



GAO

Accountability \* Integrity \* Reliability

United States Government Accountability Office  
Washington, DC 20548

September 9, 2008

Congressional Committees

*Subject: Assessment of the Explanation That Immigration and Customs Enforcement Provided for Its Subsequent Transfer from the Spectrum Relocation Fund*

Congress has taken a number of steps to facilitate the deployment of innovative, new commercial wireless services to consumers, including authorizing the Federal Communications Commission (FCC) to assign licenses through auctions and requiring more spectrum to be transferred from federal government use to commercial use. In addition, in 2004, Congress passed the Commercial Spectrum Enhancement Act (CSEA),<sup>1</sup> which established a Spectrum Relocation Fund (the Fund) to cover the costs incurred by federal entities within certain spectrum bands as they relocate to new frequency assignments or transition to alternative technologies.<sup>2</sup> The Fund is administered by the Office of Management and Budget (OMB) in consultation with the National Telecommunications and Information Administration (NTIA) of the Department of Commerce.<sup>3</sup> In September 2006, FCC concluded an auction of licenses for Advanced Wireless Services on radio spectrum in the 1710 megahertz (MHz) to 1755 MHz band that is currently used by federal agencies. The auction raised almost \$6.9 billion in net winning bids from the sale of these frequencies, which was deposited into the Fund to be available to the federal entities for their eligible relocation expenses.<sup>4</sup> Any auction proceeds remaining in the Fund after payment of relocation costs are to revert to the General Fund of the U.S. Treasury not later than 8 years after the date of their deposit.<sup>5</sup>

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<sup>1</sup>Title II of Pub. L. No. 108-494, 118 Stat. 3986, 3991-3997 (Dec. 23, 2004).

<sup>2</sup>“Eligible relocation expenses” are those costs incurred by a federal entity to achieve comparable capability of systems, regardless of whether that capability is achieved by relocating to a new frequency assignment or utilizing an alternative technology. 47 U.S.C. § 923(g)(3).

<sup>3</sup>NTIA’s Office of Spectrum Management is responsible for managing the federal government’s use of radio frequency spectrum.

<sup>4</sup>The 1710-1755 MHz band of spectrum was paired with the 2110-2155 MHz band for the auction. Although the auction raised \$13.7 billion, the portion of the auction proceeds associated with the transferred government spectrum amounted to almost \$6.9 billion and was deposited into the Fund.

<sup>5</sup>47 U.S.C. § 928(d)(3).

In February 2007, OMB, in consultation with NTIA, submitted a Report to Congress outlining the agencies' original transfer amounts from the Fund. These amounts represented OMB's determination of the appropriate costs and timelines for relocating the federal communications systems in the 1710-1755 MHz band. OMB noted that these original transfer amounts represented the best estimate of each agency at that time and that the possibility of subsequent transfers existed.<sup>6</sup> However, OMB staff with whom we spoke also pointed out that the Fund was not intended to be an ongoing source of revenue for the affected agencies. OMB staff said that initial estimates from the agencies in 2005 had formed the reserve price for the auction, and that agencies are expected to try to hold to their initial estimates.

In OMB's February 2007 report, Immigration and Customs Enforcement (ICE) of the Department of Homeland Security (DHS) requested approximately \$3.6 million from the Fund to relocate electronic surveillance operations consisting of four systems on four frequency assignments. Later that year, in November 2007, OMB notified Congress that it had approved a request from ICE for a subsequent transfer of monies from the Fund. ICE received a subsequent transfer of more than \$35 million—approximately 10 times the amount that it had originally received.<sup>7</sup> This subsequent transfer to ICE was the first subsequent transfer that OMB approved. OMB has since approved subsequent transfers to three other affected federal entities. Other requests for subsequent transfers are currently in the review process.

In accordance with the provisions of the CSEA, whenever a subsequent transfer exceeds 10 percent of the original transfer, GAO is required to submit to Congress, within 30 days after receiving the plan, an assessment of the explanation for the subsequent transfer.<sup>8</sup> Our assessment of the explanation for ICE's subsequent transfer was to be provided to Congress by December 26, 2007, but due to the scope of the work involved, we were unable to provide our assessment within that statutory time frame. The cognizant committees were amenable to our providing this report at a later date. Our assessment is based on work that we conducted between December 2007 and September 2008, including our review of documentation provided by ICE, OMB, and NTIA and discussions with staffs from these entities. We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate

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<sup>6</sup>Under the CSEA, an eligible federal entity may receive more than one transfer from the Fund, but if the sum of the subsequent transfer or transfers exceeds 10 percent of the original transfer, certain procedures apply. These procedures include prior approval by OMB and notice to the cognizant congressional committees (i.e., the Committees on Appropriations and Energy and Commerce of the House of Representatives, and the Committees on Appropriations and Commerce, Science, and Transportation of the Senate) and the Comptroller General of the United States. 47 U.S.C. § 928(e)(1)(B).

