipment, facilities, or services that provide a customer or subscriber with the ability to originate, terminate, or direct communications are capable of—

- (1) expeditiously isolating and enabling the government, pursuant to a court order or other lawful authorization, to intercept, to the exclusion of any other communications, all wire and electronic communications carried by the carrier within a service area to or from equipment, facilities, or services of a subscriber of such carrier concurrently with their transmission to or from the subscriber's equipment, facility, or service, or at such later time as may be acceptable to the government;
- (2) expeditiously isolating and enabling the government, pursuant to a court order or other lawful authorization, to access call-identifying information that is reasonably available to the carrier—

(A) before, during, or immediately after the transmission of a wire or electronic communication (or at such later time as may be acceptable to the government); and  
 (B) in a manner that allows it to be associated with the communication to which it pertains,

except that, with regard to information acquired solely pursuant to the authority for pen registers and trap and trace devices (as defined in section 3127 of title 18, United States Code), such call-identifying information shall not include any information that may disclose the physical location of the subscriber (except to the extent that the location may be determined from the telephone number);

(3) delivering intercepted communications and call-identifying information to the government, pursuant to a court order or other lawful authorization, in a format such that they may be transmitted by means of equipment, facilities, or services procured by the government to a location other than the premises of the carrier; and

(4) facilitating authorized communications interceptions and access to call-identifying information unobtrusively and with a minimum of interference with any subscriber's telecommunications service and in a manner that protects—

(A) the privacy and security of communications and call-identifying information not authorized to be intercepted; and

(B) information regarding the government's interception of communications and access to call-identifying information.

(b) LIMITATIONS.—

(1) DESIGN OF FEATURES AND SYSTEMS CONFIGURATIONS.—This title does not authorize any law enforcement agency or officer—

(A) to require any specific design of equipment, facilities, services, features, or system configurations to be adopted by any provider of a wire or electronic communication service, any manufacturer of telecommunications equipment, or any provider of telecommunications support services; or

(B) to prohibit the adoption of any equipment, facility, service, or feature by any provider of a wire or electronic communication service, any manufacturer of telecommunications equipment, or any provider of telecommunications support services.

(2) INFORMATION SERVICES; PRIVATE NETWORKS AND INTERCONNECTION SERVICES AND FACILITIES.—The requirements of subsection (a) do not apply to—

(A) information services; or

(B) equipment, facilities, or services that support the transport or switching of communications for private networks or for the sole purpose of interconnecting telecommunications carriers.

(3) ENCRYPTION.—A telecommunications carrier shall not be responsible for decrypting, or ensuring the government's ability to decrypt, any communication encrypted by a sub-

scriber or customer, unless the encryption was provided by the carrier and the carrier possesses the information necessary to decrypt the communication.

(c) **EMERGENCY OR EXIGENT CIRCUMSTANCES.**—In emergency or exigent circumstances (including those described in sections 2518 (7) or (11)(b) and 3125 of title 18, United States Code, and section 1805(e) of title 50 of such Code), a carrier at its discretion may comply with subsection (a)(3) by allowing monitoring at its premises if that is the only means of accomplishing the interception or access.

(d) **MOBILE SERVICE ASSISTANCE REQUIREMENTS.**—A telecommunications carrier that is a provider of commercial mobile service (as defined in section 332(d) of the Communications Act of 1934) offering a feature or service that allows subscribers to redirect, hand off, or assign their wire or electronic communications to another service area or another service provider or to utilize facilities in another service area or of another service provider shall ensure that, when the carrier that had been providing assistance for the interception of wire or electronic communications or access to call-identifying information pursuant to a court order or lawful authorization no longer has access to the content of such communications or call-identifying information within the service area in which interception has been occurring as a result of the subscriber's use of such a feature or service, information is made available to the government (before, during, or immediately after the transfer of such communications) identifying the provider of a wire or electronic communication service that has acquired access to the communications.

**SEC. 104. [47 U.S.C. 1003] NOTICES OF CAPACITY REQUIREMENTS.**

(a) **NOTICES OF MAXIMUM AND ACTUAL CAPACITY REQUIREMENTS.**—

(1) **IN GENERAL.**—Not later than 1 year after the date of enactment of this title, after consulting with State and local law enforcement agencies, telecommunications carriers, providers of telecommunications support services, and manufacturers of telecommunications equipment, and after notice and comment, the Attorney General shall publish in the Federal Register and provide to appropriate telecommunications industry associations and standard-setting organizations—

(A) notice of the actual number of communication interceptions, pen registers, and trap and trace devices, representing a portion of the maximum capacity set forth under subparagraph (B), that the Attorney General estimates that government agencies authorized to conduct electronic surveillance may conduct and use simultaneously by the date that is 4 years after the date of enactment of this title; and

(B) notice of the maximum capacity required to accommodate all of the communication interceptions, pen registers, and trap and trace devices that the Attorney General estimates that government agencies authorized to conduct electronic surveillance may conduct and use simulta-



neously after the date that is 4 years after the date of enactment of this title.

(2) BASIS OF NOTICES.—The notices issued under paragraph (1)—

(A) may be based upon the type of equipment, type of service, number of subscribers, type or size or<sup>1</sup> carrier, nature of service area, or any other measure; and

(B) shall identify, to the maximum extent practicable, the capacity required at specific geographic locations.

(b) COMPLIANCE WITH CAPACITY NOTICES.—

(1) INITIAL CAPACITY.—Within 3 years after the publication by the Attorney General of a notice of capacity requirements or within 4 years after the date of enactment of this title, whichever is longer, a telecommunications carrier shall, subject to subsection (e), ensure that its systems are capable of—

(A) accommodating simultaneously the number of interceptions, pen registers, and trap and trace devices set forth in the notice under subsection (a)(1)(A); and

(B) expanding to the maximum capacity set forth in the notice under subsection (a)(1)(B).

(2) EXPANSION TO MAXIMUM CAPACITY.—After the date described in paragraph (1), a telecommunications carrier shall, subject to subsection (e), ensure that it can accommodate expeditiously any increase in the actual number of communication interceptions, pen registers, and trap and trace devices that authorized agencies may seek to conduct and use, up to the maximum capacity requirement set forth in the notice under subsection (a)(1)(B).

(c) NOTICES OF INCREASED MAXIMUM CAPACITY REQUIREMENTS.—

(1) NOTICE.—The Attorney General shall periodically publish in the Federal Register, after notice and comment, notice of any necessary increases in the maximum capacity requirement set forth in the notice under subsection (a)(1)(B).

(2) COMPLIANCE.—Within 3 years after notice of increased maximum capacity requirements is published under paragraph (1), or within such longer time period as the Attorney General may specify, a telecommunications carrier shall, subject to subsection (e), ensure that its systems are capable of expanding to the increased maximum capacity set forth in the notice.

(d) CARRIER STATEMENT.—Within 180 days after the publication by the Attorney General of a notice of capacity requirements pursuant to subsection (a) or (c), a telecommunications carrier shall submit to the Attorney General a statement identifying any of its systems or services that do not have the capacity to accommodate simultaneously the number of interceptions, pen registers, and trap and trace devices set forth in the notice under such subsection.

(e) REIMBURSEMENT REQUIRED FOR COMPLIANCE.—The Attorney General shall review the statements submitted under subsection (d) and may, subject to the availability of appropriations, agree to reimburse a telecommunications carrier for costs directly associated with modifications to attain such capacity requirement

<sup>1</sup> So in law. Probably should read “of”.

**Sec. 105 COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT 130**

that are determined to be reasonable in accordance with section 109(e). Until the Attorney General agrees to reimburse such carrier for such modification, such carrier shall be considered to be in compliance with the capacity notices under subsection (a) or (c).

**SEC. 105. [47 U.S.C. 1004] SYSTEMS SECURITY AND INTEGRITY.**

A telecommunications carrier shall ensure that any interception of communications or access to call-identifying information effected within its switching premises can be activated only in accordance with a court order or other lawful authorization and with the affirmative intervention of an individual officer or employee of the carrier acting in accordance with regulations prescribed by the Commission.

**SEC. 106. [47 U.S.C. 1005] COOPERATION OF EQUIPMENT MANUFACTURERS AND PROVIDERS OF TELECOMMUNICATIONS SUPPORT SERVICES.**

(a) CONSULTATION.—A telecommunications carrier shall consult, as necessary, in a timely fashion with manufacturers of its telecommunications transmission and switching equipment and its providers of telecommunications support services for the purpose of ensuring that current and planned equipment, facilities, and services comply with the capability requirements of section 103 and the capacity requirements identified by the Attorney General under section 104.

(b) COOPERATION.—Subject to sections 104(e), 108(a), and 109 (b) and (d), a manufacturer of telecommunications transmission or switching equipment and a provider of telecommunications support services shall, on a reasonably timely basis and at a reasonable charge, make available to the telecommunications carriers using its equipment, facilities, or services such features or modifications as are necessary to permit such carriers to comply with the capability requirements of section 103 and the capacity requirements identified by the Attorney General under section 104.

**SEC. 107. [47 U.S.C. 1006] TECHNICAL REQUIREMENTS AND STANDARDS; EXTENSION OF COMPLIANCE DATE.**

(a) SAFE HARBOR.—

(1) CONSULTATION.—To ensure the efficient and industry-wide implementation of the assistance capability requirements under section 103, the Attorney General, in coordination with other Federal, State, and local law enforcement agencies, shall consult with appropriate associations and standard-setting organizations of the telecommunications industry, with representatives of users of telecommunications equipment, facilities, and services, and with State utility commissions.

(2) COMPLIANCE UNDER ACCEPTED STANDARDS.—A telecommunications carrier shall be found to be in compliance with the assistance capability requirements under section 103, and a manufacturer of telecommunications transmission or switching equipment or a provider of telecommunications support services shall be found to be in compliance with section 106, if the carrier, manufacturer, or support service provider is in compliance with publicly available technical requirements or standards adopted by an industry association or standard-set-

ting organization, or by the Commission under subsection (b), to meet the requirements of section 103.

(3) ABSENCE OF STANDARDS.—The absence of technical requirements or standards for implementing the assistance capability requirements of section 103 shall not—

(A) preclude a telecommunications carrier, manufacturer, or telecommunications support services provider from deploying a technology or service; or

(B) relieve a carrier, manufacturer, or telecommunications support services provider of the obligations imposed by section 103 or 106, as applicable.

(b) COMMISSION AUTHORITY.—If industry associations or standard-setting organizations fail to issue technical requirements or standards or if a Government agency or any other person believes that such requirements or standards are deficient, the agency or person may petition the Commission to establish, by rule, technical requirements or standards that—

(1) meet the assistance capability requirements of section 103 by cost-effective methods;

(2) protect the privacy and security of communications not authorized to be intercepted;

(3) minimize the cost of such compliance on residential ratepayers;

(4) serve the policy of the United States to encourage the provision of new technologies and services to the public; and

(5) provide a reasonable time and conditions for compliance with and the transition to any new standard, including defining the obligations of telecommunications carriers under section 103 during any transition period.

(c) EXTENSION OF COMPLIANCE DATE FOR EQUIPMENT, FACILITIES, AND SERVICES.—

(1) PETITION.—A telecommunications carrier proposing to install or deploy, or having installed or deployed, any equipment, facility, or service prior to the effective date of section 103 may petition the Commission for 1 or more extensions of the deadline for complying with the assistance capability requirements under section 103.

(2) GROUNDS FOR EXTENSION.—The Commission may, after consultation with the Attorney General, grant an extension under this subsection, if the Commission determines that compliance with the assistance capability requirements under section 103 is not reasonably achievable through application of technology available within the compliance period.

(3) LENGTH OF EXTENSION.—An extension under this subsection shall extend for no longer than the earlier of—

(A) the date determined by the Commission as necessary for the carrier to comply with the assistance capability requirements under section 103; or

(B) the date that is 2 years after the date on which the extension is granted.

(4) APPLICABILITY OF EXTENSION.—An extension under this subsection shall apply to only that part of the carrier's business on which the new equipment, facility, or service is used.

**SEC. 108. [47 U.S.C. 1007] ENFORCEMENT ORDERS.**

(a) **GROUNDS FOR ISSUANCE.**—A court shall issue an order enforcing this title under section 2522 of title 18, United States Code, only if the court finds that—

(1) alternative technologies or capabilities or the facilities of another carrier are not reasonably available to law enforcement for implementing the interception of communications or access to call-identifying information; and

(2) compliance with the requirements of this title is reasonably achievable through the application of available technology to the equipment, facility, or service at issue or would have been reasonably achievable if timely action had been taken.

(b) **TIME FOR COMPLIANCE.**—Upon issuing an order enforcing this title, the court shall specify a reasonable time and conditions for complying with its order, considering the good faith efforts to comply in a timely manner, any effect on the carrier's, manufacturer's, or service provider's ability to continue to do business, the degree of culpability or delay in undertaking efforts to comply, and such other matters as justice may require.

(c) **LIMITATIONS.**—An order enforcing this title may not—

(1) require a telecommunications carrier to meet the Government's demand for interception of communications and acquisition of call-identifying information to any extent in excess of the capacity for which the Attorney General has agreed to reimburse such carrier;

(2) require any telecommunications carrier to comply with assistance capability requirement<sup>1</sup> of section 103 if the Commission has determined (pursuant to section 109(b)(1)) that compliance is not reasonably achievable, unless the Attorney General has agreed (pursuant to section 109(b)(2)) to pay the costs described in section 109(b)(2)(A); or

(3) require a telecommunications carrier to modify, for the purpose of complying with the assistance capability requirements of section 103, any equipment, facility, or service deployed on or before January 1, 1995, unless—

(A) the Attorney General has agreed to pay the telecommunications carrier for all reasonable costs directly associated with modifications necessary to bring the equipment, facility, or service into compliance with those requirements; or

(B) the equipment, facility, or service has been replaced or significantly upgraded or otherwise undergoes major modification.

**SEC. 109. [47 U.S.C. 1008] PAYMENT OF COSTS OF TELECOMMUNICATIONS CARRIERS TO COMPLY WITH CAPABILITY REQUIREMENTS.**

(a) **EQUIPMENT, FACILITIES, AND SERVICES DEPLOYED ON OR BEFORE JANUARY 1, 1995.**—The Attorney General may, subject to the availability of appropriations, agree to pay telecommunications carriers for all reasonable costs directly associated with the modifications performed by carriers in connection with equipment, facili-

<sup>1</sup> So in law. Probably should read "requirements".

ties, and services installed or deployed on or before January 1, 1995, to establish the capabilities necessary to comply with section 103.

(b) EQUIPMENT, FACILITIES, AND SERVICES DEPLOYED AFTER JANUARY 1, 1995.—

(1) DETERMINATIONS OF REASONABLY ACHIEVABLE.—The Commission, on petition from a telecommunications carrier or any other interested person, and after notice to the Attorney General, shall determine whether compliance with the assistance capability requirements of section 103 is reasonably achievable with respect to any equipment, facility, or service installed or deployed after January 1, 1995. The Commission shall make such determination within 1 year after the date such petition is filed. In making such determination, the Commission shall determine whether compliance would impose significant difficulty or expense on the carrier or on the users of the carrier's systems and shall consider the following factors:

(A) The effect on public safety and national security.

(B) The effect on rates for basic residential telephone service.

(C) The need to protect the privacy and security of communications not authorized to be intercepted.

(D) The need to achieve the capability assistance requirements of section 103 by cost-effective methods.

(E) The effect on the nature and cost of the equipment, facility, or service at issue.

(F) The effect on the operation of the equipment, facility, or service at issue.

(G) The policy of the United States to encourage the provision of new technologies and services to the public.

(H) The financial resources of the telecommunications carrier.

(I) The effect on competition in the provision of telecommunications services.

(J) The extent to which the design and development of the equipment, facility, or service was initiated before January 1, 1995.

(K) Such other factors as the Commission determines are appropriate.

(2) COMPENSATION.—If compliance with the assistance capability requirements of section 103 is not reasonably achievable with respect to equipment, facilities, or services deployed after January 1, 1995—

(A) the Attorney General, on application of a telecommunications carrier, may agree, subject to the availability of appropriations, to pay the telecommunications carrier for the additional reasonable costs of making compliance with such assistance capability requirements reasonably achievable; and

(B) if the Attorney General does not agree to pay such costs, the telecommunications carrier shall be deemed to be in compliance with such capability requirements.

(c) ALLOCATION OF FUNDS FOR PAYMENT.—The Attorney General shall allocate funds appropriated to carry out this title in ac-

cordance with law enforcement priorities determined by the Attorney General.

(d) **FAILURE TO MAKE PAYMENT WITH RESPECT TO EQUIPMENT, FACILITIES, AND SERVICES DEPLOYED ON OR BEFORE JANUARY 1, 1995.**—If a carrier has requested payment in accordance with procedures promulgated pursuant to subsection (e), and the Attorney General has not agreed to pay the telecommunications carrier for all reasonable costs directly associated with modifications necessary to bring any equipment, facility, or service deployed on or before January 1, 1995, into compliance with the assistance capability requirements of section 103, such equipment, facility, or service shall be considered to be in compliance with the assistance capability requirements of section 103 until the equipment, facility, or service is replaced or significantly upgraded or otherwise undergoes major modification.

(e) **COST CONTROL REGULATIONS.**—

(1) **IN GENERAL.**—The Attorney General shall, after notice and comment, establish regulations necessary to effectuate timely and cost-efficient payment to telecommunications carriers under this title, under chapters 119 and 121 of title 18, United States Code, and under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

(2) **CONTENTS OF REGULATIONS.**—The Attorney General, after consultation with the Commission, shall prescribe regulations for purposes of determining reasonable costs under this title. Such regulations shall seek to minimize the cost to the Federal Government and shall—

(A) permit recovery from the Federal Government of—

(i) the direct costs of developing the modifications described in subsection (a), of providing the capabilities requested under subsection (b)(2), or of providing the capacities requested under section 104(e), but only to the extent that such costs have not been recovered from any other governmental or nongovernmental entity;

(ii) the costs of training personnel in the use of such capabilities or capacities; and

(iii) the direct costs of deploying or installing such capabilities or capacities;

(B) in the case of any modification that may be used for any purpose other than lawfully authorized electronic surveillance by a law enforcement agency of a government, permit recovery of only the incremental cost of making the modification suitable for such law enforcement purposes; and

(C) maintain the confidentiality of trade secrets.

(3) **SUBMISSION OF CLAIMS.**—Such regulations shall require any telecommunications carrier that the Attorney General has agreed to pay for modifications pursuant to this section and that has installed or deployed such modification to submit to the Attorney General a claim for payment that contains or is accompanied by such information as the Attorney General may require.

**SEC. 110. [47 U.S.C. 1009] AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to carry out this title a total of \$500,000,000 for fiscal years 1995, 1996, 1997, and 1998. Such sums are authorized to remain available until expended.

**SEC. 111. [47 U.S.C. 1001 note] EFFECTIVE DATE.**

(a) **IN GENERAL.**—Except as provided in subsection (b), this title shall take effect on the date of enactment of this Act.

(b) **ASSISTANCE CAPABILITY AND SYSTEMS SECURITY AND INTEGRITY REQUIREMENTS.**—Sections 103 and 105 of this title shall take effect on the date that is 4 years after the date of enactment of this Act.

**SEC. 112. [47 U.S.C. 1010] REPORTS.**

(a) **REPORTS BY THE ATTORNEY GENERAL.**—

(1) **IN GENERAL.**—On or before November 30, 1995, and on or before November 30 of each year thereafter, the Attorney General shall submit to Congress and make available to the public a report on the amounts paid during the preceding fiscal year to telecommunications carriers under sections 104(e) and 109.

(2) **CONTENTS.**—A report under paragraph (1) shall include—

(A) a detailed accounting of the amounts paid to each carrier and the equipment, facility, or service for which the amounts were paid; and

(B) projections of the amounts expected to be paid in the current fiscal year, the carriers to which payment is expected to be made, and the equipment, facilities, or services for which payment is expected to be made.

(b) **REPORTS BY THE COMPTROLLER GENERAL.**—

(1) On or before April 1, 1996, the Comptroller General of the United States, and every two years thereafter, the Inspector General of the Department of Justice, shall submit to the Congress a report, after consultation with the Attorney General and the telecommunications industry—

(A) describing the type of equipment, facilities, and services that have been brought into compliance under this title; and

(B) reflecting its analysis of the reasonableness and cost-effectiveness of the payments made by the Attorney General to telecommunications carriers for modifications necessary to ensure compliance with this title.

(2) **COMPLIANCE COST ESTIMATES.**—A report under paragraph (1) shall include findings and conclusions on the costs to be incurred by telecommunications carriers to comply with the assistance capability requirements of section 103 after the effective date of such section 103, including projections of the amounts expected to be incurred and a description of the equipment, facilities, or services for which they are expected to be incurred.

[Title II made amendments to title 18, Unites States Code.]

[Title III made amendments to the Communications Act of 1934.]

**TITLE IV—TELECOMMUNICATIONS CARRIER COMPLIANCE  
PAYMENTS****SEC. 401. [47 U.S.C. 1021] DEPARTMENT OF JUSTICE TELECOMMUNICATIONS CARRIER COMPLIANCE FUND.**

(a) **ESTABLISHMENT OF FUND.**—There is hereby established in the United States Treasury a fund to be known as the Department of Justice Telecommunications Carrier Compliance Fund (hereafter referred to as “the Fund”), which shall be available without fiscal year limitation to the Attorney General for making payments to telecommunications carriers, equipment manufacturers, and providers of telecommunications support services pursuant to section 109 of this Act.

(b) **DEPOSITS TO THE FUND.**—Notwithstanding any other provision of law, any agency of the United States with law enforcement or intelligence responsibilities may deposit as offsetting collections to the Fund any unobligated balances that are available until expended, upon compliance with any Congressional<sup>1</sup> notification requirements for reprogramming of funds applicable to the appropriation from which the deposit is to be made.

(c) **TERMINATION.**—

(1) The Attorney General may terminate the Fund at such time as the Attorney General determines that the Fund is no longer necessary.

(2) Any balance in the Fund at the time of its termination shall be deposited in the General Fund of the Treasury.

(3) A decision of the Attorney General to terminate the Fund shall not be subject to judicial review.

(d) **AVAILABILITY OF FUNDS FOR EXPENDITURE.**—Funds shall not be available for obligation unless an implementation plan as set forth in subsection (e) is submitted to each member of the Committees on the Judiciary and Appropriations of both the House of Representatives and the Senate and the Congress does not by law block or prevent the obligation of such funds. Such funds shall be treated as a reprogramming of funds under section 605 of the Department<sup>2</sup> of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1997, and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section and this section.

(e) **IMPLEMENTATION PLAN.**—The implementation plan shall include:

(1) the law enforcement assistance capability requirements and an explanation of law enforcement’s recommended interface;

(2) the proposed actual and maximum capacity requirements for the number of simultaneous law enforcement communications intercepts, pen registers, and trap and trace devices that authorized law enforcement agencies may seek to conduct, set forth on a county-by-county basis for wireline services and on a market service area basis for wireless services, and the historical baseline of electronic surveillance activity upon which such capacity requirements are based;

<sup>1</sup> So in law. Probably should be “congressional”.

<sup>2</sup> So in law. Probably should be “Departments”.



(3) a prioritized list of carrier equipment, facilities, and services deployed on or before January 1, 1995, to be modified by carriers at the request of law enforcement based on its investigative needs;

(4) a projected reimbursement plan that estimates the cost for the coming fiscal year and for each fiscal year thereafter, based on the prioritization of law enforcement needs as outlined in <sup>1</sup>(3), of modification by carriers of equipment, facilities and services, installed on or before January 1, 1995.

(f) ANNUAL REPORT TO THE CONGRESS.—The Attorney General shall submit to the Congress each year a report specifically detailing all deposits and expenditures made pursuant to<sup>2</sup> this Act in each fiscal year. This report shall be submitted to each member of the Committees on the Judiciary and Appropriations of both the House of Representatives and the Senate, and to the Speaker and minority leader of the House of Representatives and to the majority and minority leaders of the Senate, no later than 60 days after the end of each fiscal year.

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<sup>1</sup>Probably should have the word “paragraph” before “(3)”.

<sup>2</sup>Probably should read “to title I of”.

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March 15, 2012

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**NATIONAL TELECOMMUNICATIONS AND INFORMATION  
ADMINISTRATION ORGANIZATION ACT**

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March 15, 2012

**NATIONAL TELECOMMUNICATIONS AND INFORMATION  
ADMINISTRATION ORGANIZATION ACT**

[As Amended Through P.L. 112–96, Enacted February 22, 2012]

AN ACT To authorize appropriations for the National Telecommunications and Information Administration, and for other purposes.

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Telecommunications Authorization Act of 1992”.<sup>1</sup>

**TITLE I—NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION**

**PART A—ORGANIZATION AND FUNCTIONS**

**SEC. 101. [47 U.S.C. 901 note] SHORT TITLE.**

This title may be cited as the “National Telecommunications and Information Administration Organization Act”.

**SEC. 102. [47 U.S.C. 901] DEFINITIONS; FINDINGS; POLICY.**

(a) DEFINITIONS.—In this title, 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

<sup>1</sup>Public Law 102–538, 106 Stat. 3533, approved Oct. 27, 1992.

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.

**SEC. 103. [47 U.S.C. 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 105(d), 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 105(d), 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;

(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; 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.

(U) The responsibility to promote the best possible and most efficient use of electromagnetic spectrum resources across the Federal Government, subject to and consistent with the needs and missions of Federal agencies.

(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));

(B) shall assign to the NTIA the administration of the Public Telecommunications Facilities Program under sections 390 through 393 of the Communications Act of 1934 (47 U.S.C. 390–393), and the National Endowment for Children’s Educational Television under section 394 of the Communications Act of 1934 (47 U.S.C. 394); and

(C) shall assign to the NTIA responsibility for providing for the establishment, and overseeing operation, of a second-level Internet domain within the United States country code domain in accordance with section 157.

**SEC. 104. [47 U.S.C. 903] SPECTRUM MANAGEMENT ACTIVITIES.**<sup>1</sup>

(a) REVISION OF REGULATIONS.—Within 180 days after the date of the enactment of this Act, 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) 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;

<sup>1</sup>The fiscal year 1999 appropriation to the NTIA to carry out spectrum management activities contained the following provisions:

For necessary expenses, as provided for by law, of the National Telecommunications and Information Administration (NTIA), \$16,550,000, to remain available until expended: *Provided*, That notwithstanding 31 U.S.C. 1535(d), the Secretary of Commerce shall charge Federal agencies for costs incurred in spectrum management, analysis, and operations, and related services and such fees shall be retained and used as offsetting collections for costs of such spectrum services, to remain available until expended: *Provided further*, That hereafter, notwithstanding any other provision of law, NTIA shall not authorize spectrum use or provide any spectrum functions pursuant to the NTIA Organization Act, 47 U.S.C. 902–903, 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: *Provided further*, That the Secretary of Commerce is authorized to retain and use as offsetting collections all funds transferred, or previously transferred, from other Government agencies for all costs incurred in telecommunications research, engineering, and related activities by the Institute for Telecommunication Sciences of the NTIA, in furtherance of its assigned functions under this paragraph, and such funds received from other Government agencies shall remain available until expended.

(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 the date of enactment of this Act, 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 the date of enactment of this subsection, the Secretary and the NTIA shall amend the spectrum management document described in subsection (a) 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 such date of enactment, to operate a radio station utilizing a frequency that is authorized for the use of government stations pursuant to section 103(b)(2)(A) of this Act 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 such date of enactment, 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 the date of enactment of this subsection, 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.

