

112TH CONGRESS
1ST SESSION

S. 522

To clarify the rights and responsibilities of Federal entities in the spectrum relocation process, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 9, 2011

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

A BILL

To clarify the rights and responsibilities of Federal entities in the spectrum relocation process, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Spectrum Relocation
5 Improvement Act of 2011”.

6 **SEC. 2. RIGHTS AND RESPONSIBILITIES OF FEDERAL ENTI-**
7 **TIES IN THE SPECTRUM RELOCATION PROC-**
8 **ESS.**

9 (a) **ELIGIBLE FEDERAL ENTITIES.**—Section
10 113(g)(1) of the National Telecommunications and Infor-

1 mation Administration Organization Act (47 U.S.C.
2 923(g)(1)) is amended to read as follows:

3 “(1) ELIGIBLE FEDERAL ENTITIES.—Any Fed-
4 eral entity, as defined in subsection (i), that operates
5 a Federal Government station assigned to a band of
6 eligible frequencies, as described in paragraph (2),
7 and that incurs relocation costs because of the re-
8 allocation of frequencies from Federal use to non-
9 Federal use shall receive payment for such costs
10 from the Spectrum Relocation Fund if the Federal
11 entity is found by the Office of Management and
12 Budget (in this section referred to as ‘OMB’) to
13 comply with the requirements of this section and
14 section 118. For purposes of this paragraph, Fed-
15 eral power agencies exempted under subsection
16 (c)(4) that choose to relocate from the frequencies
17 identified for reallocation pursuant to subsection (a)
18 are eligible to receive payment under this para-
19 graph.”.

20 (b) PUBLIC INFORMATION ON RELOCATION PROC-
21 ESS.—Section 113(g) of the National Telecommunications
22 and Information Administration Organization Act (47
23 U.S.C. 923(g)) is amended—

24 (1) by redesignating paragraph (6) as para-
25 graph (7); and

1 (2) by inserting after paragraph (5) the fol-
2 lowing new paragraph:

3 “(6) PUBLIC NOTICE OF RELOCATION PLANS.—

4 “(A) Not later than 90 days after the date
5 on which the NTIA, on behalf of eligible Fed-
6 eral entities and after review by OMB, notifies
7 the Commission of estimated relocation costs
8 and timelines for such relocation as required by
9 paragraph (4)(A), NTIA shall post on its Web
10 site detailed transition plans from each of the
11 eligible Federal entities, taking appropriate
12 measures to safeguard classified or sensitive in-
13 formation as detailed in this section. Each Fed-
14 eral entity’s transition plan shall provide the
15 public with the following information about its
16 spectrum relocation requirements:

17 “(i) Current use of the spectrum.

18 “(ii) Geographic location of the Fed-
19 eral entities’ facilities or systems, including
20 frequency bands used by such systems.

21 “(iii) The steps to be taken by the
22 Federal entity to relocate its current spec-
23 trum uses from the eligible frequencies, in-
24 cluding timelines for specific geographic lo-
25 cations in sufficient detail to indicate when

1 use of such frequencies at specific locations
2 will be shared between the Federal entity
3 and the commercial licensee.

4 “(iv) The specific interactions between
5 eligible Federal entities and NTIA needed
6 to implement the transition plan.

7 “(v) The name of the director, officer,
8 or employee responsible for the Federal en-
9 tity’s relocation efforts and who is author-
10 ized to meet and negotiate with commercial
11 licensees regarding the relocation process.

12 “(vi) The Federal entity’s plans and
13 timeline for using relocation funds received
14 from the Spectrum Relocation Fund, pro-
15 curing new equipment and additional per-
16 sonnel needed for the relocation, and field-
17 testing and deploying new equipment need-
18 ed in the relocation.

19 “(vii) Risk factors in the relocation
20 process that could affect the Federal enti-
21 ty’s fulfillment of its transition plan.

22 “(B) To be eligible to receive payment for
23 relocation costs from the Spectrum Relocation
24 Fund—

1 “(i) Federal entities shall make the
2 transition plans described in this sub-
3 section available to NTIA at least 90 days
4 prior to the date that NTIA shall make
5 such plans publicly available on its Web
6 site pursuant to subparagraph (A), in a
7 common format to be specified by NTIA
8 after public input; and

9 “(ii) each transition plan shall be
10 evaluated by a standing 3-member tech-
11 nical panel (in this section referred to as
12 the ‘Technical Panel’), which shall report
13 to NTIA and to the Federal entity, within
14 30 days after the plan’s submission to
15 NTIA, on the sufficiency of the plan under
16 this paragraph, including whether the re-
17 quired public information is included and
18 whether proposed timelines and estimated
19 relocation costs, including costs proposed
20 for expanding the capabilities of a Federal
21 system in connection with relocation, are
22 reasonable.