<sup>7</sup>ICE has proposed using a two-phase relocation plan amounting to \$108 million. The first phase would cover analog-to-analog equipment conversion, and the second phase would cover analog-to-digital equipment conversion. ICE originally intended to ask for money for both phases in its 2007 subsequent transfer request. However, according to ICE staff, the agency received guidance from OMB to submit at a later date its request for monies to cover digital equipment. Thus, it is likely that, in the future, ICE will submit another request for a subsequent transfer from the Fund for conversion to digital equipment. This report deals only with ICE's original February 2007 transfer of almost \$3.6 million and its November 2007 subsequent transfer of more than \$35 million for analog equipment.

<sup>8</sup>47 U.S.C. § 928(e)(1)(B).

evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## **Results in Brief**

Our assessment of the explanation that ICE provided is that the need for a substantial subsequent transfer was caused by DHS and ICE failing to identify a significant number of relocation expenses in the original transfer request, including costs associated with additional equipment, offices, and systems, and with a fifth frequency assignment. DHS submitted and OMB, in consultation with NTIA, reviewed and approved this original transfer request. The CSEA provided some guidance to agencies concerning the categories of expenses that are eligible for relocation monies from the Fund. In addition, NTIA provided guidance to agencies about how to submit information for their initial estimates of their relocation costs, including how to break out expenses and how to format their submissions. OMB also provided some guidance to the federal entities to use in developing their original requests for transfers from the Fund. However, in submitting both its initial estimate to NTIA and its original transfer request to OMB, ICE did not detail its estimated costs by equipment, location, system, or frequency—as suggested by NTIA’s guidance—and did not include costs for one of its frequency assignments. Instead, ICE provided a lump sum estimate of \$3,559,281 for its spectrum relocation costs. ICE staff told us that the initial estimate had not been well coordinated among ICE offices and was simply a poorly crafted estimate. According to OMB staff, ICE’s initial estimate and original transfer request were based on an inadequate inventory of deployed systems. OMB and NTIA accepted ICE’s estimate and did not require ICE to provide the details suggested in the CSEA or requested in NTIA’s guidance in either its original or subsequent transfer request. As a result, OMB and NTIA had limited assurance that DHS or ICE had conducted a thorough assessment of ICE’s spectrum relocation needs. With respect to subsequent requests for transfer, OMB staff stated that they work with agencies on what information is needed to support a request. However, OMB has not established any written guidance or criteria for agencies in submitting subsequent requests for transfer, which could result in limited assurance going forward that the subsequent requests reflect thorough and properly vetted estimates.

To address the issues we have identified, we are recommending that OMB, in consultation with NTIA, establish written criteria for federal entities to follow when submitting subsequent requests for spectrum relocation funding, communicate these criteria to each of the affected federal entities, and require the federal entities submitting subsequent requests to meet these criteria. These criteria should be designed to better assure OMB (and NTIA in its consultative role) that the requesting federal entity has conducted a thorough assessment of its spectrum relocation needs, and that the estimate has been vetted throughout the agency or department involved.

We provided a draft of this report to OMB, DHS, and the Department of Commerce for comment. OMB staff provided oral comments and said that they are considering our recommendation. OMB’s comments were technical, and we incorporated them into the report as appropriate. DHS provided written comments which appear in enclosure I. DHS states in its letter that it believes our recommendation would be beneficial if adopted. DHS states that our report does not sufficiently reflect action

taken by DHS and ICE with regard to ICE's subsequent transfer request. DHS states that ICE's subsequent transfer request submission included a tactical plan, complete inventory of current equipment, office locations, and pricing information on the analog replacement equipment. We acknowledge in our report that they submitted more thorough information in support of that request, although we maintain that even more information would have been helpful to ICE, DHS, OMB, and NTIA in validating that request. NTIA, in oral and e-mail comments, disagreed with our emphasis on ICE not having provided information for any of its estimates broken out by location, system, or frequency. NTIA says this type of detail was not necessary for the type of surveillance system that ICE was operating. We maintain that ICE's costs could have and should have been broken out in multiple ways to assure and validate that all necessary relocation expenses were being identified. The fact that ICE came back and asked for 10 times more funding than its original request is evidence that ICE did not construct and present to NTIA and OMB an initial estimate that was close to accurate.