**SEC. 105. [47 U.S.C. 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 103(b)(2)(K).

(2) REPORT TO PRESIDENT.—The Secretary shall timely submit to the President each year the report (including evaluations and recommendations) provided for in section 404(a)<sup>1</sup> of the Communications Satellite Act of 1962 (47 U.S.C. 744(a)<sup>1</sup>).

(3) COORDINATION WITH SECRETARY OF STATE.—The Secretary shall coordinate with the Secretary of State the performance of the functions described in section 103(b)(2)(C). 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 title.

(2) SUPPORT AND ASSISTANCE FROM OTHER AGENCIES.—All executive agencies are authorized and directed to cooperate

<sup>1</sup>So in law. Section 404 of the Communications Satellite Act of 1962 does not contain subsections.

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 title reassigns any function that is, on the date of enactment of this Act, 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 103(b).

(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 103(b) 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 1 of the Act of October 2, 1964 (15 U.S.C. 1522), 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.

## **PART B—TRANSFER OF AUCTIONABLE FREQUENCIES**

### **SEC. 111. [47 U.S.C. 921] DEFINITIONS.**

As used in this part:

(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.).

### **SEC. 112. [47 U.S.C. 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 the 1934 Act 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.

**SEC. 113. [47 U.S.C. 923] IDENTIFICATION OF REALLOCABLE FREQUENCIES.**

(a) IDENTIFICATION REQUIRED.—The Secretary shall, within 18 months after the date of the enactment of the Omnibus Budget Reconciliation Act of 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 (other than for Federal Government stations under section 305 of the 1934 Act);

(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 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). 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) 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 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 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 12 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), 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));

(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), 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 re-establish 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), 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) shall be deemed not to be met for any purpose under this part 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) 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) DEFINITION.—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 the



date of enactment of the Omnibus Budget Reconciliation Act of 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 the date of the enactment of the Omnibus Budget Reconciliation Act of 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).

(e) TIMETABLE FOR REALLOCATION AND LIMITATION.—<sup>1</sup>

(1) TIMETABLE REQUIRED.—The Secretary shall, as part of the reports required by subsections (a) and (d)(1), 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.—

<sup>1</sup>Section 3002(b) of the Balanced Budget Act of 1997 (P.L. 105-33; 111 Stat. 260) contained the following provision with respect to the accelerated availability of certain spectrum:

(b) ACCELERATED AVAILABILITY FOR AUCTION OF 1,710-1,755 MEGAHERTZ FROM INITIAL REALLOCATION REPORT.—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, 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)).

(A) **REQUIRED REALLOCATION.**—The Secretary shall, as part of the report required by subsection (d)(1), 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), and that can be made available for reallocation immediately upon issuance of the report required by subsection (d)(1). 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), 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 115(b);

(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 AND SPECTRUM SHARING BY FEDERAL GOVERNMENT STATIONS.**—<sup>1</sup>

<sup>1</sup>Section 113(g) of the National Telecommunications and Information Administration Organization Act was amended by subsection (c) of section 1064 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999. The other provisions of that section are as follows:

**SEC. 1064. DEPARTMENT OF DEFENSE USE OF FREQUENCY SPECTRUM.**

(a) **FINDING.**—Congress finds that the report submitted to Congress by the Secretary of Defense on April 2, 1998, regarding the reallocation of the frequency spectrum used or dedicated to the Department of Defense and the intelligence community does not include a discussion of the costs to the Department of Defense that are associated with past and potential future reallocations of the frequency spectrum, although such a discussion was to be included in the re-

(1) **ELIGIBLE FEDERAL ENTITIES.**—Any Federal entity that operates a Federal Government station authorized to use a band of eligible frequencies described in paragraph (2) and that incurs relocation or sharing costs because of planning for an auction of spectrum frequencies or the reallocation of spectrum frequencies from Federal use to exclusive non-Federal use or to shared use shall receive payment for such relocation or sharing costs from the Spectrum Relocation Fund, in accordance with this section and section 118. For purposes of this paragraph, Federal power agencies exempted under subsection (c)(4) that choose to relocate from the frequencies identified for reallocation pursuant to subsection (a) are eligible to receive payment under this paragraph.

(2) **ELIGIBLE FREQUENCIES.**—The bands of eligible frequencies for purposes of this section are as follows:

(A) the 216–220 megahertz band, the 1432–1435 megahertz band, the 1710–1755 megahertz band, and the 2385–2390 megahertz band of frequencies; and

(B) any other band of frequencies reallocated from Federal use to non-Federal use or to shared use after January 1, 2003, that is assigned by competitive bidding pursuant to section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)).

(3) **RELOCATION OR SHARING COSTS DEFINED.**—

(A) **IN GENERAL.**—For purposes of this section and section 118, the term “relocation or sharing costs” means the costs incurred by a Federal entity in connection with the auction of spectrum frequencies previously assigned to such entity or the sharing of spectrum frequencies assigned to such entity (including the auction or a planned auction of the rights to use spectrum frequencies on a shared basis with such entity) in order to achieve comparable capability of systems as before the relocation or sharing arrangement. Such term includes, with respect to relocation or sharing, as the case may be—

(i) the costs of any modification or replacement of equipment, spares, associated ancillary equipment, software, facilities, operating manuals, training, or compliance with regulations that are attributable to relocation or sharing;

(ii) the costs of all engineering, equipment, software, site acquisition, and construction, as well as any legitimate and prudent transaction expense, including

port as directed in connection with the enactment of the National Defense Authorization Act for Fiscal Year 1998.

(b) **ADDITIONAL REPORT.**—The Secretary of Defense shall, not later than October 31, 1998, submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report that discusses the costs referred to in subsection (a).

\* \* \* \* \*

(d) **REPORTS ON COSTS OF RELOCATIONS.**—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 Information Administration Organization Act (47 U.S.C. 923) as of the date of such report.

term-limited Federal civil servant and contractor staff necessary to carry out the relocation or sharing activities of a Federal entity, and reasonable additional costs incurred by the Federal entity that are attributable to relocation or sharing, including increased recurring costs associated with the replacement of facilities;

(iii) the costs of research, engineering studies, economic analyses, or other expenses reasonably incurred in connection with—

(I) calculating the estimated relocation or sharing costs that are provided to the Commission pursuant to paragraph (4)(A);

(II) determining the technical or operational feasibility of relocation to 1 or more potential relocation bands; or

(III) planning for or managing a relocation or sharing arrangement (including spectrum coordination with auction winners);

(iv) the one-time costs of any modification of equipment reasonably necessary—

(I) to accommodate non-Federal use of shared frequencies; or

(II) in the case of eligible frequencies reallocated for exclusive non-Federal use and assigned through a system of competitive bidding under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) but with respect to which a Federal entity retains primary allocation or protected status for a period of time after the completion of the competitive bidding process, to accommodate shared Federal and non-Federal use of such frequencies for such period; and

(v) the costs associated with the accelerated replacement of systems and equipment if the acceleration is necessary to ensure the timely relocation of systems to a new frequency assignment or the timely accommodation of sharing of Federal frequencies.

(B) COMPARABLE CAPABILITY OF SYSTEMS.—For purposes of subparagraph (A), comparable capability of systems—

(i) may be achieved by relocating a Federal Government station to a new frequency assignment, by relocating a Federal Government station to a different geographic location, by modifying Federal Government equipment to mitigate interference or use less spectrum, in terms of bandwidth, geography, or time, and thereby permitting spectrum sharing (including sharing among relocated Federal entities and incumbents to make spectrum available for non-Federal use) or relocation, or by utilizing an alternative technology; and

(ii) includes the acquisition of state-of-the-art replacement systems intended to meet comparable oper-

ational scope, which may include incidental increases in functionality.

(4) NOTICE TO COMMISSION OF ESTIMATED RELOCATION OR SHARING COSTS.—

(A) The Commission shall notify the NTIA at least 18 months prior to the commencement of any auction of eligible frequencies defined in paragraph (2). At least 6 months prior to the commencement of any such auction, the NTIA, on behalf of the Federal entities and after review by the Office of Management and Budget, shall notify the Commission of estimated relocation or sharing costs and timelines for such relocation or sharing.

(B) Upon timely request of a Federal entity, the NTIA shall provide such entity with information regarding an alternative frequency assignment or assignments to which their radiocommunications operations could be relocated for purposes of calculating the estimated relocation or sharing costs and timelines to be submitted to the Commission pursuant to subparagraph (A).

(C) To the extent practicable and consistent with national security considerations, the NTIA shall provide the information required by subparagraphs (A) and (B) by the geographic location of the Federal entities' facilities or systems and the frequency bands used by such facilities or systems.

(5) NOTICE TO CONGRESSIONAL COMMITTEES AND GAO.—The NTIA shall, at the time of providing an initial estimate of relocation or sharing costs to the Commission under paragraph (4)(A), submit to Committees on Appropriations and Energy and Commerce of the House of Representatives for approval, to the Committees on Appropriations and Commerce, Science, and Transportation of the Senate for approval, and to the Comptroller General a copy of such estimate and the timelines for relocation or sharing. Unless disapproved within 30 days, the estimate shall be approved. If disapproved, the NTIA may resubmit a revised initial estimate.

(6) IMPLEMENTATION OF PROCEDURES.—The NTIA shall take such actions as necessary to ensure the timely relocation of Federal entities' spectrum-related operations from frequencies described in paragraph (2) to frequencies or facilities of comparable capability and to ensure the timely implementation of arrangements for the sharing of frequencies described in such paragraph. Upon a finding by the NTIA that a Federal entity has achieved comparable capability of systems, the NTIA shall terminate or limit the entity's authorization and notify the Commission that the entity's relocation has been completed or sharing arrangement has been implemented. The NTIA shall also terminate such entity's authorization if the NTIA determines that the entity has unreasonably failed to comply with the timeline for relocation or sharing submitted by the Director of the Office of Management and Budget under section 118(d)(2)(C).

(h) DEVELOPMENT AND PUBLICATION OF RELOCATION OR SHARING TRANSITION PLANS.—

(1) DEVELOPMENT OF TRANSITION PLAN BY FEDERAL ENTITY.—Not later than 240 days before the commencement of any auction of eligible frequencies described in subsection (g)(2), a Federal entity authorized to use any such frequency shall submit to the NTIA and to the Technical Panel established by paragraph (3) a transition plan for the implementation by such entity of the relocation or sharing arrangement. The NTIA shall specify, after public input, a common format for all Federal entities to follow in preparing transition plans under this paragraph.

(2) CONTENTS OF TRANSITION PLAN.—The transition plan required by paragraph (1) shall include the following information:

(A) The use by the Federal entity of the eligible frequencies to be auctioned, current as of the date of the submission of the plan.

(B) The geographic location of the facilities or systems of the Federal entity that use such frequencies.

(C) The frequency bands used by such facilities or systems, described by geographic location.

(D) The steps to be taken by the Federal entity to relocate its spectrum use from such frequencies or to share such frequencies, including timelines for specific geographic locations in sufficient detail to indicate when use of such frequencies at such locations will be discontinued by the Federal entity or shared between the Federal entity and non-Federal users.

(E) The specific interactions between the eligible Federal entity and the NTIA needed to implement the transition plan.

(F) The name of the officer or employee of the Federal entity who is responsible for the relocation or sharing efforts of the entity and who is authorized to meet and negotiate with non-Federal users regarding the transition.

(G) The plans and timelines of the Federal entity for—

- (i) using funds received from the Spectrum Relocation Fund established by section 118;

- (ii) procuring new equipment and additional personnel needed for relocation or sharing;

- (iii) field-testing and deploying new equipment needed for relocation or sharing; and

- (iv) hiring and relying on contract personnel, if any, needed for relocation or sharing.

(H) Factors that could hinder fulfillment of the transition plan by the Federal entity.

(3) TECHNICAL PANEL.—

(A) ESTABLISHMENT.—There is established within the NTIA a panel to be known as the Technical Panel.

(B) MEMBERSHIP.—

- (i) NUMBER AND APPOINTMENT.—The Technical Panel shall be composed of 3 members, to be appointed as follows:

(I) One member to be appointed by the Director of the Office of Management and Budget (in this subsection referred to as “OMB”).

(II) One member to be appointed by the Assistant Secretary.

(III) One member to be appointed by the Chairman of the Commission.

(ii) QUALIFICATIONS.—Each member of the Technical Panel shall be a radio engineer or a technical expert.

(iii) INITIAL APPOINTMENT.—The initial members of the Technical Panel shall be appointed not later than 180 days after the date of the enactment of the Middle Class Tax Relief and Job Creation Act of 2012.

(iv) TERMS.—The term of a member of the Technical Panel shall be 18 months, and no individual may serve more than 1 consecutive term.

(v) VACANCIES.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member’s predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member’s term until a successor has taken office. A vacancy shall be filled in the manner in which the original appointment was made.

(vi) NO COMPENSATION.—The members of the Technical Panel shall not receive any compensation for service on the Technical Panel. If any such member is an employee of the agency of the official that appointed such member to the Technical Panel, compensation in the member’s capacity as such an employee shall not be considered compensation under this clause.

(C) ADMINISTRATIVE SUPPORT.—The NTIA shall provide the Technical Panel with the administrative support services necessary to carry out its duties under this subsection and subsection (i).

(D) REGULATIONS.—Not later than 180 days after the date of the enactment of the Middle Class Tax Relief and Job Creation Act of 2012, the NTIA shall, after public notice and comment and subject to approval by the Director of OMB, adopt regulations to govern the workings of the Technical Panel.

(E) CERTAIN REQUIREMENTS INAPPLICABLE.—The Federal Advisory Committee Act (5 U.S.C. App.) and sections 552 and 552b of title 5, United States Code, shall not apply to the Technical Panel.

(4) REVIEW OF PLAN BY TECHNICAL PANEL.—

(A) IN GENERAL.—Not later than 30 days after the submission of the plan under paragraph (1), the Technical Panel shall submit to the NTIA and to the Federal entity a report on the sufficiency of the plan, including whether the plan includes the information required by paragraph (2) and an assessment of the reasonableness of the pro-

posed timelines and estimated relocation or sharing costs, including the costs of any proposed expansion of the capabilities of a Federal system in connection with relocation or sharing.

(B) INSUFFICIENCY OF PLAN.—If the Technical Panel finds the plan insufficient, the Federal entity shall, not later than 90 days after the submission of the report by the Technical Panel under subparagraph (A), submit to the Technical Panel a revised plan. Such revised plan shall be treated as a plan submitted under paragraph (1).

(5) PUBLICATION OF TRANSITION PLAN.—Not later than 120 days before the commencement of the auction described in paragraph (1), the NTIA shall make the transition plan publicly available on its website.

(6) UPDATES OF TRANSITION PLAN.—As the Federal entity implements the transition plan, it shall periodically update the plan to reflect any changed circumstances, including changes in estimated relocation or sharing costs or the timeline for relocation or sharing. The NTIA shall make the updates available on its website.

(7) CLASSIFIED AND OTHER SENSITIVE INFORMATION.—

(A) CLASSIFIED INFORMATION.—If any of the information required to be included in the transition plan of a Federal entity is classified information (as defined in section 798(b) of title 18, United States Code), the entity shall—

(i) include in the plan—

(I) an explanation of the exclusion of any such information, which shall be as specific as possible; and

(II) all relevant non-classified information that is available; and

(ii) discuss as a factor under paragraph (2)(H) the extent of the classified information and the effect of such information on the implementation of the relocation or sharing arrangement.

(B) REGULATIONS.—Not later than 180 days after the date of the enactment of the Middle Class Tax Relief and Job Creation Act of 2012, the NTIA, in consultation with the Director of OMB and the Secretary of Defense, shall adopt regulations to ensure that the information publicly released under paragraph (5) or (6) does not contain classified information or other sensitive information.

(i) DISPUTE RESOLUTION PROCESS.—

(1) IN GENERAL.—If a dispute arises between a Federal entity and a non-Federal user regarding the execution, timing, or cost of the transition plan submitted by the Federal entity under subsection (h)(1), the Federal entity or the non-Federal user may request that the NTIA establish a dispute resolution board to resolve the dispute.

(2) ESTABLISHMENT OF BOARD.—

(A) IN GENERAL.—If the NTIA receives a request under paragraph (1), it shall establish a dispute resolution board.



- (B) **MEMBERSHIP AND APPOINTMENT.**—The dispute resolution board shall be composed of 3 members, as follows:
- (i) A representative of the Office of Management and Budget (in this subsection referred to as “OMB”), to be appointed by the Director of OMB.
  - (ii) A representative of the NTIA, to be appointed by the Assistant Secretary.
  - (iii) A representative of the Commission, to be appointed by the Chairman of the Commission.
- (C) **CHAIR.**—The representative of OMB shall be the Chair of the dispute resolution board.
- (D) **VACANCIES.**—Any vacancy in the dispute resolution board shall be filled in the manner in which the original appointment was made.
- (E) **NO COMPENSATION.**—The members of the dispute resolution board shall not receive any compensation for service on the board. If any such member is an employee of the agency of the official that appointed such member to the board, compensation in the member’s capacity as such an employee shall not be considered compensation under this subparagraph.
- (F) **TERMINATION OF BOARD.**—The dispute resolution board shall be terminated after it rules on the dispute that it was established to resolve and the time for appeal of its decision under paragraph (7) has expired, unless an appeal has been taken under such paragraph. If such an appeal has been taken, the board shall continue to exist until the appeal process has been exhausted and the board has completed any action required by a court hearing the appeal.
- (3) **PROCEDURES.**—The dispute resolution board shall meet simultaneously with representatives of the Federal entity and the non-Federal user to discuss the dispute. The dispute resolution board may require the parties to make written submissions to it.
- (4) **DEADLINE FOR DECISION.**—The dispute resolution board shall rule on the dispute not later than 30 days after the request was made to the NTIA under paragraph (1).
- (5) **ASSISTANCE FROM TECHNICAL PANEL.**—The Technical Panel established under subsection (h)(3) shall provide the dispute resolution board with such technical assistance as the board requests.
- (6) **ADMINISTRATIVE SUPPORT.**—The NTIA shall provide the dispute resolution board with the administrative support services necessary to carry out its duties under this subsection.
- (7) **APPEALS.**—A decision of the dispute resolution board may be appealed to the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal with that court not later than 30 days after the date of such decision. Each party shall bear its own costs and expenses, including attorneys’ fees, for any appeal under this paragraph.
- (8) **REGULATIONS.**—Not later than 180 days after the date of the enactment of the Middle Class Tax Relief and Job Creation Act of 2012, the NTIA shall, after public notice and comment and subject to approval by OMB, adopt regulations to

govern the working of any dispute resolution boards established under paragraph (2)(A) and the role of the Technical Panel in assisting any such board.

(9) CERTAIN REQUIREMENTS INAPPLICABLE.—The Federal Advisory Committee Act (5 U.S.C. App.) and sections 552 and 552b of title 5, United States Code, shall not apply to a dispute resolution board established under paragraph (2)(A).

(j) RELOCATION PRIORITIZED OVER SHARING.—

(1) IN GENERAL.—In evaluating a band of frequencies for possible reallocation for exclusive non-Federal use or shared use, the NTIA shall give priority to options involving reallocation of the band for exclusive non-Federal use and shall choose options involving shared use only when it determines, in consultation with the Director of the Office of Management and Budget, that relocation of a Federal entity from the band is not feasible because of technical or cost constraints.

(2) NOTIFICATION OF CONGRESS WHEN SHARING CHOSEN.—If the NTIA determines under paragraph (1) that relocation of a Federal entity from the band is not feasible, the NTIA shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives of the determination, including the specific technical or cost constraints on which the determination is based.

(k) 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.

(l) 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).

**SEC. 114. [47 U.S.C. 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 113, 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 113(b)(2);

(3) by the delayed effective date recommended by the Secretary under section 113(e) (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); 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 113(a) unless the substituted frequency also meets each of the criteria specified by section 113(a).

(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 113(e), 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 115, 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.

**SEC. 115. [47 U.S.C. 925] DISTRIBUTION OF FREQUENCIES BY THE COMMISSION.**

(a) **ALLOCATION AND ASSIGNMENT OF IMMEDIATELY AVAILABLE FREQUENCIES.**—With respect to the frequencies made available for immediate reallocation pursuant to section 113(e)(2), the Commission, not later than 18 months after the date of enactment of the Omnibus Budget Reconciliation Act of 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 113(e)(3), the Commission shall, not later than 1 year after receipt of the initial reallocation report required by section 113(a), prepare, submit to the President and the Congress, and implement, a plan for the allocation and assignment under the 1934 Act 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 113(e), 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.

**SEC. 116. [47 U.S.C. 926] AUTHORITY TO RECOVER REASSIGNED FREQUENCIES.**

(a) AUTHORITY OF PRESIDENT.—Subsequent to the withdrawal of assignment to Federal Government stations pursuant to section 114, 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, the President shall follow the procedures for substitution of frequencies established by section 114(b) of this part.

(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 114(b) of this part, except that the statement required by section 114(b)(1)(B) 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 114(b)(1)(B) 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).

**SEC. 117. [47 U.S.C. 927] EXISTING ALLOCATION AND TRANSFER AUTHORITY RETAINED.**

(a) **ADDITIONAL REALLOCATION.**—Nothing in this part 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 part—

(1) the Secretary may, consistent with section 104(e) of this Act, 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 7 of the 1934 Act.

**SEC. 118. [47 U.S.C. 928] SPECTRUM RELOCATION FUND.**

(a) **ESTABLISHMENT OF SPECTRUM RELOCATION FUND.**—There is established on the books of the Treasury a separate fund to be known as the “Spectrum Relocation Fund” (in this section referred to as the “Fund”), which shall be administered by the Office of Management and Budget (in this section referred to as “OMB”), in consultation with the NTIA.

(b) **CREDITING OF RECEIPTS.**—The Fund shall be credited with the amounts specified in section 309(j)(8)(D) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(D)).

(c) **USE OF FUNDS.**—The amounts in the Fund from auctions of eligible frequencies are authorized to be used to pay relocation or sharing costs of an eligible Federal entity incurring such costs with respect to relocation from or sharing of those frequencies.

(d) **FUND AVAILABILITY.**—

(1) **APPROPRIATION.**—There are hereby appropriated from the Fund such sums as are required to pay the relocation or sharing costs specified in subsection (c).

(2) **TRANSFER CONDITIONS.**—None of the funds provided under this subsection may be transferred to any eligible Federal entity—

(A) unless the eligible Federal entity has submitted a transition plan to the NTIA as required by paragraph (1) of section 113(h), the Technical Panel has found such plan sufficient under paragraph (4) of such section, and the NTIA has made available such plan on its website as required by paragraph (5) of such section;

(B) unless the Director of OMB has determined, in consultation with the NTIA, the appropriateness of such costs and the timeline for relocation or sharing; and

(C) until 30 days after the Director of OMB has submitted to the Committees on Appropriations and Energy and Commerce of the House of Representatives for approval, to the Committees on Appropriations and Commerce, Science, and Transportation of the Senate for approval, and to the Comptroller General a detailed plan describing specifically how the sums transferred from the

Fund will be used to pay relocation costs in accordance with such subsection and the timeline for such relocation or sharing.

Unless disapproved within 30 days, the amounts in the Fund shall be available immediately. If the plan is disapproved, the Director may resubmit a revised plan.

(3) TRANSFERS FOR PRE-AUCTION COSTS.—

(A) IN GENERAL.—Subject to subparagraph (B), the Director of OMB may transfer to an eligible Federal entity, at any time (including prior to a scheduled auction), such sums as may be available in the Fund to pay relocation or sharing costs related to pre-auction estimates or research, as such costs are described in section 113(g)(3)(A)(iii).

(B) NOTIFICATION.—No funds may be transferred pursuant to subparagraph (A) unless—

(i) the notification provided under paragraph (2)(C) includes a certification from the Director of OMB that—

(I) funds transferred before an auction will likely allow for timely implementation of relocation or sharing, thereby increasing net expected auction proceeds by an amount not less than the time value of the amount of funds transferred; and

(II) the auction is intended to occur not later than 5 years after transfer of funds; and

(ii) the transition plan submitted by the eligible Federal entity under section 113(h)(1) provides—

(I) to the fullest extent possible, for sharing and coordination of eligible frequencies with non-Federal users, including reasonable accommodation by the eligible Federal entity for the use of eligible frequencies by non-Federal users during the period that the entity is relocating its spectrum uses (in this clause referred to as the “transition period”);

(II) for non-Federal users to be able to use eligible frequencies during the transition period in geographic areas where the eligible Federal entity does not use such frequencies;

(III) that the eligible Federal entity will, during the transition period, make itself available for negotiation and discussion with non-Federal users not later than 30 days after a written request therefor; and

(IV) that the eligible Federal entity will, during the transition period, make available to a non-Federal user with appropriate security clearances any classified information (as defined in section 798(b) of title 18, United States Code) regarding the relocation process, on a need-to-know basis, to assist the non-Federal user in the relocation process with such eligible Federal entity or other eligible Federal entities.

## (C) APPLICABILITY TO CERTAIN COSTS.—

(i) IN GENERAL.—The Director of OMB may transfer under subparagraph (A) not more than \$10,000,000 for costs incurred after June 28, 2010, but before the date of the enactment of the Middle Class Tax Relief and Job Creation Act of 2012.

(ii) SUPPLEMENT NOT SUPPLANT.—Any amounts transferred by the Director of OMB pursuant to clause (i) shall be in addition to any amounts that the Director of OMB may transfer for costs incurred on or after the date of the enactment of the Middle Class Tax Relief and Job Creation Act of 2012.

(4) REVERSION OF UNUSED FUNDS.—Any amounts in the Fund that are remaining after the payment of the relocation or sharing costs that are payable from the Fund shall revert to and be deposited in the general fund of the Treasury, for the sole purpose of deficit reduction, not later than 8 years after the date of the deposit of such proceeds to the Fund, unless within 60 days in advance of the reversion of such funds, the Director of OMB, in consultation with the NTIA, notifies the congressional committees described in paragraph (2)(C) that such funds are needed to complete or to implement current or future relocation or sharing arrangements.

## (e) TRANSFER TO ELIGIBLE FEDERAL ENTITIES.—

## (1) TRANSFER.—

(A) Amounts made available pursuant to subsection (d) shall be transferred to eligible Federal entities, as defined in section 113(g)(1) of this Act.

(B) An eligible Federal entity may receive more than one such transfer, but if the sum of the subsequent transfer or transfers exceeds 10 percent of the original transfer—

(i) such subsequent transfers are subject to prior approval by the Director of OMB as required by subsection (d)(2)(B);

(ii) the notice to the committees containing the plan required by subsection (d)(2)(C) shall be not less than 45 days prior to the date of the transfer that causes such excess above 10 percent; and

(iii) such notice shall include, in addition to such plan, an explanation of need for such subsequent transfer or transfers.

(C) Such transferred amounts shall be credited to the appropriations account of the eligible Federal entity which has incurred, or will incur, such costs, and shall, subject to paragraph (2), remain available until expended.

(2) RETRANSFER TO FUND.—An eligible Federal entity that has received such amounts shall report its expenditures to OMB and shall transfer any amounts in excess of actual relocation or sharing costs back to the Fund immediately after the NTIA has notified the Commission that the relocation of the entity or implementation of the sharing arrangement by the entity is complete, or has determined that such entity has unreasonably failed to complete such relocation or the implemen-



tation of such arrangement in accordance with the timeline required by subsection (d)(2)(B).

