

Citation	Rank (R)	Database	Mode
139 Cong.Rec. S7913-01	R 7 OF 13	CR	Page

(Cite as: 139 Cong. Rec. S7913-01, *S7997)

year following the fiscal year in which the President's notification is received.

(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 Act (47 U.S.C. 606).

SEC. 4008. COMPETITIVE BIDDING.

(a) COMPETITIVE BIDDING.-

(1) IN GENERAL.-

(A) FIVE-YEAR AUTHORIZATION.-The Commission shall, during fiscal years 1994 through 1998, use the competitive bidding process authorized under the amendment made by subsection (b) to grant all radio spectrum **licenses** for which two or more **mutually exclusive** applications have been filed, including the 200 megahertz of spectrum made available to the Commission under this subtitle, and including the **licenses** issued for a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services", or any successor proceeding, except for those **licenses** identified in subparagraphs (A) through (E) of section 309(j)(4) of the Act and those **licenses** that the Commission determines should in the public interest be issued by comparative *S7998 hearing under section 309(a) through (f) of the Act. To the extent possible, and consistent with the purposes of this subtitle, the Commission shall seek to ensure that revenues received pursuant to the competitive bidding process are received before the end of fiscal year 1998.

(B) EXPIRATION OF REQUIREMENTS.-The requirements of subparagraph (A) shall expire either-

(i) upon a determination by the Secretary of the Treasury 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

(ii) at the end of fiscal year 1998, whichever is earlier.

(C) REPORT TO PRESIDENT AND CONGRESS.-The Commission shall prepare, in consultation with the Assistant Secretary of Commerce for Communications and Information, and submit to the President and the Congress, not later than March 31, 1997, and March 31, 1999, reports on the use of competitive bidding under subparagraph (A). Such reports shall examine, in addition to any other matters deemed appropriate by the Commission, 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) the needs of rural spectrum users were adequately addressed in the competitive bidding process;

(iv) small businesses and minority-owned businesses were able to participate successfully in the competitive bidding process; and

(v) statutory changes are needed to improve the competitive bidding process.

(2) RETENTION OF REVENUES.-Notwithstanding paragraph (6) of section 309(j) of the Act, as added by this subtitle, the salaries and expenses account of the

Copr. (C) West 1995 No claim to orig. U.S. govt. works

(Cite as: 139 Cong. Rec. S7913-01, *S7998)

Commission shall retain as an offsetting collection such sums as may be necessary from the receipts received pursuant to such section for the costs of developing and implementing the program required by subsection (a)(1)(A). 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 section 309(i) of the Act shall be used by the Commission to implement section 309(j) of the Act.

(b) COMPETITIVE BIDDING AUTHORIZATION.-Section 309 of the Act (47 U.S.C. 309) is amended by adding at the end the following new subsection:

"(j)(1) Subject to the exemptions and conditions set forth in the other provisions of this subsection, if there are two or more **mutually exclusive** applications for any **construction permit** or **initial license** which will involve any use of the electromagnetic spectrum, the Commission shall have authority to use competitive bidding in the granting of such **construction permit** or **initial license**.

"(2)(A) The Commission shall, within 6 months after the date of enactment of the Emerging Telecommunications Technologies Act of 1993 and following public notice and comment proceedings, issue rules establishing competitive bidding procedures under this subsection. Such rules shall include safeguards to protect the public interest in the use of the spectrum and shall ensure the opportunity for successful participation by small businesses and minority-owned businesses.

"(B)(i) In the rules issued pursuant to subparagraph (A), the Commission shall 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 shall require the winning bidder to file a second-stage application. After determining that such application is acceptable for filing and that the winning bidder is qualified as described in clause (ii), the Commission shall grant the permit or license to the winning bidder.

"(ii) No permit or license shall be granted to a winning bidder pursuant to clause (i) unless the Commission determines that such winning bidder is qualified pursuant to section 308(b) and subsection (a) of this section, on the basis of the information contained in the first-stage and second-stage applications submitted pursuant to clause (i).

"(iii) Each participant in the competitive bidding process shall be subject to the schedule of charges contained in section 8.