### **ICE's Initial Estimate and Original Transfer Request Did Not Sufficiently Detail Its Costs and Did Not Include Relocation Expenses for All of Its Systems and Frequency Assignments**

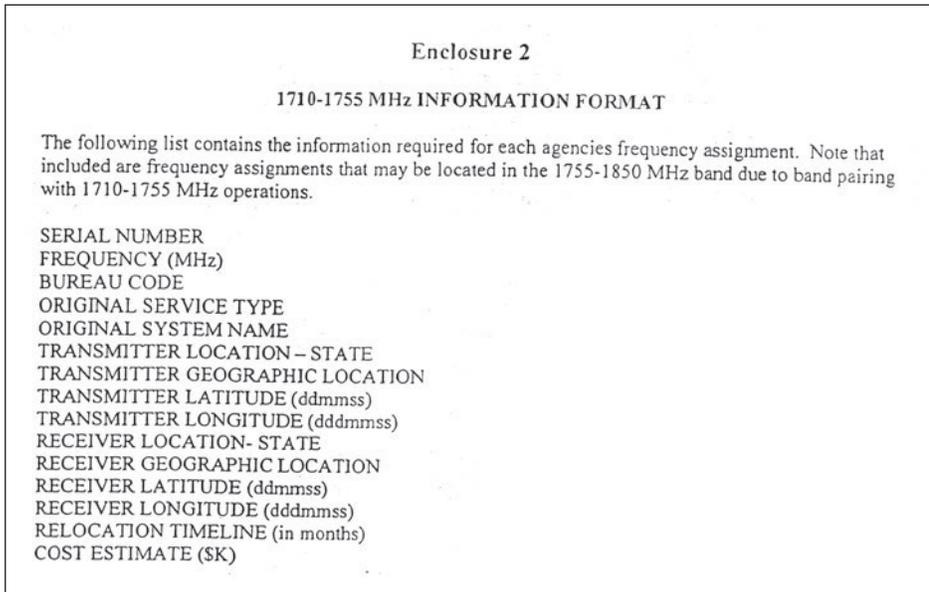
The CSEA required that NTIA notify FCC (the agency conducting the auctions) on behalf of the affected federal entities regarding their estimated relocation costs and timelines at least 6 months prior to the commencement of an auction.<sup>9</sup> In February 2005, shortly after the CSEA became law, NTIA sent each of the affected federal entities a letter that provided an overview of the CSEA. NTIA also provided an enclosure containing the language of the CSEA and recommended to the federal entities that they review carefully the listing of eligible frequencies and definition of "relocation costs" in section 202 of the act as they prepared their relocation cost estimates. Section 202 of the act provides guidance on eligible expenses by listing several categories and examples of relocation costs, such as equipment replacement costs, site acquisition and construction costs, and the costs of engineering studies or economic analyses.

To compile the necessary information as required by the CSEA, NTIA requested in its letter that agencies provide their information to NTIA by September 2005 in a certain format. Specifically, the NTIA guidance in enclosure 2 of its letter provided a list of information required for each agency's frequency assignments, including the serial number, frequency, system name, geographic location information, and initial cost estimate (see figure 1).

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<sup>9</sup>NTIA was to provide FCC with these estimates on behalf of the federal entities and after review by OMB. 47 U.S.C. § 923(g)(4)(A). NTIA also was to provide a copy of the estimates to the cognizant congressional committees for approval and to GAO. 47 U.S.C. § 923(g)(5). The CSEA also provided that the conclusion of the auction by FCC was contingent on minimum proceeds. Specifically, auction proceeds must be equal to at least 110 percent of the total estimated relocation costs for FCC to be able to conclude the auction. 47 U.S.C. § 309(j)(16)(B).

**Figure 1: Enclosure 2 of NTIA’s February 2005 Letter to the Affected Federal Entities Regarding Relocation Cost Estimates for the 1710-1755 MHz Frequency Band**



Source: NTIA.

NTIA guidance also included a separate template for an executive summary of relocation costs and timelines for the affected 1710-1755 MHz frequencies for each department or agency (see figure 2). This executive summary was to include a number and description of systems and the number of frequency assignments supporting each system, as well as per-unit costs for each system. In addition, NTIA staff with whom we spoke noted that, for surveillance systems such as ICE was operating, the most important information for the agency to provide would be detailed equipment information and costs. NTIA advised agencies to retain all documents supporting their cost estimates.