(f) ADDITIONAL PAYMENTS FROM FUND.—

(1) AMOUNTS AVAILABLE.—Notwithstanding subsections (c) through (e), after the date of the enactment of the Middle Class Tax Relief and Job Creation Act of 2012, there are appropriated from the Fund and available to the Director of OMB for use in accordance with paragraph (2) not more than 10 percent of the amounts deposited in the Fund from auctions occurring after such date of enactment of licenses for the use of spectrum vacated by eligible Federal entities.

(2) USE OF AMOUNTS.—

(A) IN GENERAL.—The Director of OMB, in consultation with the NTIA, may use amounts made available under paragraph (1) to make payments to eligible Federal entities that are implementing a transition plan submitted under section 113(h)(1) in order to encourage such entities to complete the implementation more quickly, thereby encouraging timely access to the eligible frequencies that are being reallocated for exclusive non-Federal use or shared use.

(B) CONDITIONS.—In the case of any payment by the Director of OMB under subparagraph (A)—

(i) such payment shall be based on the market value of the eligible frequencies, the timeliness with which the eligible Federal entity clears its use of such frequencies, and the need for such frequencies in order for the entity to conduct its essential missions;

(ii) the eligible Federal entity shall use such payment for the purposes specified in clauses (i) through (v) of section 113(g)(3)(A) to achieve comparable capability of systems affected by the reallocation of eligible frequencies from Federal use to exclusive non-Federal use or to shared use;

(iii) such payment may not be made if the amount remaining in the Fund after such payment will be less than 10 percent of the winning bids in the auction of the spectrum with respect to which the Federal entity is incurring relocation or sharing costs; and

(iv) such payment may not be made until 30 days after the Director of OMB has notified the congressional committees described in subsection (d)(2)(C).

(g) RESTRICTION ON USE OF FUNDS.—No amounts in the Fund on the day before the date of the enactment of the Middle Class Tax Relief and Job Creation Act of 2012 may be used for any purpose except—

(1) to pay the relocation or sharing costs incurred by eligible Federal entities in order to relocate from the frequencies the auction of which generated such amounts; or

(2) to pay relocation or sharing costs related to pre-auction estimates or research, in accordance with subsection (d)(3).

**SEC. 119. [47 U.S.C. 929] NATIONAL SECURITY AND OTHER SENSITIVE INFORMATION.**

(a) DETERMINATION.—If the head of an Executive agency (as defined in section 105 of title 5, United States Code) determines that public disclosure of any information contained in a notification or report required by section 113 or 118 would reveal classified national security information, or other information for which there is a legal basis for nondisclosure and the public disclosure of which would be detrimental to national security, homeland security, or public safety or would jeopardize a law enforcement investigation, the head of the Executive agency shall notify the Assistant Secretary of that determination prior to the release of such information.

(b) INCLUSION IN ANNEX.—The head of the Executive agency shall place the information with respect to which a determination was made under subsection (a) in a separate annex to the notification or report required by section 113 or 118. The annex shall be provided to the subcommittee of primary jurisdiction of the congressional committee of primary jurisdiction in accordance with appropriate national security stipulations but shall not be disclosed to the public or provided to any unauthorized person through any means.

**PART C—SPECIAL AND TEMPORARY PROVISIONS**

**SEC. 151. AUTHORIZATION OF APPROPRIATIONS FOR ADMINISTRATION.**

There are authorized to be appropriated for the administration of the NTIA \$17,600,000 for fiscal year 1992 and \$17,900,000 for fiscal year 1993, and such sums as may be necessary for increases resulting from adjustments in salary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs.

**SEC. 152. NATIONAL ENDOWMENT FOR CHILDREN'S EDUCATIONAL TELEVISION.**

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[Section 152 contained amendments to section 394(h) of the Communications Act of 1934.]

**SEC. 153. PEACESAT PROGRAM.**

\* \* \* \* \*

[Section 153 contained amendments to section 2(a) of Public Law 101-555 (NTIA Authorization for FY 1990-91) printed elsewhere in this compilation.]

**SEC. 154. COMMUNICATIONS FOR RURAL HEALTH PROVIDERS.**

(a) PURPOSE.—It is the purpose of this section to improve the ability of rural health providers to use communications to obtain health information and to consult with others concerning the delivery of patient care. Such enhanced communications ability may assist in—

- (1) improving and extending the training of rural health professionals; and
- (2) improving the continuity of patient care in rural areas.

(b) **ADVISORY PANEL.**—The Secretary of Commerce, in conjunction with the Secretary of Health and Human Services, shall establish an advisory panel (hereafter in this section referred to as the “Panel”) to develop recommendations for the improvement of rural health care through the collection of information needed by providers and the improvement in the use of communications to disseminate such information.

(c) **COMPOSITION OF PANEL.**—The Panel shall be composed of individuals from organizations with rural constituencies and practitioners from health care disciplines, representatives of the National Library of Medicine, and representatives of different health professions schools, including nurse practitioners.

(d) **SELECTION OF CONSULTANTS.**—The Panel may select consultants to provide advice to the Panel regarding the types of information that rural health care practitioners need, the procedures to gather and disseminate such information, and the types of communications equipment and training needed by rural health care practitioners to obtain access to such information.

(e) **REPORT TO CONGRESS.**—Not later than 1 year after the Panel is established under subsection (b), the Secretary of Commerce shall prepare and submit, to the Committee on Commerce, Science, and Transportation and the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives, a report summarizing the recommendations made by the Panel under subsection (b).

(f) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Secretary of Commerce to carry out this section \$1,000,000 to remain available until expended.

**SEC. 155. REPORT ON THE ROLE OF TELECOMMUNICATIONS IN HATE CRIMES.**

(a) **REQUIREMENT OF REPORT.**—Within 240 days after the date of enactment of this Act, the NTIA, with the assistance of the Commission, the Department of Justice, and the United States Commission on Civil Rights, shall prepare a report on the role of telecommunications in crimes of hate and violent acts against ethnic, religious, and racial minorities and shall submit such report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(b) **SCOPE OF REPORT.**—The report required by subsection (a) shall—

(1) analyze information on the use of telecommunications, including broadcast television and radio, cable television, public access television, computer bulletin boards, and other electronic media, to advocate and encourage violent acts and the commission of crimes of hate, as described in the Hate Crimes Statistics Act (28 U.S.C. 534), against ethnic, religious, and racial minorities.

(2) include any recommendations deemed appropriate and necessary by the NTIA.

**SEC. 156. ASSESSMENT OF ELECTROMAGNETIC SPECTRUM REALLOCATION.<sup>1</sup>****(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

<sup>1</sup> Section 156 was added by section 1062(a) of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106–65). Subsections (b) and (c) of section 1062 of that Act provided as follows:

**(b) SURRENDER OF DEPARTMENT OF DEFENSE SPECTRUM.—**

(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 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) and title III of the Balanced Budget Act of 1997 (Public Law 105–33, 111 Stat. 258), other than a band of frequencies that is reclaimed pursuant to subsection (c).

(c) **REASSIGNMENT TO FEDERAL GOVERNMENT FOR USE BY DEPARTMENT OF DEFENSE OF CERTAIN FREQUENCY SPECTRUM RECOMMENDED FOR REALLOCATION.**—(1) Notwithstanding any provision of the National Telecommunications and Information Administration Organization Act or the Balanced Budget Act of 1997, 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; and

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

\* \* \* \* \*

Section 1705 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (P.L. 106–398) also contained the following provision related to the spectrum use by the Department of Defense.

**SEC. 1705. REPORT ON PROGRESS ON SPECTRUM SHARING.**

(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, 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.

made by title VI of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66; 107 Stat. 379) and title III of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 258); 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, 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).

**SEC. 157. [47 U.S.C. 941] CHILD-FRIENDLY SECOND-LEVEL INTERNET DOMAIN.**

(a) RESPONSIBILITIES.—The NTIA shall require the registry selected to operate and maintain the United States country code Internet domain to establish, operate, and maintain a second-level domain within the United States country code domain that provides access only to material that is suitable for minors and not harmful to minors (in this section referred to as the “new domain”).

(b) CONDITIONS OF CONTRACTS.—

(1) INITIAL REGISTRY.—The NTIA shall not exercise any option periods under any contract between the NTIA and the ini-

tial registry to operate and maintain the United States country code Internet domain unless the initial registry agrees, during the 90-day period beginning upon the date of the enactment of the Dot Kids Implementation and Efficiency Act of 2002, to carry out, and to operate the new domain in accordance with, the requirements under subsection (c). Nothing in this subsection shall be construed to prevent the initial registry of the United States country code Internet domain from participating in the NTIA's process for selecting a successor registry or to prevent the NTIA from awarding, to the initial registry, the contract to be successor registry subject to the requirements of paragraph (2).

(2) SUCCESSOR REGISTRIES.—The NTIA shall not enter into any contract for operating and maintaining the United States country code Internet domain with any successor registry unless such registry enters into an agreement with the NTIA, during the 90-day period after selection of such registry, that provides for the registry to carry out, and the new domain to operate in accordance with, the requirements under subsection (c).

(c) REQUIREMENTS OF NEW DOMAIN.—The registry and new domain shall be subject to the following requirements:

(1) Written content standards for the new domain, except that the NTIA shall not have any authority to establish such standards.

(2) Written agreements with each registrar for the new domain that require that use of the new domain is in accordance with the standards and requirements of the registry.

(3) Written agreements with registrars, which shall require registrars to enter into written agreements with registrants, to use the new domain in accordance with the standards and requirements of the registry.

(4) Rules and procedures for enforcement and oversight that minimize the possibility that the new domain provides access to content that is not in accordance with the standards and requirements of the registry.

(5) A process for removing from the new domain any content that is not in accordance with the standards and requirements of the registry.

(6) A process to provide registrants to the new domain with an opportunity for a prompt, expeditious, and impartial dispute resolution process regarding any material of the registrant excluded from the new domain.

(7) Continuous and uninterrupted service for the new domain during any transition to a new registry selected to operate and maintain new domain or the United States country code domain.

(8) Procedures and mechanisms to promote the accuracy of contact information submitted by registrants and retained by registrars in the new domain.

(9) Operability of the new domain not later than one year after the date of the enactment of the Dot Kids Implementation and Efficiency Act of 2002.

(10) Written agreements with registrars, which shall require registrars to enter into written agreements with registrants, to prohibit two-way and multiuser interactive services in the new domain, unless the registrant certifies to the registrar that such service will be offered in compliance with the content standards established pursuant to paragraph (1) and is designed to reduce the risk of exploitation of minors using such two-way and multiuser interactive services.

(11) Written agreements with registrars, which shall require registrars to enter into written agreements with registrants, to prohibit hyperlinks in the new domain that take new domain users outside of the new domain.

(12) Any other action that the NTIA considers necessary to establish, operate, or maintain the new domain in accordance with the purposes of this section.

(d) **OPTION PERIODS FOR INITIAL REGISTRY.**—The NTIA shall grant the initial registry the option periods available under the contract between the NTIA and the initial registry to operate and maintain the United States country code Internet domain if, and may not grant such option periods unless, the NTIA finds that the initial registry has satisfactorily performed its obligations under this Act and under the contract. Nothing in this section shall preempt or alter the NTIA's authority to terminate such contract for the operation of the United States country code Internet domain for cause or for convenience.

(e) **TREATMENT OF REGISTRY AND OTHER ENTITIES.**—

(1) **IN GENERAL.**—Only to the extent that such entities carry out functions under this section, the following entities are deemed to be interactive computer services for purposes of section 230(c) of the Communications Act of 1934 (47 U.S.C. 230(c)):

(A) The registry that operates and maintains the new domain.

(B) Any entity that contracts with such registry to carry out functions to ensure that content accessed through the new domain complies with the limitations applicable to the new domain.

(C) Any registrar for the registry of the new domain that is operating in compliance with its agreement with the registry.

(2) **SAVINGS PROVISION.**—Nothing in paragraph (1) shall be construed to affect the applicability of any other provision of title II of the Communications Act of 1934 to the entities covered by subparagraph (A), (B), or (C) of paragraph (1).

(f) **EDUCATION.**—The NTIA shall carry out a program to publicize the availability of the new domain and to educate the parents of minors regarding the process for utilizing the new domain in combination and coordination with hardware and software technologies that provide for filtering or blocking. The program under this subsection shall be commenced not later than 30 days after the date that the new domain first becomes operational and accessible by the public.

(g) **COORDINATION WITH FEDERAL GOVERNMENT.**—The registry selected to operate and maintain the new domain shall—

(1) consult with appropriate agencies of the Federal Government regarding procedures and actions to prevent minors and families who use the new domain from being targeted by adults and other children for predatory behavior, exploitation, or illegal actions; and

(2) based upon the consultations conducted pursuant to paragraph (1), establish such procedures and take such actions as the registry may deem necessary to prevent such targeting. The consultations, procedures, and actions required under this subsection shall be commenced not later than 30 days after the date that the new domain first becomes operational and accessible by the public.

(h) COMPLIANCE REPORT.—The registry shall prepare, on an annual basis, a report on the registry's monitoring and enforcement procedures for the new domain. The registry shall submit each such report, setting forth the results of the review of its monitoring and enforcement procedures for the new domain, to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(i) SUSPENSION OF NEW DOMAIN.—If the NTIA finds, pursuant to its own review or upon a good faith petition by the registry, that the new domain is not serving its intended purpose, the NTIA shall instruct the registry to suspend operation of the new domain until such time as the NTIA determines that the new domain can be operated as intended.

(j) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) HARMFUL TO MINORS.—The term "harmful to minors" means, with respect to material, that—

(A) the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, that it is designed to appeal to, or is designed to pander to, the prurient interest;

(B) the material depicts, describes, or represents, in a manner patently offensive with respect to minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post-pubescent female breast; and

(C) taken as a whole, the material lacks serious, literary, artistic, political, or scientific value for minors.

(2) MINOR.—The term "minor" means any person under 13 years of age.

(3) REGISTRY.—The term "registry" means the registry selected to operate and maintain the United States country code Internet domain.

(4) SUCCESSOR REGISTRY.—The term "successor registry" means any entity that enters into a contract with the NTIA to operate and maintain the United States country code Internet domain that covers any period after the termination or expiration of the contract to operate and maintain the United States country code Internet domain, and any option periods under such contract, that was signed on October 26, 2001.



(5) **SUITABLE FOR MINORS.**—The term “suitable for minors” means, with respect to material, that it—

(A) is not psychologically or intellectually inappropriate for minors; and

(B) serves—

(i) the educational, informational, intellectual, or cognitive needs of minors; or

(ii) the social, emotional, or entertainment needs of minors.

**SEC. 158. [47 U.S.C. 942] COORDINATION OF 9-1-1, E9-1-1, AND NEXT GENERATION 9-1-1 IMPLEMENTATION.**

(a) **9-1-1 IMPLEMENTATION COORDINATION OFFICE.**—

(1) **ESTABLISHMENT AND CONTINUATION.**—The Assistant Secretary and the Administrator of the National Highway Traffic Safety Administration shall—

(A) establish and further a program to facilitate coordination and communication between Federal, State, and local emergency communications systems, emergency personnel, public safety organizations, telecommunications carriers, and telecommunications equipment manufacturers and vendors involved in the implementation of 9-1-1 services; and

(B) establish a 9-1-1 Implementation Coordination Office to implement the provisions of this section.

(2) **MANAGEMENT PLAN.**—

(A) **DEVELOPMENT.**—The Assistant Secretary and the Administrator shall develop a management plan for the grant program established under this section, including by developing—

(i) plans related to the organizational structure of such program; and

(ii) funding profiles for each fiscal year of the duration of such program.

(B) **SUBMISSION TO CONGRESS.**—Not later than 90 days after the date of enactment of the Next Generation 9-1-1 Advancement Act of 2012, the Assistant Secretary and the Administrator shall submit the management plan developed under subparagraph (A) to—

(i) the Committees on Commerce, Science, and Transportation and Appropriations of the Senate; and

(ii) the Committees on Energy and Commerce and Appropriations of the House of Representatives.

(3) **PURPOSE OF OFFICE.**—The Office shall—

(A) take actions, in concert with coordinators designated in accordance with subsection (b)(3)(A)(ii), to improve coordination and communication with respect to the implementation of 9-1-1 services, E9-1-1 services, and Next Generation 9-1-1 services;

(B) develop, collect, and disseminate information concerning practices, procedures, and technology used in the implementation of 9-1-1 services, E9-1-1 services, and Next Generation 9-1-1 services;

(C) advise and assist eligible entities in the preparation of implementation plans required under subsection (b)(3)(A)(iii);

(D) receive, review, and recommend the approval or disapproval of applications for grants under subsection (b); and

(E) oversee the use of funds provided by such grants in fulfilling such implementation plans.

(4) REPORTS.—The Assistant Secretary and the Administrator shall provide an annual report to Congress by the first day of October of each year on the activities of the Office to improve coordination and communication with respect to the implementation of 9–1–1 services, E9–1–1 services, and Next Generation 9–1–1 services.

(b) 9–1–1, E9–1–1, AND NEXT GENERATION 9–1–1 IMPLEMENTATION GRANTS.—

(1) MATCHING GRANTS.—The Assistant Secretary and the Administrator, acting through the Office, shall provide grants to eligible entities for—

(A) the implementation and operation of 9–1–1 services, E9–1–1 services, migration to an IP-enabled emergency network, and adoption and operation of Next Generation 9–1–1 services and applications;

(B) the implementation of IP-enabled emergency services and applications enabled by Next Generation 9–1–1 services, including the establishment of IP backbone networks and the application layer software infrastructure needed to interconnect the multitude of emergency response organizations; and

(C) training public safety personnel, including call-takers, first responders, and other individuals and organizations who are part of the emergency response chain in 9–1–1 services.

(2) MATCHING REQUIREMENT.—The Federal share of the cost of a project eligible for a grant under this section shall not exceed 60 percent.

(3) COORDINATION REQUIRED.—In providing grants under paragraph (1), the Assistant Secretary and the Administrator shall require an eligible entity to certify in its application that—

(A) in the case of an eligible entity that is a State government, the entity—

(i) has coordinated its application with the public safety answering points located within the jurisdiction of such entity;

(ii) has designated a single officer or governmental body of the entity to serve as the coordinator of implementation of 9–1–1 services, except that such designation need not vest such coordinator with direct legal authority to implement 9–1–1 services, E9–1–1 services, or Next Generation 9–1–1 services or to manage emergency communications operations;

(iii) has established a plan for the coordination and implementation of 9-1-1 services, E9-1-1 services, and Next Generation 9-1-1 services; and

(iv) has integrated telecommunications services involved in the implementation and delivery of 9-1-1 services, E9-1-1 services, and Next Generation 9-1-1 services; or

(B) in the case of an eligible entity that is not a State, the entity has complied with clauses (i), (iii), and (iv) of subparagraph (A), and the State in which it is located has complied with clause (ii) of such subparagraph.

(4) CRITERIA.—Not later than 120 days after the date of enactment of the Next Generation 9-1-1 Advancement Act of 2012, the Assistant Secretary and the Administrator shall issue regulations, after providing the public with notice and an opportunity to comment, prescribing the criteria for selection for grants under this section. The criteria shall include performance requirements and a timeline for completion of any project to be financed by a grant under this section. The Assistant Secretary and the Administrator shall update such regulations as necessary.

(c) DIVERSION OF 9-1-1 CHARGES.—

(1) DESIGNATED 9-1-1 CHARGES.—For the purposes of this subsection, the term “designated 9-1-1 charges” means any taxes, fees, or other charges imposed by a State or other taxing jurisdiction that are designated or presented as dedicated to deliver or improve 9-1-1 services, E9-1-1 services, or Next Generation 9-1-1 services.

(2) CERTIFICATION.—Each applicant for a matching grant under this section shall certify to the Assistant Secretary and the Administrator at the time of application, and each applicant that receives such a grant shall certify to the Assistant Secretary and the Administrator annually thereafter during any period of time during which the funds from the grant are available to the applicant, that no portion of any designated 9-1-1 charges imposed by a State or other taxing jurisdiction within which the applicant is located are being obligated or expended for any purpose other than the purposes for which such charges are designated or presented during the period beginning 180 days immediately preceding the date of the application and continuing through the period of time during which the funds from the grant are available to the applicant.

(3) CONDITION OF GRANT.—Each applicant for a grant under this section shall agree, as a condition of receipt of the grant, that if the State or other taxing jurisdiction within which the applicant is located, during any period of time during which the funds from the grant are available to the applicant, obligates or expends designated 9-1-1 charges for any purpose other than the purposes for which such charges are designated or presented, eliminates such charges, or redesignates such charges for purposes other than the implementation or operation of 9-1-1 services, E9-1-1 services, or Next Generation 9-1-1 services, all of the funds from such grant shall be returned to the Office.

(4) PENALTY FOR PROVIDING FALSE INFORMATION.—Any applicant that provides a certification under paragraph (2) knowing that the information provided in the certification was false shall—

(A) not be eligible to receive the grant under subsection (b);

(B) return any grant awarded under subsection (b) during the time that the certification was not valid; and

(C) not be eligible to receive any subsequent grants under subsection (b).

(d) FUNDING AND TERMINATION.—

(1) IN GENERAL.—From the amounts made available to the Assistant Secretary and the Administrator under section 6413(b)(6) of the Middle Class Tax Relief and Job Creation Act of 2012, the Assistant Secretary and the Administrator are authorized to provide grants under this section through the end of fiscal year 2022. Not more than 5 percent of such amounts may be obligated or expended to cover the administrative costs of carrying out this section.

(2) TERMINATION.—Effective on October 1, 2022, the authority provided by this section terminates and this section shall have no effect.

(e) DEFINITIONS.—In this section, the following definitions shall apply:

(1) 9–1–1 SERVICES.—The term “9–1–1 services” includes both E9–1–1 services and Next Generation 9–1–1 services.

(2) E9–1–1 SERVICES.—The term “E9–1–1 services” means both phase I and phase II enhanced 9–1–1 services, as described in section 20.18 of the Commission’s regulations (47 C.F.R. 20.18), as in effect on the date of enactment of the Next Generation 9–1–1 Advancement Act of 2012, or as subsequently revised by the Commission.

(3) ELIGIBLE ENTITY.—

(A) IN GENERAL.—The term “eligible entity” means a State or local government or a tribal organization (as defined in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l))).

(B) INSTRUMENTALITIES.—The term “eligible entity” includes public authorities, boards, commissions, and similar bodies created by one or more eligible entities described in subparagraph (A) to provide 9–1–1 services, E9–1–1 services, or Next Generation 9–1–1 services.

(C) EXCEPTION.—The term “eligible entity” does not include any entity that has failed to submit the most recently required certification under subsection (c) within 30 days after the date on which such certification is due.

(4) EMERGENCY CALL.—The term “emergency call” refers to any real-time communication with a public safety answering point or other emergency management or response agency, including—

(A) through voice, text, or video and related data; and

(B) nonhuman-initiated automatic event alerts, such as alarms, telematics, or sensor data, which may also include real-time voice, text, or video communications.

(5) NEXT GENERATION 9-1-1 SERVICES.—The term “Next Generation 9-1-1 services” means an IP-based system comprised of hardware, software, data, and operational policies and procedures that—

(A) provides standardized interfaces from emergency call and message services to support emergency communications;

(B) processes all types of emergency calls, including voice, data, and multimedia information;

(C) acquires and integrates additional emergency call data useful to call routing and handling;

(D) delivers the emergency calls, messages, and data to the appropriate public safety answering point and other appropriate emergency entities;

(E) supports data or video communications needs for coordinated incident response and management; and

(F) provides broadband service to public safety answering points or other first responder entities.

(6) OFFICE.—The term “Office” means the 9-1-1 Implementation Coordination Office.

(7) PUBLIC SAFETY ANSWERING POINT.—The term “public safety answering point” has the meaning given the term in section 222 of the Communications Act of 1934 (47 U.S.C. 222).

(8) STATE.—The term “State” means any State of the United States, the District of Columbia, Puerto Rico, American Samoa, Guam, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession of the United States.

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**TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION  
ACT**

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March 15, 2012



## **TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT**

AN ACT To protect the public interest and the future development of pay-per-call technology by providing for the regulation and oversight of the applications and growth of the pay-per-call industry, and for other purposes.

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

### **SECTION 1. [15 U.S.C. 5701] SHORT TITLE, FINDINGS.**

(a) SHORT TITLE.—This Act may be cited as the “Telephone Disclosure and Dispute Resolution Act”.<sup>1</sup>

(b) FINDINGS.—The Congress finds the following:

(1) The use of pay-per-call services, most commonly through the use of 900 telephone numbers, has grown exponentially in the past few years into a national, billion-dollar industry as a result of recent technological innovations. Such services are convenient to consumers, cost-effective to vendors, and profitable to communications common carriers.

(2) Many pay-per-call businesses provide valuable information, increase consumer choices, and stimulate innovative and responsive services that benefit the public.

(3) The interstate nature of the pay-per-call industry means that its activities are beyond the reach of individual States and therefore requires Federal regulatory treatment to protect the public interest.

(4) The lack of nationally uniform regulatory guidelines has led to confusion for callers, subscribers, industry participants, and regulatory agencies as to the rights of callers and the oversight responsibilities of regulatory authorities, and has allowed some pay-per-call businesses to engage in practices that abuse the rights of consumers.

(5) Some interstate pay-per-call businesses have engaged in practices which are misleading to the consumer, harmful to the public interest, or contrary to accepted standards of business practices and thus cause harm to the many reputable businesses that are serving the public.

(6) Because the consumer most often incurs a financial obligation as soon as a pay-per-call transaction is completed, the accuracy and descriptiveness of vendor advertisements become crucial in avoiding consumer abuse. The obligation for accuracy should include price-per-call and duration-of-call information, odds disclosure for lotteries, games, and sweepstakes, and obligations for obtaining parental consent from callers under 18.

(7) The continued growth of the legitimate pay-per-call industry is dependent upon consumer confidence that unfair and

<sup>1</sup> Public Law 102-556, 106 Stat. 4181, approved Oct. 28, 1992.

deceptive behavior will be effectively curtailed and that consumers will have adequate rights of redress.

(8) Vendors of telephone-billed goods and services must also feel confident in their rights and obligations for resolving billing disputes if they are to use this new marketplace for the sale of products of more than nominal value.

**TITLE I—CARRIER OBLIGATIONS AND CONSUMER RIGHTS CONCERNING PAY-PER-CALL TRANSACTIONS**

**SEC. 101. [47 U.S.C. 228] AMENDMENT TO COMMUNICATIONS ACT OF 1934.**

\* \* \* \* \*

[Section 101 added a new section 228 to the Communications Act of 1934.]

**SEC. 102. [47 U.S.C. 227 nt] TECHNICAL AMENDMENT.**

\* \* \* \* \*

[Section 102 contained a technical amendment to the effective date provisions of the Telephone Consumer Protection Act of 1991 (which was an amendment to section 227 of the Communications Act of 1934).]

