

quired to be made by an amendment made by this section shall not be required to be made before the first plan year beginning on or after January 1, 1994, if—

(A) during the period after the date before the date of the enactment of this Act and before such first plan year, the plan is operated in accordance with the requirements of the amendments made by this section, and

(B) such plan amendment applies retroactively to the period after the date before the date of the enactment of this Act and before such first plan year.

A plan shall not be treated as failing to be operated in accordance with the provisions of the plan merely because it operates in accordance with this paragraph.

#### Subtitle E—Fee Increase

##### SEC. 4401. FEE INCREASE.

The Tea Importation Act (21 U.S.C. 41 et seq.) is amended—

(1) by inserting the 4th undesignated paragraph under the center heading "FOOD AND DRUG ADMINISTRATION" of title II of the Labor-Federal Security Appropriation Act, 1942 (21 U.S.C. 46a) as a new section 13 of the Tea Importation Act, and

(2) by amending such new section 13 to read as follows:

"SEC. 13. No tea or merchandise described as tea shall be examined for importation into the United States, or released by the Customs Service, under the Tea Importation Act unless the importer or consignee of such tea or merchandise has paid, before the examination, a fee in an amount equal to—

"(1) 10 cents for each hundred weight or fraction thereof of the tea or merchandise; or

"(2) the approximate cost of the examinations; whichever amount is less. Such fee shall be deposited into the Treasury of the United States as miscellaneous receipts."

#### TITLE V—TRANSPORTATION AND PUBLIC WORKS PROVISIONS

##### SEC. 6901. RECREATIONAL USER FEES.

(a) IN GENERAL.—Section 210 of the Flood Control Act of 1968 (16 U.S.C. 460d-3) is amended—

(1) by striking "SEC. 210. No entrance" and inserting the following:

##### "SEC. 210. RECREATIONAL USER FEES.

"(a) PROHIBITION ON ADMISSIONS FEES.—No entrance";

(2) by striking the second sentence; and

(3) by adding at the end the following new subsection:

"(b) FEES FOR USE OF DEVELOPED RECREATION SITES AND FACILITIES.—

"(1) ESTABLISHMENT AND COLLECTION.—Notwithstanding section 4(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a(b)), the Secretary of the Army is authorized, subject to paragraphs (2) and (3), to establish and collect fees for the use of developed recreation sites and facilities, including campsites, swimming beaches, and boat launching ramps but excluding a site or facility which includes only a boat launch ramp and a courtesy dock.

"(2) EXEMPTION OF CERTAIN FACILITIES.—The Secretary shall not establish or collect fees under this subsection for the use or provision of drinking water, wayside exhibits, roads, scenic drives, overlook sites, picnic tables, toilet facilities, surface water areas, undeveloped or lightly developed shoreland, or general visitor information.

"(3) PER VEHICLE LIMIT.—The fee under this subsection for use of a site or facility (other than an overnight camping site or facility or any other site or facility at which a fee is charged for use of the site or facility as of the date of the enactment of this paragraph) for persons entering the site or facility by private, noncommercial vehicle transporting not more than 8 persons (including the driver) shall not

exceed \$3 per day per vehicle. Such maximum amount may be adjusted annually by the Secretary for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

"(4) DEPOSIT INTO TREASURY ACCOUNT.—All fees collected under this subsection shall be deposited into the Treasury account for the Corps of Engineers established by section 4(l) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a(1))."

(b) CONFORMING AMENDMENT FOR CAMPSITES.—Section 4(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a(b)) is amended by striking the next to the last sentence.

#### TITLE VI—COMMUNICATIONS LICENSING AND SPECTRUM ALLOCATION IMPROVEMENT

##### SEC. 6901. TRANSFER OF AUCTIONABLE FREQUENCIES.

(a) AMENDMENT.—The National Telecommunications and Information Administration Organization Act (47 U.S.C. 901 et seq.) is amended—

(1) by striking the heading of part B and inserting the following:

##### "PART C—SPECIAL AND TEMPORARY PROVISIONS";

(2) by redesignating sections 131 through 135 as sections 151 through 155, respectively; and

(3) by inserting after part A the following new part:

##### "PART B—TRANSFER OF AUCTIONABLE FREQUENCIES.

##### "SEC. 111. 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. 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. 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, 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 Fed-

eral 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) IN GENERAL.—In accordance with the provisions of this section, the Secretary shall recommend 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 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) 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) 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.

##### "(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 reestablish 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 names 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 final report required by subsection (a).

"(e) TIMETABLE FOR REALLOCATION AND LIMITATION.—

"(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.—

"(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 113(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.

"SEC. 114. 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) or (d)(1) of section 113, withdraw the assignment to a Federal Government station of any frequency which the report recommends for immediate reallocation;

"(2) within either 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 ad-

just 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 reassessment would seriously jeopardize the national defense interests of the United States;

"(B) the frequency proposed for reassessment is uniquely suited to meeting important governmental needs;

"(C) the reassessment would seriously jeopardize public health or safety;

"(D) the reassessment 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 reassessment 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. 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 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.

**"SEC. 116. 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. 806).

**"SEC. 117. 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."

(b) **CONFORMING AMENDMENT TO ENSURE COLLECTION OF FCC FEES.**—Section 104 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 903) is amended by adding at the end the following new subsection:

"(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. 608. AUTHORITY TO USE COMPETITIVE BIDDING.**

(a) **USE OF COMPETITIVE BIDDING.**—Section 309 of the Communications Act of 1934 (47 U.S.C. 309) is amended by adding at the end the following new subsection:

"(j) **USE OF COMPETITIVE BIDDING.**—

"(1) **GENERAL AUTHORITY.**—If mutually exclusive applications are accepted for filing for any initial license or construction permit which will involve a use of the electromagnetic spectrum described in paragraph (2), then the Commission shall have the authority, subject to paragraph (10), to grant such license or permit to a qualified applicant through the use of a system of competitive bidding that meets the requirements of this subsection.

"(2) **USES TO WHICH BIDDING MAY APPLY.**—A use of the electromagnetic spectrum is described in this paragraph if the Commission determines that—

"(A) the principal use of such spectrum will involve, or is reasonably likely to involve, the licensees receiving compensation from subscribers in return for which the licensees—

"(i) enables those subscribers to receive communications signals that are transmitted utilizing frequencies on which the licensee is licensed to operate; or

"(ii) enables those subscribers to transmit directly communications signals utilizing frequencies on which the licensee is licensed to operate; and

"(B) a system of competitive bidding will promote the objectives described in paragraph (3).

"(3) **DESIGN OF SYSTEMS OF COMPETITIVE BIDDING.**—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 multiple alternative methodologies under appropriate circumstances. In identifying classes of licenses and permits to be issued by competitive bidding, in specifying eligibility and other characteristics of such licenses and permits, and in designing the methodologies for use under this subsection, the Commission shall include safeguards to protect the public interest in the use of the spectrum and shall seek to promote the purposes specified in section 1 of this Act and the following objectives:

"(A) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays;

"(B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women;

"(C) recovery for the public of a portion of the value of the public spectrum resources made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource; and

"(D) efficient and intensive use of the electromagnetic spectrum.

"(4) **CONTENTS OF REGULATIONS.**—In prescribing regulations pursuant to paragraph (3), the Commission shall—

"(A) consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods that promote the objectives described in paragraph (3)(B); and combinations of such schedules and methods;

"(B) include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services;

"(C) consistent with the public interest, convenience, and necessity, the purposes of this Act, and the characteristics of the proposed service, prescribe area designations and bandwidth assignments that promote (1) an equitable distribution of licenses and services among geographic areas, (2) economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, and (3) investment in and rapid deployment of new technologies and services;

"(D) ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tag certificates, bidding preferences, and other procedures; and

"(E) require such transfer disclosures and anti-fraud restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits.

"(5) **BIDDER AND LICENSEE QUALIFICATION.**—No person shall be permitted to participate in a system of competitive bidding pursuant to this subsection unless such bidder submits such information and assurances as the Commission may require to demonstrate that such bidder's application is acceptable for filing. No license shall be granted to an applicant selected pursuant to this subsection unless the Commission determines that the applicant is qualified pursuant to subsection (a) and sections 308(b) and 310. Consistent with the objectives described in paragraph (3), the Commission shall, by regulation, prescribe expedited procedures consistent with the procedures authorized by subsection (1)(2) for the resolution of any substantial and material issues of fact concerning qualifications.

"(6) **ROLES OF CONSTRUCTION.**—Nothing in this subsection, or in the use of competitive bidding, shall—

"(A) alter spectrum allocation criteria and procedures established by the other provisions of this Act;

"(B) limit or otherwise affect the requirements of subsection (a) of this section, section 301, 304, 307, 310, or 706, or any other provision of this Act (other than subsections (d)(2) and (e) of this section);

"(C) diminish the authority of the Commission under the other provisions of this Act to regulate or reclaim spectrum licenses;

"(D) be construed to convey any rights, including any expectation of renewal of a license, that differ from the rights that apply to other licenses within the same service that were not issued pursuant to this subsection;

"(E) be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings;

"(F) be construed to prohibit the Commission from issuing nationwide, regional, or local licenses or permits;

"(G) be construed to prevent the Commission from awarding licenses to those persons who make significant contributions to the development of a new telecommunications service or technology; or

"(H) be construed to relieve any applicant for a license or permit of the obligation to pay charges imposed pursuant to section 8 of this Act.

"(7) **CONSIDERATION OF REVENUES IN PUBLIC INTEREST DETERMINATIONS.**—

"(A) **CONSIDERATION PROHIBITED.**—In making a decision pursuant to section 303(c) to assign a band of frequencies to a use for which licenses or permits will be issued pursuant to this subsection, and in prescribing regulations pursuant to paragraph (4)(C) of this subsection, the Commission may not base a finding of public interest, convenience, and necessity on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.

"(B) **CONSIDERATION LIMITED.**—In prescribing regulations pursuant to paragraph (4)(A) of this subsection, the Commission may not base a finding of public interest, convenience, and necessity solely or predominantly on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.

"(C) **CONSIDERATION OF DEMAND FOR SPECTRUM NOT AFFECTED.**—Nothing in this paragraph shall be construed to prevent the Commission from continuing to consider consumer demand for spectrum-based services.

"(8) **TREATMENT OF REVENUES.**—

"(A) **GENERAL RULE.**—Except as provided in subparagraph (B), all proceeds from the use of a competitive bidding system under this sub-

section shall be deposited in the Treasury in accordance with chapter 33 of title 31, United States Code.

"(B) **RETENTION OF REVENUES.**—Notwithstanding subparagraph (A), the salaries and expenses account of the Commission shall retain as an offsetting collection such sums as may be necessary from such proceeds for the costs of developing and implementing the program required by this subsection. Such offsetting collections shall be available for obligation subject to the terms and conditions of the receiving appropriations account, and shall be deposited in such accounts on a quarterly basis. Any funds appropriated to the Commission for fiscal years 1994 through 1998 for the purpose of assigning licenses using random selection under subsection (1) shall be used by the Commission to implement this subsection.

"(9) **USE OF FORMER GOVERNMENT SPECTRUM.**—The Commission shall, not later than 5 years after the date of enactment of this subsection, issue licenses and permits pursuant to this subsection for the use of bands of frequencies that—

"(A) in the aggregate span not less than 10 megahertz; and

"(B) have been reassigned from Government use pursuant to part B of the National Telecommunications and Information Administration Organization Act.

"(10) **AUTHORITY CONTINGENT ON AVAILABILITY OF ADDITIONAL SPECTRUM.**—

"(A) **INITIAL CONDITIONS.**—The Commission's authority to issue licenses or permits under this subsection shall not take effect unless—

"(i) the Secretary of Commerce has submitted to the Commission the report required by section 113(d)(1) of the National Telecommunications and Information Administration Organization Act;

"(ii) such report recommends for immediate reallocation bands of frequencies that, in the aggregate, span not less than 50 megahertz;

"(iii) such bands of frequencies meet the criteria required by section 113(a) of such Act; and

"(iv) the Commission has completed the rule-making required by section 332(c)(1)(D) of this Act.

"(B) **SUBSEQUENT CONDITIONS.**—The Commission's authority to issue licenses or permits under this subsection on and after 2 years after the date of the enactment of this subsection shall cease to be effective if—

"(i) the Secretary of Commerce has failed to submit the report required by section 113(a) of the National Telecommunications and Information Administration Organization Act;

"(ii) the President has failed to withdraw and limit assignments of frequencies as required by paragraphs (1) and (2) of section 114(a) of such Act;

"(iii) the Commission has failed to issue the regulations required by section 115(a) of such Act;

"(iv) the Commission has failed to complete and submit to Congress, not later than 18 months after the date of enactment of this subsection, a study of current and future spectrum needs of State and local government public safety agencies through the year 2010, and a specific plan to ensure that adequate frequencies are made available to public safety licensees; or

"(v) the Commission has failed under section 332(c)(3) to grant or deny within the time required by such section any petition that a State has filed within 90 days after the date of enactment of this subsection;

until such failure has been corrected.

"(11) **TERMINATION.**—The authority of the Commission to grant a license or permit under this subsection shall expire September 30, 1998.