**Figure 2: Enclosure 3 of NTIA’s February 2005 Letter to the Affected Federal Entities Regarding Relocation Cost Estimates for the 1710-1755 MHz Frequency Band**

Enclosure 3

EXECUTIVE SUMMARY OF 1710-1755 MHz COSTS  
AND RELOCATION TIMELINE FOR  
[INSERT NAME OF DEPARTMENT OR AGENCY]

The total estimated relocation or modification costs for the [insert name of Department or Agency]’s radio communications systems in the 1710-1755 MHz band is \$ [insert amount].<sup>1</sup> This total represents estimated costs to relocate [insert number and description of the agency’s systems and the number of frequency assignments supporting such systems for each system being relocated, e.g., 4 fixed microwave systems supported with 62 frequency assignments and 1 land mobile system supported with 4 frequency assignments]. The per unit estimated cost for the [insert description of system, e.g. fixed microwave system] is \$ [insert amount] [The per unit cost must be provided for each system covered by the cost estimate.]

The [insert the name of the Department or Agency] estimates that the timeline for relocating its [description of system] is [insert number of months/years] from the date of the agency’s receipt of relocation funds. [Please provide this information for each system covered by the cost estimate.]

[Any other additional information to be supplied by the agencies should appear in this paragraph (e.g., unique system requirements), including whether the agency intends to utilize alternative technologies or commercial systems to replace its existing systems. To the extent alternative technologies will be used, the agency should indicate for which systems (or parts of systems) and how the alternative technology affected the cost estimate and timeline for relocation.]

If you have any further questions regarding our department’s relocation costs, the point of contact is (insert name, telephone number, and email address).

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<sup>1</sup> The total relocation costs include all the eligible costs as defined in Title II of the Commercial Spectrum Enhancement Act, Pub. L. No. 108-494.

Source: NTIA.

In response to NTIA’s requests, DHS obtained the estimated relocation costs from its affected entities<sup>10</sup>—including ICE—and reviewed, approved, and submitted these estimated costs to NTIA in September 2005. The initial cost estimate that DHS provided for ICE in September 2005 did not include a breakout of costs by equipment, location, system, or frequency. For example, DHS provided an initial breakdown of costs by location and frequency for its Customs and Border Protection component, but did not do so for ICE. Instead, it provided a lump sum estimate of \$3,559,281, representing the combined costs for four systems using four frequency assignments.

<sup>10</sup>DHS submitted relocation estimates for the following four entities: Customs and Border Protection, ICE, the Secret Service, and the Office of the Chief Information Officer.

In September 2006, OMB provided some guidance to the affected federal entities for submission of the entities' original transfer requests. OMB delivered to the agencies, via NTIA, a document that outlined the process involved in relocating the agencies to new spectrum under the CSEA. OMB noted that agencies should ensure that the information they provided reflected the most up to date relocation plans. OMB also provided the agencies with a template for submitting information. However, this template was the high-level presentation of information that has been included in OMB's reports to Congress, which identify the agency, bureau, account, amount, timeline, number of frequency assignments, and number of systems. Descriptive information was also requested about the agency's relocation activities. OMB's guidance did not request any further detail from the agencies in support of the amount of their original transfer requests.

Roughly 1½ years passed between the affected federal entities providing their initial cost estimates to NTIA and their providing estimates to OMB for the actual transfer of funds. During that time, about half of the agencies provided OMB and NTIA with updated cost estimates. However, ICE again submitted the roughly \$3.6 million cost estimate for four frequencies and four systems. ICE's 2007 original transfer request still did not detail expenses by equipment, system, location, or frequency. OMB staff told us that they questioned ICE's \$3.6 million estimate as seeming too low, but ICE assured them that the amount was an accurate estimate. In February 2007, OMB made its determination of the costs and timelines for relocation for all of the affected federal entities and sent a Report to Congress<sup>11</sup> outlining the amounts that would be transferred from the Fund to 28 accounts within 12 federal departments and agencies (see figure 3). ICE was approved for \$3,559,281 for four systems using four frequency assignments.

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<sup>11</sup>Under the CSEA, the plan—describing specifically how the sums transferred from the Fund will be used to pay relocation costs and the timelines for relocation—was to be submitted to the cognizant committees for approval, and to the Comptroller General. 47 U.S.C. § 928(d)(2).

