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2^D SESSION

H. R. 5419

IN THE SENATE OF THE UNITED STATES

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Received

AN ACT

To amend the National Telecommunications and Information Administration Organization Act to facilitate the re-allocation 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.

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

TITLE I—E-911**2 SEC. 101. SHORT TITLE.**

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

6 SEC. 102. FINDINGS.

7 The Congress finds that—

8 (1) for the sake of our Nation’s homeland secu-
9 rity and public safety, a universal emergency tele-
10 phone number (911) that is enhanced with the most
11 modern and state-of-the-art telecommunications ca-
12 pabilities possible should be available to all citizens
13 in all regions of the Nation;

14 (2) enhanced emergency communications re-
15 quire Federal, State, and local government resources
16 and coordination;

17 (3) any funds that are collected from fees im-
18 posed on consumer bills for the purposes of funding
19 911 services or enhanced 911 should go only for the
20 purposes for which the funds are collected; and

21 (4) enhanced 911 is a high national priority
22 and it requires Federal leadership, working in co-
23 operation with State and local governments and with
24 the numerous organizations dedicated to delivering
25 emergency communications services.

1 **SEC. 103. PURPOSES.**

2 The purposes of this title are—

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

5 (2) to ensure that funds collected on tele-
6 communications bills for enhancing emergency 911
7 services are used only for the purposes for which the
8 funds are being collected.

9 **SEC. 104. COORDINATION OF E-911 IMPLEMENTATION.**

10 Part C of title I of the National Telecommunications
11 and Information Administration Organization Act (47
12 U.S.C. 901 et seq.) is amended by adding at the end the
13 following:

14 **“SEC. 158. COORDINATION OF E-911 IMPLEMENTATION.**

15 “(a) E-911 IMPLEMENTATION COORDINATION OF-
16 FICE.—

17 “(1) ESTABLISHMENT.—The Assistant Sec-
18 retary and the Administrator of the National High-
19 way Traffic Safety Administration shall—

20 “(A) establish a joint program to facilitate
21 coordination and communication between Fed-
22 eral, State, and local emergency communica-
23 tions systems, emergency personnel, public safe-
24 ty organizations, telecommunications carriers,
25 and telecommunications equipment manufactur-

1 ers and vendors involved in the implementation
2 of E-911 services; and

3 “(B) create an E-911 Implementation Co-
4 ordination Office to implement the provisions of
5 this section.

6 “(2) MANAGEMENT PLAN.—The Assistant Sec-
7 retary and the Administrator shall jointly develop a
8 management plan for the program established under
9 this section. Such plan shall include the organiza-
10 tional structure and funding profiles for the 5-year
11 duration of the program. The Assistant Secretary
12 and the Administrator shall, within 90 days after
13 the date of enactment of this Act, submit the man-
14 agement plan to the Committees on Energy and
15 Commerce and Appropriations of the House of Rep-
16 resentatives and the Committees on Commerce,
17 Science, and Transportation and Appropriations of
18 the Senate.

19 “(3) PURPOSE OF OFFICE.—The Office shall—

20 “(A) take actions, in concert with coordi-
21 nators designated in accordance with subsection
22 (b)(3)(A)(ii), to improve such coordination and
23 communication;

24 “(B) develop, collect, and disseminate in-
25 formation concerning practices, procedures, and

1 technology used in the implementation of E-
2 911 services;

3 “(C) advise and assist eligible entities in
4 the preparation of implementation plans re-
5 quired under subsection (b)(3)(A)(iii);

6 “(D) receive, review, and recommend the
7 approval or disapproval of applications for
8 grants under subsection (b); and

9 “(E) oversee the use of funds provided by
10 such grants in fulfilling such implementation
11 plans.

12 “(4) REPORTS.—The Assistant Secretary and
13 the Administrator shall provide a joint annual report
14 to Congress by the first day of October of each year
15 on the activities of the Office to improve coordina-
16 tion and communication with respect to the imple-
17 mentation of E-911 services.

18 “(b) PHASE II E-911 IMPLEMENTATION GRANTS.—

19 “(1) MATCHING GRANTS.—The Assistant Sec-
20 retary and the Administrator, after consultation with
21 the Secretary of Homeland Security and the Chair-
22 man of the Federal Communications Commission,
23 and acting through the Office, shall provide grants
24 to eligible entities for the implementation and oper-
25 ation of Phase II E-911 services.