"(C) In the rules issued pursuant to subparagraph (A), the Commission, in addition to other actions it finds necessary to implement competitive bidding fairly and effectively, shall-

"(i) establish the method of bidding (including but not limited to sealed bids) and the basis for payment (such as installment or lump sum payments, royalties on future income, a combination thereof, or other reasonable forms of payment specified by the Commission); and

"(ii) establish other appropriate conditions on such permits and licenses that serve the public interest.

"(3)(A)(i) If the Commission decides to use competitive bidding to grant two or more national, regional, or local licenses per market in a terrestrial

Copr. (C) West 1995 No claim to orig. U.S. govt. works

(Cite as: 139 Cong. Rec. S7913-01, *S7998)

service that will compete with telephone exchange service provided by a qualified common carrier, the Commission shall designate one such license per market as a rural program license.

"(ii) The Commission shall define the geographic boundaries of the rural program license to correspond to the geographic area of the telephone exchange service by which the qualified common carrier became eligible for the rural program license under subparagraph (E) (ii).

"(B) (i) Except as provided in subparagraph (D), the Commission shall either grant a rural program license to the qualified common carrier providing telephone exchange service in the area covered by such license, or grant a license to a consortium of such qualified carriers.

"(ii) No qualified common carrier that receives a rural program license shall be eligible to-

"(I) receive any other license to provide the same service in such area; or

"(II) own any equity interest in, become a creditor of, or otherwise become affiliated with any entity that holds a license to provide the same service in such area.

"(iii) Any qualified common carrier that receives a rural program license shall (I) provide to all other licensees providing the same service in such area the same quality of access to its wire network that it provides itself, and (II) shall interconnect its wireless service with the wireless service provided by another licensee providing the same service on the same frequency in a different geographic area. Such other licensee shall provide an equivalent interconnection with the wireless service of such rural program licensee.

"(iv) The Commission may establish other rules or conditions for the award of a rural program license, consistent with the intent of this paragraph.

"(C) (i) Upon the grant of a rural program license to a qualified common carrier, such carrier shall pay a fee (in lump sum or installment payments, in royalties on future income, in a combination thereof, or on any other reasonable basis specified by the Commission) equal to the value of such license. The value of such license shall be the average of the amounts paid by persons granted licenses through competitive bidding to provide the same service in such area, except that the Commission shall determine the value of such license by any reasonable means when the geographic area served by the rural program license is not congruent with the geographic area served by the other license or licenses. The Commission shall ensure that the total amount paid by qualified common carriers for all the licenses issued to them under the rural program shall equal the total value, as determined under clause (ii), of such licenses.

"(ii) The Commission shall determine the total value of the licenses issued under the rural program to qualified common carriers by first adding the amounts paid for the licenses not subject to the rural program, and dividing that sum by the number of licenses per market that are not subject to the rural program. The Commission shall then subtract from the amount found in the previous calculation the total amount paid for the licenses issued for the non-rural areas under bidding subject to the rural program and the total amount paid for licenses issued pursuant to subparagraph (D). The amount remaining shall be the total value of all the licenses issued under the rural program to qualified common carriers.

"(D) If no qualified common carrier applies for a rural program license in a

(Cite as: 139 Cong. Rec. S7913-01, *S7998)

particular market and the Commission awards the non-rural program licenses through competitive bidding, the rural program shall not apply for that particular market and the Commission shall use competitive bidding to award the licenses for the former rural program areas, either separately or as part of larger license areas.

"(E) For purposes of this paragraph-

"(i) the term 'rural area' means any geographic area that does not include either-

"(I) any incorporated place of 10,000 inhabitants or more, or any part thereof; or

"(II) any territory, incorporated or unincorporated, included in an urbanized area (as defined by the Bureau of the Census as of the date of enactment of the Emerging Telecommunications Technologies Act of 1993); and

"(ii) the term 'qualified common carrier' means a common carrier that-

"(I) either provides telephone exchange service by wire in a rural area, provides telephone exchange service by wire to less than 10,000 subscribers, or is a telephone utility whose income accrues to a State or political subdivision thereof; and

"(II) submits an application for a rural program license that meets the standards established by the Commission to determine ability to provide the service covered by the license.

"(F) The provisions of subparagraph (A) (ii) do not limit the Commission's discretion to determine, for licenses issued other than under this paragraph, the size of any market area or the number of licensees for any service.

