

107TH CONGRESS
2D SESSION

S. 2075

To facilitate the availability of electromagnetic spectrum for the deployment of wireless based services in rural areas, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 9, 2002

Mr. BAUCUS introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To facilitate the availability of electromagnetic spectrum for the deployment of wireless based services in rural areas, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Rural Electromagnetic
5 Spectrum Access Act of 2002”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

1 (1) The Federal Communications Commission
2 routinely uses competitive bidding to distribute elec-
3 tromagnetic spectrum to the public sector.

4 (2) In establishing and carrying out competitive
5 bidding to distribute spectrum, the Commission fails
6 to ensure the bidding process results in upholding
7 the clear meaning of the law guaranteeing rural tele-
8 phone companies and rural areas the ability to effec-
9 tively participate in and benefit from such a method
10 of distributing the spectrum.

11 (3) The approach of the Commission to com-
12 petitive bidding for the distribution of spectrum en-
13 sures, for the most part, that entities with signifi-
14 cant financial strength, or organizations that are
15 backed by such entities, acquire a majority of avail-
16 able licenses while rural telephone companies lacking
17 significant resources are denied their statutory right
18 to effectively participate in the competitive bidding.

19 (4) The Commission, through a broadbrush ap-
20 plication of its rules to all potential bidders for elec-
21 tromagnetic spectrum licenses, routinely fails to en-
22 sure that small businesses, rural telephone compa-
23 nies, and businesses owned by members of minority
24 groups and women, individually and independent of
25 one another, enjoy the statutorily mandated oppor-

1 tunity to participate in bidding for such licenses,
2 and ultimately to acquire such licenses.

3 (5) The approach of the Commission to resolv-
4 ing such inequities—through post-auction methods
5 such as disaggregation and partitioning of licenses
6 and the establishment of build-out requirements
7 which do not in fact require service to rural areas—
8 fails to meet the statutory mandate of equitable, ef-
9 fective, and prompt distribution of spectrum licenses
10 and related services.

11 (6) The approach of the Commission to com-
12 petitive bidding for the distribution of spectrum re-
13 sults in excessive concentration of licenses among a
14 few licensees, leading to timely deployment in urban
15 areas and a delay or denial of service in rural areas.

16 (7) The economic and national security of the
17 United States requires that any competitive bidding
18 for the distribution of the spectrum should—

19 (A) provide for the wide dissemination of
20 licenses among a wide variety of applicants, in-
21 cluding rural telephone companies;

22 (B) be equitable, effective, and prompt;

23 (C) result in the acquisition of licenses by
24 a wide variety of applicants, including rural
25 telephone companies;

1 (D) promote the rapid deployment of spec-
 2 trum-based services in rural areas served by
 3 rural telephone companies.

4 (b) PURPOSE.—It is the purpose of this Act to re-
 5 quire that the Commission take immediate steps to ensure
 6 that its competitive bidding systems distribute electro-
 7 magnetic spectrum in a manner that complies completely
 8 with the clear meaning of section 309(j) of the Commu-
 9 nications Act (47 U.S.C. 309(j)), including the provisions
 10 of that section that ensure that particular attention is
 11 given to the ability of rural telephone companies to partici-
 12 pate in competitive bidding to distribute spectrum.

13 **SEC. 3. AVAILABILITY OF ELECTROMAGNETIC SPECTRUM**
 14 **FOR WIRELESS BASED SERVICES IN RURAL**
 15 **AREAS.**

16 (a) RESTATEMENT OF CERTAIN AUTHORITY ON
 17 COMPETITIVE BIDDING WITH REQUIREMENTS ON WIRE-
 18 LESS BASED SERVICES IN RURAL AREAS.—Section 309(j)
 19 of the Communications Act of 1934 (47 U.S.C. 309(j))
 20 is amended by striking paragraphs (3) and (4) and insert-
 21 ing the following new paragraphs (3) and (4):

22 “(3) GEOGRAPHIC AREA LICENSING.—

23 “(A) IN GENERAL.—In order to facilitate
 24 the deployment of wireless based services in
 25 rural areas, the Commission shall, when more

than one license is available (as determined by the Commission) within a single block of the electromagnetic spectrum, award at least one license in such block of spectrum for a rural service area (RSA) or similarly sized geographic area.

“(B) CONSTRUCTION OF REQUIREMENT.— Nothing in subparagraph (A) shall be construed to prohibit the Commission from—

“(i) awarding spectrum for any particular rural service area or similarly sized geographic area in addition to the spectrum awarded under that paragraph; or

“(ii) making spectrum available for rural service areas or similarly sized geographic areas when only one license is available within a single block of spectrum.

