

**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 Federal 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 6 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 addition, 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)(6) 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 licensees. 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 licensees 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 113(e) (2) 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 305 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 4005(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 4005(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. 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 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.

Conference Agreement

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 sum 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 bidders 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 that 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, nor 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)(B) 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 provision 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)(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.

Conference Agreement

The Conference Agreement includes the Senate provision.

Section 309(j)(9)

House Bill

No provision.

Senate Amendment

No provision.

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 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 businesses, 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

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, 22(a), (b), (c), (d), (e), (f), (g), or (i), 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 approach 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)(i) or (B)(ii). 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 regulated 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 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 310(b).

Section 332(d)

House Bill

Section 332(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 3(n), 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 332(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 (B)

House Bill

Subsection (B) of the House bill adds a conforming amendment to the definition in Section 3(n) 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 3(n) 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) (2)

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 2(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 5206 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 5205 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 210 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 carriers 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 determine 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.

The Conference Agreement also adds a new fee to the list of fees in Section 8 of the Communications Act that will increase the revenues to be raised from this legislation. This provision sets a fee of \$100 for each filing of a price information by a carrier. The provision also clarifies that the Commission may permit a common carrier (or classes thereof) to file, in lieu of the schedules required by Section 203, pricing notifications if the Commission determines that such schedules are not necessary to protect consumers (or classes thereof). *deleted*