"(12) **EVALUATION.**—Not later than September 30, 1997, the Commission shall conduct a public inquiry and submit to the Congress a report—

"(A) containing a statement of the revenues obtained, and a projection of the future reve-

nues, from the use of competitive bidding systems under this subsection;

"(B) describing the methodologies established by the Commission pursuant to paragraphs (3) and (4);

"(C) comparing the relative advantages and disadvantages of such methodologies in terms of attaining the objectives described in such paragraphs;

"(D) evaluating whether and to what extent—

"(i) competitive bidding significantly improved the efficiency and effectiveness of the process for granting radio spectrum licenses;

"(ii) competitive bidding facilitated the introduction of new spectrum-based technologies and the entry of new companies into the telecommunications market;

"(iii) competitive bidding methodologies have secured prompt delivery of service to rural areas and have adequately addressed the needs of rural spectrum users; and

"(iv) small businesses, rural telephone companies, and businesses owned by members of minority groups and women were able to participate successfully in the competitive bidding process; and

"(E) recommending any statutory changes that are needed to improve the competitive bidding process."

(b) **CONFORMING AMENDMENTS.**—

(1) **LIMITATIONS ON LOTTERIES.**—Section 309 of the Communications Act of 1934 (47 U.S.C. 309) is further amended—

(A) by striking subsection (1)(1) and inserting the following:

"(1) **RANDOM SELECTION.**—

"(I) **GENERAL AUTHORITY.**—If—

"(A) there is more than one application for any initial license or construction permit which will involve a use of the electromagnetic spectrum; and

"(B) the Commission has determined that the use is not described in subsection (j)(2)(A); then the Commission shall have the authority to grant such license or permit to a qualified applicant through the use of a system of random selection;" and

(B) in paragraph (4), by adding at the end the following new subparagraph:

"(C) Not later than 180 days after the date of enactment of this subparagraph, the Commission shall prescribe such transfer disclosures and anti-fraud restrictions and payment schedules as are necessary to prevent the unjust enrichment of recipients of licenses or permits as a result of the methods employed to issue licenses under this subsection."

(2) **REGULATORY TREATMENT TO ENHANCE AUCTION VALUE OF SPECTRUM LICENSES.**—

(A) **AMENDMENT.**—Section 332 of the Communications Act of 1934 (47 U.S.C. 332) is amended—

(i) by striking "PRIVATE LAND" from the heading of the section;

(ii) by striking "land" each place it appears in subsections (a) and (b); and

(iii) by striking subsection (c) and inserting the following:

"(c) **REGULATORY TREATMENT OF MOBILE SERVICES.**—

"(1) **COMMON CARRIER TREATMENT OF COMMERCIAL MOBILE SERVICES.**—(A) A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this Act, except for such provisions of title 11 as the Commission may specify by regulation as inapplicable to that service or person. In prescribing or amending any such regulation, the Commission may not specify any provision of section 201, 202, or 208, and may specify any other provision only if the Commission determines that—

"(i) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory;

"(U) enforcement of such provision is not necessary for the protection of consumers; and

"(U) specifying such provision is consistent with the public interest.

"(B) Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this Act. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act.

"(C) The Commission shall review competitive market conditions with respect to commercial mobile services and shall include in its annual report an analysis of those conditions. Such analysis shall include an identification of the number of competitors in various commercial mobile services, an analysis of whether or not there is effective competition, an analysis of whether any of such competitors have a dominant share of the market for such services, and a statement of whether additional providers or classes of providers in those services would be likely to enhance competition. As a part of making a determination with respect to the public interest under subparagraph (A)(iii), the Commission shall consider whether the proposed regulation (or amendment thereof) will promote competitive market conditions, including the extent to which such regulation (or amendment) will enhance competition among providers of commercial mobile services. If the Commission determines that such regulation (or amendment) will promote competition among providers of commercial mobile services, such determination may be the basis for a Commission finding that such regulation (or amendment) is in the public interest.

"(D) The Commission shall, not later than 180 days after the date of enactment of this subparagraph, complete a rulemaking required to implement this paragraph with respect to the licensing of personal communications services, including making any determinations required by subparagraph (C).

"(2) NON-COMMON CARRIER TREATMENT OF PRIVATE MOBILE SERVICES.—A person engaged in the provision of a service that is a private mobile service shall not, insofar as such person is so engaged, be treated as a common carrier for any purpose under this Act. A common carrier (other than a person that was treated as a provider of a private land mobile service prior to the enactment of the Omnibus Budget Reconciliation Act of 1993) shall not provide any dispatch service on any frequency allocated for common carrier service, except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982. The Commission may by regulation terminate, in whole or in part, the prohibition contained in the preceding sentence if the Commission determines that such termination will serve the public interest.

"(3) STATE PREEMPTION.—(A) Notwithstanding sections 2(b) and 221(b), no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates. Notwithstanding the first sentence of this subparagraph, a State may petition the Commission for authority to regulate the rates for any commercial mobile service and the Commission shall

grant such petition if such State demonstrates that—

"(i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or

"(ii) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State.

The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition. If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such periods of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory.

"(B) If a State has in effect on June 1, 1993, any regulation concerning the rates for any commercial mobile service offered in such State on such date, such State may, no later than 1 year after the date of enactment of the Omnibus Budget Reconciliation Act of 1993, petition the Commission requesting that the State be authorized to continue exercising authority over such rates. If a State files such a petition, the State's existing regulation shall, notwithstanding subparagraph (A), remain in effect until the Commission completes all action (including any reconsideration) on such petition. The Commission shall review such petition in accordance with the procedures established in such subparagraph, shall complete all action (including any reconsideration) within 12 months after such petition is filed, and shall grant such petition if the State satisfies the showing required under subparagraph (A)(i) or (A)(ii). If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such period of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory. After a reasonable period of time, as determined by the Commission, has elapsed from the issuance of an order under subparagraph (A) or this subparagraph, any interested party may petition the Commission for an order that the exercise of authority by a State pursuant to such subparagraph is no longer necessary to ensure that the rates for commercial mobile services are just and reasonable and not unjustly or unreasonably discriminatory. The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition in whole or in part.

"(4) REGULATORY TREATMENT OF COMMUNICATIONS SATELLITE CORPORATION.—Nothing in this subsection shall be construed to alter or affect the regulatory treatment required by title IV of the Communications Satellite of 1962 of the corporation authorized by title III of such Act.

"(5) SPACE SEGMENT CAPACITY.—Nothing in this section shall prohibit the Commission from continuing to determine whether the provision of space segment capacity by satellite systems to providers of commercial mobile services shall be treated as common carriage.

"(6) FOREIGN OWNERSHIP.—The Commission, upon a petition for waiver filed within 6 months after the date of enactment of the Omnibus Budget Reconciliation Act of 1993, may waive the application of section 310(b) to any foreign ownership that lawfully existed before May 24, 1993, of any provider of a private land mobile service that will be treated as a common carrier as a result of the enactment of the Omnibus Budget Reconciliation Act of 1993, but only upon the following conditions:

"(A) The extent of foreign ownership interest shall not be increased above the extent which existed on May 24, 1993.

"(B) Such waiver shall not permit the subsequent transfer of ownership to any other person in violation of section 310(b).

"(d) DEFINITIONS.—For purposes of this section—

"(1) the term 'commercial mobile service' means any mobile service (as defined in section 3(n)) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission;

"(2) the term 'interconnected service' means service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission) or service for which a request for interconnection is pending pursuant to subsection (c)(1)(B); and

"(3) the term 'private mobile service' means any mobile service (as defined in section 3(n)) that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission."

(B) ADDITIONAL CONFORMING AMENDMENTS.—(i) Section 2(b) of the Communications Act of 1934 (47 U.S.C. 152(b)) is amended by inserting "and section 332" after "inclusive,".

(ii) Section 3 of the Communications Act of 1934 (47 U.S.C. 153) is amended—

(1) in subsection (n) by inserting "(1)" after "and includes", and by inserting before the period at the end the following: "(2) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (3) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled 'Amendment to the Commission's Rules to Establish New Personal Communications Services' (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding"; and

(11) by striking subsection (gg).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section are effective on the date of enactment of this Act.

(2) EFFECTIVE DATES OF MOBILE SERVICE AMENDMENTS.—The amendments made by subsection (b)(2) shall be effective on the date of enactment of this Act, except that—

(A) section 332(c)(3)(A) of the Communications Act of 1934, as amended by such subsection, shall take effect 1 year after such date of enactment; and

(B) any private land mobile service provided by any person before such date of enactment, and any paging services utilizing frequencies allocated as of January 1, 1993, for private land mobile services, shall, except for purposes of section 332(c)(4) of such Act, be treated as a private mobile service until 3 years after such date of enactment.

(d) DEADLINES FOR COMMISSION ACTION.—

(1) GENERAL RULEMAKING.—The Federal Communications Commission shall prescribe regulations to implement section 309(f) of the Communications Act of 1934 (as added by this section) within 210 days after the date of enactment of this Act.

(2) PCS ORDERS AND LICENSING.—The Commission shall—

(A) within 180 days after such date of enactment, issue a final report and order (I) in the matter entitled "Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies" (ET Docket No. 92-9); and (II) in the matter entitled "Amendment of the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90-314; ET Docket No. 92-100); and

(B) within 270 days after such date of enactment, commence issuing licenses and permits in the personal communications service.

(3) TRANSITIONAL RULEMAKING FOR MOBILE SERVICE PROVIDERS.—Within 1 year after the date of enactment of this Act, the Federal Communications Commission—

(A) shall issue such modifications or terminations of the regulations applicable (before the date of enactment of this Act) to private land mobile services as are necessary to implement the amendments made by subsection (b)(2);

(B) in the regulations that will, after such date of enactment, apply to a service that was a private land mobile service and that becomes a commercial mobile service (as a consequence of such amendments), shall make such other modifications or terminations as may be necessary and practical to assure that licensees in such service are subjected to technical requirements that are comparable to the technical requirements that apply to licensees that are providers of substantially similar common carrier services;

(C) shall issue such other regulations as are necessary to implement the amendments made by subsection (b)(2); and

(D) shall include, in such regulations, modifications, and terminations, such provisions as are necessary to provide for an orderly transition.

(e) SPECIAL RULE.—The Federal Communications Commission shall not issue any license or permit pursuant to section 309(i) of the Communications Act of 1934 (47 U.S.C. 309(i)) after the date of enactment of this Act unless—

(1) the Commission has made the determination required by paragraph (1)(B) of such section (as added by this section); or

(2) one or more applications for such license were accepted for filing by the Commission before July 26, 1993.

SEC. 6003. ADDITIONAL COMMUNICATIONS FEES.

(a) REGULATORY FEES.—

(1) AMENDMENT.—Title 1 of the Communications Act of 1934 is amended by inserting after section 8 the following new section:

\*SEC. 9. REGULATORY FEES.

“(a) GENERAL AUTHORITY.—The Commission, in accordance with this section, shall assess and collect regulatory fees to recover the costs of the following regulatory activities of the Commission: enforcement activities, policy and rule-making activities, user information services, and international activities.

“(b) ESTABLISHMENT AND ADJUSTMENT OF REGULATORY FEES.—

“(1) IN GENERAL.—The fees assessed under subsection (a) shall—

“(A) be derived by determining the full-time equivalent number of employees performing the activities described in subsection (a) within the Private Radio Bureau, Mass Media Bureau, Common Carrier Bureau, and other offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities, including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest;

“(B) be established at amounts that will result in collection, during each fiscal year, of an amount that can reasonably be expected to equal the amount appropriated for such fiscal year for the performance of the activities described in subsection (a); and

“(C) until adjusted or amended by the Commission pursuant to paragraph (2) or (3), be the fees established by the Schedule of Regulatory Fees in subsection (g).

“(2) MANDATORY ADJUSTMENT OF SCHEDULE.—For any fiscal year after fiscal year 1994, the Commission shall, by rule, revise the Schedule of Regulatory Fees by proportionate increases or decreases to reflect, in accordance with paragraph (1)(B), changes in the amount appropriated for the performance of the activities de-

scribed in subsection (a) for such fiscal year. Such proportionate increases or decreases shall—

“(A) be adjusted to reflect, within the overall amounts described in appropriations Act under the authority of paragraph (1)(A), unexpected increases or decreases in the number of licenses or units subject to payment of such fees; and

“(B) be established at amounts that will result in collection of an aggregate amount of fees pursuant to this section that can reasonably be expected to equal the aggregate amount of fees that are required to be collected by appropriations Acts pursuant to paragraph (1)(B).

Increases or decreases in fees made by adjustments pursuant to this paragraph shall not be subject to judicial review. In making adjustments pursuant to this paragraph the Commission may round such fees to the nearest \$5 in the case of fees under \$1,000, or to the nearest \$25 in the case of fees of \$1,000 or more.

“(3) PERMITTED AMENDMENTS.—In addition to the adjustments required by paragraph (2), the Commission shall, by regulation, amend the Schedule of Regulatory Fees if the Commission determines that the Schedule requires amendment to comply with the requirements of paragraph (1)(A). In making such amendments, the Commission shall add, delete, or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law. Increases or decreases in fees made by amendments pursuant to this paragraph shall not be subject to judicial review.