1 “(2) MATCHING REQUIREMENT.—The Federal
2 share of the cost of a project eligible for a grant
3 under this section shall not exceed 50 percent. The
4 non-Federal share of the cost shall be provided from
5 non-Federal sources.

6 “(3) COORDINATION REQUIRED.—In providing
7 grants under paragraph (1), the Assistant Secretary
8 and the Administrator shall require an eligible entity
9 to certify in its application that—

10 “(A) in the case of an eligible entity that
11 is a State government, the entity—

12 “(i) has coordinated its application
13 with the public safety answering points (as
14 such term is defined in section 222(h)(4)
15 of the Communications Act of 1934) lo-
16 cated within the jurisdiction of such entity;

17 “(ii) has designated a single officer or
18 governmental body of the entity to serve as
19 the coordinator of implementation of E-
20 911 services, except that such designation
21 need not vest such coordinator with direct
22 legal authority to implement E-911 serv-
23 ices or manage emergency communications
24 operations;

1 “(iii) has established a plan for the
2 coordination and implementation of E-911
3 services; and

4 “(iv) has integrated telecommuni-
5 cations services involved in the implemen-
6 tation and delivery of phase II E-911 serv-
7 ices; or

8 “(B) in the case of an eligible entity that
9 is not a State, the entity has complied with
10 clauses (i), (iii), and (iv) of subparagraph (A),
11 and the State in which it is located has com-
12 plied with clause (ii) of such subparagraph.

13 “(4) CRITERIA.—The Assistant Secretary and
14 the Administrator shall jointly issue regulations
15 within 180 days after the date of enactment of the
16 ENHANCE 911 Act of 2004, after a public com-
17 ment period of not less than 60 days, prescribing the
18 criteria for selection for grants under this section,
19 and shall update such regulations as necessary. The
20 criteria shall include performance requirements and
21 a timeline for completion of any project to be fi-
22 nanced by a grant under this section.

23 “(c) DIVERSION OF E-911 CHARGES.—

24 “(1) DESIGNATED E-911 CHARGES.—For the
25 purposes of this subsection, the term ‘designated E-

1 911 charges’ means any taxes, fees, or other charges
2 imposed by a State or other taxing jurisdiction that
3 are designated or presented as dedicated to deliver
4 or improve E-911 services.

5 “(2) CERTIFICATION.—Each applicant for a
6 matching grant under this section shall certify to the
7 Assistant Secretary and the Administrator at the
8 time of application, and each applicant that receives
9 such a grant shall certify to the Assistant Secretary
10 and the Administrator annually thereafter during
11 any period of time during which the funds from the
12 grant are available to the applicant, that no portion
13 of any designated E-911 charges imposed by a
14 State or other taxing jurisdiction within which the
15 applicant is located are being obligated or expended
16 for any purpose other than the purposes for which
17 such charges are designated or presented during the
18 period beginning 180 days immediately preceding
19 the date of the application and continuing through
20 the period of time during which the funds from the
21 grant are available to the applicant.

22 “(3) CONDITION OF GRANT.—Each applicant
23 for a grant under this section shall agree, as a con-
24 dition of receipt of the grant, that if the State or
25 other taxing jurisdiction within which the applicant

1 is located, during any period of time during which
2 the funds from the grant are available to the appli-
3 cant, obligates or expends designated E-911 charges
4 for any purpose other than the purposes for which
5 such charges are designated or presented, all of the
6 funds from such grant shall be returned to the Of-
7 fice.

8 “(4) PENALTY FOR PROVIDING FALSE INFOR-
9 MATION.—Any applicant that provides a certification
10 under paragraph (1) knowing that the information
11 provided in the certification was false shall—

12 “(A) not be eligible to receive the grant
13 under subsection (b);

14 “(B) return any grant awarded under sub-
15 section (b) during the time that the certification
16 was not valid; and

17 “(C) not be eligible to receive any subse-
18 quent grants under subsection (b).

19 “(d) AUTHORIZATION; TERMINATION.—

20 “(1) AUTHORIZATION.—There are authorized to
21 be appropriated to the Department of Transpor-
22 tation, for the purposes of grants under the joint
23 program operated under this section with the De-
24 partment of Commerce, not more than
25 \$250,000,000 for each of the fiscal years 2005

1 through 2009, not more than 5 percent of which for
2 any fiscal year may be obligated or expended for ad-
3 ministrative costs.