**TITLE II—REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH PAY-PER-CALL SERVICES**

**SEC. 201. [15 U.S.C. 5711] FEDERAL TRADE COMMISSION REGULATIONS.**

(a) IN GENERAL.—

(1) ADVERTISING REGULATIONS.—The Commission shall prescribe rules in accordance with this subsection to prohibit unfair and deceptive acts and practices in any advertisement for pay-per-call services. Such rules shall require that the person offering such pay-per-call services—

(A) clearly and conspicuously disclose in any advertising the cost of the use of such telephone number, including the total cost or the cost per minute and any other fees for that service and for any other pay-per-call service to which the caller may be transferred;

(B) in the case of an advertisement which offers a prize or award or a service or product at no cost or for a reduced cost, clearly and conspicuously disclose the odds of being able to receive such prize, award, service, or product at no cost or reduced cost, or, if such odds are not calculable in advance, disclose the factors determining such odds;

(C) in the case of an advertisement that promotes a service that is not operated or expressly authorized by a Federal agency but that provides information on a Federal program, include at the beginning of such advertisement a clear disclosure that the service is not authorized, endorsed, or approved by any Federal agency;

(D) shall not direct such advertisement at children under the age of 12, unless such service is a bona fide educational service;

(E) in the case of advertising directed primarily to individuals under the age of 18, clearly and conspicuously state in such advertising that such individual must have the consent of such individual's parent or legal guardian for the use of such services;

(F) be prohibited from using advertisements that emit electronic tones which can automatically dial a pay-per-call telephone number;

(G) ensure that, whenever the number to be called is shown in television and print media advertisements, the charges for the call are clear and conspicuous and (when shown in television advertisements) displayed for the same duration as that number is displayed;

(H) in delivering any telephone message soliciting calls to a pay-per-call service, specify clearly, and at no less than the audible volume of the solicitation, the total cost and the cost per minute and any other fees for that service and for any other pay-per-call service to which the caller may be transferred; and

(I) not advertise an 800 telephone number, or any other telephone number advertised or widely understood to be toll free, from which callers are connected to an access number for a pay-per-call service.

(2) PAY-PER-CALL SERVICE STANDARDS.—The Commission shall prescribe rules to require that each provider of pay-per-call services—

(A) include in each pay-per-call message an introductory disclosure message that—

(i) describes the service being provided;

(ii) specifies clearly and at a reasonably understandable volume the total cost or the cost per minute and any other fees for that service and for any other pay-per-call service to which the caller may be transferred;

(iii) informs the caller that charges for the call begin at the end of the introductory message;

(iv) informs the caller that parental consent is required for calls made by children; and

(v) in the case of a pay-per-call service that is not operated or expressly authorized by a Federal agency but that provides information on any Federal program, a statement that clearly states that the service is not authorized, endorsed, or approved by any Federal agency;

(B) enable the caller to hang up at or before the end of the introductory message without incurring any charge whatsoever;

(C) not direct such services at children under the age of 12, unless such service is a bona fide educational service;

(D) stop the assessment of time-based charges immediately upon disconnection by the caller;

(E) disable any bypass mechanism which allows frequent callers to avoid listening to the disclosure message described in subparagraph (A) after the institution of any price increase and for a period of time sufficient to give such frequent callers adequate and sufficient notice of the price change;

(F) be prohibited from providing pay-per-call services through an 800 number or other telephone number advertised or widely understood to be toll free;

(G) be prohibited from billing consumers in excess of the amounts described in the introductory message and from billing for services provided in violation of the rules prescribed by the Commission pursuant to this section;

(H) ensure that any billing statement for such provider's charges shall—

(i) display any charges for pay-per-call services in a part of the consumer's bill that is identified as not being related to local and long distance telephone charges; and

(ii) for each charge so displayed, specify, at a minimum, the type of service, the amount of the charge, and the date, time, and duration of the call;

(I) be liable for refunds to consumers who have been billed for pay-per-call services pursuant to programs that have been found to have violated the regulations prescribed pursuant to this section or title III of this Act or any other Federal law; and

(J) comply with such additional standards as the Commission may prescribe to prevent abusive practices.

(3) ACCESS TO INFORMATION.—The Commission shall by rule require a common carrier that provides telephone services to a provider of pay-per-call services to make available to the Commission any records and financial information maintained by such carrier relating to the arrangements (other than for the provision of local exchange service) between such carrier and any provider of pay-per-call services.

(4) EVASIONS.—The rules issued by the Commission under this section shall include provisions to prohibit unfair or deceptive acts or practices that evade such rules or undermine the rights provided to customers under this title, including through the use of alternative billing or other procedures.

(5) EXEMPTIONS.—The regulations prescribed by the Commission pursuant to paragraph (2)(A) may exempt from the requirements of such paragraph—

(A) calls from frequent callers or regular subscribers using a bypass mechanism to avoid listening to the disclo-

sure message required by such regulations, subject to the requirements of paragraph (2)(E); or

(B) pay-per-call services provided at nominal charges, as defined by the Commission in such regulations.

(6) CONSIDERATION OF OTHER RULES REQUIRED.—In conducting a proceeding under this section, the Commission shall consider requiring, by rule or regulation, that providers of pay-per-call services—

(A) automatically disconnect a call after one full cycle of the program; and

(B) include a beep tone or other appropriate and clear signal during a live interactive group program so that callers will be alerted to the passage of time.

(7) SPECIAL RULE FOR INFREQUENT PUBLICATIONS.—The rules prescribed by the Commission under subparagraphs (A) and (G) of paragraph (1) may permit, in the case of publications that are widely distributed, that are printed annually or less frequently, and that have an established policy of not publishing specific prices, advertising that in lieu of the cost disclosures required by such subparagraphs, clearly and conspicuously disclose that use of the telephone number may result in a substantial charge.

(8) TREATMENT OF RULES.—A rule issued under this subsection shall be treated as a rule issued under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) RULEMAKING.—The Commission shall prescribe the rules under subsection (a) within 270 days after the date of enactment of this Act. Such rules shall be prescribed in accordance with section 553 of title 5, United States Code.

(c) ENFORCEMENT.—Any violation of any rule prescribed under subsection (a) shall be treated as a violation of a rule respecting unfair or deceptive acts or practices under section 5 of the Federal Trade Commission Act (15 U.S.C. 45). Notwithstanding section 5(a)(2) of such Act (15 U.S.C. 45(a)(2)), communications common carriers shall be subject to the jurisdiction of the Commission for purposes of this title.

**SEC. 202. [15 U.S.C. 5712] ACTIONS BY STATES.**

(a) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice which violates any rule of the Commission under section 201(a), the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such pattern or practice, to enforce compliance with such rule of the Commission, to obtain damages on behalf of their residents, or to obtain such further and other relief as the court may deem appropriate.

(b) NOTICE.—The State shall serve prior written notice of any civil action under subsection (a) upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall

serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Commission shall have the right (1) to intervene in such action, (2) upon so intervening, to be heard on all matters arising therein, and (3) to file petitions for appeal.

(c) **VENUE.**—Any civil action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the violation occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(d) **INVESTIGATORY POWERS.**—For purposes of bringing any civil action under this section, nothing in this Act shall prevent the attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(e) **EFFECT ON STATE COURT PROCEEDINGS.**—Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal antifraud statute of such State.

(f) **LIMITATION.**—Whenever the Commission has instituted a civil action for violation of any rule or regulation under this Act, no State may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for violation of any rule as alleged in the Commission's complaint.

(g) **ACTIONS BY OTHER STATE OFFICIALS.**—

(1) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

(2) In addition to actions brought by an attorney general of a State under subsection (a), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State for protection of consumers and who are designated by the Commission to bring an action under subsection (a) against persons that the Commission has determined have or are engaged in a pattern or practice which violates a rule of the Commission under section 201(a).

**SEC. 203. [15 U.S.C. 5713] ADMINISTRATION AND APPLICABILITY OF TITLE.**

(a) **IN GENERAL.**—Except as otherwise provided in section 202, this title shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.). Consequently, no activity which is outside the jurisdiction of that Act shall be affected by this Act, except for purposes of this title.

(b) **ACTIONS BY THE COMMISSION.**—The Commission shall prevent any person from violating a rule of the Commission under section 201 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this

title. Any person who violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this title.

**SEC. 204. [15 U.S.C. 5714] DEFINITIONS.**

For purposes of this title:

(1) The term “pay-per-call services” has the meaning provided in section 228(i) of the Communications Act of 1934, except that the Commission by rule may, notwithstanding subparagraphs (B) and (C) of section 228(i)(1) of such Act, extend such definition to other similar services providing audio information or audio entertainment if the Commission determines that such services are susceptible to the unfair and deceptive practices that are prohibited by the rules prescribed pursuant to section 201(a).

(2) The term “attorney general” means the chief legal officer of a State.

(3) The term “State” means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

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

## TITLE III—BILLING AND COLLECTION

**SEC. 301. [15 U.S.C. 5721] REGULATIONS.**

(a) IN GENERAL.—

(1) RULES REQUIRED.—The Commission shall, in accordance with the requirements of this section, prescribe rules establishing procedures for the correction of billing errors with respect to telephone-billed purchases. The rules prescribed by the Commission shall also include provisions to prohibit unfair or deceptive acts or practices that evade such rules or undermine the rights provided to customers under this title.

(2) SUBSTANTIAL SIMILARITY TO CREDIT BILLING.—The Commission shall promulgate rules under this section that impose requirements that are substantially similar to the requirements imposed, with respect to the resolution of credit disputes, under the Truth in Lending and Fair Credit Billing Acts (15 U.S.C. 1601 et seq.).

(3) TREATMENT OF RULE.—A rule issued under paragraph (1) shall be treated as a rule issued under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57(a)(1)(B)).

(b) RULEMAKING SCHEDULE AND PROCEDURE.—The Commission shall prescribe the rules under subsection (a) within 270 days after the date of enactment of this Act. Such rules shall be prescribed in accordance with section 553 of title 5, United States Code.

(c) ENFORCEMENT.—Any violation of any rule prescribed under subsection (a) shall be treated as a violation of a rule under section 5 of the Federal Trade Commission Act (15 U.S.C. 45) regarding

unfair or deceptive acts or practices. Notwithstanding section 5(a)(2) of such Act (15 U.S.C. 45(a)(2)), communications common carriers shall be subject to the jurisdiction of the Commission for purposes of this title.

(d) **CORRECTION OF BILLING ERRORS AND CORRECTION OF CREDIT REPORTS.**—In prescribing rules under this section, the Commission shall consider, with respect to telephone-billed purchases, the following:

- (1) The initiation of a billing review by a customer.
- (2) Responses by billing entities and providing carriers to the initiation of a billing review.
- (3) Investigations concerning delivery of telephone-billed purchases.
- (4) Limitations upon providing carrier responsibilities, including limitations on a carrier's responsibility to verify delivery of audio information or entertainment.
- (5) Requirements on actions by billing entities to set aside charges from a customer's billing statement.
- (6) Limitations on collection actions by billing entities and vendors.
- (7) The regulation of credit reports on billing disputes.
- (8) The prompt notification of credit to an account.
- (9) Rights of customers and telephone common carriers regarding claims and defenses.
- (10) The extent to which the regulations should diverge from requirements under the Truth in Lending and Fair Credit Billing Acts in order to protect customers, and in order to be cost effective to billing entities.

**SEC. 302. [15 U.S.C. 5722] RELATION TO STATE LAWS.**

(a) **STATE LAW APPLICABLE UNLESS INCONSISTENT.**—This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with, the laws of any State with respect to telephone billing practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. The Commission is authorized to determine whether such inconsistencies exist. The Commission may not determine that any State law is inconsistent with any provision of this chapter if the Commission determines that such law gives greater protection to the consumer.

(b) **REGULATORY EXEMPTIONS.**—The Commission shall by regulation exempt from the requirements of this title any class of telephone-billed purchase transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement.

**SEC. 303. [15 U.S.C. 5723] ENFORCEMENT.**

The Commission shall enforce the requirements of this title. For the purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All the functions and powers of the Commission under that Act are available to the



Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in that Act. The Commission may prescribe such regulations as are necessary or appropriate to implement the provisions of this title.

**SEC. 304. [15 U.S.C. 5724] DEFINITIONS.**

As used in this title—

(1) The term “telephone-billed purchase” means any purchase that is completed solely as a consequence of the completion of the call or a subsequent dialing, touch tone entry, or comparable action of the caller. Such term does not include—

(A) a purchase by a caller pursuant to a preexisting agreement with the vendor;

(B) local exchange telephone services or interexchange telephone services or any service that the Federal Communications Commission determines, by rule—

(i) is closely related to the provision of local exchange telephone services or interexchange telephone services; and

(ii) is subject to billing dispute resolution procedures required by Federal or State statute or regulation; or

(C) the purchase of goods or services which is otherwise subject to billing dispute resolution procedures required by Federal statute or regulation.

(2) A “billing error” consists of any of the following:

(A) A reflection on a billing statement for a telephone-billed purchase which was not made by the customer or, if made, was not in the amount reflected on such statement.

(B) A reflection on a billing statement of a telephone-billed purchase for which the customer requests additional clarification, including documentary evidence thereof.

(C) A reflection on a billing statement of a telephone-billed purchase that was not accepted by the customer or not provided to the customer in accordance with the stated terms of the transaction.

(D) A reflection on a billing statement of a telephone-billed purchase for a call made to an 800 or other toll free telephone number.

(E) The failure to reflect properly on a billing statement a payment made by the customer or a credit issued to the customer with respect to a telephone-billed purchase.

(F) A computation error or similar error of an accounting nature on a statement.

(G) Failure to transmit the billing statement to the last known address of the customer, unless that address was furnished less than twenty days before the end of the billing cycle for which the statement is required.

(H) Any other error described in regulations prescribed by the Commission pursuant to section 553 of title 5, United States Code.

(3) The term "Commission" means the Federal Trade Commission.

(4) The term "providing carrier" means a local exchange or interexchange common carrier providing telephone services (other than local exchange services) to a vendor for a telephone-billed purchase that is the subject of a billing error complaint.

(5) The term "vendor" means any person who, through the use of the telephone, offers goods or services for a telephone-billed purchase.

(6) The term "customer" means any person who acquires or attempts to acquire goods or services in a telephone-billed purchase.

### TITLE IV—MISCELLANEOUS PROVISIONS

#### SEC. 401. PROPOSAL FOR DEMONSTRATING THE POTENTIAL OF INNOVATIVE COMMUNICATIONS EQUIPMENT AND SERVICES.

(a) DEMONSTRATION PROPOSAL.—Within 180 days after the date of enactment of this Act, the Assistant Secretary of Energy for Conservation and Renewable Energy, in consultation with the Assistant Secretary of Commerce for Communications and Information, shall submit to Congress a proposal for demonstrating the ability of new and innovative communications equipment and services to further the national goals of conserving energy and protecting public health and safety.

(b) FACTORS TO BE ADDRESSED.—The demonstration proposal required by subsection (a) shall address—

(1) the feasibility of using communications technologies to read meters from remote locations;

(2) the feasibility of managing the consumption of electrical power and natural gas by residences and businesses, thereby reducing the demand for new and additional sources of energy, and controlling the cost of providing improved utility services; and

(3) the public safety implications of monitoring utility services outages during earthquakes, hurricanes, typhoons, tornadoes, volcanoes, and other natural disasters.

(c) PROJECT TO DEMONSTRATE ENERGY CONSERVATION POTENTIAL.—Upon submission of the demonstration proposal to the Congress, the Secretary of Energy shall consider requesting from the Assistant Secretary of Commerce for Communications and Information the authority to use radio frequencies, pursuant to section 305 of the Communications Act of 1934 (47 U.S.C. 305), to carry out demonstration projects consistent with the proposal that are designed to demonstrate the energy conservation potential of communications technologies and which are administered by the Secretary of Energy.

#### SEC. 402. [47 U.S.C. 227] TECHNICAL AMENDMENTS.

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[Section 402 contained amendments to section 227(b)(2) of the Communications Act of 1934.]

**SEC. 403. INTERCEPTION OF CELLULAR TELECOMMUNICATIONS.**

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[Section 403(a) contained amendments to section 302 of the Communications Act of 1934.]

(b) **REPORT TO CONGRESS.**—The Commission shall report to Congress no later than June 1, 1993, on available security features for both analog and digital radio signals. This report shall include a study of security technologies currently available as well as those in development. The study shall assess the capabilities of such technologies, level of security afforded, and cost, with wide-spread deployment of such technologies.

(c) **[47 U.S.C. 302a note] EFFECT ON OTHER LAWS.**—This section shall not affect section 2512(2) of title 18, United States Code.

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**CHILDREN'S TELEVISION ACT OF 1990**

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March 15, 2012

## CHILDREN'S TELEVISION ACT OF 1990

AN ACT To require the Federal Communications Commission to reinstate restrictions on advertising during children's television, to enforce the obligation of broadcasters to meet the educational and informational needs of the child audience, and for other purposes.

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

### SHORT TITLE

SECTION 1. This Act may be cited as the "Children's Television Act of 1990".<sup>1</sup>

### TITLE I—REGULATION OF CHILDREN'S TELEVISION FINDINGS

SEC. 101. [47 U.S.C. 303a note] The Congress finds that—

(1) it has been clearly demonstrated that television can assist children to learn important information, skills, values, and behavior, while entertaining them and exciting their curiosity to learn about the world around them;

(2) as part of their obligation to serve the public interest, television station operators and licensees should provide programming that serves the special needs of children;

(3) the financial support of advertisers assists in the provision of programming to children;

(4) special safeguards are appropriate to protect children from overcommercialization on television;

(5) television station operators and licensees should follow practices in connection with children's television programming and advertising that take into consideration the characteristics of this child audience; and

(6) it is therefore necessary that the Federal Communications Commission (hereinafter referred to as the "Commission") take the actions required by this title.

### STANDARDS FOR CHILDREN'S TELEVISION PROGRAMMING

SEC. 102. [47 U.S.C. 303a] (a) The Commission shall, within 30 days after the date of enactment of this Act, initiate a rule-making proceeding to prescribe standards applicable to commercial television broadcast licensees with respect to the time devoted to commercial matter in conjunction with children's television programming. The Commission shall, within 180 days after the date of enactment of this Act, complete the rulemaking proceeding and prescribe final standards that meet the requirements of subsection (b).

<sup>1</sup> Public Law 101-437, 104 Stat. 996, approved Oct. 18, 1990.

(b) Except as provided in subsection (c), the standards prescribed under subsection (a) shall include the requirement that each commercial television broadcast licensee shall limit the duration of advertising in children's television programming to not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays.

(c) After January 1, 1993, the Commission—

(1) may review and evaluate the advertising duration limitations required by subsection (b); and

(2) may, after notice and public comment and a demonstration of the need for modification of such limitations, modify such limitations in accordance with the public interest.

(d) As used in this section, the term "commercial television broadcast licensee" includes a cable operator, as defined in section 602 of the Communications Act of 1934 (47 U.S.C. 522).

CONSIDERATION OF CHILDREN'S TELEVISION SERVICE IN BROADCAST  
LICENSE RENEWAL

SEC. 103. [47 U.S.C. 303b] (a) After the standards required by section 102 are in effect, the Commission shall, in its review of any application for renewal of a commercial or noncommercial television broadcast license, consider the extent to which the licensee—

(1) has complied with such standards; and

(2) has served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs.

(b) In addition to consideration of the licensee's programming as required under subsection (a), the Commission may consider—

(1) any special nonbroadcast efforts by the licensee which enhance the educational and informational value of such programming to children; and

(2) any special efforts by the licensee to produce or support programming broadcast by another station in the licensee's marketplace which is specifically designed to serve the educational and informational needs of children.

PROGRAM LENGTH COMMERCIAL MATTER

SEC. 104. Within 180 days after the date of enactment of this Act, the Commission shall complete the proceeding known as "Revision of Programming and Commercialization Policies, Ascertainment Requirements and Program Log Requirements for Commercial Television Stations", MM Docket No. 83-670.

TITLE II—ENDOWMENT FOR CHILDREN'S EDUCATIONAL  
TELEVISION

SHORT TITLE

SEC. 201. [47 U.S.C. 609 note] This title may be cited as the "National Endowment for Children's Educational Television Act of 1990".

FINDINGS

SEC. 202. [47 U.S.C. 394 note] The Congress finds that—



(1) children in the United States are lagging behind those in other countries in fundamental intellectual skills, including reading, writing, mathematics, science, and geography;

(2) these fundamental skills are essential for the future governmental and industrial leadership of the United States;

(3) the United States must act now to greatly improve the education of its children;

(4) television is watched by children about three hours each day on average and can be effective in teaching children;

(5) educational television programming for children is aired too infrequently either because public broadcast licensees and permittees lack funds or because commercial broadcast licensees and permittees or cable television system operators do not have the economic incentive; and

(6) the Federal Government can assist in the creation of children's educational television by establishing a National Endowment for Children's Educational Television to supplement the children's educational programming funded by other governmental entities.

NATIONAL ENDOWMENT FOR CHILDREN'S EDUCATIONAL TELEVISION

SEC. 203.<sup>1</sup>

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<sup>1</sup>This section added a new subpart B to part IV of title III of the Communications Act of 1934, and made additional conforming changes in that Act, and is reflected in the part of this compilation containing that Act.

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March 15, 2012



**COMMUNICATIONS SATELLITE ACT OF 1962**



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March 15, 2012

## COMMUNICATIONS SATELLITE ACT OF 1962

AN ACT To provide for the establishment, ownership, operation, and regulation of a commercial communications satellite system, and for other purposes.

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

### TITLE I—SHORT TITLE, DECLARATION OF POLICY AND DEFINITIONS

#### SEC. 101. SHORT TITLE.

This Act may be cited as the “Communications Satellite Act of 1962”.<sup>1</sup>

#### SEC. 102. [47 U.S.C. 701] DECLARATION OF POLICY AND PURPOSE.

(a) The Congress hereby declares that it is the policy of the United States to establish, in conjunction and in cooperation with other countries, as expeditiously as practicable a commercial communications satellite system, as part of an improved global communications network, which will be responsive to public needs and national objectives, which will serve the communication needs of the United States and other countries, and which will contribute to world peace and understanding.

(b) The new and expanded telecommunication services are to be made available as promptly as possible and are to be extended to provide global coverage at the earliest practicable date. In effectuating this program, care and attention will be directed toward providing such services to economically less developed countries and areas as well as those more highly developed, toward efficient and economical use of the electromagnetic frequency spectrum, and toward the reflection of the benefits of this new technology in both quality of services and charges for such services.

(c) In order to facilitate this development and to provide for the widest possible participation by private enterprise, United States participation in the global system shall be in the form of a private corporation, subject to appropriate governmental regulation. It is the intent of Congress that all authorized users have nondiscriminatory access to the system; that maximum competition be maintained in the provision of equipment and services utilized by the system; that the corporation created under this Act be so organized and operated as to maintain and strengthen competition in the provision of communications services to the public; and that the activities of the corporation created under this Act and of the persons or companies participating in the ownership of the corporation shall be consistent with the Federal antitrust laws.

(d) It is not the intent of Congress by this Act to preclude the use of the communications satellite system for domestic commu-

<sup>1</sup> Public Law No. 624, 87th Cong., 2d Sess., 76 Stat. 419, approved Aug. 31, 1962.

nication services where consistent with the provision of this Act nor to preclude the creation of additional communications satellite systems, if required to meet unique governmental needs or if otherwise required in the national interest.

**SEC. 103. [47 U.S.C. 702] DEFINITIONS.**

As used in this Act, and unless the context otherwise requires—

(1) the term “communications satellite system” refers to a system of communications satellites in space whose purpose is to relay telecommunication information between satellite terminal stations, together with such associated equipment and facilities for tracking, guidance, control, and command functions as are not part of the generalized launching, tracking, control, and command facilities for all space purposes;

(2) the term “satellite terminal station” refers to a complex of communication equipment located on the earth’s surface, operationally connected with one or more terrestrial communication systems, and capable of transmitting telecommunications to or receiving telecommunications from a communications satellite system;

(3) the term “communications satellite” means an earth satellite which is intentionally used to relay telecommunications information;

(4) the term “associated equipment and facilities” refers to facilities other than satellite terminal stations and communications satellites, to be constructed and operated for the primary purpose of a communications satellite system, whether for administration and management, for research and development, or for direct support of space operations;

(5) the term “research and development” refers to the conception, design, and first creation of experimental or prototype operational devices for the operation of a communications satellite system, including the assembly of separate components into a working whole, as distinguished from the term “production,” which relates to the construction of such devices to fixed specifications compatible with repetitive duplication for operational applications;

(6) the term “telecommunication” means any transmission, emission or reception of signs, signals, writings, images, and sounds or intelligence of any nature by wire, radio, optical, or other electromagnetic systems;

(7) the term “communications common carrier” has the same meaning as the term “common carrier” has when used in the Communications Act of 1934, as amended, and in addition includes, but only for purposes of sections 303 and 304, any individual, partnership, association, joint-stock company, trust, corporation, or other entity which owns or controls, directly or indirectly, or is under direct or indirect common control with, any such carrier; and the term “authorized carrier”, except as otherwise provided for purposes of section 304 by section 304(b)(1), means a communications common carrier which has been authorized by the Federal Communications Commission

under the Communications Act of 1934, as amended, to provide services by means of communications satellites;

(8) the term "corporation" means the corporation authorized by title III of this Act;

(9) the term "Administration" means the National Aeronautics and Space Administration; and

(10) the term "Commission" means the Federal Communications Commission.

#### TITLE II—FEDERAL COORDINATION, PLANNING, AND REGULATION

##### SEC. 201. [47 U.S.C. 721] IMPLEMENTATION OF POLICY.

In order to achieve the objectives and to carry out the purposes of this Act—

(a) the President shall—

(1) aid in the planning and development and foster the execution of a national program for the establishment and operation, of a commercial communications satellite system;

(2) provide for continuous review of all phases of the development and operation of such a system, including the activities of a communications satellite corporation authorized under title III of this Act;

(3) coordinate the activities of governmental agencies with responsibilities in the field of telecommunication, so as to insure that there is full and effective compliance at all times with the policies set forth in this Act;

(4) exercise such supervision over relationships of the corporation with foreign governments or entities or with international bodies as may be appropriate to assure that such relationships shall be consistent with the national interest and foreign policy of the United States;

(5) insure that timely arrangements are made under which there can be foreign participation in the establishment and use of a communications satellite system;

(6) take all necessary steps to insure the availability and appropriate utilization of the communications satellite system for general governmental purposes except where a separate communications satellite system is required to meet unique governmental needs, or is otherwise required in the national interest; and

(7) to exercise his authority as to help attain coordinated and efficient use of the electromagnetic spectrum and the technical compatibility of the system with existing communications facilities both in the United States and abroad.

(b) the National Aeronautics and Space Administration shall—

(1) advise the Commission on technical characteristics of the communications satellite system;

(2) cooperate with the corporation in research and development to the extent deemed appropriate by the Administration in the public interest;

(3) assist the corporation in the conduct of its research and development program by furnishing to the corporation, when requested, on a reimbursable basis, such satellite launching

and associated services as the Administration deems necessary for the most expeditious and economical development of the communications satellite system;

(4) consult with the corporation with respect to the technical characteristics of the communications satellite system;

(5) furnish to the corporation, on request and on a reimbursable basis, satellite launching and associated services required for the establishment, operation, and maintenance of the communications satellite system approved by the Commission; and

(6) to the extent feasible, furnish other services, on a reimbursable basis, to the corporation in connection with the establishment and operation of the system.

(c) the Federal Communications Commission, in its administration of the provisions of the Communications Act of 1934, as amended, and as supplemented by this Act, shall—

(1) insure effective competition, including the use of competitive bidding where appropriate, in the procurement by the corporation and communications common carriers of apparatus, equipment, and services required for the establishment and operation of the communications satellite system and satellite terminal stations; and the Commission shall consult with the Small Business Administration and solicit its recommendations on measures and procedures which will insure that small business concerns are given an equitable opportunity to share in the procurement program of the corporation for property and services, including but not limited to research, development, construction, maintenance, and repair.