“(4) NOTICE TO CONGRESS.—The Commission shall—

“(A) transmit to the Congress notification of any adjustment made pursuant to paragraph (2) immediately upon the adoption of such adjustment; and

“(B) transmit to the Congress notification of any amendment made pursuant to paragraph (3) not later than 90 days before the effective date of such amendment.

“(c) ENFORCEMENT.—

“(1) PENALTIES FOR LATE PAYMENT.—The Commission shall prescribe by regulation an additional charge which shall be assessed as a penalty for late payment of fees required by subsection (a) of this section. Such penalty shall be 25 percent of the amount of the fee which was not paid in a timely manner.

“(2) DISMISSAL OF APPLICATIONS FOR FILINGS.—The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section.

“(3) REVOCATIONS.—In addition to or in lieu of the penalties and dismissals authorized by paragraphs (1) and (2), the Commission may revoke any instrument of authorization held by any entity that has failed to make payment of a regulatory fee assessed pursuant to this section. Such revocation action may be taken by the Commission after notice of the Commission’s intent to take such action is sent to the licensee by registered mail, return receipt requested, at the licensee’s last known address. The notice will provide the licensee at least 30 days to either pay the fee or show cause why the fee does not apply to the licensee or should otherwise be waived or payment deferred. A hearing is not required under this subsection unless the licensee’s response presents a substantial and material question of fact. In any case where a hearing is conducted pursuant to this section, the hearing shall be based on written evidence only, and the burden of proceeding with the introduction of evidence and the burden of proof shall be on the licensee. Unless the licensee substantially prevails in the hearing, the Commission may assess the licensee for the costs of such hearing. Any Commission order adopted pursuant to this subsection shall determine the amount due, if any, and provide the licensee with at least 30

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

“(d) WAIVER, REDUCTION, AND DEFERMENT.—The Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest.

“(e) DEPOSIT OF COLLECTIONS.—Moneys received from fees established under this section shall be deposited as an offsetting collection in, and credited to, the account providing appropriations to carry out the functions of the Commission.

“(f) REGULATIONS.—

“(1) IN GENERAL.—The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section. Such rules and regulations shall permit payment by installments in the case of fees in large amounts, and in the case of fees in small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payor.

“(g) SCHEDULE.—Until amended by the Commission pursuant to subsection (b), the Schedule of Regulatory Fees which the Federal Communications Commission shall, subject to subsection (a)(2), assess and collect shall be as follows:

“SCHEDULE OF REGULATORY FEES

Bureau/Category	Annual Regulatory Fee
Private Radio Bureau	
Exclusive use services (per license)	
Land Mobile (above 470 MHz, Base Station and SMRS) (47 C.F.R. Part 90)	\$216
Microwave (47 C.F.R. Part 94)	16
Interactive Video Data Service (47 C.F.R. Part 1)	16
Shared use services (per license unless otherwise noted)	7
Amateur vanity call signs	7
Mass Media Bureau (per license)	
AM radio (47 C.F.R. Part 73)	
Class D Daytime	250
Class A Fulltime	800
Class B Fulltime	500
Class C Fulltime	200
Construction permits	100
FM radio (47 C.F.R. Part 73)	
Classes C, C1, C2, B	900
Classes A, B1, C3	600
Construction permits	500
TV (47 C.F.R. Part 73)	
VHF Commercial	
Markets 1 thru 10	18,000
Markets 11 thru 25	16,000
Markets 26 thru 50	12,000
Markets 51 thru 100	8,000
Remaining Markets	5,000
Construction permits	4,000
UHF Commercial	
Markets 1 thru 10	14,400
Markets 11 thru 25	12,800
Markets 26 thru 50	9,600
Markets 51 thru 100	6,400
Remaining Markets	4,000
Construction permits	3,200
Low Power TV, TV Translator, and TV Booster (47 C.F.R. Part 74)	135
Broadcast Auxiliary (47 C.F.R. Part 74)	25
International (HF) Broadcast (47 C.F.R. Part 73)	200
Cable Antenna Relay Service (47 C.F.R. Part 78)	220
Cable Television System (per 1,000 subscribers) (47 C.F.R. Part 76)	370
Common Carrier Bureau Radio Facilities	

"SCHEDULE OF REGULATORY FEES—CONTINUED

Bureau/Category	Annual Regulatory Fee
Cellular Radio (per 1,000 subscribers) (47 C.F.R. Part 22).	60
Personal Communications (per 1,000 subscribers) (47 C.F.R.).	60
Space Station (per operational station in geosynchronous orbit) (47 C.F.R. Part 25).	65,000
Space Station (per system in low-earth orbit) (47 C.F.R. Part 25).	90,000
Public Mobile (per 1,000 subscribers) (47 C.F.R. Part 22).	60
Domestic Public Fixed (per call sign) (47 C.F.R. Part 21).	55
International Public Fixed (per call sign) (47 C.F.R. Part 23).	110
Earth Stations (47 C.F.R. Part 25)	
VSAT and equivalent C-Band antennas (per 100 antennas).	6
Mobile satellite earth stations (per 100 antennas).	6
Earth station antennas	
Less than 9 meters (per 100 antennas).	6
9 Meters or more	
Transmit/Receive and Transmit Only (per meter).	65
Receive only (per meter).	55
Carriers	
Inter-Exchange Carrier (per 1,000 presubscriber access lines).	60
Local Exchange Carrier (per 1,000 access lines).	60
Competitive access provider (per 1,000 subscribers).	60
International circuits (per 100 active 64KB circuit or equivalent).	220

"(h) EXCEPTIONS.—The charges established under this section shall not be applicable to (1) governmental entities or nonprofit entities; or (2) to amateur radio operator licenses under part 97 of the Commission's regulations (47 C.F.R. Part 97).

"(i) ACCOUNTING SYSTEM.—The Commission shall develop accounting systems necessary to making the adjustments authorized by subsection (b)(3). In the Commission's annual report, the Commission shall prepare an analysis of its progress in developing such systems and shall afford interested persons the opportunity to submit comments concerning the allocation of the costs of performing the functions described in subsection (a) among the services in the Schedule."

(2) CONFORMING AMENDMENTS.—Section 8 of the Communications Act of 1934 (47 U.S.C. 158) is amended—

- (A) by striking the heading of such section and inserting "APPLICATION FEES";
- (B) by striking "charges" each place it appears and inserting "application fees";
- (C) by striking "charge" each place it appears in subsection (c) and inserting "application fee";
- (D) by striking out "Schedule of Charges" each place it appears and inserting "Schedule of Application Fees"; and
- (E) in the schedule contained in subsection (g)—

- (i) by striking "SCHEDULE OF CHARGES" and inserting "SCHEDULE OF APPLICATION FEES";
- (ii) by striking "charge" and "Charges" each place they appear and inserting "application fee" and "Application fee", respectively; and
- (iii) by striking "CHARGES" and inserting "APPLICATION FEES".

(b) USE OF REGULATORY FEES.—Section 8 of the Communications Act of 1934 (47 U.S.C. 158) is amended by adding at the end the following new subsection:

"(d) Of the sum appropriated in any fiscal year under this section, a portion, in an amount determined under section 9(b), shall be derived from fees authorized by section 9."

**TITLE VII—NUCLEAR REGULATORY COMMISSION PROVISIONS**

**SEC. 7001. NUCLEAR REGULATORY COMMISSION ANNUAL CHARGES.**

Section 6101(a)(3) of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 2214(a)(3)) is amended by striking "September 30, 1995" and inserting "September 30, 1998".

**TITLE VIII—PATENT AND TRADEMARK FEES**

**SEC. 8001. PATENT AND TRADEMARK FEES.**

Section 10101 of the Omnibus Budget Reconciliation Act of 1990 (35 U.S.C. 41 note) is amended—

- (1) in subsection (a) by striking "1995" and inserting "1998";
- (2) in subsection (b)(2) by striking "1995" and inserting "1998"; and
- (3) in subsection (c)—
  - (A) by striking "through 1995" and inserting "through 1998"; and
  - (B) by adding at the end the following:
    - "(6) \$111,000,000 in fiscal year 1996.
    - "(7) \$115,000,000 in fiscal year 1997.
    - "(8) \$119,000,000 in fiscal year 1998."

**TITLE IX—MERCHANT MARINE PROVISIONS**

**SEC. 9001. EXTENSION OF VESSEL TONNAGE DUTIES.**

(a) EXTENSION OF DUTIES.—Section 36 of the Act of August 5, 1906 (36 Stat. 111; 46 App. U.S.C. 121), is amended by—

- (1) striking "and 1995," each place it appears and inserting "1995, 1996, 1997, 1998";
- (2) striking "place," and inserting "place,"; and
- (3) striking "port, not, however, to include vessels in distress or not engaged in trade" and inserting "port. However, neither duty shall be imposed on vessels in distress or not engaged in trade".

(b) CONFORMING AMENDMENT.—The Act of March 8, 1910 (36 Stat. 234; 46 App. U.S.C. 132), is amended by striking "and 1995," and inserting "1996, 1996, 1997, and 1998."

(c) TECHNICAL CORRECTION.—

(1) CORRECTION.—Section 10402(a) of the Omnibus Budget Reconciliation Act of 1990 (104 Stat. 1368-398) is amended by striking "in the second paragraph".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall be effective on and after November 5, 1990.

**TITLE X—NATURAL RESOURCE PROVISIONS**

**Subtitle A—Recreation Use Fees**

**SEC. 10001. ADMISSION FEES.**

(a) ADDITIONAL AREAS.—(1) The first sentence of section 4(a) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a(a)) is amended by inserting after "National Park System" the phrase "or National Conservation Area" and by inserting after "National Recreation Areas" the following: ", National Monuments, National Volcanic Monuments, National Scenic Areas, and no more than 21 areas of concentrated public use".

(2) Section 4(a) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a(a)) is amended by inserting the following after the first sentence: "For purposes of this subsection, the term 'area of concentrated public use' means an area that is managed primarily for outdoor recreation purposes, contains at least one major recreation attraction, where facilities and services necessary to accommodate heavy public use are provided, and public access to the area is

provided in such a manner that admission fees can be efficiently collected at one or more centralized locations."

(b) GOLDEN AGE PASSPORT.—The second sentence of section 4(a)(4) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a(a)(4)) is amended by striking "without charge," and inserting in lieu thereof "for a one-time charge of \$10."

**SEC. 10002. RECREATION USER FEES.**

(a) IN GENERAL.—(1) The first sentence of section 4(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a(b)) is amended by striking out "toilet facilities, picnic tables, or boat ramps" and all that follows down through the end of the sentence and inserting in lieu thereof: "or toilet facilities, nor shall there be any such charge solely for the use of picnic tables: Provided, That in no event shall there be a charge for the use of any campground not having a majority of the following: tent or trailer spaces, picnic tables, drinking water, access road, refuse containers, toilet facilities, personal collection of the fee by an employee or agent of the Federal agency operating the facility, reasonable visitor protection, and simple devices for containing a campfire (where campfires are permitted). For the purposes of this subsection, the term 'specialized outdoor recreation sites' includes, but is not limited to, campgrounds, swimming sites, boat launch facilities, and managed parking lots."

(2) Section 4(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a(b)) is amended by striking the second sentence.

(b) COSTS OF COLLECTION.—Section 4(i)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a(i)) is amended by inserting "(A)" after "(1)" and by adding the following at the end of paragraph (1):

"(B) Notwithstanding subparagraph (A), in any fiscal year, the Secretary of Agriculture and the Secretary of the Interior may withhold from the special account established under subparagraph (A) such portion of all receipts collected from fees imposed under this section in such fiscal year as the Secretary of Agriculture or the Secretary of the Interior, as appropriate, determines to be equal to the fee collection costs for that fiscal year: Provided, That such costs shall not exceed 15 percent of all receipts collected from fees imposed under this section in that fiscal year. The amounts so withheld shall be retained by the Secretary of Agriculture or the Secretary of the Interior, as appropriate, and shall be available, without further appropriation, for expenditure by the Secretary concerned to cover fee collection costs in that fiscal year. The Secretary concerned shall deposit into the special account established pursuant to subparagraph (A) any amounts so retained which remain unexpended and unobligated at the end of the fiscal year. For the purposes of this subparagraph, for any fiscal year, the term 'fee collection costs' means those costs for personnel and infrastructure directly associated with the collection of fees imposed under this section."

(c) COMMERCIAL TOUR USE FEES.—Section 4 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a) is amended by adding the following new subsection at the end thereof:

"(m)(1) In the case of each unit of the National Park System for which an admission fee is charged under this section, the Secretary of the Interior shall establish, by October 1, 1993, a commercial tour use fee to be imposed on each vehicle entering the unit for the purpose of providing commercial tour services within the unit. Fee revenue derived from such commercial tour use fees shall be deposited into the special account established under subsection (i).

"(2) The Secretary shall establish the amount of fee per entry as follows:

- "(A) \$25 per vehicle with a passenger capacity of 25 persons or less, and
- "(B) \$30 per vehicle with a passenger capacity of more than 25 persons.

been made under Title XIX, states would acquire the right of any other party to payment. State laws enforcing these rights must be honored by group health plans since those laws would be exempt from ERISA's preemption.