4 “(2) TERMINATION.—The provisions of this
5 section shall cease to be effective on October 1,
6 2009.

7 “(e) DEFINITIONS.—As used in this section:

8 “(1) OFFICE.—The term ‘Office’ means the E-
9 911 Implementation Coordination Office.

10 “(2) ADMINISTRATOR.—The term ‘Adminis-
11 trator’ means the Administrator of the National
12 Highway Traffic Safety Administration.

13 “(3) ELIGIBLE ENTITY.—

14 “(A) IN GENERAL.—The term ‘eligible en-
15 tity’ means a State or local government or a
16 tribal organization (as defined in section 4(l) of
17 the Indian Self-Determination and Education
18 Assistance Act (25 U.S.C. 450b(l))).

19 “(B) INSTRUMENTALITIES.—Such term in-
20 cludes public authorities, boards, commissions,
21 and similar bodies created by one or more eligi-
22 ble entities described in subparagraph (A) to
23 provide E-911 services.

24 “(C) EXCEPTION.—Such term does not in-
25 clude any entity that has failed to submit the

1 most recently required certification under sub-
2 section (c) within 30 days after the date on
3 which such certification is due.

4 “(4) E-911 SERVICES.—The term ‘E-911 serv-
5 ices’ means both phase I and phase II enhanced 911
6 services, as described in section 20.18 of the Com-
7 mission’s regulations (47 C.F.R. 20.18), as in effect
8 on the date of enactment of the ENHANCE 911
9 Act of 2004, or as subsequently revised by the Fed-
10 eral Communications Commission.

11 “(5) PHASE II E-911 SERVICES.—The term
12 ‘phase II E-911 services’ means only phase II en-
13 hanced 911 services, as described in such section
14 20.18 (47 C.F.R. 20.18), as in effect on such date,
15 or as subsequently revised by the Federal Commu-
16 nications Commission.

17 “(6) STATE.—The term ‘State’ means any
18 State of the United States, the District of Columbia,
19 Puerto Rico, the Northern Mariana Islands, and any
20 territory or possession of the United States.”.

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

23 (a) IN GENERAL.—Within 60 days after the date of
24 enactment of this Act, the Comptroller General shall ini-
25 tiate a study of—

1 (1) the imposition of taxes, fees, or other
2 charges imposed by States or political subdivisions
3 of States that are designated or presented as dedi-
4 cated to improve emergency communications serv-
5 ices, including 911 services or enhanced 911 serv-
6 ices, or related to emergency communications serv-
7 ices operations or improvements; and

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

10 (b) REPORT.—Within 18 months after initiating the
11 study required by subsection (a), the Comptroller General
12 shall transmit a report on the results of the study to the
13 Senate Committee on Commerce, Science, and Transpor-
14 tation and the House of Representatives Committee on
15 Energy and Commerce setting forth the findings, conclu-
16 sions, and recommendations, if any, of the study, includ-
17 ing—

18 (1) the identity of each State or political sub-
19 division that imposes such taxes, fees, or other
20 charges; and

21 (2) the amount of revenues obligated or ex-
22 pended by that State or political subdivision for any
23 purpose other than the purposes for which such
24 taxes, fees, or charges were designated or presented.

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

3 Within 90 days after the date of enactment of this
4 Act, the Federal Communications Commission shall sub-
5 mit a report to the Committee on Energy and Commerce
6 of the House of Representatives and the Committee on
7 Commerce, Science, and Transportation of the Senate de-
8 tailing—

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

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

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

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

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

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

24 (7) actions the Commission has taken to reduce
25 the amount of time a waiver request remains pend-
26 ing; and

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

4 **SEC. 107. FCC REQUIREMENTS FOR CERTAIN TIER III CAR-**
5 **RIERS.**

6 (a) IN GENERAL.—The Federal Communications
7 Commission shall act on any petition filed by a qualified
8 Tier III carrier requesting a waiver of compliance with the
9 requirements of section 20.18(g)(1)(v) of the Commis-
10 sion’s rules (47 C.F.R. 20.18(g)(1)(v)) within 100 days
11 after the Commission receives the petition. The Commis-
12 sion shall grant the waiver of compliance with the require-
13 ments of section 20.18(g)(1)(v) of the Commission’s rules
14 (47 C.F.R. 20.18(g)(1)(v)) requested by the petition if it
15 determines that strict enforcement of the requirements of
16 that section would result in consumers having decreased
17 access to emergency services.