23 “(C) The Director of OMB, the Adminis-
24 trator of NTIA, in consultation with the af-
25 fected Federal entities, and the Chairman of

1 the Commission shall each appoint one member
2 to the Technical Panel, and each such member
3 shall be a radio engineer or technical expert, or
4 have equivalent qualifications. NTIA shall
5 adopt regulations to govern the workings of the
6 Technical Panel after public notice and com-
7 ment, subject to OMB approval, and the mem-
8 bers of the Technical Panel shall be appointed,
9 within 180 days of the date of enactment of the
10 Spectrum Relocation Improvement Act of 2011.
11 No person shall serve as a member of the Tech-
12 nical Panel for more than 3 years.

13 “(D) If any of the information otherwise
14 required by this paragraph is ‘classified infor-
15 mation,’ as that term is defined in section
16 798(b) of title 18, United States Code, the Fed-
17 eral entity’s transition plan shall explain the ex-
18 clusion of any such information as specifically
19 as possible, shall make all relevant non-classi-
20 fied information available in its transition plan,
21 and shall discuss as a risk factor the extent of
22 the classified information and the effect on the
23 relocation process of the classified information.

24 “(E) NTIA, in consultation with OMB and
25 the Department of Defense, shall adopt regula-

1 tions within 180 days of the date of enactment
2 the Spectrum Relocation Improvement Act of
3 2011 to ensure information released publicly for
4 the purpose of this paragraph contains no sen-
5 sitive or classified information.”.

6 (c) SHARING AND COORDINATION OF SPECTRUM BE-
7 TWEEN COMMERCIAL LICENSEES AND FEDERAL ENTI-
8 TIES DURING RELOCATION TRANSITION.—

9 (1) EVALUATION OF SHARED ACCESS.—Section
10 111 of the National Telecommunications and Infor-
11 mation Administration Organization Act (47 U.S.C.
12 921) is amended—

13 (A) by striking “As used” and inserting
14 the following:

15 “(a) IN GENERAL.—As used”; and

16 (B) by adding at the end the following:

17 “(b) EVALUATION OF SHARED ACCESS.—The Com-
18 mission and the NTIA shall jointly establish any applica-
19 ble conditions as are determined necessary to define the
20 term shared access to include such considerations as meth-
21 ods of sharing spectrum resources, coordination between
22 Federal and non-Federal entities, such as commercial li-
23 censees, and/or sharing network infrastructure or other re-
24 sources.”.

1 (2) ELIGIBILITY FOR PAYMENT OF RELOCATION
2 COSTS.—Section 118 of the National Telecommuni-
3 cations and Information Administration Organiza-
4 tion Act (47 U.S.C. 928) is amended by adding at
5 the end the following new subsections:

6 “(f) ELIGIBILITY FOR PAYMENT OF RELOCATION
7 COSTS.—

8 “(1) SPECTRUM SHARING.—To be eligible to re-
9 ceive payment for relocation costs from the Spec-
10 trum Relocation Fund, a Federal entity shall—

11 “(A) in its transition plan for relocating its
12 current spectrum uses, provide—

13 “(i) to the fullest extent possible, for
14 sharing and coordination of eligible fre-
15 quencies with commercial licensees, includ-
16 ing reasonable accommodation by the Fed-
17 eral entity for the use of eligible fre-
18 quencies by the commercial licensee during
19 the period that the Federal entity is relo-
20 cating its spectrum uses (in this subsection
21 referred to as the ‘transition period’); and

22 “(ii) a presumption that commercial
23 licensees shall be able to use eligible fre-
24 quencies during the transition period in ge-

1 ographic areas where the Federal entity
2 does not utilize those frequencies;

3 “(B) during the transition period, make
4 itself available, within 30 days after a written
5 request, for negotiation and discussion with
6 commercial licensees; and

7 “(C) during the transition period, make
8 available to a commercial licensee with appro-
9 priate security clearances any ‘classified infor-
10 mation’ as that term is defined in section
11 798(b) of title 18, United States Code, regard-
12 ing the relocation process, which will assist the
13 commercial licensee in the relocation process
14 with that Federal entity or other Federal enti-
15 ties.