MEDICAL CHILD SUPPORT ORDERS

House bill

No provision.

Senate amendment

Section 12301(a) of the Senate amendment amends section 514(b)(8) of ERISA to require group health plans to comply with state laws relating to assignment of rights of payment and child health insurance support.

Conference agreement

The House recedes with an amendment.

Under the conference agreement, group health plans are required to honor "qualified medical child support orders." The term "medical child support order" means generally any judgment, decree, or order (including approval of a settlement agreement) issued by a court of competent jurisdiction providing for child support or health benefit coverage for a child of a participant. The child on whose behalf such an order is issued is an "alternative recipient" and will be treated as a participant under the plans. An order is "qualified" and must be honored by the plan if it meets certain specified requirements.

In addition, group health plans that provide for coverage for dependent children must treat dependent children placed for adoption in the home of participants under the plan the same as dependent children who are the natural children of participants, irrespective of whether that adoption has become final. For purposes of these provisions, a child is defined as an individual who has not attained age 18 as of the date of adoption or placement for adoption.

MEDICAL AND MEDICAID COVERAGE DATA BANK

House bill

Section 5117 of the House bill, as reported by the Committee on Energy and Commerce, established a Health Coverage Clearinghouse in order to identify third parties which may be liable for payment as primary payors for health care items and services for Medicaid beneficiaries. Under the House bill, qualified employers are required to provide information to the clearinghouse with respect to every individual who has received wages from such employers and for whom group health plan coverage is available. The information to be provided includes the name and taxpayer identification number of the individual, the name, address, and taxpayer identification number of the employer, and whether the employer has made available group health plan coverage for the individual and his or her family.

Senate amendment

Sections 7904 and 12101 of the Senate amendment (as reported by the Senate Finance and Senate Labor and Human Resources Committee, respectively) establish similar clearinghouses and impose similar requirements on employers.

Conference agreement

A full description of the conference agreement appears in the statement of managers describing section 13581. Conforming amendments to ERISA, ensuring that group health plans furnish required data needed for employer compliance, are adopted as part of section 4301 of the conference agreement.

TEA INSPECTION FEES

Current law

The Tea Importation Act (21 U.S.C. 41 et seq.) establishes a program under which the

Secretary of Health and Human Services sets standards for tea, through the Board of Tea Experts, and operates a program under which tea and tea products are examined for inspection into the United States. Under the law, a fee of 3.5 cents for each hundredweight of tea is required from each importer or consignee.

Conference agreement

Under the conference agreement, the fee on imported tea is increased from 3.5 cents to 10 cents per hundredweight of tea. This increase should provide that expenses of the Food and Drug Administration associated with the standardization and inspection of tea, including expenses associated with the Board of Tea Experts, will be funded by fees paid by the industry. Provision is made such that the fees will not exceed the actual cost of these activities.

TITLE V—TRANSPORTATION AND PUBLIC WORKS PROVISIONS

SEC. 5001. RECREATIONAL USER FEES

House bill.

Authorizes the Secretary of the Army to establish and collect fees for the use of developed recreation sites and facilities. New fees established under the authorization are limited to \$3 per private, noncommercial vehicle. It also deletes the existing requirement for one free campground at Corps facilities where camping is permitted.

Senate amendment

Authorizes the Secretary of the Army to charge fees for the use of developed recreation sites and facilities, and deletes the existing requirement for one free campground at Corps facilities where camping is permitted.

Conference agreement

Adopts a combination of the two provisions authorizing the Secretary of the Army to establish and collect fees for the use of developed recreation sites and facilities. The new fees are limited to \$3 per private, noncommercial vehicle transporting not more than 8 persons. It also deletes the existing requirement for one free campground at Corps facilities where camping is permitted.

Individual conferees on this issue want to make it clear that his or her position on the issue does not necessarily reflect his or her position on other issues of this conference report.

Aircraft registration fees (sec. 1101 of the House bill and sec. 313(f) of the Federal Aviation Act of 1968).

Present law

Under present law (sec. 313(f) of the Federal Aviation Act of 1968 (49 U.S.C. App. 1354(f)), the Administrator of the Federal Aviation Administration (FAA) may establish and collect such fees as may be necessary to cover the costs associated with issuance of certificates of registration of aircraft, issuance of airman certificates to pilots, and processing of forms for major repairs and alterations of fuel tanks and fuel systems of aircraft. The current FAA aircraft registration fee is a one-time fee of \$5. The other fees are not being collected.

The maximum fee schedule authorized under present law is as follows:

Type of fee	Statutory authorized maximum amount
Renewal of aircraft registration ..	\$15.00
Registration of aircraft after transfer of ownership .....	25.00
Airman's pilot certificate .....	12.00
Processing of form major repair or alteration of a fuel tank or fuel system of an aircraft .....	7.50

The amount of fees collected are to be credited to the FAA for expense of carrying

out Titles V and VI of the Federal Aviation Act of 1968.

House bill

Imposing of fees.—The House bill (sec. 11001) replaces the current FAA fee schedule with the following fees:

Type of fee	Amount (in dollars)
Annual aircraft registration fee:	
Aircraft 3,500 lbs. and under .....	\$40
Aircraft over 3,500-8,500 lbs. ....	175
Aircraft over 8,500-10,000 lbs. ....	500
Aircraft over 10,000-100,000 lbs. ....	1,500
Aircraft over 100,000 lbs. ....	2,000
Aircraft transfer fee (average based on aircraft weight, to be set by FAA) .....	200
Aviation Medical Examiner's fee ....	500
Pilot's certificate fee (triennial) ....	12
Continues authorization of fee for processing of forms for major repairs and alterations of fuel tanks and fuel systems of aircraft	7.50

Exemptions.—The annual aircraft registration fee and the aircraft transfer fee do not apply to (1) commercial air carrier, (2) aircraft owned by or operated exclusively for, the United States Government (3) a dealer's registered aircraft, (4) aircraft without an engine driven electrical system, and (5) balloons or gliders.

Deposit of fee revenues.—The fees under the House bill are to be deposited in the Airport and Airway Trust Fund.

Effective date.—The provision applies to fiscal years beginning after September 30, 1993 (fiscal year 1994).

Senate amendment

No provision.

Conference agreement

The conference agreement is that the House recede to the Senate and not include these fees from the House bill.

Each conferee on this issue wants to make it clear that his or her position on the issue does not necessarily reflect his or her position on other issues of this Conference Report.

TITLE VI—COMMUNICATIONS LICENSING AND SPECTRUM ALLOCATION IMPROVEMENT

Section 6001 of H.R. 2264 provides for the orderly transfer of frequencies, including frequencies that can be licensed utilizing competitive bidding procedures, from the Federal Government to the Federal Communications Commission.

SECTION 6001—TRANSFER OF AUCTIONABLE FREQUENCIES

SECTION 111

House bill

Section 117 defines "allocation", "assignment", "commercial provider", and "the Act".

Senate amendment

Section 4011 of the Senate Amendment is virtually identical, except this section also defines the terms "Commission" and "Secretary".

Conference agreement

The conferees adopted the House provision, except the term "commercial provider" was deleted.

FINDINGS

House bill

Section 111 sets forth congressional findings concerning the Federal Government's use of the spectrum, the scarcity of assignable frequencies for licensing by the Commission, and the fact that reassignment of the spectrum can produce significant economic returns.

*Senate bill*

Section 4002(1)-(7) of the Senate Amendment sets forth congressional findings with respect to reallocation of spectrum that are similar to the House provision, except the Senate amendment finds that a reassignment of Federal Government spectrum can be accomplished without an adverse impact on amateur radio licenses that currently share spectrum with Government users.

*Conference agreement*

The Conference Agreement eliminates the findings section of the House bill and Senate Amendment because these provisions do not have a budgetary impact and could violate the Byrd rule. However, the conferees believe that these findings and conclusions are important and lay the predicate for this legislation, and incorporate the findings of both bills herein by reference.

## SECTION 112

*House bill*

Section 112(a) requires the Assistant Secretary and the Chairman of the Commission to meet at least biannually to conduct joint spectrum planning. Section 112(b) requires a report by the Assistant Secretary and the Chairman to the Committee on Energy and Commerce and the Committee on Commerce, Science, and Transportation, the Secretary, and the Commission, on the joint planning activities. Section 112(c) sets forth the analysis that should be included in the first annual report.

*Senate amendment*

Section 4003(a) of the Senate Amendment is essentially the same as the House provision. Section 4003(b) requires a similar report as the House provision, but includes the requirement of recommendations for actions developed pursuant to the planning activities. The Senate Amendment also requires recommendations for the reform of the process of allocating spectrum between Federal uses and non-Federal uses.

*Conference agreement*

Section 112 of the Conference Agreement contains the provision on national spectrum allocation planning. The conferees adopted the language from both the House bill and the Senate Amendment with respect to the requirement of annual meetings between the Assistant Secretary and the Chairman of the Commission. One of the purposes of these annual meetings is to plan for the shared use of spectrum between commercial and Federal Government users. Such planning will provide certainty to potential bidders for commercial licenses and will thus increase the value of such licenses.

The conferees also added an issue for the joint spectrum planning activity, namely the extent to which licenses for spectrum use can be issued subject to the Commission's auction authority under section 309(j) of the 1934 Act. The purpose of this provision is to ensure that the Secretary and the Commission are reviewing all relevant issues of spectrum management.

Due to concerns about the non-budgetary impact of the reporting requirements, the Conference Agreement removes the statutory requirement concerning reports by the Secretary and the Commission about the scope of their planning activities and what progress had been made. Nonetheless, the conferees find this report necessary and expect the Assistant Secretary and the Chairman of the Commission to submit a joint annual report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, and to include an analysis of the effect on spectrum efficiency and the cost of equipment to Fed-

eral spectrum users of maintaining separate allocations for Federal Government and non-Federal licensees for the same or similar services.

## SECTION 113

*House bill*

Section 113(a) requires the Secretary to submit a report within 24 months to the President and Congress, identifying and recommending for reallocation frequencies that are assigned to Federal Government stations and are not required for the present or identifiable future needs of the Federal Government. The frequencies are to be those which are, or will be, feasible to make available during the next 15 years and have the greatest potential for commercial use.

Subsection (b) requires that the spectrum identified for reallocation must be located below 5 GHz, except that a maximum of 20 megahertz of the identified frequencies may be located between 5 and 6 gigahertz. Subsection (c) requires the Secretary to consider a number of factors affecting the usefulness and appropriateness of identified spectrum. Subsection (c)(4) provides additional criteria which the Secretary must consider in identifying reallocable spectrum, including the requirement that frequencies that Federal power agencies are licensed to use may only be eligible for mixed use in geographically separate areas and shall not be subject to withdrawal as part of the minimum 200 MHz that is required by section 113(b) of this chapter.

Subsection (d) describes the procedures for the identification of frequencies. The Secretary is required to prepare and submit to Congress, within 12 months, a report which makes preliminary identification of frequencies to be reallocated. The Secretary is to convene an Advisory Committee to review the frequencies identified in the preliminary report.

Subsection (e) requires the Secretary to include a timetable for reallocation that recommends immediate and delayed effective dates by which the President shall withdraw or limit assignments on the frequencies specified in the report. To expedite the availability of at least a portion of the spectrum to be reassigned, this section authorizes the Secretary to identify an initial 30 megahertz of spectrum to be made available for reallocation immediately upon issuance of the report.

*Senate amendment*

Section 4004 of the Senate Amendment is similar to the House provision, with a number of exceptions. First, section 4004(b)(1) requires that all of the 200 megahertz identified by the Secretary be below 5 gigahertz. Next, it adds the requirement that at least one-half of the 200 megahertz identified by the Secretary for reallocation fall below 3 gigahertz. Paragraph (b)(2)(C) also requires any sharing of spectrum between Federal and non-Federal users be subject to coordination procedures established by both the Commission and the Secretary. The Senate Amendment also directed the Secretary to seek to avoid excessive disruption of amateur licensees.

With respect to frequencies assigned to Federal power agencies, paragraph (c)(4) provides that the criteria for eligibility of spectrum shall be deemed not to be met for any frequency assigned to such an agency.

The timetable for the preliminary report on allocable frequencies in subsection (d)(2) of the Senate Amendment is for 8 months; the House provision allowed 12 months. Subsection (d)(5) provides that within 18 months of enactment the Secretary shall prepare and submit a final report that recommends reallocation of at least 170 megahertz. In ad-

dition, the Senate Amendment provided for public comment on the report and direct discussion among commercial representatives and Federal Government users, but did not provide for an advisory committee.

In order to ensure the spectrum identified by the Secretary would be of maximum use, subsection (d)(8) requires that none of the 200 megahertz may be frequencies identified for reallocation by international agreement. Moreover, the Senate Amendment requires that none of the spectrum identified for immediate reallocation as part of the Secretary's 6-month report be allocated for mixed use, and that at least one-half of the spectrum identified for immediate reallocation must be below 3 gigahertz.