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

1 **TITLE II—SPECTRUM**
2 **RELOCATION**

3 **SEC. 201. SHORT TITLE.**

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

6 **SEC. 202. RELOCATION OF ELIGIBLE FEDERAL ENTITIES**
7 **FOR THE REALLOCATION OF SPECTRUM FOR**
8 **COMMERCIAL PURPOSES.**

9 Section 113(g) of the National Telecommunications
10 and Information Administration Organization Act (47
11 U.S.C. 923(g)) is amended by striking paragraphs (1)
12 through (3) and inserting the following:

13 “(1) ELIGIBLE FEDERAL ENTITIES.—Any Fed-
14 eral entity that operates a Federal Government sta-
15 tion assigned to a band of frequencies specified in
16 paragraph (2) and that incurs relocation costs be-
17 cause of the reallocation of frequencies from Federal
18 use to non-Federal use shall receive payment for
19 such costs from the Spectrum Relocation Fund, in
20 accordance with section 118 of this Act. For pur-
21 poses of this paragraph, Federal power agencies ex-
22 empted under subsection (c)(4) that choose to relo-
23 cate from the frequencies identified for reallocation
24 pursuant to subsection (a), are eligible to receive
25 payment under this paragraph.

1 “(2) ELIGIBLE FREQUENCIES.—The bands of
2 eligible frequencies for purposes of this section are
3 as follows:

4 “(A) the 216–220 megahertz band, the
5 1432–1435 megahertz band, the 1710–1755
6 megahertz band, and the 2385–2390 megahertz
7 band of frequencies; and

8 “(B) any other band of frequencies reallo-
9 cated from Federal use to non-Federal use after
10 January 1, 2003, that is assigned by competi-
11 tive bidding pursuant to section 309(j) of the
12 Communications Act of 1934 (47 U.S.C.
13 309(j)), except for bands of frequencies pre-
14 viously identified by the National Telecommuni-
15 cations and Information Administration in the
16 Spectrum Reallocation Final Report, NTIA
17 Special Publication 95–32 (1995).

18 “(3) DEFINITION OF RELOCATION COSTS.—For
19 purposes of this subsection, the term ‘relocation
20 costs’ means the costs incurred by a Federal entity
21 to achieve comparable capability of systems, regard-
22 less of whether that capability is achieved by relo-
23 cating to a new frequency assignment or by utilizing
24 an alternative technology. Such costs include—

1 “(A) the costs of any modification or re-
2 placement of equipment, software, facilities, op-
3 erating manuals, training costs, or regulations
4 that are attributable to relocation;

5 “(B) the costs of all engineering, equip-
6 ment, software, site acquisition and construc-
7 tion costs, as well as any legitimate and pru-
8 dent transaction expense, including outside con-
9 sultants, and reasonable additional costs in-
10 curred by the Federal entity that are attrib-
11 utable to relocation, including increased recur-
12 ring costs associated with the replacement fa-
13 cilities;

14 “(C) the costs of engineering studies, eco-
15 nomic analyses, or other expenses reasonably
16 incurred in calculating the estimated relocation
17 costs that are provided to the Commission pur-
18 suant to paragraph (4) of this subsection;

19 “(D) the one-time costs of any modifica-
20 tion of equipment reasonably necessary to ac-
21 commodate commercial use of such frequencies
22 prior to the termination of the Federal entity’s
23 primary allocation or protected status, when the
24 eligible frequencies as defined in paragraph (2)
25 of this subsection are made available for private

1 sector uses by competitive bidding and a Fed-
2 eral entity retains primary allocation or pro-
3 tected status in those frequencies for a period
4 of time after the completion of the competitive
5 bidding process; and

6 “(E) the costs associated with the acceler-
7 ated replacement of systems and equipment if
8 such acceleration is necessary to ensure the
9 timely relocation of systems to a new frequency
10 assignment.