**Figure 3: Spectrum Relocation Fund Original Transfer Amounts and Project Timelines, February 2007**

**Table 1 - Spectrum Relocation Transfer Amounts and Project Timelines**

AGENCY	BUREAU	AMOUNT <sup>1</sup>	TIMELINE <sup>2</sup>
Agriculture	Forest Service	\$21,578,486	36
DOD	Air Force	\$106,753,481	48
DOD	Army	\$15,933,043	36
DOD	Navy	\$134,465,000	36
DOD	RDT&E / O&M (Defense-wide support)	\$98,200,000	72
	Subtotal	\$355,351,524	
DOE	Bonneville Power Administration	\$48,627,399	72
DOE	Southwestern Power Administration	\$8,091,360	24
DOE	Western Area Power Administration	\$108,202,200	36
DOE	National Nuclear Security Administration	\$10,900,000	24
DOE	Departmental Administration (DOE-wide support)	\$1,000,000	72
	Subtotal	\$176,820,959	
DHS	Customs and Border Protection	\$74,349,990	12
DHS	Immigration and Customs Enforcement	\$3,559,281	12
DHS	Secret Service	\$105,800	12
DHS	Chief Information Officer (DHS-wide support)	\$11,979,761	12
	Subtotal	\$89,994,832	
HUD	Inspector General	\$21,115	24
DOI	Bureau of Reclamation	\$4,550,000	36
DOI	Geological Survey	\$6,158,949	36
DOI	National Park Service	\$14,703,000	36
	Subtotal	\$25,411,949	
DOJ	Alcohol, Tobacco, and Firearms	\$48,024,000	36
DOJ	Drug Enforcement Agency	\$74,772,000	36
DOJ	Federal Bureau of Investigation	\$139,225,000	36
DOJ	Chief Information Officer (DOJ-wide support)	\$800,000	36
	Subtotal	\$262,821,000	
DOT	Federal Aviation Administration	\$58,062,020	48
Treasury	Internal Revenue Service	\$4,409,000	28
Treasury	Inspector General for Tax Administration	\$892,000	28
	Subtotal	\$5,301,000	
NASA	NASA	\$740,000	24
TVA	Tennessee Valley Authority	\$10,687,857	48
USPS	Inspection Service	\$1,761,760	12
<b>TOTAL</b>		<b>\$1,008,552,502</b>	

<sup>1</sup> Amount specified will be transferred to the agency following the notification period. If actual project costs differ from the transferred amount, such discrepancies will be disposed of in accordance with the CSEA. Due to rounding, amounts may differ from figures included in the President's Budget.

<sup>2</sup> Timeline indicated represents the estimated time to completion of spectrum relocation activities, in months, beginning from the date of the transfer of funds to the agency.

Source: OMB.

ICE's subsequent transfer request of November 2007 was for an additional \$35.6 million to cover relocation expenses for an additional 547 systems and 1 frequency assignment<sup>12</sup> that had not been accounted for in ICE's initial estimate of September

<sup>12</sup>Staff from NTIA told us that they discovered in September 2005 that ICE had five frequency assignments, not four as ICE had originally reported. According to NTIA e-mail documentation, NTIA communicated this information to ICE in September 2005. According to NTIA staff, they asked ICE staff on several occasions following September 2005 if systems and equipment on this fifth frequency would also require relocation monies from the Fund. NTIA staff said that some agencies had frequency assignments that they were not using, so it was possible that ICE was not using the fifth frequency and, therefore, would require no relocation funding for it. NTIA staff said that they would not change the number of ICE's frequency assignments with relation to reporting ICE's needs from the Fund until they were informed by DHS or ICE that the agency was using that assignment and would need money from the Fund for relocation costs. NTIA staff said that they did not receive information

2005 or its original transfer request of February 2007. ICE also noted that many of its offices had not been included in its original transfer request. ICE staff told us that the initial estimate was completed when DHS was being set up and confusion existed from the combining of agencies and offices.<sup>13</sup> ICE staff said that the original estimate had not been well coordinated among ICE offices and was simply a poorly crafted estimate. Nonetheless, ICE and DHS officials approved the initial estimate and original transfer request and submitted them to NTIA and OMB. According to an OMB staffer, ICE's initial estimate was based on an inadequate inventory of ICE's deployed systems, leading to the need for additional funding to cover relocation of these systems.

### **OMB and NTIA Did Not Require Sufficient Detail from ICE, Resulting in Limited Assurance That the Estimate Reflected a Thorough Assessment of ICE's Spectrum Relocation Needs**

NTIA staff told us that while they provided guidance and a format for ICE to submit spectrum relocation information for its initial estimate, they did not require ICE to provide the detail requested, including costs by equipment, location, system, or frequency. With regard to the original transfer requests, OMB provided the affected federal entities with some guidance and a template for submitting information. But this template asked for information at a high level, and the guidance did not seek specifics to support the amounts requested. With regard to subsequent transfer requests, OMB staff told us that they provided no written guidance or criteria for the federal entities to use in developing their requests. OMB staff noted that they do expect to receive certain information from the agencies, including reasons for the subsequent request, information on costs, information on options the agency considered, and information to show that the agency will only use the funding to achieve comparable capability and not enhanced capability.