*Conference agreement*

Section 113 of the Conference Agreement reflects the House provision with a number of key portions of the Senate Amendment. The conferees adopted the Senate position regarding 6 months as the time period in which the Secretary must prepare and submit a preliminary report identifying reallocable spectrum, and 18 months in which to submit a final report. Given the fact that this legislation has passed the House three times in six years, the conferees are confident that this legislation comes as no surprise for the Secretary, and that this deadline can be met.

The Conference Agreement adopts the Senate language requiring that all spectrum identified by the Secretary be below 5 gigahertz, and that one-half be below 3 gigahertz. This provision was included since it guarantees that the spectrum identified by the Secretary will be useful to the commercial sector, and this will advance the primary goals of the legislation.

In order to encourage the maximum usefulness of the spectrum that will be reallocated in the near future, the conferees increased the amount of spectrum subject to this expedited process from 30 megahertz to 50 megahertz. Moreover, the conferees agreed to the Senate language requiring that one-half of such spectrum be below 3 gigahertz, and that none of the spectrum be allocated for mixed use.

The Conference Agreement adopts the Senate language that any operational sharing permitted under this paragraph must be subject to coordination and interference standards worked out by the Secretary and the Commission.

With respect to obtaining input on the Secretary's preliminary identification of reallocable spectrum, the Conference Agreement adopts the Senate language on public comment and direct discussions between commercial representatives and Federal Government users in lieu of the House provision on advisory committees. However, the conferees also added a provision requiring the Commission to submit to the Secretary its analysis of the public comments received by the Secretary and its recommendations for responses to such comments. The intent of this provision is to ensure that the Secretary gets another expert analysis of the numerous technical, regulatory and commercial issues that will be generated by the preliminary identification report. The Commission's processes and analysis will serve the same purposes as the Advisory Committee that was required by the House bill, but will not cause delays and increase expenditures.

In order to afford some protection to amateur licensees, the Conference Agreement adopts the Senate language directing the Secretary to seek to avoid excessive disruption of existing use of Federal Government frequencies by amateur radio licensees. The conferees believe the concerns of amateurs should be taken into consideration, and that

the Secretary should seek to avoid excessive disruption.

The Conference Agreement adopts the Senate language providing that spectrum scheduled for reallocation by international agreement would not be eligible for identification by the Secretary. With respect to the Federal power agencies, the Conference Agreement incorporated the Senate language.

The conferees note that in assessing the criteria for identifying reallocable spectrum, the Secretary must assume that there will be reasonable rates of scientific progress and growth in demand for telecommunications services, and that the frequencies identified for reassignment will be assigned by the Commission within a fifteen-year period. These assumptions will help to assure that the frequencies that are reallocated will be able to be utilized as the state of radio art advances, as well as help stimulate the development of new spectrum-dependent technologies.

The conferees also observe that these delayed effective dates shall permit the earliest possible reallocation of the frequency bands, while taking into consideration the relationship between the cost to the Federal Government of changing to different frequencies and the commercial benefits of reassignment of these frequencies.

#### SECTION 114

##### House bill

Section 114(a) requires the President to withdraw the assignment to a Government station of any frequency recommended in the Secretary's report for immediate reallocation within six months after receiving such report. The President also is required to limit the assignment to a Government station of any frequency the report recommends for immediate mixed use. Subsection (b) recognizes that exceptions may be required to the recommendations made by the Secretary and provides procedures to be utilized by the President when the criteria established in subsection (b) are met. Subsection (c) limits the ability of the President to delegate the functions assigned by the Act.

##### Senate amendment

Section 4005 of the Senate Amendment is similar to the House provision, with these exceptions. The Senate Amendment provides that a ground for the President removing spectrum from the list identified by the Secretary and substituting other spectrum is that the identified spectrum will disrupt amateur radio licenses. Subsection (c) authorizes those Federal users who are displaced by virtue of a reallocation to be reimbursed, from the revenues generated by the competitive bidding, for their incremental costs directly attributable to the displacement. Subsection (d) clarifies that nothing in this subtitle prevents or limits additional reallocation of spectrum from the Federal Government to commercial or other users. The subsection also provides that the Secretary can permit the sharing of its frequencies to facilitate implementation of new technologies, and that the Commission shall expedite the allocation and associated licensing of any such frequencies.

##### Conference agreement

Section 114 of the Conference Agreement reflects the decision of the conferees to adopt the House provision with the following changes. The conference agreement incorporated the Senate language regarding disruption to amateur licenses as a grounds for substituting identified spectrum.

With regard to federal agencies getting reimbursed for costs associated with any reallocation of spectrum, the conference agreement does not include any statutory

authorization in the Conference Agreement. However, the conferees believe that any Federal agency whose operation is displaced from a frequency assignment should be reimbursed for the incremental costs such agency incurs. Such costs must be directly attributable to the displacement from the frequency.

The Senate language with respect to implementation of new technologies and additional reallocation is generally incorporated in the Conference Agreement in section 117. However, the conferees concluded that the Commission should make any allocation decisions pertinent to such sharing in a timely manner and in accordance with the expedited timetable set forth in section 7 of the Communications Act of 1934.

The conferees find that the timetables authorized under this section will allow optimal use of frequencies that have been selected for reallocation and should impose only a minimal financial burden on the Government.

#### SECTION 115

##### House bill

Section 115 states that no less than one year after the President notifies the Commission of a frequency band to be reallocated, pursuant to section 114(a)(5), the Commission is required to submit to the President and Congress a plan for distribution of the reassigned frequencies. This plan shall not propose the immediate distribution of frequencies, and must take into account the timetable recommended by the Secretary.

##### Senate amendment

The differences between the Senate Amendment and the House Bill are few. Section 4006(b) requires consultation by the Commission with the Assistant Secretary, whereas the House language leaves such consultation at the Commission's discretion. More significantly, the Senate requires the Commission to not just submit a plan, but to implement it as well. Subsection (b)(2) directs the Commission to contain appropriate provisions to ensure the safety of life and property. Finally, subsection (c) amends section 303 of the Communications Act of 1934 by stipulating that any frequencies reallocated could be licensed by the Commission, but that any such assignment shall be expressly subject to the right of the President to reclaim that frequency.

##### Conference agreement

The Conference Agreement adopted the Senate language with one significant change. In order to ensure that the 50 megahertz of spectrum identified for immediate reallocation by section 115(a)(3) be allocated and assigned on an expedited basis by the Commission, the conferees agreed that the Commission shall have rules in place in 18 months allocating such spectrum and shall propose regulations to assign such frequencies.

The Conference Agreement provides that the Commission shall both submit a plan and begin to implement that plan on distribution and allocation of frequencies, and consequently adopted the Senate language. The Conference Agreement also provides that in developing its plan, the Commission shall contain appropriate provisions to ensure the safety of life and property in accordance with section 1 of the 1934 Act. The conferees agreed to delete subsection (c) of the Senate Amendment.

The Conferees note that advances in low power (e.g., below 5 mW) biomedical telemetry systems may greatly improve the quality and significantly decrease the cost of certain health care services. These systems are designed to operate in either the VHF or UHF bands. The Conferees believe that the

NTIA and the FCC should carefully consider the needs of hospitals and other health care providers for interference-free radio spectrum in their respective allocation decisions made pursuant to this Act.

#### SECTION 116

##### House bill

This section establishes the process by which the President can reclaim frequencies which already have been reallocated to the Commission for reassignment. Subsection (e) stipulates that nothing contained in this chapter limits or otherwise affects the President's authority under sections 306 and 706 of the Communications Act, including the ability to withdraw or limit the use of all frequencies utilized by Government users.

##### Senate amendment

Section 4011 of the Senate Amendment is virtually identical to the House provision, except that subsection (e) sets forth a rule of construction that nothing in this section shall be construed to limit or otherwise affect the authority of the President under section 706.

##### Conference agreement

The conferees adopted the Senate provision.

#### SECTION 117

##### House bill

No provision.

##### Senate amendment

Section 4006(d) clarifies that nothing in this subtitle prevents or limits additional reallocation of spectrum from the Federal Government to commercial or other users. The subsection also provides that the Secretary can permit the sharing of Government frequencies to facilitate implementation of new technologies, and that the Commission shall expedite the allocation and associated licensing of any such frequencies.

##### Conference agreement

Section 117(a) of the Conference Agreement is similar to the Senate provision in section 4006(d). Subsection (b) adds a new section 104(e) to the NTIA Organization Act (47 U.S.C. 903), to require the Secretary and the NTIA to amend their rules and regulations to require that any person (other than an agency or instrumentality of the United States) utilizing a frequency that is allocated for the use of government stations, or utilizing a radio station belonging to the United States for any non-government application, must submit proof to the NTIA that such person has obtained a license from the Commission. The subsection further requires that the NTIA retain on file proof that such licenses have been obtained, and that the Secretary and the NTIA certify to Congress that such licenses have been obtained.

The conferees find it necessary to include this provision because it has become evident that some persons, despite clear law to the contrary, make use of frequency assigned to government stations without obtaining a license from the Commission. This practice offends the essence of Title III of the Communications Act of 1934, circumvents the licensing fee process, and undermines the mission of the FCC as the agency charged with licensing all non-Federal users of the spectrum. The conferees are committed to terminating this practice immediately, and thus have placed these obligations on the Secretary as well as NTIA.

#### SECTION 6002. AUTHORITY TO USE COMPETITIVE BIDDING

Section 6002 of H.R. 2204 amends the Communications Act of 1934 (47 U.S.C. 151 et seq.) to permit the Federal Communications Commission (FCC) to utilize a system of competitive bidding to issue licenses for the use of

frequencies. Specifically, section 3002 amends section 309 of the Act (47 U.S.C. 309) by adding a new subsection (j) that would permit such competitive bidding, and limits the circumstances under which existing authority to license frequencies utilizing a system of random selection could be used.

#### House bill

Section 5202 of H.R. 2264 contained four findings.

#### Senate amendment

Section 4002 of the Senate Amendment contained thirteen findings.

Due to the circumstances governing the consideration of the Conference Report, the Conferees have omitted them from the statutory text. They are, however, incorporated herein by reference.

#### SECTION 309 (J) (1) AND 309 (J) (2)

#### House bill

Subsection 309(j) confers the authority for the FCC to utilize a system of competitive bidding to issue licenses, and establishes the general criteria that the FCC must meet in order to utilize such authority. The Commission is restricted to utilizing competitive bidding procedures only when mutually exclusive applications are filed for subscription-based services.

#### Senate amendment

Subsection 309(j) would require the Commission to utilize a system of competitive bidding, but exempts certain classes of licenses from the requirement. Specifically, paragraph (4) of subsection 309(j) prohibits the use of the competitive bidding authority for license renewals and modifications thereof; for issuing new licenses to state and local government entities; for issuing new licenses in the amateur radio service, for over-the-air terrestrial radio and television licenses; for public safety and radio astronomy services; for non-mutually exclusive applications (such as specialized mobile radio, maritime and aeronautical end-user licenses); and for the modification of any non-Federal license that is required in order to make spectrum available for new technologies.

#### Conference agreement

The Conference Agreement adopts the provisions of the House bill, with an amendment to clarify the terms and conditions that must be met in order for the Commission to carry out its responsibilities under this Act.

Under the terms of the Conference Agreement, competitive bidding procedures would be utilized for a limited number of licenses. These procedures will only be utilized when the Commission accepts for filing mutually exclusive applications for a license, and the Commission has determined that the principal use of that license will be to offer service in return for compensation from subscribers.

The House Committee Report (H.R. Rept. 103-111) contains many examples of the types of licenses that would be covered by the competitive bidding procedures authorized in this Act, which are incorporated herein by reference.

The Conferees note that the principal use of licenses in the Instructional Television Fixed Service is the provision of educational television programming services to public school systems, parochial schools and other educational institutions. The fact that the Commission's rules permit licensees in this service to allow MMDS operators to utilize these frequencies when they are not needed for their principal use will not alter the manner by which these licenses will be issued as the result of the enactment of this legislation. Similarly, although such licensees are permitted to receive payments from such MMDS operators, such payments are

not to be construed by the Commission to indicate that ITFS licensees are receiving compensation from "subscribers" as that term is used in section 309(j)(2).

#### SECTION 309 (J)(3)

#### House bill

Paragraph (3) of the House bill requires the Commission to establish competitive bidding systems that meet the requirements of this section. In particular, the Commission is required to develop methodologies that promote the development and rapid deployment of new technologies; promote economic opportunity and competition and ensure that new and innovative technologies are available to the American people by avoiding excessive concentration and by disseminating licenses among a wide variety of applicants, including small business and businesses owned by members of minority groups and women; recover for the public a portion of the value of the public spectrum resource made available to the licensee and the avoidance of unjust enrichment; and promote the efficient and intensive use of the spectrum.

#### Senate amendment

Section 309(j)(2) requires the Commission seek to adopt rules to implement competitive bidding, and requires that such rules include safeguards to protect the public interest and ensure the opportunity for successful participation by small businesses and minority-owned businesses.

The original House provision requires the Commission to disseminate licenses to a wide variety of applicants, including small businesses and businesses owned by minority groups and women. The Amendment adds rural telephone companies to the list of examples of the term "wide variety of applicants."

#### Conference agreement

The Conference Agreement adopts the provisions of the House bill with an amendment. The amendment requires that the Commission disseminate licenses among a wide variety of applicants, including small business, rural telephone companies, and businesses owned by members of minority groups and women.