11 “(4) NOTICE TO COMMISSION OF ESTIMATED
12 RELOCATION COSTS.—

13 “(A) The Commission shall notify the
14 NTIA at least 18 months prior to the com-
15 mencement of any auction of eligible fre-
16 quencies defined in paragraph (2). At least 6
17 months prior to the commencement of any such
18 auction, the NTIA, on behalf of the Federal en-
19 tities and after review by the Office of Manage-
20 ment and Budget, shall notify the Commission
21 of estimated relocation costs and timelines for
22 such relocation.

23 “(B) Upon timely request of a Federal en-
24 tity, the NTIA shall provide such entity with in-
25 formation regarding an alternative frequency

1 assignment or assignments to which their
2 radiocommunications operations could be relo-
3 cated for purposes of calculating the estimated
4 relocation costs and timelines to be submitted
5 to the Commission pursuant to subparagraph
6 (A).

7 “(C) To the extent practicable and con-
8 sistent with national security considerations,
9 the NTIA shall provide the information re-
10 quired by subparagraphs (A) and (B) by the ge-
11 ographic location of the Federal entities’ facili-
12 ties or systems and the frequency bands used
13 by such facilities or systems.

14 “(5) NOTICE TO CONGRESSIONAL COMMITTEES
15 AND GAO.—The NTIA shall, at the time of providing
16 an initial estimate of relocation costs to the Commis-
17 sion under paragraph (4)(A), submit to Committees
18 on Appropriations and Energy and Commerce of the
19 House of Representatives for approval, to the Com-
20 mittees on Appropriations and Commerce, Science,
21 and Transportation of the Senate for approval, and
22 to the Comptroller General a copy of such estimate
23 and the timelines for relocation. Unless disapproved
24 within 30 days, the estimate shall be approved. If

1 disapproved, the NTIA may resubmit a revised ini-
2 tial estimate.

3 “(6) IMPLEMENTATION OF PROCEDURES.—The
4 NTIA shall take such actions as necessary to ensure
5 the timely relocation of Federal entities’ spectrum-
6 related operations from frequencies defined in para-
7 graph (2) to frequencies or facilities of comparable
8 capability. Upon a finding by the NTIA that a Fed-
9 eral entity has achieved comparable capability of sys-
10 tems by relocating to a new frequency assignment or
11 by utilizing an alternative technology, the NTIA
12 shall terminate the entity’s authorization and notify
13 the Commission that the entity’s relocation has been
14 completed. The NTIA shall also terminate such enti-
15 ty’s authorization if the NTIA determines that the
16 entity has unreasonably failed to comply with the
17 timeline for relocation submitted by the Director of
18 the Office of Management and Budget under section
19 118(d)(2)(B).”.

20 **SEC. 203. MINIMUM AUCTION RECEIPTS AND DISPOSITION**
21 **OF PROCEEDS.**

22 (a) AUCTION DESIGN.—Section 309(j)(3) of the
23 Communications Act of 1934 (47 U.S.C. 309(j)(3)) is
24 amended—

1 (1) by striking “and” at the end of subpara-
2 graph (D);

3 (2) by striking the period at the end of sub-
4 paragraph (E) and inserting “; and”; and

5 (3) by adding at the end the following new sub-
6 paragraph:

7 “(F) for any auction of eligible frequencies
8 described in section 113(g)(2) of the National
9 Telecommunications and Information Adminis-
10 tration Organization Act (47 U.S.C. 923(g)(2)),
11 the recovery of 110 percent of estimated reloca-
12 tion costs as provided to the Commission pursu-
13 ant to section 113(g)(4) of such Act.”.

14 (b) SPECIAL AUCTION PROVISIONS FOR ELIGIBLE
15 FREQUENCIES.—Section 309(j) of such Act is further
16 amended by adding at the end the following new para-
17 graph:

18 “(15) SPECIAL AUCTION PROVISIONS FOR ELI-
19 GIBLE FREQUENCIES.—

20 “(A) SPECIAL REGULATIONS.—The Com-
21 mission shall revise the regulations prescribed
22 under paragraph (4)(F) of this subsection to
23 prescribe methods by which the total cash pro-
24 ceeds from any auction of eligible frequencies
25 described in section 113(g)(2) of the National

1 Telecommunications and Information Adminis-
2 tration Organization Act (47 U.S.C. 923(g)(2))
3 shall at least equal 110 percent of the total esti-
4 mated relocation costs provided to the Commis-
5 sion pursuant to section 113(g)(4) of such Act.