(2) insure that all present and future authorized carriers shall have nondiscriminatory use of, and equitable access to, the communications satellite system and satellite terminal stations under just and reasonable charges, classifications, practices, regulations, and other terms and conditions and regulate the manner in which available facilities of the system and stations are allocated among such users thereof;

(3) in any case where the Secretary of State, after obtaining the advice of the Administration as to technical feasibility, has advised that commercial communication to a particular foreign point by means of the communications satellite system and satellite terminal stations should be established in the national interest, institute forthwith appropriate proceedings under section 214(d) of the Communications Act of 1934, as amended, to require the establishment of such communication by the corporation and the appropriate common carrier or carriers;

(4) insure that facilities of the communications satellite system and satellite terminal stations are technically compatible and interconnected operationally with each other and with existing communications facilities;

(5) prescribe such accounting regulations and systems and engage in such ratemaking procedures as will insure that any economies made possible by a communications satellite system are appropriately reflected in rates for public communication services;



(6) approve technical characteristics of the operational communications satellite system to be employed by the corporation and of the satellite terminal stations; and<sup>1</sup>

(7) grant appropriate authorization for the construction and operation of each satellite terminal station, either to the corporation or to one or more authorized carriers or to the corporation and one or more such carriers jointly, as will best serve the public interest, convenience, and necessity. In determining the public interest, convenience, and necessity the Commission shall authorize the construction and operation of such stations by communications common carriers or the corporation, without preference to either;

(8) authorize the corporation to issue any shares of capital stock, except the initial issue of capital stock referred to in section 304(a), or to borrow any moneys, or to assume any obligation in respect of the securities of any other person, upon finding that such issuance, borrowing, or assumption is compatible with the public interest, convenience, and necessity and is necessary or appropriate for or consistent with carrying out the purposes and objectives of this Act by the corporation;

(9) insure that no substantial additions are made by the corporation or carriers with respect to facilities of the system or satellite terminal stations unless such additions are required by the public interest, convenience, and necessity;

(10) require, in accordance with the procedural requirements of section 214 of the Communications Act of 1934, as amended, that additions be made by the corporation or carriers with respect to facilities of the system or satellite terminal stations where such additions would serve the public interest, convenience, and necessity; and

(11) make rules and regulations to carry out the provisions of this Act.

### TITLE III—CREATION OF A COMMUNICATIONS SATELLITE CORPORATION

#### SEC. 301. [47 U.S.C. 731] CREATION OF CORPORATION.

There is authorized to be created a communications satellite corporation for profit which will not be an agency or establishment of the United States Government.

#### SEC. 302. [47 U.S.C. 732] APPLICABLE LAWS.

The corporation shall be subject to the provisions of this Act and, to the extent consistent with this Act, to the District of Columbia Business Corporation Act. The right to repeal, alter, or amend this Act at any time is expressly reserved.

#### SEC. 303. [47 U.S.C. 733] DIRECTORS AND OFFICERS.

(a) The corporation shall have a board of directors consisting of fifteen individuals who are citizens of the United States, of whom one shall be elected annually by the board to serve as chairman. Three members of the board shall be appointed by the President of the United States, by and with the advice and consent of the Senate, effective the date on which the other members are

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

elected, and for terms of three years or until their successors have been appointed and qualified, and any member so appointed to fill a vacancy shall be appointed only for the unexpired term of the director whom he succeeds. The remaining twelve members of the board shall be elected annually by the stockholders. Six of such members shall be elected by those stockholders who are not communications common carriers, and the remaining six such members shall be elected by the stockholders who are communications common carriers, except that if the number of shares of the voting capital stock of the corporation issued and outstanding and owned either directly or indirectly by communications common carriers as of the record date for the annual meeting of stockholders is less than 45 per centum of the total number of shares of the voting capital stock of the corporation issued and outstanding, the numbers of members to be elected at such meeting by each group of stockholders shall be determined in accordance with the following table:

When the number of shares of the voting capital stock of the corporation issued and outstanding and owned either directly or indirectly by communications common carriers is less than—	But not less than—	The number of members which stockholders who are communications common carriers are entitled to elect shall be—	And the number of members which other stockholders are entitled to elect shall be—
45 per centum .....	40 per centum .....	5	7
40 per centum .....	35 per centum .....	4	8
35 per centum .....	25 per centum .....	3	9
25 per centum .....	15 per centum .....	2	10
15 per centum .....	8 per centum .....	1	11
8 per centum .....	.....	0	12

No stockholder who is a communications common carrier and no trustee for such a stockholder shall vote, either directly or indirectly, through the votes of subsidiaries or affiliated companies, nominees, or any persons subject to his direction or control, for more than three candidates for membership on the board, except that in the event the number of shares of the voting capital stock of the corporation issued and outstanding and owned either directly or indirectly by communications common carriers as of the record date for the annual meeting is less than 8 per centum of the total number of shares of the voting capital stock of the corporation issued and outstanding, any stockholder who is a communications common carrier shall be entitled to vote at such meeting for candidates for membership on the board in the same manner as all other stockholders. Subject to the foregoing limitations, the articles of incorporation of the corporation shall provide for cumulative voting under section 327(d) of the District of Columbia Business Corporation Act (D.C. Code, sec. 29-327(d)). The articles of incorporation of the corporation may be amended, altered, changed, or repealed by a vote of not less than 66<sup>2</sup>/<sub>3</sub> per centum of the outstanding shares of the voting capital stock of the corporation owned by stockholders who are communications common carriers and by stockholders who are not communications common carriers, voting together if such vote complies with all other requirements of this Act and of the articles of incorporation of the corporation with respect to the amendment, alteration, change, or repeal of such articles. The corporation may adopt such bylaws as shall, notwith-

standing the provisions of section 336 of the District of Columbia Business Corporation Act (D.C. Code, sec. 29-336(d)), provide for the continued ability of the board to transact business under such circumstances of national emergency as the President of the United States, or the officer designated by him, may determine, after February 18, 1969, would not permit a prompt meeting of a majority of the board to transact business.

(b) The corporation shall have a president, and such other officers as may be named and appointed by the board, at rates of compensation fixed by the board, and serving at the pleasure of the board. No individual other than a citizen of the United States may be an officer of the corporation. No officer of the corporation shall receive any salary from any source other than the corporation during the period of his employment by the corporation.

**SEC. 304. [47 U.S.C. 734] FINANCING OF THE CORPORATION.**

(a) The corporation is authorized to issue and have outstanding, in such amounts as it shall determine, shares of capital stock, without par value, which shall carry voting rights and be eligible for dividends. The shares of such stock initially offered shall be sold in a manner to encourage the widest distribution to the American public. Subject to the provisions of subsections (b) and (d) of this section, shares of stock offered under this subsection may be issued to and held by any person.

(b)(1) For the purposes of this section the term "authorized carrier" shall mean a communications common carrier which is specifically authorized or which is a member of a class of carriers authorized by the Commission to own shares of stock in the corporation upon a finding that such ownership will be consistent with the public interest, convenience, and necessity.

(2) Only those communications common carriers which are authorized carriers shall own shares of stock in the corporation at any time, and no other communications common carrier shall own shares either directly or indirectly through subsidiaries or affiliated companies, nominees, or any persons subject to its direction or control. At no time after the initial issue is completed shall the aggregate of the shares of voting stock of the corporation owned by authorized carriers directly or indirectly through subsidiaries or affiliated companies, nominees, or any persons subject to their direction or control exceed 50 per centum of such shares issued and outstanding.

(3) At no time shall any stockholder who is not an authorized carrier, or any syndicate or affiliated group of such stockholders, own more than 10 per centum of the shares of voting stock of the corporation issued and outstanding.

(c) The corporation is authorized to issue, in addition to the stock authorized by subsection (a) of this section, nonvoting securities, bonds, debentures, and other certificates of indebtedness as it may determine. Such nonvoting securities, bonds, debentures, or other certificates of indebtedness of the corporation as a communications common carrier may own shall be eligible for inclusion in the rate base of the carrier to the extent allowed by the Commission. The voting stock of the corporation shall not be eligible for inclusion in the rate base of the carrier.

(d) Not more than an aggregate of 20 per centum of the shares of stock of the corporation authorized by subsection (a) of this section which are held by holders other than authorized carriers may be held by persons of the classes described in subsection (a) and paragraphs (1) through (4) of subsection (b) of section 310 of the Communications Act of 1934, as amended (47 U.S.C. 310).

(e) The requirement of section 345(b) of the District of Columbia Business Corporation Act (D.C. Code, sec. 29-345(b)) as to the percentage of stock which a stockholder must hold in order to have the rights of inspection and copying set forth in that subsection shall not be applicable in the case of holders of the stock of the corporation, and they may exercise such rights without regard to the percentage of stock they hold.

(f) Upon application to the Commission by any authorized carrier and after notice and hearing, the Commission may compel any other authorized carrier which owns shares of stock in the corporation to transfer to the applicant, for a fair and reasonable consideration, a number of such shares as the Commission determines will advance the public interest and the purposes of this Act. In its determination with respect to ownership of shares of stock in the corporation, the Commission, whenever consistent with the public interest, shall promote the widest possible distribution of stock among the authorized carriers.

**SEC. 305. [47 U.S. 735] PURPOSES AND POWERS OF THE CORPORATION.**

(a) In order to achieve the objectives and to carry out the purposes of this Act, the corporation is authorized to—

(1) plan, initiate, construct, own, manage, and operate itself or in conjunction with foreign governments or business entities a commercial communications satellite system;

(2) furnish, for hire, channels of communication to United States communications common carriers and to other authorized entities, foreign and domestic; and

(3) own and operate satellite terminal stations when licensed by the Commission under section 201(c)(7).

(b) Included in the activities authorized to the corporation for accomplishment of the purposes indicated in subsection (a) of this section, are, among others not specifically named—

(1) to conduct or contract for research and development related to its mission;

(2) to acquire the physical facilities, equipment and devices necessary to its operations, including communications satellites and associated equipment and facilities, whether by construction, purchase, or gift;

(3) to purchase satellite launching and related services from the United States Government;

(4) to contract with authorized users, including the United States Government, for the services of the communications satellite system; and

(5) to develop plans for the technical specifications of all elements of the communications satellite system.

(c) To carry out the foregoing purposes, the corporation shall have the usual powers conferred upon a stock corporation by the District of Columbia Business Corporation Act.

## TITLE IV—MISCELLANEOUS

**SEC. 401. [47 U.S.C. 741] APPLICABILITY OF COMMUNICATIONS ACT OF 1934.**

The corporation shall be deemed to be a common carrier within the meaning of section 3(h) of the Communications Act of 1934, as amended, and as such shall be fully subject to the provisions of title II and title III of that Act. The provision of satellite terminal station facilities by one communication common carrier to one or more other communications common carriers shall be deemed to be a common carrier activity fully subject to the Communications Act. Whenever the application of the provisions of this Act shall be inconsistent with the application of the provisions of the Communications Act, the provisions of this Act shall govern.

**SEC. 402. [47 U.S.C. 742] NOTICE OF FOREIGN BUSINESS NEGOTIATIONS.**

Whenever the corporation shall enter into business negotiations with respect to facilities, operations, or services authorized by this Act with any international or foreign entity, it shall notify the Department of State of the negotiations, and the Department of State shall advise the corporation of relevant foreign policy considerations. Throughout such negotiations the corporation shall keep the Department of State informed with respect to such considerations. The corporation may request the Department of State to assist in the negotiations, and that Department shall render such assistance as may be appropriate.

**SEC. 403. [47 U.S.C. 743] SANCTIONS.**

(a) If the corporation created pursuant to this Act shall engage in or adhere to any action, practices, or policies inconsistent with the policy and purposes declared in section 102 of this Act, or if the corporation or any other person shall violate any provision of this Act, or shall obstruct or interfere with any activities authorized by this Act, or shall refuse, fail, or neglect to discharge his duties and responsibilities under this Act, or shall threaten any such violation, obstruction, interference, refusal, failure, or neglect, the district court of the United States for any district in which such corporation or other person resides or may be found shall have jurisdiction, except as otherwise prohibited by law, upon petition of the Attorney General of the United States, to grant such equitable relief as may be necessary or appropriate to prevent or terminate such conduct or threat.

(b) Nothing contained in this section shall be construed as relieving any person of any punishment, liability, or sanction which may be imposed otherwise than under this Act.

(c) It shall be the duty of the corporation and all communications common carriers to comply, insofar as applicable, with all provisions of this Act and all rules and regulations promulgated thereunder.

**SEC. 404. [47 U.S.C. 744] REPORTS TO THE CONGRESS.**

The corporation shall transmit to the President and the Congress, annually and at such other times as it deems desirable, a comprehensive and detailed report of its operations, activities, and accomplishments under this Act.

TITLE V—INTERNATIONAL MARITIME SATELLITE  
TELECOMMUNICATIONS**SEC. 501. SHORT TITLE.**

This title may be cited as the “International Maritime Satellite Telecommunications Act”.

**SEC. 502. [47 U.S.C. 751] DECLARATION OF POLICY AND PURPOSE.**

(a) The Congress hereby declares that it is the policy of the United States to provide for the participation of the United States in the International Maritime Satellite Organization (hereinafter in this title referred to as “INMARSAT”) in order to develop and operate a global maritime satellite telecommunications system. Such system shall have facilities and services which will serve maritime commercial and safety needs of the United States and foreign countries.

(b) It is the purpose of this title to provide that the participation of the United States in INMARSAT shall be through the communications satellite corporation established pursuant to title III of this Act, which constitutes a private entity operating for profit, and which is not an agency or establishment of the Federal Government.

**SEC. 503. [47 U.S.C. 752] DESIGNATED OPERATING ENTITY.**

(a)(1) The the communications satellite corporation established pursuant to title III of this Act is hereby designated as the sole operating entity of the United States for participation in INMARSAT, for the purpose of providing international maritime satellite telecommunications services.

(2) The corporation may participate in and is hereby authorized to sign the operating agreement or other pertinent instruments of INMARSAT as the sole designated operating entity of the United States.

(b) The corporation—

(1) may own and operate satellite earth terminal stations in the United States;

(2) shall interconnect such stations, and the maritime satellite telecommunications provided by such stations, with the facilities and services of United States domestic common carriers and international common carriers, other than any common carrier or other entity in which the corporation has any ownership interest, as authorized by the Commission;

(3) shall interconnect such stations and the maritime satellite telecommunications provided by such stations, with the facilities and services of private communications systems, unless the Commission finds that such interconnection will not serve the public interest; and

(4) may establish, own, and operate the United States share of the jointly owned international space segment and associated ancillary facilities.

(c) The corporation shall be responsible for fulfilling any financial obligation placed upon the corporation as a signatory to the operating agreement or other pertinent instruments, and any other financial obligation which may be placed upon the corporation as the result of a convention or other instrument establishing

INMARSAT. The corporation shall be the sole United States representative in the managing body of INMARSAT.

(d)(1) Any person, including the Federal Government or any agency thereof, may be authorized, in accordance with paragraph (2) or paragraph (3), to be the sole owner or operator, or both, of any satellite earth terminal station if such station is used for the exclusive purposes of training personnel in the use of equipment associated with the operation and maintenance of such station, or in carrying out experimentation relating to maritime satellite telecommunications services.

(2) If the person referred to in paragraph (1) is the Federal Government or any agency thereof, such satellite earth terminal station shall have been authorized to operate by the executive department charged with such responsibility.

(3) In any other case, such satellite earth terminal station shall have been authorized by the Commission.

(e) The Commission may authorize ownership of satellite earth terminal stations by persons other than the corporation at any time the Commission determines that such additional ownership will enhance the provision of maritime satellite services in the public interest.

(f) The Commission shall determine the operational arrangements under which the corporation shall interconnect its satellite earth terminal station facilities and services with United States domestic common carriers and international common carriers, other than any common carrier, system, or other entity in which the corporation has any ownership interest, and private communications systems when authorized pursuant to subsection (b)(3) for the purpose of extending maritime satellite telecommunications services within the United States and in other areas.

(g) Notwithstanding any provision of State law, the articles of incorporation of the corporation shall provide for the continued ability of the board of directors of the corporation to transact business under such circumstances of national emergency as the President or his delegate may determine would not permit a prompt meeting of the number of directors otherwise required to transact business.

**SEC. 504. [47 U.S.C. 753] IMPLEMENTATION OF POLICY.**

(a) The Secretary of Commerce shall—

(1) coordinate the activities of Federal agencies with responsibilities in the field of telecommunications (other than the Commission), so as to ensure that there is full and effective compliance with the provisions of this title;

(2) take all necessary steps to ensure the availability and appropriate utilization of the maritime satellite telecommunications services provided by INMARSAT for general governmental purposes, except in any case in which a separate telecommunications system is required to meet unique governmental needs or is otherwise required in the national interest;

(3) exercise his authority in a manner which seeks to obtain coordinated and efficient use of the electromagnetic spectrum and orbital space, and to ensure the technical compat-

ibility of the space segment with existing communications facilities in the United States and in foreign countries; and

(4) take all necessary steps to determine the interests and needs of the ultimate users of the maritime satellite telecommunications system and to communicate the views of the Federal Government on utilization and user needs to INMARSAT.

(b) The President shall exercise such supervision over, and issue such instructions to, the corporation in connection with its relationships and activities with foreign governments, international entities, and INMARSAT as may be necessary to ensure that such relationships and activities are consistent with the national interest and foreign policy of the United States.

(c) The Commission shall—

(1) institute such proceedings as may be necessary to carry out the provisions of section 503 of this title;

(2) make recommendations to the President for the purpose of assisting him in his issuance of instructions to the corporation;

(3) grant such authorizations as may be necessary under title II and title III of the Communications Act of 1934 to enable the corporation—

(A) to provide to the public, in accordance with section 503(c)(2) of this title, space segment channels of communication obtained from INMARSAT; and

(B) to construct and operate such satellite earth terminal stations in the United States as may be necessary to provide sufficient access to the space segment;

(4) grant such other authorizations as may be necessary under title II and title III of this Communications Act of 1934 to carry out the provisions of this title;

(5) establish procedures to provide for the continuing review of the telecommunications activities of the corporation as the United States signatory to the operating agreement or other pertinent instruments; and

(6) prescribe such rules as may be necessary to carry out the provisions of this title.

(d) The Commission is authorized to issue instructions to the corporation with respect to regulatory matters within the jurisdiction of the Commission. In the event an instruction of the Commission conflicts with an instruction of the President pursuant to subsection (b), the instructions issued by the President shall prevail.

**SEC. 505. [47 U.S.C. 757] DEFINITIONS.**

For purposes of this title—

(1) the term “person” includes an individual, partnership, association, joint stock company, trust, or corporation;

(2) the term “satellite earth terminal station” means a complex of communications equipment located on land, operationally interconnected with one or more terrestrial communications systems, and capable of transmitting telecommunications to, or receiving telecommunications from, the space segment;



(3) the term “space segment” means any satellite (or capacity on a satellite) maintained under the authority of INMARSAT, for the purpose of providing international maritime telecommunications services, and the tracking, telemetry, command, control, monitoring, and related facilities and equipment required to support the operations of such satellite; and

(4) the term “State” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

## **TITLE VI—COMMUNICATIONS COMPETITION AND PRIVATIZATION <sup>1</sup>**

### **Subtitle A—Actions To Ensure Pro- Competitive Privatization**

#### **SEC. 601. [47 U.S.C. 761] FEDERAL COMMUNICATIONS COMMISSION LICENSING.**

(a) **LICENSING FOR SEPARATED ENTITIES.—**

(1) **COMPETITION TEST.—**The Commission may not issue a license or construction permit to any separated entity, or renew or permit the assignment or use of any such license or permit, or authorize the use by any entity subject to United States jurisdiction of any space segment owned, leased, or operated by any separated entity, unless the Commission determines that such issuance, renewal, assignment, or use will not harm competition in the telecommunications market of the United States. If the Commission does not make such a determination, it shall deny or revoke authority to use space segment owned, leased, or operated by the separated entity to provide services to, from, or within the United States.

(2) **CRITERIA FOR COMPETITION TEST.—**In making the determination required by paragraph (1), the Commission shall use the licensing criteria in sections 621 and 623, and shall not make such a determination unless the Commission determines that the privatization of any separated entity is consistent with such criteria.

(b) **LICENSING FOR INTELSAT, INMARSAT, AND SUCCESSOR ENTITIES.—**

(1) **COMPETITION TEST.—**

(A) **IN GENERAL.—**In considering the application of INTELSAT, Inmarsat, or their successor entities for a license or construction permit, or for the renewal or assignment or use of any such license or permit, or in considering the request of any entity subject to United States jurisdiction for authorization to use any space segment

<sup>1</sup>Title VI of the Communications Satellite Act of 1962 was added by the ORBIT Act (Public Law 106–180). Section 2 of the Orbit Act contained the following statement of purpose: “It is the purpose of this Act to promote a fully competitive global market for satellite communication services for the benefit of consumers and providers of satellite services and equipment by fully privatizing the intergovernmental satellite organizations, INTELSAT and Inmarsat.”

owned, leased, or operated by INTELSAT, Inmarsat, or their successor entities, to provide non-core services to, from, or within the United States, the Commission shall determine whether—

(i) after April 1, 2001, in the case of INTELSAT and its successor entities, INTELSAT and any successor entities have been privatized in a manner that will harm competition in the telecommunications markets of the United States; or

(ii) after April 1, 2000, in the case of Inmarsat and its successor entities, Inmarsat and any successor entities have been privatized in a manner that will harm competition in the telecommunications markets of the United States.

(B) CONSEQUENCES OF DETERMINATION.—If the Commission determines that such competition will be harmed or that grant of such application or request for authority is not otherwise in the public interest, the Commission shall limit through conditions or deny such application or request, and limit or revoke previous authorizations to provide non-core services to, from, or within the United States. After due notice and opportunity for comment, the Commission shall apply the same limitations, restrictions, and conditions to all entities subject to United States jurisdiction using space segment owned, leased, or operated by INTELSAT, Inmarsat, or their successor entities.

(C) NATIONAL SECURITY, LAW ENFORCEMENT, AND PUBLIC SAFETY.—The Commission shall not impose any limitation, condition, or restriction under subparagraph (B) in a manner that will, or is reasonably likely to, result in limitation, denial, or revocation of authority for non-core services that are used by and required for a national security agency or law enforcement department or agency of the United States, or used by and required for, and otherwise in the public interest, any other Department or Agency of the United States to protect the health and safety of the public. Such services may be obtained by the United States directly from INTELSAT, Inmarsat, or a successor entity, or indirectly through COMSAT, or authorized carriers or distributors of the successor entity.

(D) RULE OF CONSTRUCTION.—Nothing in this subsection is intended to preclude the Commission from acting upon applications of INTELSAT, Inmarsat, or their successor entities prior to the latest date set out in section 621(5)(A), including such actions as may be necessary for the United States to become the licensing jurisdiction for INTELSAT, but the Commission shall condition a grant of authority pursuant to this subsection upon compliance with sections 621 and 622.

(2) CRITERIA FOR COMPETITION TEST.—In making the determination required by paragraph (1), the Commission shall use the licensing criteria in sections 621, 622, and 624, and shall determine that competition in the telecommunications markets of the United States will be harmed unless the Commission

finds that the privatization referred to in paragraph (1) is consistent with such criteria.

(3) CLARIFICATION: COMPETITIVE SAFEGUARDS.—In making its licensing decisions under this subsection, the Commission shall consider whether users of non-core services provided by INTELSAT or Inmarsat or successor or separated entities are able to obtain non-core services from providers offering services other than through INTELSAT or Inmarsat or successor or separated entities, at competitive rates, terms, or conditions. Such consideration shall also include whether such licensing decisions would require users to replace equipment at substantial costs prior to the termination of its design life. In making its licensing decisions, the Commission shall also consider whether competitive alternatives in individual markets do not exist because they have been foreclosed due to anticompetitive actions undertaken by or resulting from the INTELSAT or Inmarsat systems. Such licensing decisions shall be made in a manner which facilitates achieving the purposes and goals in this title and shall be subject to notice and comment.

(c) ADDITIONAL CONSIDERATIONS IN DETERMINATIONS.—In making its determinations and licensing decisions under subsections (a) and (b), the Commission shall construe such subsections in a manner consistent with the United States obligations and commitments for satellite services under the Fourth Protocol to the General Agreement on Trade in Services.

(d) INDEPENDENT FACILITIES COMPETITION.—Nothing in this section shall be construed as precluding COMSAT from investing in or owning satellites or other facilities independent from INTELSAT and Inmarsat, and successor or separated entities, or from providing services through reselling capacity over the facilities of satellite systems independent from INTELSAT and Inmarsat, and successor or separated entities. This subsection shall not be construed as restricting the types of contracts which can be executed or services which may be provided by COMSAT over the independent satellites or facilities described in this subsection.

**SEC. 602. [47 U.S.C. 761a] INCENTIVES; LIMITATION ON EXPANSION PENDING PRIVATIZATION.**

(a) LIMITATION.—Until INTELSAT, Inmarsat, and their successor or separate entities are privatized in accordance with the requirements of this title, INTELSAT, Inmarsat, and their successor or separate entities, respectively, shall not be permitted to provide additional services. The Commission shall take all necessary measures to implement this requirement, including denial by the Commission of licensing for such services.

(b) ORBITAL LOCATION INCENTIVES.—Until such privatization is achieved, the United States shall oppose and decline to facilitate applications by such entities for new orbital locations to provide such services.

## Subtitle B—Federal Communications Commission Licensing Criteria: Privatization Criteria

### SEC. 621. [47 U.S.C. 763] GENERAL CRITERIA TO ENSURE A PRO-COMPETITIVE PRIVATIZATION OF INTELSAT AND INMARSAT.

The President and the Commission shall secure a pro-competitive privatization of INTELSAT and Inmarsat that meets the criteria set forth in this section and sections 622 through 624. In securing such privatizations, the following criteria shall be applied as licensing criteria for purposes of subtitle A:

(1) DATES FOR PRIVATIZATION.—Privatization shall be obtained in accordance with the criteria of this title of—

(A) INTELSAT as soon as practicable, but no later than April 1, 2001; and

(B) Inmarsat as soon as practicable, but no later than July 1, 2000.

(2) INDEPENDENCE.—The privatized successor entities and separated entities of INTELSAT and Inmarsat shall operate as independent commercial entities, and have a pro-competitive ownership structure. The successor entities and separated entities of INTELSAT and Inmarsat shall conduct an initial public offering in accordance with paragraph (5) to achieve such independence. Such offering shall substantially dilute the aggregate ownership of such entities by such signatories or former signatories. In determining whether a public offering attains such substantial dilution, the Commission shall take into account the purposes and intent, privatization criteria, and other provisions of this title, as well as market conditions. No inter-governmental organization, including INTELSAT or Inmarsat, shall have—

(A) an ownership interest in INTELSAT or the successor or separated entities of INTELSAT; or

(B) more than minimal ownership interest in Inmarsat or the successor or separated entities of Inmarsat.

(3) TERMINATION OF PRIVILEGES AND IMMUNITIES.—The preferential treatment of INTELSAT and Inmarsat shall not be extended to any successor entity or separated entity of INTELSAT or Inmarsat. Such preferential treatment includes—

(A) privileged or immune treatment by national governments;

(B) privileges or immunities or other competitive advantages of the type accorded INTELSAT and Inmarsat and their signatories through the terms and operation of the INTELSAT Agreement and the associated Headquarters Agreement and the Inmarsat Convention; and

(C) preferential access to orbital locations.

Access to new, or renewal of access to, orbital locations shall be subject to the legal or regulatory processes of a national government that applies due diligence requirements intended to prevent the warehousing of orbital locations.