#### SECTION 309(J)(4)

#### House bill

Section 309(j)(4) contains requirements for the rules that the Commission must issue in order to implement this section. The Commission is required to consider alternative payment schedules and methods of calculation, including initial lump sums, installment or royalty payments, guaranteed annual minimum payments, or other schedules or methods (including combinations of methods) that promote the objectives of this Act.

In addition, the Commission is required to include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural and other areas, and to prevent stockpiling of frequencies.

Consistent with the public interest, the purposes of this Act, and the characteristics of the proposed service, the Commission is also required to prescribe area designations and bandwidth assignments that promote an equitable distribution of licenses and services among geographic areas; economic opportunity for a wide variety of applicants, including small businesses and businesses owned by members of minority groups and women; and investment in and rapid deployment of new technologies and services.

Finally, the Commission must require such transfer disclosures and antitrafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses.

#### Senate amendment

Section 309(j)(2)(C) requires that the Commission's rules implementing the amendments to section 309(j) establish the method of bidding (including but not limited to sealed bids) and the basis for payment (such as installment of lump payments, royalties on future income, a combination thereof, or other reasonable forms of payment as specified by the Commission).

Section 309(j)(3) requires the Commission to establish at least one license per market as a "rural program license" for any service that will compete with telephone exchange service provided by a qualified common carrier. This section also stipulates the terms and conditions for any such license, including requirements to pay an amount equal to the value of comparable licenses issued utilizing competitive bids.

#### Conference agreement

The Conference Agreement adopts the House provisions, with several amendments.

First, the Conference Agreement modifies the requirements regarding the use of installment or royalty payments and guaranteed annual minimum payments. The modification clarifies that the Commission can utilize payment schedules that include lump sums or guaranteed installment payments, with or without royalty payments.

The reason for the modification is to ensure that the Commission is not placed in the position of evaluating bids that are submitted solely in the form of promises to pay a royalty on future income, and attempting to determine which bid is greater based on speculation about the amount of money that will be generated thereby. Such a situation would force the Commission to assume all of the risk that is properly borne by the licensee and its financial underwriters, and force the Commission to make determinations that surely would be litigated, further delaying the availability of service to the public.

The Conferees anticipate that under some circumstances, the Commission will require bidder to agree to pay a stipulated lump sum or annual minimum, and, in addition to those amounts, a percentage of future revenues that are derived from the use of the license. Such an approach will reduce the likelihood of protracted litigation that could delay the availability of service to the public, and hold the Commission harmless in the event that projections of future revenue fall short.

The Conferees also agreed to require that the Commission provide economic opportunities for rural telephone companies in addition to small business and businesses owned by members of minority groups and women.

The Conference Agreement also modifies the House provision to include a provision, based on but not identical to a Senate provision, that requires the Commission to ensure that small businesses, rural telephone companies, and businesses owned by minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences and other procedures.

#### SECTION 309(J) (5)

#### House bill

Section 309(j)(5) requires the Commission to adopt procedures that will assure that no license is accepted for filing that does not meet the Commission's requirements. It provides that no license shall be granted unless the Commission determines that the applicant is qualified pursuant to subsection (a) of section 309 and sections 308(b) and 310 of the Communications Act of 1934. Finally, it requires the Commission to adopt expedited

procedures for the resolution of any substantial and material issues of fact concerning qualifications.

*Senate bill*

Section 309(J)(2)(B) instructs the Commission to prescribe rules that require potential bidders to file a first-stage application indicating an intent to participate in the competitive bidding process, and containing such other information as the Commission finds necessary. After conducting the bidding, the Commission must require the winner to submit such other information as it deems necessary in order to determine that the bidder is qualified.

This section also clarifies that participants in the competitive bidding process shall be subject to the schedule of charges contained in section 8 of the Communications Act.

*Conference agreement*

The Conference Agreement adopts the House provisions.

SECTION 309(J)(6)

*House bill*

Section 309(J)(6) contains rules of construction, and stipulates that nothing in the use of competitive bidding for the award of licenses shall limit or otherwise affect the requirements of the Communications Act that limit the rights of licensees, or require the Commission to adhere to other requirements. In particular, the adoption of competitive bidding procedures does not affect the requirements of sections 301, 304, 307, 309(h), 310, 706, or any other provision of the Act other than subsections (d)(2) and (e) of Section 309.

In addition, the House bill requires that nothing in this subsection, or in the use of competitive bidding, shall be construed to convey any rights, including any expectation of renewal of a license, that differ from the rights that apply to other licenses within the same service that were not issued pursuant to this subsection, or construed to prohibit the Commission from issuing nationwide licenses or permits.

*Senate amendment*

Section 309(J)(6) states that nothing in the competitive bidding provisions of this Act shall be construed to alter spectrum allocation criteria and procedures established by the other provisions of the Communications Act; allow the Commission to consider potential revenues from competitive bidding when making decisions concerning spectrum allocation; diminish the authority of the Commission under the other provisions of the Communications Act to regulate or reclaim spectrum licenses; grant any right to a licensee different from the rights awarded to licensees who obtained their license through assignment methods other than competitive bidding; or prevent the Commission from awarding licenses to those persons who make significant contributions to the development of a new telecommunications service or technology.

*Conference agreement*

The Conference Agreement adopts the House provisions with an amendment. The amendment includes three provisions from the Senate Amendment, including the provision of section 309(J)(5)(E) concerning the so-called "Pioneer's Preference."

In addition, the Conference Agreement includes a provision that requires the Commission to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings.

The Conference Agreement also includes the provisions contained in the House Bill that retains for the Commission its ability

to issue nationwide licenses or permit, but clarifies that the Commission retains its discretion to issue nationwide, regional, or local licenses or permits.

Finally, the Conference Agreement includes the provision of the Senate Amendment (309(J)(2)(B)(iii)) that requires applicants to pay any fee imposed pursuant to section 8 of the Communications Act.

SECTION 309(J)(7)

*House bill*

Section 309(J)(7) limits the ability of the Commission to base allocation decisions, or its decisions concerning payment schedules, area designations and bandwidth assignments, solely or predominantly on expectations of Federal revenues.

*Senate amendment*

Section 309(J)(5)(B) prohibits the Commission from considering potential revenues from competitive bidding when making decisions concerning spectrum allocation.

*Conference agreement*

The Conference Agreement prohibits the Commission from basing a finding of public interest, convenience, and necessity on the expectation of Federal revenues from competitive bidding when making allocation decisions pursuant to section 303(c) or paragraph 4(C) of subsection 309(j).

In prescribing regulations pursuant to paragraph 4(A) of subsection 309(j), the Conference Agreement prohibits the Commission from basing a finding of public interest, convenience, and necessity solely or predominantly on the expectation of Federal revenues from the use of competitive bidding.

Finally, the Conference Agreement recognizes that the Commission historically has attempted to project demand for services as part of its determinations, and preserves that ability for the Commission in the future.

SECTION 309(J)(8)(A)

*House bill*

Section 309(J)(8) requires that all proceeds from the use of a competitive bidding system under this subsection shall be deposited in the Treasury in accordance with chapter 33 of title 31, U.S. Code.

This section also stipulates that a license or permit issued by the Commission shall not be treated as the property of the licensee for tax purposes by any State or local government entity.

*Senate amendment*

Section 309(J)(8) requires that moneys received from competitive bidding pursuant to this subsection shall be deposited in the general fund of the Treasury.

Section 400(c) of the Senate Amendment to H.R. 2264 amends the Communications Act by creating a new section 714, which states that a license or permit issued by the Commission under the Act shall not be treated as the property of the licensee for property tax purposes, or other similar tax purposes, by any State or local government entity.

*Conference agreement*

The Conference Agreement adopts the language contained in the House Bill pertaining to the treatment of revenues derived from competitive bidding.

The Conferees agree to drop the language contained in both the House bill and the Senate Amendment relating to State and local government tax treatment of parties who have obtained licenses under the Communications Act. It is the intent of the Conferees to clarify that nothing in this Act alters or affects the authority or lack of authority of State and local governments to assess ad valorem property, or other taxes on the licensee. The Conferees do not intend for

the deletion of the proposed House and Senate language to create any other inference regarding the subject matter of the proposed provisions.

SECTION 309(J)(8)(B)

*House bill*

No provision.

*Senate amendment*

Section 400(a)(2) of the Senate Amendment to H.R. 2264 permits the Commission to retain as an offsetting collection such sums as may be necessary from the receipts received pursuant to section 309(j) for the costs of developing and implementing the competitive bidding procedures required by this Act.

*Conference agreement*

The Conference Agreement includes the Senate provision.

SECTION 309(J)(9)

*House bill*

No provision.

*Senate amendment*

No provisions.

*Conference agreement*

Section 309(J)(9) of the Conference Agreement requires that, within 5 years after the enactment of this section, the Commission issue licenses and permits, utilizing the provisions of section 309(j), that in the aggregate span not less than 10 megahertz, and that have been reassigned from Government use pursuant to part B of the National Telecommunications and Information Administration Organization Act.

SECTION 309(J)(10)

*House bill*

No provision.

*Senate amendment*

No provision.

*Conference agreement*

Section 309(J)(10) stipulates the conditions that must have been met in order for the Commission to commence issuing licenses pursuant to section 309(j), and in order that the Commission continue to have such authority over the course of the next five years.

The initial authority for the Commission to utilize competitive bidding procedures is conditioned on the Secretary of Commerce submitting to the Commission the report required by section 113(d)(1) of the National Telecommunications and Information Administration Organization Act; that such report recommends for immediate reallocation bands of frequencies that, in the aggregate, span not less than 50 megahertz; and that such bands of frequencies meet the criteria required by section 113(a) of such Act.

In addition, in order to utilize the competitive bidding procedures authorized by section 309(j), the Commission must have completed the rulemaking required by section 332(c)(1)(D) of H.R. 2264.

Subparagraph (B) of this subsection stipulates that the Commission's authority to utilize competitive bidding procedures on and after two years after the enactment of this Act shall cease to be effective if the Secretary of Commerce has failed to submit the report required by section 113(a) of the National Telecommunications and Information Administration Organization Act; if the President has failed to withdraw and limit assignments of frequencies as required by paragraphs (1) and (2) of such Act; or if the Commission has failed to issue the regulations required by section 113(a) of such Act.

In addition, the Commission's authority to utilize competitive bidding procedures shall cease to be effective if the Commission has failed to complete and submit to Congress,

not later than 18 months after the date of enactment of this subsection, a study of current and future spectrum needs of state and local government public safety agencies through the year 2010, and a specific plan to ensure that adequate frequencies are made available to public safety licensees, or the Commission has failed, under section 332(c)(3), to grant or deny within the time required by such section any petition that a State has filed within 90 days after the enactment of this subsection. The authority to reinstate competitive bidding procedures is conditioned on the correction of the failure that required that such authority cease to be effective.

**SECTION 309(j) (11)**

*House bill*

Section 309(j)(9) of the House bill terminates the competitive bidding authority contained in section 309(j) on September 30, 1998.

*Senate amendment*

Section 4008(a) of the Senate Amendment to H.R. 2264 requires the Commission to utilize competitive bidding procedures under appropriate circumstances, but terminates that requirement when the Secretary of the Treasury determines that competitive bidding has resulted in or is reasonably expected to result in the receipt of \$7,200,000,000 by the end of fiscal year 1998, or at the end of fiscal year 1998, whichever is earlier. The Senate Amendment contains no provision that terminates the Commission's discretionary authority to utilize competitive bidding procedures.

*Conference agreement*

The Conference Agreement includes the House provision.

**SECTION 309(j) (12)**

*House bill*

Section 309(j)(9) includes a provision that requires the Commission to conduct a public inquiry and submit to the congress a report concerning the implementation of section 309(j). The report must describe the methodologies established by the Commission; compare the relative advantages and disadvantages of such methodologies in terms of attaining the objectives stipulated in this Act; evaluate the extent to which such methodologies have secured prompt delivery of service to rural areas; and contain a statement of the revenues obtained, and a projection of the future revenues that are derived from the use of competitive bidding.

*Senate amendment*

Section 4008(a)(1)(C) of the Senate Amendment contained a similar reporting requirement.

*Conference agreement*

The Conference Agreement adopts the House provisions with an amendment, which contains several provisions required by the Senate Amendment. In addition to the reporting requirements required by the House Bill, the Conference Agreement requires that such report evaluate whether and to what extent competitive bidding significantly improved the efficiency and effectiveness of the licensing process; facilitated the introduction of new spectrum-based technologies and the entry of new companies into the telecommunications market; and enabled small business, rural telephone companies, and businesses owned by members of minority groups and women to participate successfully in the competitive bidding process. In addition, the Conference Agreement requires that the Commission include any recommendations for statutory changes that may be necessary to improve the competitive bidding process.

**SECTION 309 (b)**

*House bill*

Section 3204 of the House bill contains conforming amendments that limit the ability of the Commission to utilize the provisions of section 309(i) to award licenses by random selection. These amendments condition the use of the provisions of section 309(i) on a prior determination that the Commission cannot utilize the competitive bidding authority contained in section 309(j) because the use of the license is not one for which the Commission is authorized to use competitive bidding procedures.