6 “(B) CONCLUSION OF AUCTIONS CONTIN-
7 GENT ON MINIMUM PROCEEDS.—The Commis-
8 sion shall not conclude any auction of eligible
9 frequencies described in section 113(g)(2) of
10 such Act if the total cash proceeds attributable
11 to such spectrum are less than 110 percent of
12 the total estimated relocation costs provided to
13 the Commission pursuant to section 113(g)(4)
14 of such Act. If the Commission is unable to
15 conclude an auction for the foregoing reason,
16 the Commission shall cancel the auction, return
17 within 45 days after the auction cancellation
18 date any deposits from participating bidders
19 held in escrow, and absolve such bidders from
20 any obligation to the United States to bid in
21 any subsequent reauction of such spectrum.

22 “(C) AUTHORITY TO ISSUE PRIOR TO DE-
23 AUTHORIZATION.—In any auction conducted
24 under the regulations required by subparagraph
25 (A), the Commission may grant a license as-

1 signed for the use of eligible frequencies prior
2 to the termination of an eligible Federal entity's
3 authorization. However, the Commission shall
4 condition such license by requiring that the li-
5 censee cannot cause harmful interference to
6 such Federal entity until such entity's author-
7 ization has been terminated by the National
8 Telecommunications and Information Adminis-
9 tration.”.

10 (c) DEPOSIT OF PROCEEDS.—Paragraph (8) of sec-
11 tion 309(j) of the Communications Act of 1934 (47 U.S.C.
12 309(j)) is amended—

13 (1) in subparagraph (A), by inserting “or sub-
14 paragraph (D)” after “subparagraph (B)”; and

15 (2) by adding at the end the following new sub-
16 paragraph:

17 “(D) DISPOSITION OF CASH PROCEEDS.—
18 Cash proceeds attributable to the auction of any
19 eligible frequencies described in section
20 113(g)(2) of the National Telecommunications
21 and Information Administration Organization
22 Act (47 U.S.C. 923(g)(2)) shall be deposited in
23 the Spectrum Relocation Fund established
24 under section 118 of such Act, and shall be
25 available in accordance with that section.”.

1 **SEC. 204. ESTABLISHMENT OF FUND AND PROCEDURES.**

2 Part B of the National Telecommunications and In-
3 formation Administration Organization Act is amended by
4 adding after section 117 (47 U.S.C. 927) the following
5 new section:

6 **“SEC. 118. SPECTRUM RELOCATION FUND.**

7 “(a) ESTABLISHMENT OF SPECTRUM RELOCATION
8 FUND.—There is established on the books of the Treasury
9 a separate fund to be known as the ‘Spectrum Relocation
10 Fund’ (in this section referred to as the ‘Fund’), which
11 shall be administered by the Office of Management and
12 Budget (in this section referred to as ‘OMB’), in consulta-
13 tion with the NTIA.

14 “(b) CREDITING OF RECEIPTS.—The Fund shall be
15 credited with the amounts specified in section
16 309(j)(8)(D) of the Communications Act of 1934 (47
17 U.S.C. 309(j)(8)(D)).

18 “(c) USED TO PAY RELOCATION COSTS.—The
19 amounts in the Fund from auctions of eligible frequencies
20 are authorized to be used to pay relocation costs, as de-
21 fined in section 113(g)(3) of this Act, of an eligible Fed-
22 eral entity incurring such costs with respect to relocation
23 from those frequencies.

24 “(d) FUND AVAILABILITY.—

25 “(1) APPROPRIATION.—There are hereby ap-
26 propriated from the Fund such sums as are required

1 to pay the relocation costs specified in subsection
2 (c).

3 “(2) TRANSFER CONDITIONS.—None of the
4 funds provided under this subsection may be trans-
5 ferred to any eligible Federal entity—

6 “(A) unless the Director of OMB has de-
7 termined, in consultation with the NTIA, the
8 appropriateness of such costs and the timeline
9 for relocation; and

10 “(B) until 30 days after the Director of
11 OMB has submitted to the Committees on Ap-
12 propriations and Energy and Commerce of the
13 House of Representatives for approval, to the
14 Committees on Appropriations and Commerce,
15 Science, and Transportation of the Senate for
16 approval, and to the Comptroller General a de-
17 tailed plan describing specifically how the sums
18 transferred from the Fund will be used to pay
19 relocation costs in accordance with such sub-
20 section and the timeline for such relocation.