In conducting their reviews of ICE's initial estimate, original transfer request, and subsequent transfer request, OMB and NTIA accepted ICE's estimate and did not require ICE to provide the details suggested in the CSEA or requested in NTIA's correspondence, resulting in limited assurance that DHS or ICE had conducted a thorough assessment of ICE's spectrum relocation needs. According to ICE staff, the agency's subsequent request for almost \$35.6 million from the Fund covers all of its frequencies and is a thorough assessment of ICE's spectrum relocation needs for its analog systems. While ICE's subsequent request does provide much more thorough detail in relation to the new equipment it will need to purchase, ICE still has not provided a complete breakout of costs by location, systems, or frequency. Such

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from DHS or ICE about needing relocation monies for the fifth frequency assignment until DHS made its subsequent request for spectrum relocation funding to OMB in 2007. OMB staff said that they did not receive information from DHS or NTIA about ICE's fifth frequency assignment prior to submitting their February 2007 Report to Congress, even though both ICE and NTIA had known since September 2005 about the existence of the fifth frequency assignment.

<sup>13</sup>Pursuant to Section 1502 of the Department of Homeland Security Act of 2002 (Pub. L. No. 107-296, 116 Stat. 2135 (Nov. 25, 2002)), multiple federal agencies were consolidated into the new Department of Homeland Security in 2003, including the U.S. Customs Service, the Immigration and Naturalization Service, and the Federal Protective Service. Elements of these organizations became ICE. For a complete listing of DHS agencies and offices, see [http://www.dhs.gov/xabout/history/editorial\\_0133.shtm](http://www.dhs.gov/xabout/history/editorial_0133.shtm).

information would have allowed ICE, DHS, OMB, and NTIA to cross check information and better validate the equipment inventory provided.

Although OMB is currently reviewing additional subsequent transfer requests, and could receive more, the agency has not established any written guidance for preparing subsequent transfer requests. Yet preparation of thorough and properly vetted requests is essential because NTIA staff told us they do not have the staff resources to validate the information on a large number of systems and OMB staff stated that they do not have the technical capability to always do an in-depth technical analysis of an agency's submissions regarding relocation costs. For example, in its subsequent transfer request for almost \$35.6 million, ICE submitted a list of equipment that it would need to purchase in moving to its new frequency assignments, such as video recording and receiver kits, transmitters, and antennas. ICE included the estimated costs and quantities for each piece of equipment. OMB and NTIA told us that the validation of those costs must come in large part from the agency or department itself. They said that they rely on the agencies and departments to have the most thorough understanding of their inventories and equipment needs. However, they said they would question a specific piece of equipment or a quantity if something looked unusual. OMB staff told us they review agency submissions for reasonableness, consistency with the CSEA, and cost-effectiveness, and that they compare the equipment requested with the agencies' needs and missions.

## **Conclusions**

A large proportion of the responsibility for accurately assessing spectrum relocation funding needs falls to the individual agencies that must relocate. Although guidance for estimating spectrum relocation funding needs was provided in the CSEA and by NTIA and OMB, ICE did not ensure that it was covering all of its equipment inventory, the needs of all its offices, and including all of its frequency assignments in its initial estimate or its original transfer request. By not undertaking a comprehensive assessment of its needs, ICE underestimated those needs by 10-fold. Although we were told that additional subsequent transfer requests are expected, OMB has not established written criteria regarding information to be provided in support of the requests. Going forward, OMB, in consultation with NTIA, should require from the agencies enough detail and information to be confident that the agencies have conducted a thorough and properly vetted assessment of spectrum relocation needs when submitting subsequent requests for funding. It is important to make sure that subsequent transfer requests truly represent the best cost estimates of the agencies.

