

SECTION-BY-SECTION ANALYSIS

SECTION 1. Termination of the Telecommunications Development Fund.

This section terminates the Telecommunications Development Fund (Fund). The first paragraph terminates the Fund and directs that remaining assets and balances in the Fund be returned and deposited to the Miscellaneous Receipts account of the Treasury. The second paragraph directs the deposit in the Treasury of earnings on the funds in escrow accounts required by the Federal Communications Commission (FCC) to be established by qualifying bidders in spectrum auctions.

SECTION 2. Permanent Extension of Auction Authority.

As part of the Deficit Reduction Act of 2005, Public Law No. 109-171, the FCC's spectrum auction authority was extended through September 30, 2011. Section 309(j) establishes the FCC's auction authority and paragraph (11) currently states that the entire section sunsets on September 30, 2011. The new section provides the FCC with permanent authority to assign licenses via auction (competitive bidding) by repealing paragraph (11) of section 309(j) of the Communications Act of 1934 in its entirety. Spectrum auctions have proven to be an efficient method for assigning licenses or permits for certain spectrum-based services. Making the FCC's auction authority permanent allows for more certainty in the auction-planning process.

SECTION 3. Authority to Establish Spectrum License User Fees.

This section creates a new subsection (m) under section 309 of the Communications Act of 1934, which provides the FCC with authority to establish, assess, and collect fees for spectrum licenses and construction permits and renewals thereof that were not assigned by auction (competitive bidding) under section 309(j). Fee authority will assist the FCC in managing the spectrum efficiently in cases in which auctions are prohibited or may not be an appropriate assignment tool but in which it is important to ensure that license holders pay the opportunity costs of their spectrum use.

Paragraph (1) of new subsection (m) governs the FCC's development of regulations to implement its fee authority. Subparagraph (A) requires the FCC to conduct a rulemaking to establish a fee methodology and a fee collection schedule. The FCC is directed to develop a fee methodology consistent with the public interest, convenience and necessity requirement, which is found throughout the Communications Act. The FCC is expected to undertake a multi-stage rulemaking during which fees for different classes of spectrum licenses or construction permits may be developed and phased-in over time, consistent with spectrum management principles. It is expected that fees would encourage efficient allocation and use of the radio spectrum, as the opportunity cost of spectrum resources would be reflected to commercial license holders that did

not receive authorizations through competitive bidding, such as mobile satellite services and their ancillary terrestrial component.

The proposal specifies that the FCC may take the following factors into account when developing a fee methodology: (1) the scope and type of permissible services and uses; (2) the amount of spectrum and licensed coverage area; (3) shared versus exclusive use; (4) the level of demand for spectrum licenses or construction permits within a certain spectrum band or geographic area; and (5) other such factors that the FCC determines, in its discretion, are necessary to promote efficient and effective spectrum use. These factors may assist the FCC in determining which classes of spectrum licenses and construction permits should be subject to user fees and in developing a methodology that addresses the relative value of the spectrum to different classes of users. The FCC may consider other factors that may be raised during the rulemaking process. The FCC may also determine that certain classes of licenses or permits should be exempt from fees.

Subparagraph (B) directs the FCC to commence a rulemaking regarding fees as a spectrum management tool within 60 days of enactment of the Act. The FCC is also directed to take all actions necessary so that fees for the first class or classes of spectrum licenses or construction permits can be collected by September 30, 2008.

Subparagraph (C) clarifies that the FCC may modify the fee methodology or revise the rules that implement fees either through separate rulemakings, or as part of rulemakings or proceedings involving spectrum-based services, licenses, permits, and uses. Such modifications or revisions may add or modify classes of spectrum license or construction permit holders that must pay fees, and reflect appropriate increases or decreases in fees as a result of the addition, deletion, reclassification or other change in a spectrum-based service or use, including changes in the nature of a spectrum-based service or use as a consequence of FCC rulemaking proceedings or changes in law. Such modifications or revisions can take effect upon the date established in the FCC's rulemaking or in the law.

Subparagraph (D) provides an exemption from spectrum licensing fees for state and local government public safety licensees and emergency response providers. The meaning of "emergency response providers" is derived from the definition of the term found in section 2(6) of the Homeland Security Act of 2002. Federal agencies are not FCC licensees and would not be subject to FCC fees.

Paragraph (2) directs the FCC to assess penalties for late payment of fees. Paragraph (3) provides the FCC with the authority to revoke a license or permit if the licensee or construction permit holder has failed to pay to the FCC the fee or penalty authorized under this subsection. Paragraph (4) requires that all proceeds collected by the FCC under this section of the legislation be deposited in the general fund of the Treasury.

SECTION 4. Authority to Auction Licenses for Domestic Satellite Services.

This section of the legislation creates a new subsection (17) at the end of section 309(j) of the Communications Act of 1934 to direct the FCC to use competitive bidding to assign orbital locations and spectrum used solely or predominantly for domestic satellite communications services, including satellite-based television or radio services. “Predominantly for domestic satellite services” is defined in this section as a service for which the majority of customers or revenue associated with the service results from use within the geographic boundaries of the United States. This new subsection also authorizes the FCC to assign licenses using an alternative approach if the use of the alternative approach would serve the public interest, convenience, and necessity.

It also creates a new subsection (18) at the end of section 309(j) of the Communications Act of 1934 to direct the FCC to use competitive bidding to assign the ancillary terrestrial component to mobile satellite services if the FCC finds such terrestrial services can be provided by a separate provider from the satellite component. This provision will apply to any assignment for mobile satellite services to which terrestrial operations may be authorized, including reassignment of a current license. It clarifies that the FCC may reassign a license for international or global communications services or domestic satellite communications services if a licensee fails to meet service milestones or other FCC requirements.