“(4) ENSURING PUBLIC ACCESS TO SPECTRUM.—

“(A) IN GENERAL.—For each class of licenses or permits that the Commission grants through the use of a competitive bidding system, the Commission shall, by regulation, establish a competitive bidding methodology. The Commission shall seek to design and test mul-

1 tiple alternative methodologies under appro-
2 priate circumstances. The Commission shall, di-
3 rectly or by contract, provide for the design and
4 conduct (for purposes of testing) of competitive
5 bidding using a contingent combinatorial bid-
6 ding system that permits prospective bidders to
7 bid on combinations or groups of licenses in a
8 single bid and to enter multiple alternative bids
9 within a single bidding round. In identifying
10 classes of licenses and permits to be issued by
11 competitive bidding, in specifying eligibility and
12 other characteristics of such licenses and per-
13 mits, and in designing the methodologies for
14 use under this subsection, the Commission shall
15 include safeguards to protect the public interest
16 in the use of the spectrum.

17 “(B) AVOIDING EXCESSIVE CONCENTRA-
18 TION OF LICENSES.—The Commission shall
19 seek to promote the purposes of paragraphs (1)
20 and (2) and the following objectives:

21 “(i) The development and rapid de-
22 ployment of new technologies, products,
23 and services for the benefit of the public,
24 including those residing in rural areas,
25 without administrative or judicial delays.

1 “(ii) Promoting economic opportunity
2 and competition and ensuring that new
3 and innovative technologies are readily ac-
4 cessible to the American people by avoiding
5 excessive concentration of licenses and by
6 disseminating licenses among a wide vari-
7 ety of applicants, including small busi-
8 nesses, rural telephone companies, and
9 businesses owned by members of minority
10 groups and women.

11 “(iii) Recovery for the public of a por-
12 tion of the value of the public spectrum re-
13 source made available for commercial use
14 and avoidance of unjust enrichment
15 through the methods employed to award
16 uses of that resource.

17 “(iv) Efficient and intensive use of the
18 electromagnetic spectrum.

19 “(v) Ensuring that, in the scheduling
20 of any competitive bidding under this sub-
21 section, an adequate period is allowed—

22 “(I) before issuance of bidding
23 rules, to permit notice and comment
24 on proposed auction procedures; and

1 “(II) after issuance of bidding
2 rules, to ensure that interested parties
3 have a sufficient time to develop busi-
4 ness plans, assess market conditions,
5 and evaluate the availability of equip-
6 ment for the relevant services.

7 “(C) AVAILABILITY OF WIRELESS BASED
8 SERVICES IN RURAL AREAS.—

9 “(i) STUDIES.—Not later than 12
10 months after the date of the enactment of
11 the Rural Electromagnetic Spectrum Ac-
12 cess Act of 2002, and every 24 months
13 thereafter, the Commission shall conduct a
14 study to determine the following:

15 “(I) The extent to which licenses
16 and permits have been awarded to fa-
17 cilitate the deployment of wireless
18 based services in rural areas.

19 “(II) The extent to which licenses
20 and permits for wireless based serv-
21 ices have been awarded to small busi-
22 nesses, rural telephone companies,
23 and businesses owned by minority
24 groups or women.

1 “(III) The extent to which wire-
2 less based services are available in
3 rural areas pursuant to licenses and
4 permits referred to in subclauses (I)
5 and (II).

6 “(ii) REPORT.—The Commission shall
7 submit to Congress a report on each study
8 conducted under clause (i).

9 “(iii) ACTIONS.—If the Commission
10 determines as a result of a study under
11 clause (i) that financial or regulatory bar-
12 riers are impeding the availability of wire-
13 less based services in rural areas (whether
14 through limitation on the capacity of eligi-
15 ble entities to bid for licenses or permits,
16 limitation on the capacity of licensees or
17 permittees to deploy wireless based serv-
18 ices, or otherwise), the Commission shall,
19 to the maximum extent practicable, take
20 appropriate actions to remove such bar-
21 riers.

22 “(D) DESIGN OF SYSTEMS OF COMPETI-
23 TIVE BIDDING.—In prescribing regulations pur-
24 suant to subparagraph (A), the Commission
25 shall—

1 “(i) consider alternative payment
2 schedules and methods of calculation, in-
3 cluding lump sums or guaranteed install-
4 ment payments, with or without royalty
5 payments, or other schedules or methods
6 that promote the objectives described in
7 subparagraph (B)(ii), and combinations of
8 such schedules and methods;

9 “(ii) develop requirements, including
10 deadlines and penalties, for the prompt de-
11 livery of wireless based services to rural
12 areas in order to prevent the stockpiling or
13 warehousing of spectrum by licensees or
14 permittees;

15 “(iii) consistent with the public inter-
16 est, convenience, and necessity, the pur-
17 poses of this Act, and the characteristics of
18 the proposed service, prescribe area des-
19 ignations and bandwidth assignments that
20 promote (I) an equitable distribution of li-
21 censes and services among geographic
22 areas, (II) economic opportunity for a wide
23 variety of applicants, including small busi-
24 nesses, rural telephone companies, and
25 businesses owned by members of minority