21 Unless disapproved within 30 days, the amounts in
22 the Fund shall be available immediately. If the plan
23 is disapproved, the Director may resubmit a revised
24 plan.

1 “(3) REVERSION OF UNUSED FUNDS.—Any
2 auction proceeds in the Fund that are remaining
3 after the payment of the relocation costs that are
4 payable from the Fund shall revert to and be depos-
5 ited in the general fund of the Treasury not later
6 than 8 years after the date of the deposit of such
7 proceeds to the Fund.

8 “(e) TRANSFER TO ELIGIBLE FEDERAL ENTITIES.—

9 “(1) TRANSFER.—

10 “(A) Amounts made available pursuant to
11 subsection (d) shall be transferred to eligible
12 Federal entities, as defined in section 113(g)(1)
13 of this Act.

14 “(B) An eligible Federal entity may receive
15 more than one such transfer, but if the sum of
16 the subsequent transfer or transfers exceeds 10
17 percent of the original transfer—

18 “(i) such subsequent transfers are
19 subject to prior approval by the Director of
20 OMB as required by subsection (d)(2)(A);

21 “(ii) the notice to the committees con-
22 taining the plan required by subsection
23 (d)(2)(B) shall be not less than 45 days
24 prior to the date of the transfer that
25 causes such excess above 10 percent;

1 “(iii) such notice shall include, in ad-
2 dition to such plan, an explanation of need
3 for such subsequent transfer or transfers;
4 and

5 “(iv) the Comptroller General shall,
6 within 30 days after receiving such plan,
7 review such plan and submit to such com-
8 mittees an assessment of the explanation
9 for the subsequent transfer or transfers.

10 “(C) Such transferred amounts shall be
11 credited to the appropriations account of the el-
12 igible Federal entity which has incurred, or will
13 incur, such costs, and shall, subject to para-
14 graph (2), remain available until expended.

15 “(2) RETRANSFER TO FUND.—An eligible Fed-
16 eral entity that has received such amounts shall re-
17 port its expenditures to OMB and shall transfer any
18 amounts in excess of actual relocation costs back to
19 the Fund immediately after the NTIA has notified
20 the Commission that the entity’s relocation is com-
21 plete, or has determined that such entity has unrea-
22 sonably failed to complete such relocation in accord-
23 ance with the timeline required by subsection
24 (d)(2)(A).”.

1 **SEC. 205. TELECOMMUNICATIONS DEVELOPMENT FUND.**

2 Section 714(f) of the Communications Act of 1934
3 (47 U.S.C. 614(f)) is amended to read as follows:

4 “(f) LENDING AND CREDIT OPERATIONS.—Loans or
5 other extensions of credit from the Fund shall be made
6 available to an eligible small business on the basis of—

7 “(1) the analysis of the business plan of the eli-
8 gible small business;

9 “(2) the reasonable availability of collateral to
10 secure the loan or credit extension;

11 “(3) the extent to which the loan or credit ex-
12 tension promotes the purposes of this section; and

13 “(4) other lending policies as defined by the
14 Board.”.

15 **SEC. 206. CONSTRUCTION.**

16 Nothing in this title is intended to modify section
17 1062(b) of the National Defense Authorization Act for
18 Fiscal Year 2000 (Public Law 106–65).

19 **SEC. 207. ANNUAL REPORT.**

20 The National Telecommunications and Information
21 Administration shall submit an annual report to the Com-
22 mittees on Appropriations and Energy and Commerce of
23 the House of Representatives, the Committees on Appro-
24 priations and Commerce, Science, and Transportation of
25 the Senate, and the Comptroller General on—

1 (1) the progress made in adhering to the
2 timelines applicable to relocation from eligible fre-
3 quencies required under section 118(d)(2)(A) of the
4 National Telecommunications and Information Ad-
5 ministration Organization Act, separately stated on
6 a communication system-by-system basis and on an
7 auction-by-auction basis; and

8 (2) with respect to each relocated communica-
9 tion system and auction, a statement of the estimate
10 of relocation costs required under section 113(g)(4)
11 of such Act, the actual relocations costs incurred,
12 and the amount of such costs paid from the Spec-
13 trum Relocation Fund.