(4) PREVENTION OF EXPANSION DURING TRANSITION.—During the transition period prior to privatization under this title, INTELSAT and Inmarsat shall be precluded from expanding into additional services.

(5) CONVERSION TO STOCK CORPORATIONS.—Any successor entity or separated entity created out of INTELSAT or Inmarsat shall be a national corporation or similar accepted commercial structure, subject to the laws of the nation in which incorporated, as follows:

(A) An initial public offering of securities of any successor entity or separated entity—

(i) shall be conducted, for the successor entities of INTELSAT, on or about June 30, 2005, except that the Commission may extend this deadline in consideration of market conditions and relevant business factors relating to the timing of an initial public offering, but such extensions shall not permit such offering to be conducted later than December 31, 2005; and

(ii) shall be conducted, for the successor entities of Inmarsat, not later than June 30, 2005, except that the Commission may extend this deadline to not later than December 31, 2004.

(B) The shares of any successor entities and separated entities shall be listed for trading on one or more major stock exchanges with transparent and effective securities regulation.

(C) A majority of the members of the board of directors of any successor entity or separated entity shall not be directors, employees, officers, or managers or otherwise serve as representatives of any signatory or former signatory. No member of the board of directors of any successor or separated entity shall be a director, employee, officer or manager of any intergovernmental organization remaining after the privatization.

(D) Any successor entity or separated entity shall—

(i) have a board of directors with a fiduciary obligation;

(ii) have no officers or managers who are officers or managers of any signatories or former signatories;

(iii) have no directors, officers, or managers who hold such positions in any intergovernmental organization.

(E) Any transactions or other relationships between or among any successor entity, separated entity, INTELSAT, or Inmarsat shall be conducted on an arm's length basis.

(F) Notwithstanding subparagraphs (A) and (B), a successor entity may be deemed a national corporation and may forgo an initial public offering and public securities listing and still achieve the purposes of this section if—

(i) the successor entity certifies to the Commission that—

(I) the successor entity has achieved substantial dilution of the aggregate amount of signatory

or former signatory financial interest in such entity;

(II) any signatories and former signatories that retain a financial interest in such successor entity do not possess, together or individually, effective control of such successor entity; and

(III) no intergovernmental organization has any ownership interest in a successor entity of INTELSAT or more than a minimal ownership interest in a successor entity of Inmarsat;

(ii) the successor entity provides such financial and other information to the Commission as the Commission may require to verify such certification; and

(iii) the Commission determines, after notice and comment, that the successor entity is in compliance with such certification.

(G) For purposes of subparagraph (F), the term “substantial dilution” means that a majority of the financial interests in the successor entity is no longer held or controlled, directly or indirectly, by signatories or former signatories.

(6) REGULATORY TREATMENT.—Any successor entity or separated entity created after the date of enactment of this title shall apply through the appropriate national licensing authorities for international frequency assignments and associated orbital registrations for all satellites.

(7) COMPETITION POLICIES IN DOMICILIARY COUNTRY.—Any successor entity or separated entity shall be subject to the jurisdiction of a nation or nations that—

(A) have effective laws and regulations that secure competition in telecommunications services;

(B) are signatories of the World Trade Organization Basic Telecommunications Services Agreement; and

(C) have a schedule of commitments in such Agreement that includes non-discriminatory market access to their satellite markets.

**SEC. 622. [47 U.S.C. 763a] SPECIFIC CRITERIA FOR INTELSAT.**

In securing the privatizations required by section 621, the following additional criteria with respect to INTELSAT privatization shall be applied as licensing criteria for purposes of subtitle A:

(1)<sup>1</sup> TECHNICAL COORDINATION UNDER INTELSAT AGREEMENTS.—Technical coordination shall not be used to impair competition or competitors, and shall be conducted under International Telecommunication Union procedures and not under Article XIV(d) of the INTELSAT Agreement.

**SEC. 623. [47 U.S.C. 763b] SPECIFIC CRITERIA FOR INTELSAT SEPARATED ENTITIES.**

In securing the privatizations required by section 621, the following additional criteria with respect to any INTELSAT separated entity shall be applied as licensing criteria for purposes of subtitle A:

<sup>1</sup> So in law. There is no paragraph (2).

(1) DATE FOR PUBLIC OFFERING.—Within one year after any decision to create any separated entity, a public offering of the securities of such entity shall be conducted. In the case of a separated entity created before January 1, 1999, such public offering shall be conducted no later than July 1, 2000, except that the Commission may extend this deadline in consideration of market conditions and relevant business factors relating to the timing of an initial public offering, but such extensions shall not permit such offering to be conducted later than July 31, 2001.

(2) INTERLOCKING DIRECTORATES OR EMPLOYEES.—None of the officers, directors, or employees of any separated entity shall be individuals who are officers, directors, or employees of INTELSAT.

(3) SPECTRUM ASSIGNMENTS.—After the initial transfer which may accompany the creation of a separated entity, the portions of the electromagnetic spectrum assigned as of the date of enactment of this title to INTELSAT shall not be transferred between INTELSAT and any separated entity.

(4) REAFFILIATION PROHIBITED.—Any merger or ownership or management ties or exclusive arrangements between a privatized INTELSAT or any successor entity and any separated entity shall be prohibited until 11 years after the completion of INTELSAT privatization under this title.

**SEC. 624. [47 U.S.C. 763c] SPACE SEGMENT CAPACITY OF THE GMDSS.**

The United States shall preserve the space segment capacity of the GMDSS. This section is not intended to alter the status that the GMDSS would otherwise have under United States laws and regulations of the International Telecommunication Union with respect to spectrum, orbital locations, or other operational parameters, or to be a barrier to competition for the provision of GMDSS services.

**SEC. 625. [47 U.S.C. 763d] ENCOURAGING MARKET ACCESS AND PRIVATIZATION.**

(a) NTIA DETERMINATION.—

(1) DETERMINATION REQUIRED.—Within 180 days after the date of enactment of this section, the Secretary of Commerce shall, through the Assistant Secretary for Communications and Information, transmit to the Commission—

(A) a list of Member countries of INTELSAT and Inmarsat that are not Members of the World Trade Organization and that impose barriers to market access for private satellite systems; and

(B) a list of Member countries of INTELSAT and Inmarsat that are not Members of the World Trade Organization and that are not supporting pro-competitive privatization of INTELSAT and Inmarsat.

(2) CONSULTATION.—The Secretary's determinations under paragraph (1) shall be made in consultation with the Federal Communications Commission, the Secretary of State, and the United States Trade Representative, and shall take into account the totality of a country's actions in all relevant fora, including the Assemblies of Parties of INTELSAT and Inmarsat.

(b) IMPOSITION OF COST-BASED SETTLEMENT RATE.—Notwithstanding—

(1) any higher settlement rate that an overseas carrier charges any United States carrier to originate or terminate international message telephone services; and

(2) any transition period that would otherwise apply, the Commission may by rule prohibit United States carriers from paying an amount in excess of a cost-based settlement rate to overseas carriers in countries listed by the Commission pursuant to subsection (a).

(c) SETTLEMENTS POLICY.—The Commission shall, in exercising its authority to establish settlements rates for United States international common carriers, seek to advance United States policy in favor of cost-based settlements in all relevant fora on international telecommunications policy, including in meetings with parties and signatories of INTELSAT and Inmarsat.

## Subtitle C—Deregulation and Other Statutory Changes

### SEC. 641. [47 U.S.C. 765] ACCESS TO INTELSAT.

(a) ACCESS PERMITTED.—Beginning on the date of enactment of this title, users or providers of telecommunications services shall be permitted to obtain direct access to INTELSAT telecommunications services and space segment capacity through purchases of such capacity or services from INTELSAT. Such direct access shall be at the level commonly referred to by INTELSAT, on the date of enactment of this title, as “Level III”.

(b) RULEMAKING.—Within 180 days after the date of enactment of this title, the Commission shall complete a rulemaking, with notice and opportunity for submission of comment by interested persons, to determine if users or providers of telecommunications services have sufficient opportunity to access INTELSAT space segment capacity directly from INTELSAT to meet their service or capacity requirements. If the Commission determines that such opportunity to access does not exist, the Commission shall take appropriate action to facilitate such direct access pursuant to its authority under this Act and the Communications Act of 1934. The Commission shall take such steps as may be necessary to prevent the circumvention of the intent of this section.

(c) CONTRACT PRESERVATION.—Nothing in this section shall be construed to permit the abrogation or modification of any contract.

### SEC. 642. [47 U.S.C. 765a] SIGNATORY ROLE.

(a) LIMITATIONS ON SIGNATORIES.—

(1) NATIONAL SECURITY LIMITATIONS.—The Federal Communications Commission, after a public interest determination, in consultation with the executive branch, may restrict foreign ownership of a United States signatory if the Commission determines that not to do so would constitute a threat to national security.

(2) NO SIGNATORIES REQUIRED.—The United States Government shall not require signatories to represent the United



States in INTELSAT or Inmarsat or in any successor entities after a pro-competitive privatization is achieved consistent with sections 621, 622, and 624.

**(b) CLARIFICATION OF PRIVILEGES AND IMMUNITIES OF COMSAT.—**

(1) **GENERALLY NOT IMMUNIZED.**—Notwithstanding any other law or executive agreement, COMSAT shall not be entitled to any privileges or immunities under the laws of the United States or any State on the basis of its status as a signatory of INTELSAT or Inmarsat.

(2) **LIMITED IMMUNITY.**—COMSAT or any successor in interest shall not be liable for action taken by it in carrying out the specific, written instruction of the United States issued in connection with its relationships and activities with foreign governments, international entities, and the intergovernmental satellite organizations.

(3) **NO JOINT OR SEVERAL LIABILITY.**—If COMSAT is found liable for any action taken in its status as a signatory or a representative of the party to INTELSAT, any such liability shall be limited to the portion of the judgment that corresponds to COMSAT's percentage of the ownership of INTELSAT at the time the activity began which lead to the liability.

(4) **PROVISIONS PROSPECTIVE.**—Paragraph (1) shall not apply with respect to liability for any action taken by COMSAT before the date of enactment of this title.

**(c) PARITY OF TREATMENT.**—Notwithstanding any other law or executive agreement, the Commission shall have the authority to impose similar regulatory fees on the United States signatory which it imposes on other entities providing similar services.

**SEC. 643. [47 U.S.C. 765b] ELIMINATION OF PROCUREMENT PREFERENCES.**

Nothing in this title or the Communications Act of 1934 shall be construed to authorize or require any preference, in Federal Government procurement of telecommunications services, for the satellite space segment provided by INTELSAT, Inmarsat, or any successor entity or separated entity.

**SEC. 644. [47 U.S.C. 765c] ITU FUNCTIONS.**

(a) **TECHNICAL COORDINATION.**—The Commission and United States satellite companies shall utilize the International Telecommunication Union procedures for technical coordination with INTELSAT and its successor entities and separated entities, rather than INTELSAT procedures.

(b) **ITU NOTIFYING ADMINISTRATION.**—The President and the Commission shall take the action necessary to ensure that the United States remains the ITU notifying administration for the privatized INTELSAT's existing and future orbital slot registrations.

**SEC. 645. [47 U.S.C. 765d] TERMINATION OF COMMUNICATIONS SATELLITE ACT OF 1962 PROVISIONS.**

Effective on the dates specified, the following provisions of this Act shall cease to be effective:

(1) Date of enactment of this title: Paragraphs (1), (5) and (6) of section 201(a); section 201(b); paragraphs (1), (3) through

(5), and (8) through (10) of section 201(c); section 303; section 304; section 502; section 503; paragraphs (2) and (4) of section 504(a); and section 504(c).

(2) Upon the transfer of assets to a successor entity and receipt by signatories or former signatories (including COMSAT) of ownership shares in the successor entity of INTELSAT in accordance with appropriate arrangements determined by INTELSAT to implement privatization: Section 305.

(3) On the effective date of a Commission order determining under section 601(b)(2) that Inmarsat privatization is consistent with criteria in sections 621 and 624: Sections 504(b) and 504(d).

(4) On the effective date of a Commission order determining under section 601(b)(2) that INTELSAT privatization is consistent with criteria in sections 621 and 622: Section 102; section 103(7); paragraphs (2) through (4) and (7) of section 201(a); paragraphs (2), (6), and (7) of section 201(c); section 301; section 302; section 401; section 402; section 403; and section 404.

**SEC. 646. [47 U.S.C. 765e] REPORTS TO CONGRESS.**

(a) ANNUAL REPORTS.—The President and the Commission shall report to the Committees on Commerce and International Relations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Foreign Relations of the Senate within 90 calendar days of the enactment of this title, and not less than annually thereafter, on the progress made to achieve the objectives and carry out the purposes and provisions of this title. Such reports shall be made available immediately to the public.

(b) CONTENTS OF REPORTS.—The reports submitted pursuant to subsection (a) shall include the following:

(1) Progress with respect to each objective since the most recent preceding report.

(2) Views of the Parties with respect to privatization.

(3) Views of industry and consumers on privatization.

(4) Impact privatization has had on United States industry, United States jobs, and United States industry's access to the global marketplace.

**SEC. 647. [47 U.S.C. 765f] SATELLITE AUCTIONS.**

Notwithstanding any other provision of law, the Commission shall not have the authority to assign by competitive bidding orbital locations or spectrum used for the provision of international or global satellite communications services. The President shall oppose in the International Telecommunication Union and in other bilateral and multilateral fora any assignment by competitive bidding of orbital locations or spectrum used for the provision of such services.

**SEC. 648. [47 U.S.C. 765g] EXCLUSIVITY ARRANGEMENTS.**

(a) IN GENERAL.—No satellite operator shall acquire or enjoy the exclusive right of handling telecommunications to or from the United States, its territories or possessions, and any other country or territory by reason of any concession, contract, understanding, or working arrangement to which the satellite operator or any per-

sons or companies controlling or controlled by the operator are parties.

(b) EXCEPTION.—In enforcing the provisions of this section, the Commission—

(1) shall not require the termination of existing satellite telecommunications services under contract with, or tariff commitment to, such satellite operator; but

(2) may require the termination of new services only to the country that has provided the exclusive right to handle telecommunications, if the Commission determines the public interest, convenience, and necessity so requires.

## Subtitle D—Negotiations To Pursue Privatization

### SEC. 661. [47 U.S.C. 767] METHODS TO PURSUE PRIVATIZATION.

The President shall secure the pro-competitive privatizations required by this title in a manner that meets the criteria in subtitle B.

## Subtitle E—Definitions

### SEC. 681. [47 U.S.C. 769] DEFINITIONS.

(a) IN GENERAL.—As used in this title:

(1) INTELSAT.—The term “INTELSAT” means the International Telecommunications Satellite Organization established pursuant to the Agreement Relating to the International Telecommunications Satellite Organization (INTELSAT).

(2) INMARSAT.—The term “Inmarsat” means the International Mobile Satellite Organization established pursuant to the Convention on the International Maritime Organization.

(3) SIGNATORIES.—The term “signatories”—

(A) in the case of INTELSAT, or INTELSAT successors or separated entities, means a Party, or the telecommunications entity designated by a Party, that has signed the Operating Agreement and for which such Agreement has entered into force; and

(B) in the case of Inmarsat, or Inmarsat successors or separated entities, means either a Party to, or an entity that has been designated by a Party to sign, the Operating Agreement.

(4) PARTY.—The term “Party”—

(A) in the case of INTELSAT, means a nation for which the INTELSAT agreement has entered into force; and

(B) in the case of Inmarsat, means a nation for which the Inmarsat convention has entered into force.

(5) COMMISSION.—The term “Commission” means the Federal Communications Commission.

(6) INTERNATIONAL TELECOMMUNICATION UNION.—The term “International Telecommunication Union” means the intergovernmental organization that is a specialized agency of

the United Nations in which member countries cooperate for the development of telecommunications, including adoption of international regulations governing terrestrial and space uses of the frequency spectrum as well as use of the geostationary satellite orbit.

(7) SUCCESSOR ENTITY.—The term “successor entity”—

(A) means any privatized entity created from the privatization of INTELSAT or Inmarsat or from the assets of INTELSAT or Inmarsat; but

(B) does not include any entity that is a separated entity.

(8) SEPARATED ENTITY.—The term “separated entity” means a privatized entity to whom a portion of the assets owned by INTELSAT or Inmarsat are transferred prior to full privatization of INTELSAT or Inmarsat, including in particular the entity whose structure was under discussion by INTELSAT as of March 25, 1998, but excluding ICO.

(9) ORBITAL LOCATION.—The term “orbital location” means the location for placement of a satellite on the geostationary 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 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 title III of the Communications Satellite Act of 1962 (47 U.S.C. 731 et seq.), or the successor in interest to such corporation.

(19) ICO.—The term “ICO” means the company known, as of the date of enactment of this title, as ICO Global Communications, Inc.

(20) GLOBAL MARITIME DISTRESS AND SAFETY SERVICES OR GMDSS.—The term “global maritime distress and safety services” or “G” 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 G 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), terms used in this title that are defined in section 3 of the Communications Act of 1934 have the meanings provided in such section.

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March 15, 2012



**SUBMARINE CABLE STATUTE**



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March 15, 2012



**ACT OF MAY 27, 1921<sup>1</sup>**

**(Submarine Cables)**

AN ACT Relating to the landing and operation of submarine cables in the United States.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [47 U.S.C. 34]* That no person shall land or operate in the United States any submarine cable directly or indirectly connecting the United States with any foreign country, or connecting one portion of the United States with any other portion thereof, unless a written license to land or operate such cable has been issued by the President of the United States: *Provided*, That any such cable now laid within the United States without a license granted by the President may continue to operate without such license for a period of ninety days from the date this Act takes effect: *And provided further*, That the conditions of this Act shall not apply to cables, all of which, including both terminals, lie wholly within the continental United States.

SEC. 2. [47 U.S.C. 35] That the President may withhold or revoke such license when he shall be satisfied after due notice and hearing that such action will assist in securing rights for the landing or operation of cables in foreign countries, or in maintaining the rights or interests of the United States or of its citizens in foreign countries, or will promote the security of the United States, or may grant such license upon such terms as shall be necessary to assure just and reasonable rates and service in the operation and use of cables so licensed: *Provided*, That the license shall not contain terms or conditions granting to the licensee exclusive rights of landing or of operation in the United States: *And provided further*, That nothing herein contained shall be construed to limit the power and jurisdiction heretofore granted the Interstate Commerce Commission with respect to the transmission of messages.

SEC. 3. [47 U.S.C. 36] That the President is empowered to prevent the landing of any cable about to be landed in violation of this Act. When any such cable is about to be or is landed or is being operated, without a license, any district court of the United States exercising jurisdiction in the district in which such cable is about to be or is landed, or any district court of the United States having jurisdiction of the parties, shall have jurisdiction, at the suit of the United States, to enjoin the landing or operation of such cable or to compel, by injunction, the removal thereof.

SEC. 4. [47 U.S.C. 37] That whoever knowingly commits, instigates, or assists in any act forbidden by section 1 of this Act shall be guilty of a misdemeanor and shall be fined not more than \$5,000, or imprisoned for not more than one year, or both.

<sup>1</sup>Public Law 8, 67th Congress, 42 Stat. 8, May 27, 1921.

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SEC. 5. [47 U.S.C. 38] That the term "United States" as used in this Act includes the Canal Zone, the Philippine Islands, and all territory, continental or insular, subject to the jurisdiction of the United States of America.

SEC. 6. [47 U.S.C. 39] That no right shall accrue to any Government, person, or corporation under the terms of this Act that may not be rescinded, changed, modified, or amended by the Congress.



**ADDITIONAL COMMUNICATIONS STATUTES**



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March 15, 2012

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**SECTION 632 OF THE COMMERCE, JUSTICE, AND STATE,  
THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 2001**

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March 15, 2012

**COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND  
RELATED AGENCIES APPROPRIATIONS ACT, 2001**<sup>1</sup>

[As Amended Through P.L. 111-371, Enacted January 4, 2011]

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SEC. 632. (a) The Federal Communications Commission shall modify the rules authorizing the operation of low-power FM radio stations, as proposed in MM Docket No. 99-25, to—

(1) prescribe protection for co-channels and first- and second-adjacent channels; and

(2) prohibit any applicant from obtaining a low-power FM license if the applicant has engaged in any manner in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934 (47 U.S.C. 301).

(b) Any license that was issued by the Federal Communications Commission to a low-power FM station prior to April 2, 2001, and that does not comply with the modifications adopted by the Commission in MM Docket No. 99-25 on April 2, 2001, shall remain invalid.

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<sup>1</sup>This Act is H.R. 5548 as introduced on October 25, 2000 and enacted into law by section 1(a)(2) of Public Law 106-553 (114 Stat. 2762, 2762A-111).

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March 15, 2012



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**SECTIONS 2, 4, 6, AND 7 OF THE WIRELESS  
COMMUNICATIONS AND PUBLIC SAFETY ACT OF 1999**

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March 15, 2012

**SECTIONS 2, 4, 6, and 7 OF THE WIRELESS  
COMMUNICATIONS AND PUBLIC SAFETY ACT OF 1999**

[As Amended Through P.L. 110–368, Enacted October 8, 2008]

**SECTION 1. [47 U.S.C. 609 note] SHORT TITLE.**

This Act may be cited as the “Wireless Communications and Public Safety Act of 1999”.

**SEC. 2. [47 U.S.C. 615 note] FINDINGS AND PURPOSE.**

(a) FINDINGS.—The Congress finds that—

(1) the establishment and maintenance of an end-to-end communications infrastructure among members of the public, emergency safety, fire service and law enforcement officials, emergency dispatch providers, transportation officials, and hospital emergency and trauma care facilities will reduce response times for the delivery of emergency care, assist in delivering appropriate care, and thereby prevent fatalities, substantially reduce the severity and extent of injuries, reduce time lost from work, and save thousands of lives and billions of dollars in health care costs;

(2) the rapid, efficient deployment of emergency telecommunications service requires statewide coordination of the efforts of local public safety, fire service and law enforcement officials, emergency dispatch providers, and transportation officials; the establishment of sources of adequate funding for carrier and public safety, fire service and law enforcement agency technology development and deployment; the coordination and integration of emergency communications with traffic control and management systems and the designation of 9–1–1 as the number to call in emergencies throughout the Nation;

(3) emerging technologies can be a critical component of the end-to-end communications infrastructure connecting the public with emergency medical service providers and emergency dispatch providers, public safety, fire service and law enforcement officials, and hospital emergency and trauma care facilities, to reduce emergency response times and provide appropriate care;

(4) improved public safety remains an important public health objective of Federal, State, and local governments and substantially facilitates interstate and foreign commerce;

(5) emergency care systems, particularly in rural areas of the Nation, will improve with the enabling of prompt notification of emergency services when motor vehicle crashes occur; and

(6) the construction and operation of seamless, ubiquitous, and reliable wireless telecommunications systems promote public safety and provide immediate and critical communications links among members of the public; emergency medical

**Sec. 4 WIRELESS COMMUNICATIONS AND PUBLIC SAFETY ACT OF 1999 244**

service providers and emergency dispatch providers; public safety, fire service and law enforcement officials; transportation officials, and hospital emergency and trauma care facilities.

(b) PURPOSE.—The purpose of this Act is to encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure for communications, including wireless communications, to meet the Nation’s public safety and other communications needs.

\* \* \* \* \*

**SEC. 4. [47 U.S.C. 615a] SERVICE PROVIDER PARITY OF PROTECTION.**

(a) PROVIDER PARITY.—A wireless carrier, IP-enabled voice service provider, or other emergency communications provider, and their officers, directors, employees, vendors, and agents, shall have immunity or other protection from liability in a State of a scope and extent that is not less than the scope and extent of immunity or other protection from liability that any local exchange company, and its officers, directors, employees, vendors, or agents, have under Federal and State law (whether through statute, judicial decision, tariffs filed by such local exchange company, or otherwise) applicable in such State, including in connection with an act or omission involving the release to a PSAP, emergency medical service provider or emergency dispatch provider, public safety, fire service or law enforcement official, or hospital emergency or trauma care facility of subscriber information related to emergency calls, emergency services, or other emergency communications services.

(b) USER PARITY.—A person using wireless 9–1–1 service, or making 9–1–1 communications via IP-enabled voice service or other emergency communications service, shall have immunity or other protection from liability of a scope and extent that is not less than the scope and extent of immunity or other protection from liability under applicable law in similar circumstances of a person using 9–1–1 service that is not via wireless 9–1–1 service, IP-enabled voice service, or other emergency communications service.

(c) PSAP PARITY.—In matters related to 9–1–1 communications via wireless 9–1–1 service, IP-enabled voice service, or other emergency communications service, a PSAP, and its employees, vendors, agents, and authorizing government entity (if any) shall have immunity or other protection from liability of a scope and extent that is not less than the scope and extent of immunity or other protection from liability under applicable law accorded to such PSAP, employees, vendors, agents, and authorizing government entity, respectively, in matters related to 9–1–1 communications that are not via wireless 9–1–1 service, IP-enabled voice service, or other emergency communications service.

(d) BASIS FOR ENACTMENT.—This section is enacted as an exercise of the enforcement power of the Congress under section 5 of the Fourteenth Amendment to the Constitution and the power of the Congress to regulate commerce with foreign nations, among the several States, and with Indian tribes.

\* \* \* \* \*

**SEC. 6. [47 U.S.C. 615a-1] DUTY TO PROVIDE 9-1-1 AND ENHANCED 9-1-1 SERVICE.**

(a) **DUTIES.**—It shall be the duty of each IP-enabled voice service provider to provide 9-1-1 service and enhanced 9-1-1 service to its subscribers in accordance with the requirements of the Federal Communications Commission, as in effect on the date of enactment of the New and Emerging Technologies 911 Improvement Act of 2008 and as such requirements may be modified by the Commission from time to time.

(b) **PARITY FOR IP-ENABLED VOICE SERVICE PROVIDERS.**—An IP-enabled voice service provider that seeks capabilities to provide 9-1-1 and enhanced 9-1-1 service from an entity with ownership or control over such capabilities, to comply with its obligations under subsection (a), shall, for the exclusive purpose of complying with such obligations, have a right of access to such capabilities, including interconnection, to provide 9-1-1 and enhanced 9-1-1 service on the same rates, terms, and conditions that are provided to a provider of commercial mobile service (as such term is defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d))), subject to such regulations as the Commission prescribes under subsection (c).

(c) **REGULATIONS.**—The Commission—

(1) within 90 days after the date of enactment of the New and Emerging Technologies 911 Improvement Act of 2008, shall issue regulations implementing such Act, including regulations that—

(A) ensure that IP-enabled voice service providers have the ability to exercise their rights under subsection (b);

(B) take into account any technical, network security, or information privacy requirements that are specific to IP-enabled voice services; and

(C) provide, with respect to any capabilities that are not required to be made available to a commercial mobile service provider but that the Commission determines under subparagraph (B) of this paragraph or paragraph (3) are necessary for an IP-enabled voice service provider to comply with its obligations under subsection (a), that such capabilities shall be available at the same rates, terms, and conditions as would apply if such capabilities were made available to a commercial mobile service provider;

(2) shall require IP-enabled voice service providers to which the regulations apply to register with the Commission and to establish a point of contact for public safety and government officials relative to 9-1-1 and enhanced 9-1-1 service and access; and

(3) may modify such regulations from time to time, as necessitated by changes in the market or technology, to ensure the ability of an IP-enabled voice service provider to comply with its obligations under subsection (a) and to exercise its rights under subsection (b).