1 groups and women, and (III) investment in
2 and rapid deployment of new technologies
3 and services;

4 “(iv) ensure that small businesses,
5 rural telephone companies, and businesses
6 owned by members of minority groups and
7 women are all given the opportunity to
8 participate in the provision of spectrum-
9 based services, and, for such purposes,
10 consider the use of tax certificates, bidding
11 preferences, bidding credits, and other pro-
12 cedures;

13 “(v) require such transfer disclosures
14 and antitrafficking restrictions and pay-
15 ment schedules as may be necessary to
16 prevent unjust enrichment as a result of
17 the methods employed to issue licenses and
18 permits; and

19 “(vi) prescribe methods by which a
20 reasonable reserve price will be required, or
21 a minimum bid will be established, to ob-
22 tain any license or permit being assigned
23 pursuant to the competitive bidding, unless
24 the Commission determines that such a re-

1 serve price or minimum bid is not in the
2 public interest.

3 “(E) FACILITATION OF DEPLOYMENT OF
4 WIRELESS BASED SERVICES IN RURAL AREAS.—

5 “(i) REPORTS ON DEPLOYMENT.—The
6 Commission shall require each licensee or
7 permittee of a license or permit granted
8 under this subsection to submit to the
9 Commission each year a map or other
10 analysis showing the following:

11 “(I) The area covered by the li-
12 cense or permit.

13 “(II) The portions of such area
14 in which infrastructure to provide
15 wireless based services under the li-
16 cense or permit is in place, and such
17 services are commercially available.

18 “(ii) DEPLOYMENT THROUGH FIRST
19 HALF OF LICENSE PERIOD.—Not later
20 than the end of the first half of the period
21 of a license or permit granted under this
22 subsection for the deployment of services
23 to a rural service area, or a similarly sized
24 geographic area within a larger license or
25 permit area, the Commission shall, uti-

1 lizing maps or other analysis under clause
2 (i), determine whether or not the licensee
3 or permittee—

4 “(I) has made wireless based
5 services available throughout such
6 rural service area or similar geo-
7 graphic area, as the case may be; or

8 “(II) has demonstrated a com-
9 mitment to provide wireless based
10 services in such rural service area or
11 similarly sized geographic area, as the
12 case may be, in a substantial portion
13 of such area.

14 “(iii) SUBSTANTIAL PORTION.—For
15 purposes of clause (ii), a substantial por-
16 tion of an area shall consist of both, taking
17 into account—

18 “(I) the geographic portion of
19 such area that is capable of receiving
20 the services to be available through
21 the license or permit; and

22 “(II) the portion of the popu-
23 lation residing in such area who would
24 be capable of receiving such services.

1 “(iv) ACTION ON NEGATIVE DETER-
2 MINATIONS.—If the Commission deter-
3 mines under clause (ii) that a licensee or
4 permittee has not satisfied either of the ac-
5 tions described by subclauses (I) and (II)
6 of that clause in a rural service area or
7 similarly sized geographic area, the Com-
8 mission shall permit a party which peti-
9 tions the Commission to provide wireless
10 based services in such area to provide such
11 services in such area. In the absence of
12 such a petition with respect to an area, the
13 Commission shall make such services avail-
14 able to the public in such area through
15 mandatory partitioning of such area, the
16 disaggregation of the portion of such area
17 that is unserved by wireless based services
18 from the license or permit, or both.

19 “(v) DEPLOYMENT THROUGH END OF
20 LICENSE PERIOD.—If at the end of the pe-
21 riod of a license or permit granted under
22 this subsection for the deployment of wire-
23 less based services to a rural service area,
24 or a similarly sized geographic area within
25 a larger license or permit area, the Com-

mission determines that such services are not available in such rural service area or similarly sized geographic area, as the case may be, the Commission will reclaim such license or permit and, subject to clause (vi), make such license or permit available through use of a competitive bidding system under this subsection.

“(vi) PREFERENCE FOR ORIGINAL LICENSEES.—In the case of an action under clause (iii) or (iv), the Commission may grant the right of first refusal to the original licensee or permittee, as the case may be, if the Commission determines that such licensee or permittee has in place an appropriate plan for the immediate and complete deployment of wireless based services in the area covered by the action under such clause.”.

(b) CONFORMING AMENDMENTS.—Paragraph (7) of that section is amended—

(1) in subparagraph (A), by striking “paragraph (4)(C)” and inserting “paragraph (4)(D)(iii)”; and

- 1 (2) in subparagraph (B), by striking “para-
2 graph (4)(A)” and inserting “paragraph (4)(D)(i)”.

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