"(4) The competitive bidding authority provided to the Commission in paragraph (1) shall not-

"(A) because of the need to avoid excessive service disruption, extend to license renewals and modifications;

"(B) because of the essential services they provide, extend to licenses reserved for the United States Government and State or local government entities;

"(C) because of their public service obligations, extend to licenses to provide amateur operator services, over-the-air terrestrial radio and television broadcast services, public safety services, and radio astronomy services;

"(D) because they do not involve **mutually exclusive** applications, extend to private radio end-user **licenses**, including Specialized Mobile Radio Service (SMRS), maritime, and aeronautical end-user **licenses**;

"(E) because of the need to avoid excessive service disruption, extend to any license grant to a non-Federal licensee being moved from its current frequency assignment to a different one by the Commission in order to make spectrum available for new technologies; and

***S7999** "(F) extend to any other service, class of services, or assignments that the Commission determines, after conducting public notice and comment proceedings, should be exempt from competitive bidding because of public interest factors warranting an exemption to the extent the Commission determines the use of competitive bidding would jeopardize appropriate treatment of those factors.

"(5) No provision of this subsection or of the Emerging Telecommunications Technologies Act of 1993 shall be construed, in any way, to-

Copr. (C) West 1995 No claim to orig. U.S. govt. works

(Cite as: 139 Cong. Rec. S7913-01, *S7999)

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

"(B) allow the Commission to consider potential revenues from competitive bidding when making decisions concerning spectrum allocation;

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

"(D) grant any right to a spectrum licensee different from the rights awarded to licensees who obtained their license through assignment methods other than competitive bidding; or

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

"(6) Moneys received from competitive bidding pursuant to this subsection shall be deposited in the general fund of the Treasury."

(c) STATE AND LOCAL TAX TREATMENT OF LICENSES AND PERMITS.-Title VII of the Act (47 U.S.C. 601 et seq.) is amended by adding at the end the following new section:

"SEC. 714. STATE AND LOCAL TAX TREATMENT OF LICENSES AND PERMITS.

"A license or permit issued by the Commission under this 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."

SEC. 4009. REGULATORY PARITY.

(a) AMENDMENT.-Section 332 of the Act (47 U.S.C. 332) is amended-

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

(2) by amending subsection (c) to read as follows:

"(c) (1) (A) A person engaged in the provision of commercial mobile services shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this Act, except that the Commission may waive the requirements of

Copr. (C) West 1995 No claim to orig. U.S. govt. works

Citation	Rank(R)	Database	Mode
139 Cong.Rec. H5792-01	R 6 OF 13	CR	Page

(Cite as: 139 Cong. Rec. H5792-01, *H5913)
 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. 2264 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 *H5914 frequencies. Specifically, section 6002 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

(Cite as: 139 Cong. Rec. H5792-01, *H5914)

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
Copr. (C) West 1995 No claim to orig. U.S. govt. works

(Cite as: 139 Cong. Rec. H5792-01, *H5914)

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

Copr. (C) West 1995 No claim to orig. U.S. govt. works

(Cite as: 139 Cong. Rec. H5792-01, *H5914)

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 *H5915 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

Copr. (C) West 1995 No claim to orig. U.S. govt. works

(Cite as: 139 Cong. Rec. H5792-01, *H5915)

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)(5) 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

Copr. (C) West 1995 No claim to orig. U.S. govt. works

(Cite as: 139 Cong. Rec. H5792-01, *H5915)

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

Section 4008(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 4008(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.

Copr. (C) West 1995 No claim to orig. U.S. govt. works

(Cite as: 139 Cong. Rec. H5792-01, *H5915)

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 115(a) of such Act.

In addition, the Commission's authority to utilize competitive

(Cite as: 139 Cong. Rec. H5792-01, *H5915)

bidding procedures shall cease to be effective if the Commission has failed to complete and submit to Congress, *H5916 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; evaluates 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

Copr. (C) West 1995 No claim to orig. U.S. govt. works

(Cite as: 139 Cong. Rec. H5792-01, *H5916)

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 6002 (b)

House bill

Section 5204 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

Copr. (C) West 1995 No claim to orig. U.S. govt. works