## **Recommendation for Executive Action**

Because it is important that federal agencies present accurate estimates when determining their spectrum relocation needs so that additional subsequent transfer requests—and, thus, further depletion of the Spectrum Relocation Fund—can be avoided, we are recommending that the Director of OMB take the following action:

- In consultation with NTIA, establish written criteria for agencies to follow when submitting supplemental requests for spectrum relocation funding, communicate these criteria to each of the affected federal entities, and require that these

criteria be followed before OMB approves subsequent requests. These criteria should be designed to better assure OMB (and NTIA in its consultative role) that the requesting agency has conducted a thorough assessment of its spectrum relocation needs, and that the estimate has been properly vetted throughout the agency or department involved. For example, these criteria could include, but not be limited to, requiring agencies to provide replacement costs by equipment, location, system, or frequency and requiring agencies to break out expenses into standard categories. Until such criteria can be developed, OMB might consider using, as an interim requirement, the guidance set forth in NTIA's February 2005 letter to the agencies, including NTIA's template and executive summary.

## **Agency Comments and Our Evaluation**

We provided a draft of this report to OMB, DHS, and the Department of Commerce for their review and comment. OMB provided oral comments. OMB staff said that they were considering our recommendation. They also provided technical comments, which we incorporated into the report, as appropriate. They further provided additional documentation and we made changes to our report based on this documentation.

DHS provided oral comments, comments via e-mail, and written comments. DHS's written comments, reprinted in enclosure I of our report, note that DHS believes our recommendation would be beneficial if adopted. However, DHS's letter states that the agency does not believe that our report sufficiently reflects action taken by DHS and ICE, noting submissions from ICE to OMB in relation to ICE's subsequent transfer request. DHS states that its subsequent transfer request submission included a tactical plan, complete inventory of current equipment, office locations, and pricing information on the analog replacement equipment. Most of our report deals with the insufficiency of ICE's original request for \$3.6 million. With regard to ICE's subsequent request, we acknowledge in our report that ICE submitted more thorough information in support of that request, although we maintain that a complete breakout of costs by location, system, or frequency would have been helpful to ICE, DHS, OMB, and NTIA in validating that request.

With regard to DHS's oral and e-mail comments, we incorporated the department's technical comments into the report, as appropriate. Most of DHS's comments related to ICE's need to transition from analog to digital surveillance systems in the future. We referred to this issue in footnote 7 of our report. As we stated there, our report deals only with ICE's original and approved subsequent transfer request, which involved conversion from analog to analog equipment. However, DHS notes that any criteria established for future subsequent transfer requests (per our recommendation) should also be oriented toward the unique characteristics of surveillance systems and the missions of federal law enforcement agencies. We agree. If OMB should decide to implement our recommendation, we urge DHS and the other affected federal entities to work with OMB and NTIA to ensure that the criteria developed meet the spectrum relocation needs of the various federal entities. DHS also noted that some of its subsequent request was related to acquiring new analog equipment because many of the devices currently deployed in the field cannot be modified or repaired. We believe these types of costs should have been identified by ICE as part of its original transfer request and are thus included in the missed

relocation costs identified in our report. Finally, ICE noted that it provided an itemized listing of equipment needs for its subsequent transfer request that was broken down by offices. While ICE provided a thorough listing of equipment, we maintain that providing information broken out by locations, systems, and frequencies—to the greatest extent possible—would have allowed ICE, DHS, OMB, and NTIA to cross-check information and better assure that all funding needs have been identified.

NTIA provided oral and e-mail comments. Overall, NTIA disagrees with the emphasis that we placed on ICE not having provided information for any of its estimates broken out by system, location, or frequency. NTIA said that, due to the nature of ICE's surveillance system, NTIA considers it to be one system, operating in one location (the United States and its possessions), and that all of the equipment on this one system was multi-frequency equipment that could have used any of ICE's frequencies, making whether ICE had four or five frequencies irrelevant to ICE's relocation costs. NTIA said that ICE gave the agency exactly the type of information that NTIA expected to receive about ICE's type of system. However, we maintain that had more information been provided, it would have produced a better estimate, and ICE, DHS, OMB, and NTIA would have been better able to validate the estimate. While we do not take a position on what constitutes a "system," we believe that any definition should provide the ability to track specific costs for replacement. Lumping all of ICE's equipment into one system, as NTIA suggests, does not provide sufficient detail for tracking costs. With regard to breaking out relocation expenses by location, ICE documentation lists offices as part of the costs missed. We do not agree with NTIA that ICE's operating "location" should be "the United States and its possessions," as that again lumps costs together and does not allow sufficient detail for tracking costs. With regard to breaking out relocation expenses by frequency, ICE noted on several occasions that the missed frequency affected its costs, and OMB's November 2007 Report to Congress that accompanied ICE's subsequent transfer request states this as well.