14 **SEC. 208. PRESERVATION OF AUTHORITY; NTIA REPORT**
15 **REQUIRED.**

16 (a) SPECTRUM MANAGEMENT AUTHORITY RE-
17 TAINED.—Except as provided with respect to the bands
18 of frequencies identified in section 113(g)(2)(A) of the Na-
19 tional Telecommunications and Information Administra-
20 tion Organization Act (47 U.S.C. 923(g)(2)(A)) as amend-
21 ed by this title, nothing in this title or the amendments
22 made by this title shall be construed as limiting the Fed-
23 eral Communications Commission’s authority to allocate
24 bands of frequencies that are reallocated from Federal use

1 to non-Federal use for unlicensed, public safety, shared,
2 or non-commercial use.

3 (b) **NTIA REPORT REQUIRED.**—Within 1 year after
4 the date of enactment of this Act, the Administrator of
5 the National Telecommunications and Information Ad-
6 ministration shall submit to the Energy and Commerce
7 Committee of the House of Representatives and the Com-
8 merce, Science, and Transportation Committee of the Sen-
9 ate a report on various policy options to compensate Fed-
10 eral entities for relocation costs when such entities’ fre-
11 quencies are allocated by the Commission for unlicensed,
12 public safety, shared, or non-commercial use.

13 **SEC. 209. COMMERCIAL SPECTRUM LICENSE POLICY RE-**
14 **VIEW.**

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

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

24 (1) An estimate of the respective proportions of
25 electromagnetic spectrum capacity that have been

1 assigned by the Federal Communications Commis-
2 sion—

3 (A) prior to enactment of section 309(j) of
4 the Communications Act of 1934 (47 U.S.C.
5 309(j)) providing to the Commission’s competi-
6 tive bidding authority,

7 (B) after enactment of that section using
8 the Commission’s competitive bidding authority,
9 and

10 (C) by means other than competitive bid-
11 ding,

12 and a description of the classes of licensees assigned
13 under each method.

14 (2) The extent to which requiring entities to ob-
15 tain licenses through competitive bidding places
16 those entities at a competitive or financial disadvan-
17 tage to offer services similar to entities that did not
18 acquire licenses through competitive bidding.

19 (3) The effect, if any, of the use of competitive
20 bidding and the resulting diversion of licensees’ fi-
21 nancial resources on the introduction of new services
22 including the quality, pace, and scope of the offering
23 of such services to the public.

24 (4) The effect, if any, of participation in com-
25 petitive bidding by incumbent spectrum license hold-

1 ers as applicants or investors in an applicant, includ-
2 ing a discussion of any additional effect if such ap-
3 plicant qualified for bidding credits as a designated
4 entity.

5 (5) The effect on existing license holders and
6 consumers of services offered by these providers of
7 the Administration’s Spectrum License User Fee
8 proposal contained in the President’s Budget of the
9 United States Government for Fiscal Year 2004
10 (Budget, page 299; Appendix, page 1046), and an
11 evaluation of whether the enactment of this proposal
12 could address, either in part or in whole, any pos-
13 sible competitive disadvantages described in para-
14 graph (2).

15 (c) FCC ASSISTANCE.—The Federal Communica-
16 tions Commission shall provide information and assist-
17 ance, as necessary, to facilitate the completion of the ex-
18 amination required by subsection (a).

19 **TITLE III—UNIVERSAL SERVICE**

20 **SEC. 301. SHORT TITLE.**

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

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

3 (a) IN GENERAL.—During the period beginning on
4 the date of enactment of this Act and ending on December
5 31, 2005, section 1341 and subchapter II of chapter 15
6 of title 31, United States Code, do not apply—

7 (1) to any amount collected or received as Fed-
8 eral universal service contributions required by sec-
9 tion 254 of the Communications Act of 1934 (47
10 U.S.C. 254), including any interest earned on such
11 contributions; nor

12 (2) to the expenditure or obligation of amounts
13 attributable to such contributions for universal serv-
14 ice support programs established pursuant to that
15 section.

16 (b) POST-2005 FULFILLMENT OF PROTECTED OBLI-
17 GATIONS.—Section 1341 and subchapter II of chapter 15
18 of title 31, United States Code, do not apply after Decem-
19 ber 31, 2005, to an expenditure or obligation described
20 in subsection (a)(2) made or authorized during the period
21 described in subsection (a).

Passed the House of Representatives November 20,
2004.

Attest:

JEFF TRANDAHL,

Clerk.