In addition, the House bill contains a requirement that, within 180 days of the date of the enactment of this section, the Commission adopt regulations that include such transfer disclosures and antitrafficking restrictions and payment schedules as are necessary to prevent the unjust enrichment of recipients of licenses that are issued by a system of random selection.

*Senate amendment*

No provision.

*Conference agreement*

The Conference Agreement includes the provisions of the House Bill.

**SECTION 332(c)(1)**

*House bill*

Section 332(c)(1)(A) states that any person providing commercial mobile service shall be treated as a common carrier subject to the requirements of title II of the communications Act. The Commission is given authority to specify by rule which provisions of title II may not apply. In specifying sections or provisions of sections that shall not apply, the Commission may not specify sections 201, 202, or 208. In addition, the Commission may not specify a provision that is necessary to ensure charges are just and reasonable and not unjustly or unreasonably discriminatory, or otherwise in the public interest.

The House bill requires in section 332(c)(1)(B) that the Commission shall order a common carrier to establish interconnection with any person providing commercial mobile service, upon reasonable request. Nothing here shall be construed to expand or limit the Commission's authority under section 201, except as this paragraph provides.

*Senate amendment*

Section 332(c)(1)(A) of the Senate Amendment is the same as the House provision except:

the Senate amendment states expressly that the Commission may waive the requirements of sections 203, 204, 205, and 214, and the 30-day notice requirement of section 309(a);

the Senate amendment specifies that the Commission may not waive sections 201, 202, 206, 208, 209, 215(c), 216, 217, 220(d) or (e), 223, 225, 226(a), (b), (c), (d), (e), (f), (g), or (h), 227 or 228.

Section 332(c)(1)(B) of the Senate provision is identical to the House provision.

Section 332(c)(7) as added by the Senate bill states that the Commission, in any proceeding under this subsection, (i) shall consider the ability of new entrants to compete in the services to which such proceeding relates, and (ii) shall have the flexibility to amend, modify, or forbear from any regulation of new entrants under this subsection, or consistent with the public interest, take other appropriate action, to provide a full opportunity for new entrants to compete in such services.

*Conference agreement*

With regard to section 332(c)(1)(A), the Conference Agreement adopts the House ap-

proach with some modifications. The intent of this provision, as modified, is to establish a Federal regulatory framework to govern the offering of all commercial mobile services. The Conference Agreement adds two additional requirements that the Commission must meet before specifying any provision as inapplicable. In addition to requiring that the Commission determine that enforcement of the provision is not necessary in order to ensure that charges are reasonable, the Conference Agreement requires the FCC to determine that enforcement of the provision is not necessary for the protection of consumers and that specifying such provision is consistent with the public interest. The Conference Agreement adopts the House provision of section 332(c)(1)(B). Differential regulation of providers of commercial mobile services is permissible but is not required in order to fulfill the intent of this section.

By dropping the list of provisions in the Senate Amendment that the Commission may not specify by rule, the Conferees do not intend to diminish the importance of these provisions to consumers. The Conferees intend to give the Commission the flexibility to determine whether or not the enforcement of these provisions is necessary, in light of their significance to consumers.

The fact that all commercial mobile services will be treated as common carriers under this provision is not intended to affect the telephone-cable cross-ownership provision contained in Section 613(b) of the Communications Act.

Section 332(c)(1)(C) of the Conference Agreement directs the Commission to review and analyze competitive market conditions with respect to commercial mobile services in its annual report. This section also states that the Commission, as part of determining whether a provision is consistent with the public interest under subparagraph (A)(iii), shall consider whether the proposed regulation (or amendment thereof) will promote competitive market conditions. If the Commission determines that such regulation will promote competition among providers of commercial mobile services, such determination may be the basis for a Commission finding that such regulation is in the public interest.

The purpose of this provision is to recognize that market conditions may justify differences in the regulatory treatment of some providers of commercial mobile services. While this provision does not alter the treatment of all commercial mobile services as common carriers, this provision permits the Commission some degree of flexibility to determine which specific regulations should be applied to each carrier. For instance, the Commission may, under the authority of this provision, forbear from regulating some providers of commercial mobile services if it finds that such regulation is not necessary to promote competition or to protect consumers against unjust or unreasonable rates or unjustly or unreasonably discriminatory rates. At the same time, the Commission may determine that it should not specify some provisions as inapplicable to some commercial mobile services providers, or may choose to "unspecify" certain provisions for certain providers, if it determines, after analyzing the market conditions for commercial mobile services, that application of such provisions would promote competition and protect consumers.

Section 332(c)(1)(D) of the Conference Agreement provides that the Commission shall conduct a rulemaking to implement this paragraph with respect to the licensing of personal communications services within 180 days after the enactment of this Act. This provision is necessary because the Act elsewhere requires the Commission, in order

to speed the licensing of personal communications services, to complete two other proceedings concerning the rules for personal communications services within 180 days. Completion of a rulemaking regarding the regulatory treatment of personal communications services prior to the issuance of licenses through competitive bidding for these services will provide regulatory certainty that will enhance the value of the licenses.

## SECTION 332(C)(2)

*House bill*

Section 332(c)(2) as added by the House bill clarifies that a party engaged in private land mobile service shall not be treated as a common carrier. This section also clarifies that parties deemed common carriers by virtue of paragraph (1)(A) can continue to offer radio dispatch service. In addition, this section authorizes the FCC to decide whether all common carriers should be able to provide dispatch service in the future.

*Senate amendment*

The provision of the Senate bill is almost identical to the House provision.

*Conference agreement*

The Conference Agreement adopts the House language.

## SECTION 332(C)(3)

*House bill*

Section 332(c)(3)(A) added by the House bill provides that state or local governments cannot impose rate or entry regulation on private land mobile service or commercial mobile services; this paragraph further stipulates that nothing shall preclude a state from regulating the other terms and conditions of commercial mobile services. Section 332(c)(3)(B) permits states to petition the Commission for authority to regulate rates for any commercial mobile services where mobile services have become a substitute for telephone service, or where market conditions are such that consumers are not protected from unreasonable and unjust rates. The FCC is required to respond to any state's petition within 9 months of filing.

*Senate amendment*

Section 332(c)(3)(A) of the Senate Amendment is identical to the House provision except that it explicitly recognizes that nothing in this subparagraph exempts providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the continued availability of telephone exchange service at affordable rates.

Similarly, section 332(c)(3)(B) as added by the Senate Amendment permits the State to petition for the right to regulate, but under slightly different standards. Under the Senate Amendment, a state may obtain regulatory authority if the state demonstrates that the commercial mobile service is a substitute for land line telephone exchange service for a substantial portion of the communications within such State (rather than substantial portion of the public).

Section 332(c)(3)(C) of the Senate Amendment is a "grandfathering" provision that permits states that regulate the rates for any commercial mobile services as of June 1, 1993 to continue to exercise such authority until the Commission issues a final order in response to a petition filed by the State requesting that the State be authorized to continue exercising authority over such rates. The Commission must rule on such a petition within nine months and must grant the petition if the State satisfies the showing required under subparagraph (B)(1) or (B)(1).

Section 332(c)(3)(D) of the Senate Amendment permits any interested party to petition the Commission, after a reasonable period of time after the issuance of an order under subparagraph (B) or (C), for an order that the State authority to regulate rates is no longer necessary. After receiving public comment on the petition, the Commission must rule on such petition within 9 months.

*Conference agreement*

The Conference Agreement retains the Senate language concerning universal service, with slight modifications to clarify that universal service can be provided by any provider of telecommunications service. The Conference Agreement adopts the language "substantial portion of the telephone land line exchange service" rather than either "communications" or "public" to more accurately describe the situation in which state authority to regulate commercial mobile services should be granted. For instance, the Conferees intend that the Commission should permit States to regulate radio service provided for basic telephone service if subscribers have no alternative means of obtaining basic service if subscribers have no alternative means of obtaining basic telephone service. If, however, several companies offer radio service as a means of providing basic telephone service in competition with each other, such that consumers can choose among alternative providers of this service, it is not the intention of the conferees that States should be permitted to regulate these competitive services simply because they employ radio as a transmission means.

The Conference Agreement merges subparagraphs (C) and (D) of the Senate Amendment into subparagraph (B) to provide regulatory certainty to potential bidders for licenses to provide commercial mobile services. The Conference Agreement clarifies that State authority to regulate is "grandfathered" only to the extent that it regulates commercial mobile services "offered in such State on such date". The Conference Agreement also clarifies that the State authority continues in effect until the Commission completes all action on the petition (including reconsideration). The Commission must complete all action on any state petition (including action on petitions for reconsideration) within 12 months after the petition is filed. The Conference Agreement further clarifies that State authority to regulate is only "grandfathered" if the State files a petition seeking such authority within 1 year after the date of enactment; if the State fails to file a petition within this time, the State authority is preempted as all other States are preempted under subsection (c)(3)(A).

It is the intent of the Conferees that the Commission, in considering the scope, duration or limitation of any State regulation shall ensure that such regulation is consistent with the overall intent of this subsection as implemented by the Commission, so that, consistent with the public interest, similar services are accorded similar regulatory treatment.

## SECTION 332(C)(4)

*House bill*

Section 332(c)(4) of the House Bill states that nothing in this provision affects the regulation of Comsat pursuant to title IV of the Communications Satellite Act of 1962.

*Senate amendment*

The Senate provision is identical to the House provision.

*Conference agreement*

The Conference Agreement accepts the House provision.

## SECTION 332(C)(5)

*House bill*

No provision.

*Senate amendment*

Section 332(c)(5) as added by the Senate Amendment provides that the Commission shall continue to determine whether the provision of space segment capacity by satellite systems to providers of commercial mobile services shall be treated as common carriage.

*Conference agreement*

The Conference Agreement adopts the Senate provision with slight modification to clarify that the Commission may continue to use its existing procedures to determine whether the provision of space segment capacity to providers of commercial mobile services shall be treated as common carriage. Under section 332(c)(1)(A), however, the provision of space segment capacity directly to users of commercial mobile services shall be treated as common carriage.

## SECTION 332(C)(6)

*House bill*

No provision.

*Senate amendment*

Section 332(c)(6) as added by the Senate Amendment states that the foreign ownership restrictions of Section 310(b) shall not apply to any lawful foreign ownership in a provider of commercial mobile services prior to May 24, 1993, if that provider was not regulated as a common carrier prior to the date of enactment of this Act and is deemed a common carrier as a result of this Act.

*Conference agreement*

The Conference Agreement adopts a modified version of the Senate provision. The purpose of this provision is to "grandfather" any foreign ownership in a provider of private land mobile services that existed prior to May 24, 1993 if that provider becomes a common carrier under this Act. Section 310(b) of the Communications Act limits the amount of private foreign ownership in a common carrier service but does not impose any such limits on the foreign ownership in private radio service. Currently, some foreign-owned companies provide private radio services. Some of these companies will become common carriers as a result of section 332(c)(1)(A). Without this "grandfathering" provision, these companies would be forced to divest themselves of any foreign ownership when this Act becomes effective.

In order to avoid this result, the Conference Agreement accepts the Senate provision with modifications to limit its application. First, Section 332(c)(6) as added by the Conference Report requires a person that may be affected by this provision to file a waiver request with the Commission within 6 months of enactment. The FCC may grant the waiver only on the following conditions:

(1) The extent of foreign ownership interest shall not be increased above the extent which existed on May 24, 1993.

(2) Such waiver shall not permit the subsequent transfer of ownership to any other person in violation of section 310(b). In effect, this condition "grandfathers" only the particular person who holds the foreign ownership on May 24, 1993; the "grandfathering" does not transfer to any future foreign owners.

Section 310(b) addresses the permissible extent of foreign investment in certain radio licenses, including common carriers. One effect of the denomination of commercial mobile services as common carrier services is to broaden the range of services subject to limitations on foreign investment. In securing regulatory parity for commercial mobile

services, the Conference Agreement does not restrict the FCC's discretion, pursuant to section 310(b)(4), to permit foreign investors to acquire interests in U.S.-licensed enterprises. These amendments in no way affect the Commission's authority under section 330(b).

## SECTION 322(D)

*House bill*

Section 322(d) of the House bill defines the terms "commercial mobile service" and "private mobile service". "Commercial mobile service" is defined as a mobile service, as defined in section 332(a), that is interconnected with the Public switched telephone network offered for profit and held out to the public, or offered on an indiscriminate basis to classes of eligible users, or to such a broad class so as to equal the public. "Private mobile service" is defined as anything that does not fall under commercial mobile service. The provisions also direct the Commission to define "interconnected" and "public switched telephone network".

*Senate amendment*

Section 322(c)(8) as added by the Senate Amendment contains similar definitions of the terms "commercial mobile service" and "private land mobile service". The differences in the Senate definition of "commercial mobile service" are: 1) that "offered on an indiscriminate basis" is not one of the tests for determining a "commercial mobile service" in the Senate Amendment; 2) the Senate definition expressly recognizes the Commission's authority to define the terms used in defining "commercial mobile service"; and 3) the Senate definition requires that "interconnected service" must be made available to the public, as opposed to the House definition which simply requires the service offered to the public to be "interconnected". In other words, under the House definition, only one aspect of the service needs to be interconnected, whereas under the Senate language, the interconnected service must be broadly available. The Senate Amendment defines "interconnected service" as a service that is interconnected with the public switched network or service for which an interconnection request is pending. The definition of "private land mobile service" in the Senate amendment is virtually identical to the definition of "private mobile service" in the House bill.