16 “(2) TIMELY AND SUCCESSFUL COMPLETION
17 OF RELOCATION.—In addition to the conditions of
18 paragraph (1), to be eligible to receive payment for
19 relocation costs from the Spectrum Relocation Fund,
20 a Federal entity—

21 “(A) shall complete the relocation of its
22 current spectrum uses not later than 1 year
23 after the date upon which funds are transferred
24 to the entity to fund the relocation;

1 “(B) may complete the relocation of its
2 current spectrum use at a time period different
3 that required under subparagraph (A), if prior
4 to the date the Technical Panel (as described in
5 section 113(g)(6)(C)) is required to post pub-
6 licly the Federal entity’s transition plan, the
7 Federal entity receives written approval from
8 the Office of Management and Budget (in this
9 section referred to as ‘OMB’), with the advice
10 of the Technical Panel; and

11 “(C) shall make available to NTIA, not
12 later than 15 days prior to the date that is the
13 halfway point of the time period described in
14 subparagraph (A), a complete update of its
15 transition plan, provided that NTIA shall post
16 such update publicly on its Web site not later
17 than the date that is the halfway point of the
18 time period described in subparagraph (A).

19 “(3) Nothing in paragraphs (1) or (2) shall be
20 construed to adversely affect critical communications
21 related to the mission of any Federal entity.

22 “(4) Subject to subsection (d), payments for re-
23 location costs from the Spectrum Relocation Fund
24 shall be made to an eligible Federal entity not later

1 than 30 days after the grant of the first license fol-
2 lowing the close of the auction.

3 “(g) DISPUTE RESOLUTION PROCESS.—

4 “(1) If, during the spectrum relocation process,
5 a dispute arises over the execution, timing, or cost
6 of the Federal entity’s transition plan, either the
7 Federal entity or the affected commercial licensee
8 may seek resolution of the dispute from a 3-member
9 dispute resolution board, consisting of a representa-
10 tive of OMB, NTIA, and the Commission, and
11 chaired by the representative of OMB.

12 “(2) The dispute resolution board shall meet
13 with representatives of the Federal entity involved in
14 the dispute and the commercial licensee together to
15 discuss the dispute. The dispute resolution board
16 may require the parties to make written submissions
17 to it. The dispute resolution board shall rule on any
18 dispute within 30 days after the date that the dis-
19 pute was brought before it.

20 “(3) The dispute resolution board shall be as-
21 sisted by the Technical Panel described in section
22 113(g)(6)(C).

23 “(4) Subject to OMB approval, NTIA shall
24 adopt regulations to govern the working of the dis-
25 pute resolution board and the role of the Technical

1 Panel after public notice and comment within 180
2 days after the date of enactment of the Spectrum
3 Relocation Improvement Act of 2011.

4 “(5) Appeals may be taken from decisions of
5 the dispute resolution board to the United States
6 Court of Appeals for the District of Columbia Cir-
7 cuit by filing a notice of appeal with that court with-
8 in 30 days after the date of such decision. Each
9 party shall bear its own costs and expenses, includ-
10 ing attorneys’ fees, for any litigation to enforce this
11 subsection or any decision rendered under it.”.

12 **SEC. 3. GAO STUDY.**

13 (a) IN GENERAL.—The Comptroller General of the
14 United States shall conduct a study regarding the Na-
15 tional Telecommunications and Information Administra-
16 tion and other Federal agencies’ spectrum management
17 capabilities, including related staff, mission, and current
18 budget for the annual spectrum-related efforts of the
19 NTIA and such other Federal agencies. The study re-
20 quired under this subsection shall include an analysis of
21 expected funding needs and coordination of existing re-
22 sources of the Federal Government, by agency, to prepare
23 for any future relocation or sharing of currently utilized
24 spectrum.

1 (b) SUBMISSION OF REPORT.—Not later than De-
2 cember 31, 2011, the Comptroller General of the United
3 States shall submit report on the study required under
4 subsection (a) to the Committee on Energy and Commerce
5 of the House of Representatives and the Committee on
6 Commerce, Science, and Transportation of the Senate.

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