(d) **DELEGATION OF ENFORCEMENT TO STATE COMMISSIONS.**—The Commission may delegate authority to enforce the regulations issued under subsection (c) to State commissions or other State or

local agencies or programs with jurisdiction over emergency communications. Nothing in this section is intended to alter the authority of State commissions or other State or local agencies with jurisdiction over emergency communications, provided that the exercise of such authority is not inconsistent with Federal law or Commission requirements.

(e) IMPLEMENTATION.—

(1) LIMITATION.—Nothing in this section shall be construed to permit the Commission to issue regulations that require or impose a specific technology or technological standard.

(2) ENFORCEMENT.—The Commission shall enforce this section as if this section was a part of the Communications Act of 1934. For purposes of this section, any violations of this section, or any regulations promulgated under this section, shall be considered to be a violation of the Communications Act of 1934 or a regulation promulgated under that Act, respectively.

(f) STATE AUTHORITY OVER FEES.—

(1) AUTHORITY.—Nothing in this Act, the Communications Act of 1934 (47 U.S.C. 151 et seq.), the New and Emerging Technologies 911 Improvement Act of 2008, or any Commission regulation or order shall prevent the imposition and collection of a fee or charge applicable to commercial mobile services or IP-enabled voice services specifically designated by a State, political subdivision thereof, Indian tribe, or village or regional corporation serving a region established pursuant to the Alaska Native Claims Settlement Act, as amended (85 Stat. 688) for the support or implementation of 9-1-1 or enhanced 9-1-1 services, provided that the fee or charge is obligated or expended only in support of 9-1-1 and enhanced 9-1-1 services, or enhancements of such services, as specified in the provision of State or local law adopting the fee or charge. For each class of subscribers to IP-enabled voice services, the fee or charge may not exceed the amount of any such fee or charge applicable to the same class of subscribers to telecommunications services.

(2) FEE ACCOUNTABILITY REPORT.—To ensure efficiency, transparency, and accountability in the collection and expenditure of a fee or charge for the support or implementation of 9-1-1 or enhanced 9-1-1 services, the Commission shall submit a report within 1 year after the date of enactment of the New and Emerging Technologies 911 Improvement Act of 2008, and annually thereafter, to the Committee on Commerce, Science and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives detailing the status in each State of the collection and distribution of such fees or charges, and including findings on the amount of revenues obligated or expended by each State or political subdivision thereof for any purpose other than the purpose for which any such fees or charges are specified.

(g) AVAILABILITY OF PSAP INFORMATION.—The Commission may compile a list of public safety answering point contact information, contact information for providers of selective routers, testing procedures, classes and types of services supported by public safety answering points, and other information concerning 9-1-1 and en-

**247 WIRELESS COMMUNICATIONS AND PUBLIC SAFETY ACT OF 1999 Sec. 7**

hanced 9-1-1 elements, for the purpose of assisting IP-enabled voice service providers in complying with this section, and may make any portion of such information available to telecommunications carriers, wireless carriers, IP-enabled voice service providers, other emergency service providers, or the vendors to or agents of any such carriers or providers, if such availability would improve public safety.

(h) DEVELOPMENT OF STANDARDS.—The Commission shall work cooperatively with public safety organizations, industry participants, and the E-911 Implementation Coordination Office to develop best practices that promote consistency, where appropriate, including procedures for—

- (1) defining geographic coverage areas for public safety answering points;
- (2) defining network diversity requirements for delivery of IP-enabled 9-1-1 and enhanced 9-1-1 calls;
- (3) call-handling in the event of call overflow or network outages;
- (4) public safety answering point certification and testing requirements;
- (5) validation procedures for inputting and updating location information in relevant databases; and
- (6) the format for delivering address information to public safety answering points.

(i) RULE OF CONSTRUCTION.—Nothing in the New and Emerging Technologies 911 Improvement Act of 2008 shall be construed as altering, delaying, or otherwise limiting the ability of the Commission to enforce the Federal actions taken or rules adopted obligating an IP-enabled voice service provider to provide 9-1-1 or enhanced 9-1-1 service as of the date of enactment of the New and Emerging Technologies 911 Improvement Act of 2008.

**SEC. 7. [47 U.S.C. 615b] DEFINITIONS.**

As used in this Act:

(1) SECRETARY.—The term “Secretary” means the Secretary of Transportation.

(2) STATE.—The term “State” means any of the several States, the District of Columbia, or any territory or possession of the United States.

(3) PUBLIC SAFETY ANSWERING POINT; PSAP.—The term “public safety answering point” or “PSAP” means a facility that has been designated to receive 9-1-1 calls and route them to emergency service personnel.

(4) WIRELESS CARRIER.—The term “wireless carrier” means a provider of commercial mobile services or any other radio communications service that the Federal Communications Commission requires to provide wireless 9-1-1 service.

(5) ENHANCED WIRELESS 9-1-1 SERVICE.—The term “enhanced wireless 9-1-1 service” means any enhanced 9-1-1 service so designated by the Federal Communications Commission in the proceeding entitled “Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 9-1-1 Emergency Calling Systems” (CC Docket No. 94-102; RM-8143), or any successor proceeding.

(6) **WIRELESS 9-1-1 SERVICE.**—The term “wireless 9-1-1 service” means any 9-1-1 service provided by a wireless carrier, including enhanced wireless 9-1-1 service.

(7) **EMERGENCY DISPATCH PROVIDERS.**—The term “emergency dispatch providers” shall include governmental and non-governmental providers of emergency dispatch services.

(8) **IP-ENABLED VOICE SERVICE.**—The term “IP-enabled voice service” has the meaning given the term “interconnected VoIP service” by section 9.3 of the Federal Communications Commission’s regulations (47 CFR 9.3).

(8)<sup>1</sup> **OTHER EMERGENCY COMMUNICATIONS SERVICE.**—The term “other emergency communications service” means the provision of emergency information to a public safety answering point via wire or radio communications, and may include 9-1-1 and enhanced 9-1-1 service.

(9) **OTHER EMERGENCY COMMUNICATIONS SERVICE PROVIDER.**—The term “other emergency communications service provider” means—

(A) an entity other than a local exchange carrier, wireless carrier, or an IP-enabled voice service provider that is required by the Federal Communications Commission consistent with the Commission’s authority under the Communications Act of 1934 to provide other emergency communications services; or

(B) in the absence of a Commission requirement as described in subparagraph (A), an entity that voluntarily elects to provide other emergency communications services and is specifically authorized by the appropriate local or State 9-1-1 service governing authority to provide other emergency communications services.

(10) **ENHANCED 9-1-1 SERVICE.**—The term “enhanced 9-1-1 service” means the delivery of 9-1-1 calls with automatic number identification and automatic location identification, or successor or equivalent information features over the wireline E911 network (as defined in section 9.3 of the Federal Communications Commission’s regulations (47 C.F.R. 9.3) as of the date of enactment of the New and Emerging Technologies 911 Improvement Act of 2008) and equivalent or successor networks and technologies. The term also includes any enhanced 9-1-1 service so designated by the Commission in its Report and Order in WC Docket Nos. 04-36 and 05-196, or any successor proceeding.

<sup>1</sup>So in law. The amendment by section 201(b) of Public Law 110-283 probably should have been made to insert new paragraphs (9)–(11). Section 101(3) of such Public Law adds a new paragraph (8) (relating to IP-enabled voice service). (See 122 Stat. 2623 and 2624.)





**INTERNATIONAL TELECOMMUNICATIONS POLICY**



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March 15, 2012

**INTERNATIONAL TELECOMMUNICATIONS POLICY**

(Section 2218 of Division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999)

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**SEC. 2218. [22 U.S.C. 2669b] REAFFIRMING UNITED STATES INTERNATIONAL TELECOMMUNICATIONS POLICY.**

(a) **PROCUREMENT POLICY.**—It is the policy of the United States to foster and support procurement of goods and services from private, commercial companies.

(b) **IMPLEMENTATION.**—In order to achieve the policy set forth in subsection (a), the Diplomatic Telecommunications Service Program Office (DTS-PO) shall—

(1) utilize full and open competition, to the maximum extent practicable, in the procurement of telecommunications services, including satellite space segment, for the Department of State and each other Federal entity represented at United States diplomatic missions and consular posts overseas;

(2) make every effort to ensure and promote the participation in the competition for such procurement of commercial private sector providers of satellite space segment who have no ownership or other connection with an intergovernmental satellite organization; and

(3) implement the competitive procedures required by paragraphs (1) and (2) at the prime contracting level and, to the maximum extent practicable, the subcontracting level.

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March 15, 2012

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**INTERNATIONAL ANTI-BRIBERY AND FAIR  
COMPETITION ACT**

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March 15, 2012

**INTERNATIONAL ANTI-BRIBERY AND FAIR  
COMPETITION ACT**

AN ACT To amend the Securities Exchange Act of 1934 and the Foreign Corrupt Practices Act of 1977 to improve the competitiveness of American business and promote foreign commerce, and for other purposes.

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

**SECTION 1. [15 U.S.C. 78a note] SHORT TITLE.**

This Act may be cited as the “International Anti-Bribery and Fair Competition Act of 1998”.

\* \* \* \* \*

**SEC. 5. [15 U.S.C. 78dd-1 note] TREATMENT OF INTERNATIONAL ORGANIZATIONS PROVIDING COMMERCIAL COMMUNICATIONS SERVICES.**

(a) DEFINITION.—For purposes of this section:

(1) INTERNATIONAL ORGANIZATION PROVIDING COMMERCIAL COMMUNICATIONS SERVICES.—The term “international organization providing commercial communications services” means—

(A) the International Telecommunications Satellite Organization established pursuant to the Agreement Relating to the International Telecommunications Satellite Organization; and

(B) the International Mobile Satellite Organization established pursuant to the Convention on the International Maritime Satellite Organization.

(2) PRO-COMPETITIVE PRIVATIZATION.—The term “pro-competitive privatization” means a privatization that the President determines to be consistent with the United States policy of obtaining full and open competition to such organizations (or their successors), and nondiscriminatory market access, in the provision of satellite services.

(b) TREATMENT AS PUBLIC INTERNATIONAL ORGANIZATIONS.—

(1) TREATMENT.—An international organization providing commercial communications services shall be treated as a public international organization for purposes of section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd-1) and sections 104 and 104A of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd-2) until such time as the President certifies to the Committee on Commerce of the House of Representatives and the Committees on Banking, Housing and Urban Affairs and Commerce, Science, and Transportation that such international organization providing commercial communications services has achieved a pro-competitive privatization.

(2) **LIMITATION ON EFFECT OF TREATMENT.**—The requirement for a certification under paragraph (1), and any certification made under such paragraph, shall not be construed to affect the administration by the Federal Communications Commission of the Communications Act of 1934 in authorizing the provision of services to, from, or within the United States over space segment of the international satellite organizations, or the privatized affiliates or successors thereof.

(c) **EXTENSION OF LEGAL PROCESS.**—

(1) **IN GENERAL.**—Except as required by international agreements to which the United States is a party, an international organization providing commercial communications services, its officials and employees, and its records shall not be accorded immunity from suit or legal process for any act or omission taken in connection with such organization's capacity as a provider, directly or indirectly, of commercial telecommunications services to, from, or within the United States.

(2) **NO EFFECT ON PERSONAL LIABILITY.**—Paragraph (1) shall not affect any immunity from personal liability of any individual who is an official or employee of an international organization providing commercial communications services.

(3) **EFFECTIVE DATE.**—This subsection shall take effect on May 1, 1999.

(d) **ELIMINATION OR LIMITATION OF EXCEPTIONS.**—

(1) **ACTION REQUIRED.**—The President shall, in a manner that is consistent with requirements in international agreements to which the United States is a party, expeditiously take all appropriate actions necessary to eliminate or to reduce substantially all privileges and immunities that are accorded to an international organization described in subparagraph (A) or (B) of subsection (a)(1), its officials, its employees, or its records, and that are not eliminated pursuant to subsection (c).

(2) **DESIGNATION OF AGREEMENTS.**—The President shall designate which agreements constitute international agreements to which the United States is a party for purposes of this section.

(e) **PRESERVATION OF LAW ENFORCEMENT AND INTELLIGENCE FUNCTIONS.**—Nothing in subsection (c) or (d) of this section shall affect any immunity from suit or legal process of an international organization providing commercial communications services, or the privatized affiliates or successors thereof, for acts or omissions—

(1) under chapter 119, 121, 206, or 601 of title 18, United States Code, the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 514 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 884), or Rule 104, 501, or 608 of the Federal Rules of Evidence;

(2) under similar State laws providing protection to service providers cooperating with law enforcement agencies pursuant to State electronic surveillance or evidence laws, rules, regulations, or procedures; or

(3) pursuant to a court order.

(f) **RULES OF CONSTRUCTION.**—



(1) NEGOTIATIONS.—Nothing in this section shall affect the President's existing constitutional authority regarding the time, scope, and objectives of international negotiations.

(2) PRIVATIZATION.—Nothing in this section shall be construed as legislative authorization for the privatization of INTELSAT or Inmarsat, nor to increase the President's authority with respect to negotiations concerning such privatization.

**SEC. 6. [15 U.S.C. 78dd-1 note] ENFORCEMENT AND MONITORING.**

(a) REPORTS REQUIRED.—Not later than July 1 of 1999 and each of the 5 succeeding years, the Secretary of Commerce shall submit to the House of Representatives and the Senate a report that contains the following information with respect to implementation of the Convention:

(1) RATIFICATION.—A list of the countries that have ratified the Convention, the dates of ratification by such countries, and the entry into force for each such country.

(2) DOMESTIC LEGISLATION.—A description of domestic laws enacted by each party to the Convention that implement commitments under the Convention, and assessment of the compatibility of such laws with the Convention.

(3) ENFORCEMENT.—As assessment of the measures taken by each party to the Convention during the previous year to fulfill its obligations under the Convention and achieve its object and purpose including—

(A) an assessment of the enforcement of the domestic laws described in paragraph (2);

(B) an assessment of the efforts by each such party to promote public awareness of such domestic laws and the achievement of such object and purpose; and

(C) an assessment of the effectiveness, transparency, and viability of the monitoring process for the Convention, including its inclusion of input from the private sector and nongovernmental organizations.

(4) LAWS PROHIBITING TAX DEDUCTION OF BRIBES.—An explanation of the domestic laws enacted by each party to the Convention that would prohibit the deduction of bribes in the computation of domestic taxes.

(5) NEW SIGNATORIES.—A description of efforts to expand international participation in the Convention by adding new signatories to the Convention and by assuring that all countries which are or become members of the Organization for Economic Cooperation and Development are also parties to the Convention.

(6) SUBSEQUENT EFFORTS.—An assessment of the status of efforts to strengthen the Convention by extending the prohibitions contained in the Convention to cover bribes to political parties, party officials, and candidates for political office.

(7) ADVANTAGES.—Advantages, in terms of immunities, market access, or otherwise, in the countries or regions served by the organizations described in section 5(a), the reason for such advantages, and an assessment of progress toward fulfilling the policy described in that section.

**Sec. 6      INTERNATIONAL ANTI-BRIBERY AND FAIR COMPETITION ACT      258**

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(8) BRIBERY AND TRANSPARENCY.—An assessment of anti-bribery programs and transparency with respect to each of the international organizations covered by this Act.

(9) PRIVATE SECTOR REVIEW.—A description of the steps taken to ensure full involvement of United States private sector participants and representatives of nongovernmental organizations in the monitoring and implementation of the Convention.

(10) ADDITIONAL INFORMATION.—In consultation with the private sector participants and representatives of nongovernmental organizations described in paragraph (9), a list of additional means for enlarging the scope of the Convention and otherwise increasing its effectiveness. Such additional means shall include, but not be limited to, improved recordkeeping provisions and the desirability of expanding the applicability of the Convention to additional individuals and organizations and the impact on United States business of section 30A of the Securities Exchange Act of 1934 and sections 104 and 104A of the Foreign Corrupt Practices Act of 1977.

(b) DEFINITION.—For purposes of this section, the term “Convention” means the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted on November 21, 1997, and signed on December 17, 1997, by the United States and 32 other nations.

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**SECTION 3001 OF THE OMNIBUS CONSOLIDATED  
APPROPRIATIONS FOR FISCAL YEAR 1997**

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March 15, 2012

**OMNIBUS CONSOLIDATED APPROPRIATIONS FOR  
FISCAL YEAR 1997<sup>1</sup>**

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**TITLE III—SPECTRUM ALLOCATION  
PROVISIONS**

**SEC. 3001. COMPETITIVE BIDDING FOR SPECTRUM.**

(a) **COMMISSION OBLIGATION TO MAKE ADDITIONAL SPECTRUM AVAILABLE.**—The Federal Communications Commission shall—

(1) reallocate the use of frequencies at 2305–2320 megahertz and 2345–2360 megahertz to wireless services that are consistent with international agreements concerning spectrum allocations; and

(2) assign the use of such frequencies by competitive bidding pursuant to section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)).

(b) **ADDITIONAL REQUIREMENTS.**—In making the bands of frequencies described in subsection (a) available for competitive bidding, the Commission shall—

(1) seek to promote the most efficient use of the spectrum; and

(2) take into account the needs of public safety radio services.

(c) **EXPEDITED PROCEDURES.**—The Commission shall commence the competitive bidding for the assignment of the frequencies described in subsection (a)(1) no later than April 15, 1997. The rules governing such frequencies shall be effective immediately upon publication in the Federal Register notwithstanding section 553(d), 801(a)(3), and 806(a) of title 5, United States Code. Chapter 6 of such title, and sections 3507 and 3512 of title 44, United States Code, shall not apply to the rules and competitive bidding procedures governing such frequencies. Notwithstanding section 309(b) of the Communications Act of 1934 (47 U.S.C. 309(b)), no application for an instrument of authorization for such frequencies shall be granted by the Commission earlier than 7 days following issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereto. Notwithstanding section 309(d)(1) of such Act (47 U.S.C. 309(d)(1)), the Commission may specify a period (no less than 5 days following issuance of such public notice) for the filing of petitions to deny any application for an instrument of authorization for such frequencies.

<sup>1</sup>This Act is Public Law 104–208, enacted Sept. 30, 1996 (110 Stat. 3009–499).

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(d) DEADLINE FOR COLLECTION.—The Commission shall conduct the competitive bidding under subsection (a)(2) in a manner that ensures that all proceeds of the bidding are deposited in accordance with section 309(j)(8) of the Communications Act of 1934 not later September 30, 1997.

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**PUBLIC TELECOMMUNICATIONS ACT OF 1992**

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March 15, 2012



**PUBLIC TELECOMMUNICATIONS ACT OF 1992**

AN ACT To authorize appropriations for public broadcasting, and for other purposes.

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

SHORT TITLE

SECTION 1. [47 U.S.C. 609 nt] This Act may be cited as the "Public Telecommunications Act of 1992".<sup>1</sup>

\* \* \* \* \*

[Sections 2 through 4 contained amendments to sections 391, 393, and 396 of the Communications Act of 1934.]

BOARD OF DIRECTORS

SEC. 5. \* \* \*

\* \* \* \* \*

[Section 5(a) and (b) contained amendments to section 396(c) of the Communications Act of 1934 relating to number of members and terms of office of the board of directors of the Corporation for Public Broadcasting.]

(c) [47 U.S.C. 396 nt] TRANSITION RULES.—(1) With respect to the three offices whose terms are prescribed by law to expire on March 26, 1992, the term for each such office immediately after that date shall expire on January 31, 1998.

(2) With respect to the two offices whose terms are prescribed by law to expire on March 1, 1994, the term for each of such offices immediately after that date shall expire on January 31, 2000.

(3) With respect to the five offices whose terms are prescribed by law to expire on March 26, 1996—

(A) one such office, as selected by the President, shall be abolished on January 31, 1996;

(B) the term immediately after March 26, 1996, for another such office, as designated by the President, shall expire on January 31, 2000; and

(C) the term for each of the remaining three such offices immediately after March 26, 1996, shall expire on January 31, 2002.

(4) As used in this subsection, the term "office" means an office as a member of the Board of Directors of the Corporation for Public Broadcasting.

\* \* \* \* \*

<sup>1</sup> Public Law 102-356, 106 Stat. 949, approved Aug. 26, 1992.

[Sections 6 through 14 contained amendments to section 396 of the Communications Act of 1934.]

CLARIFICATION OF CONGRESSIONAL INTENT

\* \* \* \* \*

[Section 15 contained an amendment to section 103(a) of the Children's Television Act of 1990, which is printed elsewhere in this compilation.]

BROADCASTING OF INDECENT PROGRAMMING

SEC. 16. [47 U.S.C. 303 nt] (a) FCC REGULATIONS.—The Federal Communications Commission shall promulgate regulations to prohibit the broadcasting of indecent programming—

(1) between 6 a.m. and 10 p.m. on any day by any public radio station or public television station that goes off the air at or before 12 midnight; and

(2) between 6 a.m. and 12 midnight on any day for any radio or television broadcasting station not described in paragraph (1).

The regulations required under this subsection shall be promulgated in accordance with section 553 of title 5, United States Code, and shall become final not later than 180 days after the date of enactment of this Act.

(b) REPEAL.—Section 608 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1989 (Public Law 100-459; 102 Stat. 2228), is repealed.

READY-TO-LEARN TELEVISION CHANNEL

SEC. 17. (a) The Congress finds that—

(1) many of the Nation's children are not entering school "ready to learn";

(2) next to parents and early childhood teachers, television is probably the young child's most influential teacher;

(3) a vital component in meeting the Nation's first education goal is the development of interactive programming aimed exclusively at the developmental and educational needs and interests of preschool children;

(4) television can assist parents and preschool and child care teachers in gaining information on how young children grow and learn; and

(5) there is a need for quality interactive instructional programming based on worthwhile information on child development designed for children, parents, and preschool and child care providers and teachers.

(b) Within 90 days following the date of the enactment of this Act, the Corporation for Public Broadcasting shall report to the Congress as to the most effective way to establish and implement a ready-to-learn public television channel. Such report shall include, among other things—

(1) the costs of establishing and implementing a ready-to-learn channel;

(2) the special considerations of using television as a learning tool for very young children;

- (3) the technology, and availability thereof, needed to establish and implement such a channel; and
- (4) the best means of providing financing for the establishment and implementation of a ready-to-learn channel.

CORPORATION FOR PUBLIC BROADCASTING REPORT ON DISTANCE  
LEARNING

SEC. 18. (a) The Congress finds that—

- (1) distance learning would provide schools in rural areas with advanced or specialized instruction not readily available;
- (2) utilization of distance learning can end some school closings or consolidations;
- (3) distance learning will play a vital role in accomplishing the goals of “America 2000” as established by the President;
- (4) the Corporation for Public Broadcasting should promote distance learning projects where it is cost effective; and
- (5) the Corporation for Public Broadcasting can promote distance learning by helping reduce the costs associated with telecommunications services.

(b) Within 180 days following the date of the enactment of this Act, the Corporation for Public Broadcasting, in consultation with other education program providers and users, shall report to the Congress as to the most effective use of their existing telecommunications facilities to establish and implement distance learning projects in rural areas. Such report should include, among other things, the costs and benefits of establishing national demonstration sites to study new distance learning tools and to evaluate the most effective use of current distance learning applications; any incentives necessary to provide access to Corporation for Public Broadcasting facilities for distance learning applications.

OBJECTIVITY AND BALANCE POLICY, PROCEDURES, AND REPORT

SEC. 19. [47 U.S.C. 396 nt] Pursuant to the existing responsibility of the Corporation for Public Broadcasting under section 396(g)(1)(A) of the Communications Act of 1934 (47 U.S.C. 396(g)(1)(A)) to facilitate the full development of public telecommunications in which programs of high quality, diversity, creativity, excellence, and innovation, which are obtained from diverse sources, will be made available to public telecommunications entities, with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature, the Board of Directors of the Corporation shall—

- (1) review the Corporation’s existing efforts to meet its responsibility under section 396(g)(1)(A);
- (2) after soliciting the views of the public, establish a comprehensive policy and set of procedures to—
  - (A) provide reasonable opportunity for members of the public to present comments to the Board regarding the quality, diversity, creativity, excellence, innovation, objectivity, and balance of public broadcasting services, including all public broadcasting programming of a controversial nature, as well as any needs not met by those services;

(B) review, on a regular basis, national public broadcasting programming for quality, diversity, creativity, excellence, innovation, objectivity, and balance, as well as for any needs not met by such programming;

(C) on the basis of information received through such comment and review, take such steps in awarding programming grants pursuant to clauses (ii)(II), (iii)(II), and (iii)(III) of section 396(k)(3)(A) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)) that it finds necessary to meet the Corporation's responsibility under section 396(g)(1)(A), including facilitating objectivity and balance in programming of a controversial nature; and

(D) disseminate among public broadcasting entities information about its efforts to address concerns about objectivity and balance relating to programming of a controversial nature so that such entities can utilize the Corporation's experience in addressing such concerns within their own operations; and

(3) starting in 1993, by January 31 of each year, prepare and submit to the President for transmittal to the Congress a report summarizing its efforts pursuant to paragraphs (1) and (2).

#### CONSUMER INFORMATION

SEC. 20. [47 U.S.C. 396 nt] Prior to the expiration of the 90-day period following the date of the enactment of this Act, the Corporation for Public Broadcasting, in consultation with representatives of public broadcasting entities, shall develop guidelines to assure that program credits for public television programs that receive production funding directly from the Corporation for Public Broadcasting adequately disclose that all or a portion of the cost of producing such program was paid for by funding from the Corporation for Public Broadcasting, and that indicates in some manner that the Corporation for Public Broadcasting is partially funded from Federal tax revenues.

#### INDEPENDENT PRODUCTION SERVICE FUNDING

SEC. 21. [47 U.S.C. 396 nt] In making available funding pursuant to authorizations under this Act, any independent production service established under section 396(k) of the Communications Act of 1934 (47 U.S.C. 396(k)) shall, to the maximum extent practicable and consistent with the provisions of the Communications Act of 1934, provide such funding to eligible recipients and projects representing the widest possible geographic distribution, with the objective of providing funding to eligible recipients and projects in each State from which qualified proposals are received over the course of such authorizations.

#### EFFECTIVE DATE

SEC. 22. [47 U.S.C. 396 nt] Section 5(a) shall take effect on January 31, 1996. All other provisions of this Act are effective on its date of enactment.

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**CABLE TELEVISION CONSUMER PROTECTION AND  
COMPETITION ACT OF 1992**

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March 15, 2012

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March 15, 2012

## **CABLE TELEVISION CONSUMER PROTECTION AND COMPETITION ACT OF 1992**

To amend the Communications Act of 1934 to provide increased consumer protection and to promote increased competition in the cable television and related markets, and for other purposes.

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

### **SECTION 1. [47 U.S.C. 609 nt] SHORT TITLE.**

This Act may be cited as the “Cable Television Consumer Protection and Competition Act of 1992”.<sup>1</sup>

### **SEC. 2. [47 U.S.C. 521 nt] FINDINGS; POLICY; DEFINITIONS.**

(a) FINDINGS.—The Congress finds and declares the following:

(1) Pursuant to the Cable Communications Policy Act of 1984, rates for cable television services have been deregulated in approximately 97 percent of all franchises since December 29, 1986. Since rate deregulation, monthly rates for the lowest priced basic cable service have increased by 40 percent or more for 28 percent of cable television subscribers. Although the average number of basic channels has increased from about 24 to 30, average monthly rates have increased by 29 percent during the same period. The average monthly cable rate has increased almost 3 times as much as the Consumer Price Index since rate deregulation.