*Conference report*

The Conference Report adopts the Senate definitions with minor changes. The Conference Report deletes the word "broad" before "classes of users" in order to ensure that the definition of "commercial mobile services" encompasses all providers who offer their services to broad or narrow classes of users so as to be effectively available to a substantial portion of the public.

Further, the definition of "private mobile service" is amended to make clear that the term includes neither a commercial mobile service nor the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.

The Commission may determine, for instance, that a mobile service offered to the public and interconnected with the public switched network is not the functional equivalent of a commercial mobile service if it is provided over a system that, either individually or as part of a network of systems or licenses, does not employ frequency or channel reuse or its equivalent (or any other techniques for augmenting the number of channels of communication made available for such mobile service) and does not make service available throughout a standard metropolitan statistical area or other similar wide geographic area.

## SECTION (E)

*House bill*

Subsection (E) of the House bill adds a conforming amendment to the definition in Section 30(a) of the Communications Act of "mobile service" to clarify that the term includes all items previously defined as "private land mobile service" and includes the licenses to be issued by the Commission pursuant to the proceedings for personal communications services.

*Senate amendment*

The Senate Amendment makes almost the identical changes to the definition of "mobile service" in Section 30(a) of the Communications Act except that the Senate Amendment clarifies that the term does not include rural radio service or the provision by a local exchange carrier of telephone exchange service by radio instead of by wire.

*Conference agreement*

The Conference Agreement adopts the House definition.

## SUBSECTION (b)(1)

*House bill*

Section (b)(2) of the House bill makes additional conforming amendments to clarify headings and spacing.

*Senate amendment*

The Senate Amendment does not contain the provisions contained in the House bill. The Senate Amendment contains a technical amendment to Section 3(b) of the Communications Act to clarify that the Commission has the authority to regulate commercial mobile services.

*Conference agreement*

The Conference Agreement adopts the Senate position.

## SUBSECTION (c)

*House bill*

Section 3304 of the House bill established effective dates and deadlines for Commission action. Under the House bill, the amendments made by the above chapter are effective upon the date of enactment, except that the amendments made by section 3305 on regulatory parity take effect one year after enactment, and that persons that provide private land mobile services shall continue to be treated as a provider of private land mobile service until 3 years after enactment. The House bill directs the FCC to prescribe rules to implement competitive bidding within 110 days of enactment. The House bill directs the Commission to, within 180 days after enactment, issue a final report and order in two proceedings regarding personal communications services and begin issuing licenses within 270 days after enactment. Finally, the House bill directs the Commission, within 1 year after enactment, to alter its rules regarding private land mobile services to provide for an orderly transition of these services to regulation as common carrier services.

*Senate amendment*

Under the Senate Amendment, all provisions regarding regulatory parity take effect one year after enactment, except: 1) the provisions in 332(c)(1)(A) regarding the treatment of commercial mobile services as common carrier services take effect upon enactment; and 2) any person that provides private land mobile services before such date of enactment shall continue to be treated as a provider of private land mobile service until 3 years after enactment. The deadlines for Commission action with regard to personal communications services are identical to the House deadlines. The Senate Amendment also directs the Commission to alter its rules regarding private mobile services to provide

for a transition to the treatment of these services as common carrier services.

*Conference agreement*

The Conference Agreement adopts the House provisions that generally establish the effective date as the date of enactment, except that the provisions of section 332(c)(3)(A) shall take effect one year after enactment. The Conference Agreement adds that any private land mobile service provided prior to enactment, and any paging service utilizing frequencies allocated as of January 1, 1993, for private land mobile services shall be treated as a private mobile service until 3 years after enactment, except for the foreign ownership provisions of section 332(c)(6).

The Conferees included the specific references to paging services in order to clarify that if a paging service that was not offered prior to the enactment of this section is offered in a state that restricts entry for common carriers, and the Commission's regulations preempting such state entry regulation has not yet taken effect, the paging service is not to be treated as a common carrier and subjected to such entry regulation.

The Conference Agreement adopts the House language concerning the transitional rulemaking for mobile services with slight modifications to clarify that the rules are intended to ensure that services that were formerly private land mobile services and become common carrier services as a result of this Act are subjected to technical requirements that are comparable to the technical requirements that apply to similar common carrier services.

## SECTION (C)—SPECIAL RULE

*House bill*

The House bill provides that the Commission may not issue any license or permit by lottery after the date of enactment unless the Commission has made the determination required by paragraph (1)(B) that the use is not of a type described in subsection (2)(A).

*Senate amendment*

The Senate Amendment accomplishes the same purpose by requiring competitive bidding to be used for all except exempted communications licenses.

*Conference agreement*

The Conference Agreement adopts the House approach and adds additional language which permits the Commission to use lotteries for applications that were accepted for filing before July 26, 1993. This provision will permit the Commission to conduct lotteries for the nine Interactive Video Data Service markets for which applications have already been accepted, and several other licenses. This provision does not permit the FCC to conduct lotteries of applications that were not filed prior to July 26, 1993.

*House bill*

Section 5241 of the House Bill contained a series of technical amendments to the Communications Act to make clerical corrections, transfer provisions of law, and eliminate expired or outdated provisions.

*Senate amendment*

No provision.

*Conference agreement*

The Conference Agreement does not contain this package of technical amendments.

## SECTION 6003. ADDITIONAL COMMUNICATIONS FEES

*House bill*

No provision.

*Senate amendment*

No provision.

*Conference agreement*

The Conference agreement contains a new section 9 of the Communications Act, which has a table of regulatory fees to be collected by the Commission from its licensees in order to recover for the Commission the costs of enforcement, policy and rulemaking, international coordination, and user information services with respect to those licensees. The Commission is given authority to review these fees after one year and make any recommendations for their adjustment. In addition, the Commission is required to adjust the fees to reflect proportionate changes in its appropriations, and is permitted through a rulemaking, to make changes to the fee schedule, including adding, deleting, or reclassifying services when the Commission determines that such changes are necessary to ensure such fees are reasonably related to the benefits provided to the payor of the fee by the Commission's activities.

The Conference Agreement also authorizes late payment penalties, dismissal of application, and revocation. The Conference Agreement also authorizes the Commission to waive, reduce, or defer payment of a fee for good cause.

With the exception of the level of the fees themselves, the fee provisions contained in this section are virtually identical to those contained in H.R. 1674, which passed the House in 1991. To the extent applicable, the appropriate provisions of the House Report (H.R. Rept. 102-207 are incorporated herein by reference.

#### TITLE VII—NRC USER FEES AND ANNUAL CHARGES

*Present law*

Section 6101 of the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-506) requires the Nuclear Regulatory Commission (NRC) to collect 100% of its budget authority (less amounts appropriated to the NRC from the Nuclear Waste Fund established by 42 U.S.C. 10222(c) and fees collected under the Independent Offices Appropriations Act of 1962) from annual charges on NRC licensees. This authority expires at the end of fiscal year 1995. After fiscal year 1995, the NRC is authorized to collect 33% of its costs from annual fees and charges, pursuant to Section 7801 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272).

*House bill*

The House bill extends present law for three years, through fiscal year 1998.

*Senate amendment*

The language in the Senate amendment is identical to the language in the House bill.

*Conference agreement*

The Conference Agreement adopts the same language as in the House bill and the Senate amendment.

#### TITLE VIII—PATENT AND TRADEMARK OFFICE PROVISIONS

##### PATENT AND TRADEMARK FEES

The House bill contains language raising Patent Office Fees by \$345 million through fiscal year 1998.

The Senate amendment contains identical language.

The conferees agreed to retain the language in the conference report.

#### TITLE IX—MERCHANT MARINE PROVISIONS

##### TONNAGE DUTIES

*Current law*

The United States imposes a tonnage duty on a vessel which enters the U.S. from any foreign port or place; the duty is also imposed on a vessel which departs from and re-

turns to a U.S. port or place on a "voyage to nowhere".

The tonnage duty is imposed on the cargo-carrying capacity of the vessel and is assessed regardless of whether the vessel is empty or is carrying cargo.

A vessel arriving from a foreign port in the northern Western Hemisphere (Canada, Mexico, Central America, West Indies, Bahamas, Bermuda, and northern South America) and a vessel returning from a "voyage to nowhere" must pay a tonnage duty of nine cents per ton. However, the maximum payment for any vessel in a single year is 45 cents per ton.

A vessel arriving from a foreign port anywhere else in the world must pay a tonnage duty of 27 cents per ton, not to exceed \$1.35 per ton in a single year.

Under current law, in Fiscal Year 1996, the tonnage duties will revert to earlier, lesser amounts (two cents per ton, not to exceed ten cents per ton in a single year for vessels entering from the northern Western Hemisphere and from "voyages to nowhere;" six cents per ton, not to exceed 30 cents per ton for other vessels subject to the duty).

*House bill*

Section 8001 amends section 36 of the Act of August 5, 1909, and the Act of March 8, 1910, to maintain the tonnage duties at current levels through Fiscal Year 1998. Section 8001 also makes related technical corrections in relevant statutes.

*Senate amendment*

Section 4061 is substantively identical to the House provision.

*Conference agreement*

Section 8001 contains this provision.

#### SENSE OF CONGRESS ON INCREASES IN INLAND WATERWAYS FUEL TAXES

*House bill*

Section 8002 of the House Bill contains a Sense of the Congress Resolution which expresses the Congress' intention that the inland waterways fuel tax should not be further increased beyond those increases already mandated by law.

The inland waterways fuel tax is a tax paid by commercial cargo vessel operators on the inland waterway system and the intra-coastal waterway. Receipts from this tax are transferred to the Inland Waterways Trust Fund. Barge operators on these inland waterways currently pay a tax of 17 cents per gallon. Under current law, this amount will increase to 19 cents per gallon in 1994 and to 20 cents in 1995 and thereafter. In addition, these barge operators pay a one-cent-per-gallon tax on the same fuel for the Leaking Underground Storage Tank Trust Fund.

*Senate bill*

The Senate had no comparable provision.

*Conference agreement*

The Conference Agreement does not include the House provision.

#### TITLE X—NATURAL RESOURCES PROVISIONS

##### RECREATIONAL USER FEES ENTRANCE FEES

*House bill*

The House bill made no changes in current law.

*Senate amendment*

The Senate amendment would authorize entrance fees at National Recreation Areas, National Monuments, National Volcanic Monuments, National Scenic Areas, BLM National Conservation Areas and areas of concentrated public use.

*Conference agreement*

The Conference Agreement authorizes entrance fees at Congressionally designated

Forest Service and BLM areas and at up to 21 areas of concentrated public use administered by the Secretary of Agriculture.

##### GOLDEN AGE PASSPORT

*House bill*

The House bill would impose a one-time processing fee of \$10.

*Senate amendment*

The Senate amendment did not contain a similar provision.

*Conference agreement*

The Conference agreement adopts the House provision.

##### USER FEES

*House bill*

The House bill would authorize user fees at day use recreation sites including swimming areas, boat ramps and managed parking lots on Department of the Interior, Department of Agriculture and Army Corps of Engineers outdoor recreation sites. The bill would retain the current prohibition on fees for drinking water, wayside exhibits, roads and overlooks, visitor centers, scenic drives and picnic tables. In addition, the bill would authorize overnight camping fees if 5 of 8 criteria (tent or trailer space, drinking water, access roads, refuse containers, toilet facilities, fee collection, visitor protection, campfire facilities) are met.

*Senate amendment*

The Senate version contained a similar provision, except the prohibition on picnic tables and visitor centers was not retained and camping fees would be charged if 5 of 9 criteria were met.

*Conference agreement*

The Conference agreement includes the Senate provision, but retains the prohibitions on visitor centers and prohibits charging fees solely for the use of picnic tables.

##### COSTS OF COLLECTION

*House bill*

The House bill would authorize the Secretary of the Interior and the Secretary of Agriculture to retain costs of fee collection from additional fee revenues.

*Senate amendment*

The Senate amendment contained an identical provision.

*Conference agreement*

The Conference agreement authorizes the Secretaries to retain all direct costs of collection associated with existing and additional fee revenues, but caps the amount that may be retained at 15% of the fee revenues collected for that year.

##### COMMERCIAL TOUR FEES

*House bill*

The House bill would authorize commercial tour use fees for vehicles and aircraft entering National Park System units for the sole purpose of providing commercial tour services.

*Senate amendment*

The Senate amendment would authorize commercial tour use fees for vehicles only.

*Conference agreement*

The Conference agreement authorizes commercial tour use fees for vehicles and aircraft at certain park system units with high levels of overflight activity.

##### NON-FEDERAL GOLDEN EAGLE PASSPORT SALES

*House bill*

The House bill contained no provision.

*Senate amendment*

The Senate amendment would authorize the sale of Golden Eagle Passports by non-federal entities, with such entities retaining