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We will send copies of this report to the appropriate congressional committees, the Director of OMB, the Secretary of Commerce, and the Secretary of Homeland Security. We will make copies available to others upon request. In addition, this report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staffs have any questions about this report, please contact me at (202) 512-2843 or [goldsteinm@gao.gov](mailto:goldsteinm@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were Faye Morrison (Assistant Director), Eli Albagli (Senior Analyst), Colin Fallon, David Hooper, Madhav Panwar, and Mindi Weisenbloom.

A handwritten signature in black ink, appearing to read 'M. Goldstein', with a long horizontal flourish extending to the right.

Mark L. Goldstein  
Director, Physical Infrastructure Issues

*List of Committees*

The Honorable Robert C. Byrd  
Chairman

The Honorable Thad Cochran  
Ranking Member  
Committee on Appropriations  
United States Senate

The Honorable Daniel K. Inouye  
Chairman

The Honorable Kay Bailey Hutchison  
Ranking Member  
Committee on Commerce, Science, and Transportation  
United States Senate

The Honorable Barbara A. Mikulski  
Chairman

The Honorable Richard C. Shelby  
Ranking Member  
Subcommittee on Commerce, Justice, Science, and Related Agencies  
Committee on Appropriations  
United States Senate

The Honorable Richard Durbin  
Chairman

The Honorable Sam Brownback  
Ranking Member  
Subcommittee on Financial Services and General Government  
Committee on Appropriations  
United States Senate

The Honorable Robert C. Byrd  
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The Honorable Thad Cochran  
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## Comments from the Department of Homeland Security

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

September 5, 2008

Mr. Mark L. Goldstein  
Director, Physical Infrastructure Issues  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Goldstein:

RE: Draft Report GAO-08-846R, Spectrum Relocation Fund Subsequent Transfer-Assessment of the Explanation that Immigration and Customs Enforcement Provided for Its Subsequent Transfer from the Spectrum Relocation Fund (GAO Job Code 543199)

The Department of Homeland Security (DHS) appreciates the opportunity to review and comment on the Government Accountability Office's (GAO) draft report. The report is an assessment of the explanation for the subsequent transfer of funds from the Spectrum Relocation Fund as the transfer exceeded ten percent of the original transfer.

GAO makes no recommendations to the Department of Homeland Security. The draft report recommends that the Director of the Office of Management and Budget (OMB) establish clear criteria, in consultation with the Department of Commerce's National Telecommunications and Information Administration (NTIA), for agencies to follow when submitting supplemental requests for spectrum relocation funding, communicate these criteria to each of the affected federal entities, and require that these criteria be followed before OMB approves subsequent requests. The recommendation would be beneficial if adopted.

We believe that the draft does not sufficiently reflect action taken by DHS and its component, Immigration and Customs Enforcement (ICE), regarding aspects of the transfer. Specifically, in May 2007, with the full support of the DHS Office of the Chief Information Officer (OCIO), ICE submitted to OMB and NTIA a revised \$72.3 million funding request above the initially provided \$3.5 million for the purchase of digital video equipment to transition ICE operations from the Advanced Wireless Services (AWS) band. The submission included a tactical plan, complete inventory of current equipment, office locations, and pricing of replacement (analog) equipment in support of the funding request. OMB's review of the ICE submission, along with subsequent estimates resulted in ICE being granted an additional \$35.57 million for the purchase of analog replacement equipment. This additional funding was provided to meet the DHS OCIO established

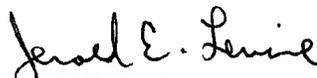
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aggressive twelve month timeline to release the encumbered Advanced Wireless Services (AWS) frequencies to the FCC license winners. OMB further directed ICE to coordinate with other affected law enforcement agencies to develop a common digital solution. OMB agreed to consider providing additional AWS Spectrum Fund funds once a common digital solution has been adopted.

ICE successfully met the expeditious release of encumbered AWS frequencies to the FCC license winners on March 26, 2008 by immediately employing all of the initial \$3.5 million AWS funds along with additional DHS OCIO contingency funds (with OMB agreement) as phase one of the tactical plan. Due to the significant funding shortfall and tight time line, ICE was required to temporarily reduce surveillance capability by over 50% in order to successfully meet the deadline. The additional \$35.5 million funding shall be applied to fully restore analog operational capability in phase two of the tactical plan. This will fully migrate all inventoried surveillance equipment to the new spectrum obtained above 1755MHz. Phase three of the plan shall complete the migration to digital services once a digital standard is adopted by the federal law enforcement community and additional funding is provided by OMB.

Technical comments have been provided under separate cover.

Sincerely,



Jerald E. Levine

Director

Departmental GAO/OIG Liaison Office

MMcP

(543199)

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