(2) For a variety of reasons, including local franchising requirements and the extraordinary expense of constructing more than one cable television system to serve a particular geographic area, most cable television subscribers have no opportunity to select between competing cable systems. Without the presence of another multichannel video programming distributor, a cable system faces no local competition. The result is undue market power for the cable operator as compared to that of consumers and video programmers.

(3) There has been a substantial increase in the penetration of cable television systems over the past decade. Nearly 56,000,000 households, over 60 percent of the households with televisions, subscribe to cable television, and this percentage is almost certain to increase. As a result of this growth, the cable television industry has become a dominant nationwide video medium.

(4) The cable industry has become highly concentrated. The potential effects of such concentration are barriers to entry for new programmers and a reduction in the number of media voices available to consumers.

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<sup>1</sup> Public Law 102–385, 106 Stat. 1460, approved Oct. 5, 1992.

(5) The cable industry has become vertically integrated; cable operators and cable programmers often have common ownership. As a result, cable operators have the incentive and ability to favor their affiliated programmers. This could make it more difficult for noncable-affiliated programmers to secure carriage on cable systems. Vertically integrated program suppliers also have the incentive and ability to favor their affiliated cable operators over nonaffiliated cable operators and programming distributors using other technologies.

(6) There is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media.

(7) There is a substantial governmental and First Amendment interest in ensuring that cable subscribers have access to local noncommercial educational stations which Congress has authorized, as expressed in section 396(a)(5) of the Communications Act of 1934. The distribution of unique noncommercial, educational programming services advances that interest.

(8) The Federal Government has a substantial interest in making all nonduplicative local public television services available on cable systems because—

(A) public television provides educational and informational programming to the Nation's citizens, thereby advancing the Government's compelling interest in educating its citizens;

(B) public television is a local community institution, supported through local tax dollars and voluntary citizen contributions in excess of \$10,800,000,000 since 1972, that provides public service programming that is responsive to the needs and interests of the local community;

(C) the Federal Government, in recognition of public television's integral role in serving the educational and informational needs of local communities, has invested more than \$3,000,000,000 in public broadcasting since 1969; and

(D) absent carriage requirements there is a substantial likelihood that citizens, who have supported local public television services, will be deprived of those services.

(9) The Federal Government has a substantial interest in having cable systems carry the signals of local commercial television stations because the carriage of such signals is necessary to serve the goals contained in section 307(b) of the Communications Act of 1934 of providing a fair, efficient, and equitable distribution of broadcast services.

(10) A primary objective and benefit of our Nation's system of regulation of television broadcasting is the local origination of programming. There is a substantial governmental interest in ensuring its continuation.

(11) Broadcast television stations continue to be an important source of local news and public affairs programming and other local broadcast services critical to an informed electorate.

(12) Broadcast television programming is supported by revenues generated from advertising broadcast over stations. Such programming is otherwise free to those who own television sets and do not require cable transmission to receive broadcast sig-



nals. There is a substantial governmental interest in promoting the continued availability of such free television programming, especially for viewers who are unable to afford other means of receiving programming.

(13) As a result of the growth of cable television, there has been a marked shift in market share from broadcast television to cable television services.

(14) Cable television systems and broadcast television stations increasingly compete for television advertising revenues. As the proportion of households subscribing to cable television increases, proportionately more advertising revenues will be reallocated from broadcast to cable television systems.

(15) A cable television system which carries the signal of a local television broadcaster is assisting the broadcaster to increase its viewership, and thereby attract additional advertising revenues that otherwise might be earned by the cable system operator. As a result, there is an economic incentive for cable systems to terminate the retransmission of the broadcast signal, refuse to carry new signals, or reposition a broadcast signal to a disadvantageous channel position. There is a substantial likelihood that absent the reimposition of such a requirement, additional local broadcast signals will be deleted, repositioned, or not carried.

(16) As a result of the economic incentive that cable systems have to delete, reposition, or not carry local broadcast signals, coupled with the absence of a requirement that such systems carry local broadcast signals, the economic viability of free local broadcast television and its ability to originate quality local programming will be seriously jeopardized.

(17) Consumers who subscribe to cable television often do so to obtain local broadcast signals which they otherwise would not be able to receive, or to obtain improved signals. Most subscribers to cable television systems do not or cannot maintain antennas to receive broadcast television services, do not have input selector switches to convert from a cable to antenna reception system, or cannot otherwise receive broadcast television services. The regulatory system created by the Cable Communications Policy Act of 1984 was premised upon the continued existence of mandatory carriage obligations for cable systems, ensuring that local stations would be protected from anticompetitive conduct by cable systems.

(18) Cable television systems often are the single most efficient distribution system for television programming. A Government mandate for a substantial societal investment in alternative distribution systems for cable subscribers, such as the "A/B" input selector antenna system, is not an enduring or feasible method of distribution and is not in the public interest.

(19) At the same time, broadcast programming that is carried remains the most popular programming on cable systems, and a substantial portion of the benefits for which consumers pay cable systems is derived from carriage of the signals of network affiliates, independent television stations, and public television stations. Also cable programming placed on channels adjacent to popular off-the-air signals obtains a larger audience

than on other channel positions. Cable systems, therefore, obtain great benefits from local broadcast signals which, until now, they have been able to obtain without the consent of the broadcaster or any copyright liability. This has resulted in an effective subsidy of the development of cable systems by local broadcasters. While at one time, when cable systems did not attempt to compete with local broadcasters for programming, audience, and advertising, this subsidy may have been appropriate, it is so no longer and results in a competitive imbalance between the 2 industries.

(20) The Cable Communications Policy Act of 1984, in its amendments to the Communications Act of 1934, limited the regulatory authority of franchising authorities over cable operators. Franchising authorities are finding it difficult under the current regulatory scheme to deny renewals to cable systems that are not adequately serving cable subscribers.

(21) Cable systems should be encouraged to carry low-power television stations licensed to the communities served by those systems where the low-power station creates and broadcasts, as a substantial part of its programming day, local programming.

(b) STATEMENT OF POLICY.—It is the policy of the Congress in this Act to—

(1) promote the availability to the public of a diversity of views and information through cable television and other video distribution media;

(2) rely on the marketplace, to the maximum extent feasible, to achieve that availability;

(3) ensure that cable operators continue to expand, where economically justified, their capacity and the programs offered over their cable systems;

(4) where cable television systems are not subject to effective competition, ensure that consumer interests are protected in receipt of cable service; and

(5) ensure that cable television operators do not have undue market power vis-a-vis video programmers and consumers.

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[Sections 2(c) and 3 through 25 contained amendments to the Communications Act of 1934]

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**SEC. 10. CHILDREN'S PROTECTION FROM INDECENT PROGRAMMING ON LEASED ACCESS CHANNELS.**

(a) \* \* \*

\* \* \* \* \*

(c) **[47 U.S.C. 531 nt] PROHIBITS SYSTEM USE.**—Within 180 days following the date of the enactment of this Act, the Federal Communications Commission shall promulgate such regulations as may be necessary to enable a cable operator of a cable system to prohibit the use, on such system, of any channel capacity of any public, educational, or governmental access facility for any pro-

gramming which contains obscene material, sexually explicit conduct, or material soliciting or promoting unlawful conduct.

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**SEC. 26. [47 U.S.C. 521 nt] SPORTS PROGRAMMING MIGRATION STUDY AND REPORT.**

(a) **STUDY REQUIRED.**—The Federal Communications Commission shall conduct an ongoing study on the carriage of local, regional, and national sports programming by broadcast stations, cable programming networks, and pay-per-view services. The study shall investigate and analyze, on a sport-by-sport basis, trends in the migration of such programming from carriage by broadcast stations to carriage over cable programming networks and pay-per-view systems, including the economic causes and the economic and social consequences of such trends.

(b) **REPORT ON STUDY.**—The Federal Communications Commission shall, on or before July 1, 1993, and July 1, 1994, submit an interim and a final report, respectively, on the results of the study required by subsection (a) to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. Such reports shall include a statement of the results, on a sport-by-sport basis, of the analysis of the trends required by subsection (a) and such legislative or regulatory recommendations as the Commission considers appropriate.

(c) **ANALYSIS OF PRECLUSIVE CONTRACTS REQUIRED.**—

(1) **ANALYSIS REQUIRED.**—In conducting the study required by subsection (a), the Commission shall analyze the extent to which preclusive contracts between college athletic conferences and video programming vendors have artificially and unfairly restricted the supply of the sporting events of local colleges for broadcast on local television stations. In conducting such analysis, the Commission shall consult with the Attorney General to determine whether and to what extent such preclusive contracts are prohibited by existing statutes. The reports required by subsection (b) shall include separate statements of the results of the analysis required by this subsection, together with such recommendations for legislation as the Commission considers necessary and appropriate.

(2) **DEFINITION.**—For purposes of the subsection, the term “preclusive contract” includes any contract that prohibits—

(A) the live broadcast by a local television station of a sporting event of a local college team that is not carried, on a live basis, by any cable system within the local community served by such local television station; or

(B) the delayed broadcast by a local television station of a sporting event of a local college team that is not carried, on a live or delayed basis, by any cable system within the local community served by such local television station.

**SEC. 27. [47 U.S.C. 521 nt] APPLICABILITY OF ANTITRUST LAWS.**

Nothing in this Act or the amendments made by this Act shall be construed to alter or restrict in any manner the applicability of any Federal or State antitrust law.

**Sec. 28      CABLE TELEVISION CONSUMER PROTECTION & COMPETITION      276**

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**SEC. 28. [47 U.S.C. 325 nt] EFFECTIVE DATE.**

Except where otherwise expressly provided, the provisions of this Act and the amendments made thereby shall take effect 60 days after the date of enactment of this Act.

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**TELECOMMUNICATIONS AUTHORIZATION ACT OF 1992**



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March 15, 2012

**TELECOMMUNICATIONS AUTHORIZATION ACT OF 1992**

[As Amended Through P.L. ???-???, Enacted ???]

[Checking P.L. 109-459, Enacted December 22, 2006]

AN ACT To authorize appropriations for the National Telecommunications and Information Administration, and for other purposes.

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Telecommunications Authorization Act of 1992”.<sup>1</sup>

\* \* \* \* \*

**TITLE II—FEDERAL COMMUNICATIONS COMMISSION**

\* \* \* \* \*

[Sections 201 to 209 contained amendments to the Communications Act of 1934.]

**SEC. 211. REVIEW OF LICENSE TRANSFER.**

(a) **REQUIREMENT FOR HEARING.**—The Federal Communications Commission shall not approve any assignment or transfer of control of a license held by any corporation identified in subsection (b) without first holding a full hearing on the record, with notice and opportunity for comment.

(b) **APPLICABILITY.**—Subsection (a) applies to any corporation holding a television broadcast license, the transfer of which was approved by the Federal Communications Commission on November 14, 1985, and which is a corporation owned or controlled directly or indirectly by a corporation organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(c) **REPORT TO CONGRESS.**—The Federal Communications Commission shall submit a report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate concerning the proposed transfer 30 days prior to authorizing any such transfer. The report required by this subsection shall include a review of the consistency of such transfer with the Commission’s minority ownership policies.

(d) **WAIVER.**—The requirements of subsections (a) and (c) shall not apply in any case in which the Native Regional corporation

<sup>1</sup> Public Law 102-538, 106 Stat. 3533, approved Oct. 27, 1992.

**Sec. 214**                      **TELECOMMUNICATIONS AUTHORIZATION ACT OF 1992**                      **280**

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identified in subsection (b) requests in writing that this section be waived by the Federal Communications Commission.

\*                      \*                      \*                      \*                      \*                      \*

[Section 212 contained amendments to section 6 of the Federal Communications Commission Authorization Act of 1988 which is printed elsewhere in this compilation.]

[Section 213 was repealed by section 3 of the Call Home Act of 2006 (Public Law 109-459; 120 Stat. 3400)]

**SEC. 214. [47 U.S.C. 303 note] AM RADIO IMPROVEMENT STANDARD.**

The Federal Communications Commission shall—

(1) within 60 days after the date of enactment of this Act, initiate a rulemaking to adopt a single AM radio stereophonic transmitting equipment standard that specifies the composition of the transmitted stereophonic signal; and

(2) within one year after such date of enactment, adopt such standard.



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**NATIONAL TELECOMMUNICATIONS AND INFORMATION  
ADMINISTRATION AUTHORIZATION, FISCAL YEARS  
1990 AND 1991**

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March 15, 2012

**NATIONAL TELECOMMUNICATIONS AND INFORMATION  
ADMINISTRATION AUTHORIZATION, FISCAL YEARS  
1990 AND 1991**<sup>1</sup>

AN ACT To authorize appropriations for activities of the National Telecommunications and Information Administration for Fiscal Years 1990 and 1991

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there is authorized to be appropriated for activities of the National Telecommunications and Information Administration \$14,554,000 for fiscal year 1990 and \$18,000,000 for fiscal year 1991, together with such sums as may be necessary for increases resulting from adjustments in salary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs, for fiscal year 1991.

SEC. 2. (a) The Congress finds that—

(1) the Pacific Ocean region is of strategic and economic importance to the United States;

(2) other nations, especially Japan, are seeking to increase their influence in this region;

(3) because the Pacific Basin communities are geographically isolated and because many are relatively poor, they are in great need of quality, low-cost communications services to maintain contact among themselves and with other countries;

(4) from 1971 until 1985, such communications needs were satisfied by the Pan-Pacific Educational and Cultural Experiments by Satellite Program (hereinafter referred to as the "PEACESAT Program") operating over the ATS-1 satellite of the National Aeronautics and Space Administration;

(5) the ATS-1 satellite ran out of station-keeping fuel in 1985 and has provided only intermittent service since then;

(6) the Act entitled "An Act to provide authorization of appropriations for activities of the National Telecommunications and Information Administration", approved November 3, 1988 (Public Law 100-584; 102 Stat. 2970), authorized \$3,400,000 in funding during fiscal years 1988 and 1989 for re-establishing the communications network of the PEACESAT Program;

(7) Congress appropriated \$1,700,000 for fiscal year 1988 and \$200,000 for fiscal year 1989 for the purposes of re-establishing the communications network of the PEACESAT Program;

(8) in fiscal years 1988 and 1989, significant progress was made to ensure resumption of this vital communications service by repairing earth terminals in the Pacific communities, by identifying the short-term and long-term needs of the residents of these communities, and by acquiring the use of the GOES-3 satellite owned by the National Oceanic and Atmospheric Ad-

<sup>1</sup>This Act is Public Law 101-555, Nov. 15, 1990 (104 Stat. 2758).

ministration, which is expected to provide service from 1990 to 1994;

(9) because these activities exhausted the funds previously appropriated for the PEACESAT program, Congress authorized to be appropriated \$1,000,000 for fiscal year 1990 and such sums as necessary for fiscal year 1991 for use by the Secretary of Commerce in the negotiation for and acquisition of satellite capacity and equipment under subsection (c)(1) of this section and the management and operation of satellite communications services under subsection (c)(2) of this section;

(10) while no funds were appropriated for fiscal year 1990 because of the availability of carry-over funds, Congress appropriated \$1,000,000 for fiscal year 1991 for the ongoing maintenance and operation of the GOES-3 satellite, for the administration of the PEACESAT program, for the acquisition and installation of earth stations and the training of engineers to operate the Earth stations, and for the study of a long-term solution to the satellite needs of the PEACESAT program;

(11) with these funds, the PEACESAT program has been reestablished, over 20 new Earth terminals have been installed (some at the expense of the individual user groups), and the use of the PEACESAT network is expanding;

(12) while the PEACESAT program has now been reestablished, additional funding continues to be necessary for the ongoing administrative and operational expenses of the PEACESAT program and especially for the acquisition of satellite capacity after 1994;

(13) the importance of the PEACESAT program to the educational and cultural communications in the Pacific Ocean region makes it imperative that the Secretary of Commerce and the PEACESAT users explore every available option for long-term satellite capacity, including the possibility of using foreign-owned satellites or engaging in joint ventures with foreign entities to satisfy these long-term needs for transmission capacity; and

(14) whether or not a domestic or foreign-owned satellite is used for transmission, it is essential to the achievement of United States policy goals that the headquarters, management, and operation of the PEACESAT program be located and conducted in the United States.

(b) It is the purpose of this section to assist in the acquisition of satellite communications services until viable alternatives are available and to provide interim funding in order that the PEACESAT Program may again serve the educational, medical, and cultural needs of the Pacific Basin communities.

(c)(1) The Secretary of Commerce shall expeditiously negotiate for and acquire satellite space segment capacity and related ground segment equipment to provide communications services for former users of the ATS-1 satellite of the National Aeronautics and Space Administration.

(2)(A) The Secretary of Commerce shall provide to the manager of the PEACESAT Program such funds, from appropriations authorized under subsection (d) of this section, as the Secretary considers necessary to manage the operation of the satellite commu-

nications services provided with the capacity and equipment acquired under this subsection.

(B) The recipient of funds under subparagraph (A) of this paragraph shall keep such records as may reasonably be necessary to enable the Secretary of Commerce to conduct an effective audit of such funds.

(C) The Secretary of Commerce and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of such recipient that are pertinent to the funds received under subparagraph (A) of this paragraph.

(d) There are authorized to be appropriated \$400,000 for fiscal year 1992 and \$1,500,000 for fiscal year 1993 for use by the Secretary of Commerce in the negotiation for and acquisition of capacity and equipment under subsection (c)(1) of this section and the management of the operation of satellite communications services under subsection (c)(2) of this section. Sums appropriated pursuant to this subsection may be used by the Secretary of Commerce to cover administrative costs associated with the provisions of this section.

(e) The Secretary of Commerce shall consult with appropriate departments and agencies of the Federal Government, representatives of the PEACESAT Program, and other affected parties regarding the development of a long-term solution to the communications needs of the Pacific Ocean region. Within one year after the date of enactment of this Act, the Secretary of Commerce shall report to the Congress regarding such consultation.

SEC. 3. (a) It is the purpose of this section to improve the ability of rural health providers to use communications to obtain health information and to consult with others concerning the delivery of patient care. Such enhanced communications ability may assist in—

(1) improving and extending the training of rural health professionals; and

(2) improving the continuity of patient care in rural areas.

(b) The Secretary of Commerce, in conjunction with the Secretary of Health and Human Services, shall establish an advisory panel (hereafter in this section referred to as the "Panel") to develop recommendations for the improvement of rural health care through the collection of information needed by providers and the improvement in the use of communications to disseminate such information.

(c) The Panel shall be composed of individuals from organizations with rural constituencies and practitioners from health care disciplines, representatives of the National Library of Medicine, and representatives of different health professions schools, including nurse practitioners.

(d) The Panel may select consultants to provide advice to the Panel regarding the types of information that rural health care practitioners need, the procedures to gather and disseminate such information, and the types of communications equipment and training needed by rural health care practitioners to obtain access to such information.

(e) Not later than 1 year after the Panel is established under subsection (b), the Secretary of Commerce shall prepare and submit, to the Committee on Commerce, Science, and Transportation and the Committee on Labor and Human Resources of the Senate and to the Committee on Energy and Commerce of the House of Representatives, a report summarizing the recommendations made by the Panel under subsection (b).

(f) There is authorized to be appropriated to the Secretary of Commerce to carry out this section \$1,000,000 to remain available until expended.

**【Sec. 4 contained amendments to section 226 of the Communication Act of 1934.】**

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**TELEVISION PROGRAM IMPROVEMENT ACT OF 1990**

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March 15, 2012



**TELEVISION PROGRAM IMPROVEMENT ACT OF 1990<sup>1</sup>**

**TITLE V—TELEVISION PROGRAM  
IMPROVEMENT**

**SEC. 501. [47 U.S.C. 303c] TELEVISION PROGRAM IMPROVEMENT.**

(a) **SHORT TITLE.**—This section may be cited as the “Television Program Improvement Act of 1990”.

(b) **DEFINITIONS.**—For purposes of this section—

(1) the term “antitrust laws” has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 applies to unfair methods of competition;

(2) the term “person in the television industry” means a television network, any entity which produces programming (including theatrical motion pictures) for telecasting or telecasts programming, the National Cable Television Association, the Association of Independent Television Stations, Incorporated, the National Association of Broadcasters, the Motion Picture Association of America, the Community Antenna Television Association, and each of the networks’ affiliate organizations, and shall include any individual acting on behalf of such person; and

(3) the term “telecast” means—

(A) to broadcast by a television broadcast station; or

(B) to transmit by a cable television system or a satellite television distribution service.

(c) **EXEMPTION.**—The antitrust laws shall not apply to any joint discussion, consideration, review, action, or agreement by or among persons in the television industry for the purpose of, and limited to, developing and disseminating voluntary guidelines designed to alleviate the negative impact of violence in telecast material.

(d) **LIMITATIONS.**—(1) The exemption provided in subsection (c) shall not apply to any joint discussion, consideration, review, action, or agreement which results in a boycott of any person.

(2) The exemption provided in subsection (c) shall apply only to any joint discussion, consideration, review, action, or agreement engaged in only during the 3-year period beginning on the date of the enactment of this section.

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<sup>1</sup>This Act was title V of the Judicial Improvements Act of 1990, Public Law 101-650, 104 Stat. 5089, approved Dec. 1, 1990.

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**FEDERAL COMMUNICATIONS COMMISSION  
AUTHORIZATION ACT OF 1988**

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March 15, 2012

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March 15, 2012

**FEDERAL COMMUNICATIONS COMMISSION  
AUTHORIZATION ACT OF 1988<sup>1</sup>**

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OLDER AMERICANS PROGRAM

SEC. 6. [47 U.S.C. 154 note] (a) During fiscal years 1992 and 1993, the Federal Communications Commission is authorized to make grants to, or enter into cooperative agreements with, private nonprofit organizations designated by the Secretary of Labor under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 et seq) to utilize the talents of older Americans in programs authorized by other provisions of law administered by the Commission (and consistent with such provisions of law) in providing technical and administrative assistance for projects related to the implementation, promotion, or enforcement of the regulations of the Commission.

(b) Prior to awarding any grant or entering into any agreement under subsection (a), the Office of the Managing Director of the Commission shall certify to the Commission that such grant or agreement will not—

(1) result in the displacement of individuals currently employed by the Commission;

(2) result in the employment of any individual when any other individual is on layoff status from the same or a substantially equivalent job within the jurisdiction of the Commission; or

(3) affect existing contracts for services.

(c) Participants in any program under a grant or cooperative agreement pursuant to this section shall—

(1) execute a signed statement with the Commission in which such participants certify that they will adhere to the standards of conduct prescribed for regular employees of the Commission, as set forth in part 19 of title 47, Code of Federal Regulations; and

(2) execute a confidential statement of employment and financial interest (Federal Communications Commission Form A-54) prior to commencement of work under the program.

Failure to comply with the terms of the signed statement described in paragraph (1) shall result in termination of the individual under the grant or agreement.

(d) Nothing in this section shall be construed to permit employment of any such participant in any decisionmaking or policymaking position.

(e) Grants or agreements under this section shall be subject to prior appropriation Acts.

<sup>1</sup>Public Law 100-594, 102 Stat. 3021, approved Nov. 3, 1988.

## CONGRESSIONAL COMMUNICATIONS

SEC. 7. (a) The prohibition in section 1.1203(a) of title 47, Code of Federal Regulations, shall not apply to any of the types of presentations listed in section 1.1204(b) of such title nor to any presentation made by a member or officer of Congress, or a staff person of any such member or officer, acting in his or her official capacity, in—

- (1) any non-restricted proceeding under section 1.1206(b) of such title;
- (2) any exempt proceeding under section 1.1204(a)(2) of such title not involving the allotment of a channel in the radio broadcast or television broadcast services; or
- (3) any exempt proceeding under section 1.1204 (a)(4) through (a)(6) of such title.

(b) Each reference in subsection (a) of this section to a provision of title 47, Code of Federal Regulations, applies to such provision as in effect on the date of enactment of this Act. No subsequent amendment of the rules or regulations in such title shall have the effect of prohibiting any presentation of the kind that would be permitted under subsection (a) of this section on the date of enactment of this Act.

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## HAWAII MONITORING STATION

SEC. 9. [47 U.S.C. 154 note] (a) The Federal Communications Commission is authorized to expend such funds as may be required in fiscal years 1991, 1992, 1993, and 1994, out of its appropriations for such fiscal years, to relocate within the State of Hawaii the Hawaii Monitoring Station presently located in Honolulu (Waipahu), including all necessary expenses for—

- (1) acquisition of real property;
- (2) options to purchase real property;
- (3) architectural and engineering services;
- (4) construction of a facility at the new location;
- (5) transportation of equipment and personnel;
- (6) lease-back or real property and related personal property at the present location of the Monitoring Station pending acquisition of real property and construction of a facility at a new location; and
- (7) the re-establishment, if warranted by the circumstances, of a downtown office to serve the residents of Honolulu.

(b) The Federal Communications Commission shall declare as surplus property, for disposition by the General Services Administration, the real property (including the structures and fixtures) and related personal property which are at the present location of the Hawaii Monitoring Station and which will not be relocated. Notwithstanding sections 203 and 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484 and 485), the General Services Administration shall sell such real and related personal property on an expedited basis, including provisions for leaseback as required, and shall reimburse the Commission from

the net proceeds of the sale for all of the expenditures of the Commission associated with such relocation of the Monitoring Station. Any such reimbursed funds received by the Commission shall remain available until expended.

(c) The net proceeds of the sale of such real and related property, less any funds reimbursed to the Federal Communications Commission pursuant to subsection (b), and less normal and reasonable charges by the General Services Administration for costs associated with such sale, shall be deposited in the general funds of the Treasury.

(d) The Hawaii Monitoring Station shall continue its full operations at its present location until a new facility has been built and is fully operational at a new location.

(e) The Federal Communications Commission and the General Services Administration shall not take any action under this section committing any funds disposing of any property in connection with the relocation of the Hawaii Monitoring Station until—

(1) The Chairman of the Commission and the Administrator of General Services have jointly prepared and submitted, to the Committee on Appropriations, the Committee on Commerce, Science, and Transportation, and the Committee on Governmental Affairs of the Senate, and the Committee on Appropriations, the Committee on Energy and Commerce and the Committee on Government Operations of the House of Representatives, a letter or other document setting forth in detail the plan and procedures for such relocation which will reasonably carry out, in an expeditious manner, the provisions of this section but will not disrupt or defer any programs or regulatory activities of the Commission or adversely affect any employee of the Commission (other than those at the Monitoring Station who may be required to transfer to another location) through the use of appropriations for the Commission, in fiscal years 1989 and 1990; and

(2) at least 30 calendar days have passed since the receipt of such document by such committees.

#### SENSE OF CONGRESS

SEC. 10. (a) The Congress finds that—

(1) more than four hundred and thirty-five thousand four hundred radio amateurs in the United States are licensed by the Federal Communications Commission upon examination in radio regulations, technical principles, and the international Morse code;

(2) by international treaty and the Federal Communications Commission regulation, the amateur is authorized to operate his or her station in a radio service of intercommunications and technical investigations solely with a personal aim and without pecuniary interest;

(3) among the basic purposes for the Amateur Radio Service is the provision of voluntary, noncommercial radio service, particularly emergency communications; and

(4) volunteer amateur radio emergency communications services have consistently and reliably been provided before,

during, and after floods, tornadoes, forest fires, earthquakes, blizzards, train wrecks, chemical spills, and other disasters.

(b) It is the sense of the Congress that—

(1) it strongly encourages and supports the Amateur Radio Service and its emergency communications efforts; and

(2) Government agencies shall take into account the valuable contributions made by amateur radio operators when considering actions affecting the Amateur Radio Service.