

November 29, 2011



MEMORANDUM

To: Members, Subcommittee on Communications and Technology

From: Majority Committee Staff

Re: Markup of a Discussion Draft of the Jumpstarting Opportunity with Broadband Spectrum Act of 2011

The Subcommittee will meet in open markup session on Thursday, December 1, 2011, at 10:00 a.m. in 2123 Rayburn House Office Building to consider a discussion draft of the Jumpstarting Opportunity with Broadband Spectrum (JOBS) Act of 2011.

Background

By clearing spectrum for commercial auction, the JOBS Act of 2011 can advance wireless broadband service, promote billions of dollars in private investment, create thousands of jobs, help bring interoperable broadband communications to public safety officials, and reduce the deficit by approximately \$15 billion dollars. The Digital Television Transition and Public Safety Act of 2005, for example, cleared 24 MHz of nationwide spectrum for First Responders to meet some of the 9/11 Commission recommendations, provided \$1 billion for interoperable public safety equipment, freed spectrum that carriers are now using to roll out fourth generation wireless broadband services, and raised close to \$20 billion in spectrum auction proceeds. Despite the progress the legislation made, however, we still do not have a nationwide, interoperable public safety network; at the same time, consumer demand for wireless broadband is rapidly outpacing the amount of spectrum available for commercial use.

This legislation addresses these issues by authorizing incentive auctions, creating the contiguous, 20-MHz block of spectrum public safety officials say they need for broadband by reallocating the 700 MHz D Block and providing for the return of 700 MHz narrowband spectrum, making up to \$6.5 billion in grants available for the construction of an interoperable public safety network, and creating a governance structure for construction and operation of the network. The legislation also addresses the relocation of federal government incumbents to make additional spectrum available for commercial services. Following the experiences of the AWS-1 band (1710-1755 MHz), the legislation adopts changes to the Commercial Spectrum Enhancement Act to streamline the existing relocation process, including providing NTIA with funding for spectrum planning prior to relocation auctions, permitting incremental updates to government systems through the relocation process, improving processes for the creation of relocation plans, and improving accountability.

Section-by-Section

Section 1. Short Title.

Section 2. Definitions.

Sections 3-4. Rules of construction and enforcement provisions.

Title I – Spectrum Auction Authority

Section 101. Establishes clearing and auction timelines for spectrum in 1915-1920 MHz and 1995-2000 MHz (the PCS H Block), 2155-2180 MHz (the AWS-3 block), 1755-1780 MHz, 15 MHz from the government spectrum at 1675-1710 MHz, and 3550-3650 MHz. This section also allows the President to substitute alternate spectrum for 1755-1780 MHz, subject to Congressional approval.

Section 102. Reallocates the 700 MHz D Block from commercial to public safety use. Requires public safety to return the 700 MHz narrowband and guard band spectrum five years after standards have been set for the carriage of public safety voice communications over broadband networks. Provides public safety with up to \$1 billion in grants from auction proceeds to transition end users to broadband voice. In combination, these provisions give public safety officials the contiguous, 20 MHz of spectrum they say they need for wireless broadband while providing for auction of the 700 MHz narrowband spectrum. This will help meet the ongoing demand for commercial wireless broadband services while providing funding to help migrate public safety officials from narrowband voice services to broadband once public-safety-grade voice over Internet protocol is available.

Section 103. Grants the FCC authority to conduct incentive auctions under which it shares some of the proceeds with licensees who return spectrum. Limits FCC authority to those auctions in which there is competition on the “reverse” side of the auction – the portion of the auction that sets the buy-out price.

Section 104. Grants the FCC special authority to conduct an incentive auction for the broadcast spectrum in the UHF band. Places special restrictions on both broadcasters and the FCC in order to facilitate the auction. FCC authority to conduct an auction is restricted to protect those broadcasters that choose not to participate and remain in the television band following the auction. Broadcasters’ administrative remedies to protest channel changes are curtailed in order to facilitate the “repack” that will be needed in order to accommodate both broadcasting and broadband in the UHF spectrum. Provides up to \$3 billion for relocation costs of broadcasters and cable systems. Ensures that the auction is both self-funding and generates a profit for the treasury. Ensures that the auction is only consummated if there is sufficient spectrum to accommodate the broadcasters that wish to remain broadcasters following the auction and requires the FCC to make all reasonable efforts to preserve broadcasters’ service areas. The FCC is required to auction the spectrum it clears, but retains discretion to add to the approximately 675 MHz of unlicensed spectrum currently available below 6 GHz by allowing secondary, shared use of this spectrum or primary, dedicated use of other spectrum.

Section 105. Prevents the FCC from excluding bidders from participating in spectrum auctions for reasons other than citizenship, character, financial, and technical qualifications.

Section 106. Extends the FCC's auction authority through 2021.

Section 107. Instructs the FCC and NTIA to pursue additional secondary allocations of spectrum for unlicensed use by evaluating the viability of sharing spectrum with government operations in the 5 GHz band.

Title II – Advanced Public Safety Communications

Section 201. Assigns the spectrum for public safety broadband use to the Administrator that is created under Section 203.

Section 202. Establishes a Public Safety Communications Planning Board within the FCC made up of government officials, public safety representatives, wireless network equipment manufacturers and commercial wireless providers. Establishes procedures for the creation, operation, and qualifications of the Board. Tasks the Board with the creation of the National Public Safety Communications Plan to govern the use of the public safety broadband spectrum. Details the minimum requirements for the Plan, including nationwide interoperability and improvements to public safety device availability.

Sections 203-204: Establishes the procedures for choosing an Administrator, the role of the Administrator in governing the public safety broadband spectrum, limitations of the powers of the Administrator as a licensee, a mechanism for initial funding of the Administrator, and audit and reporting procedures for the Administrator. Creates an efficient and cost-effective governance structure that enables government oversight while capitalizing on private sector expertise without creating a large, new government bureaucracy.

Section 205. Instructs the FCC to report on the use of amateur radio during times of emergency.

Sections 221-224. Establishes and funds a \$100 million grant program at the NTIA for State Broadband Implementation Offices. Defines the role of the State Broadband Offices in implementing the Plan through negotiations with commercial wireless providers for the buildout of the nationwide, interoperable broadband network, and establishes the procedure for Administrator approval of state public safety broadband plans and contracts. Also establishes a grant program at the NTIA for buildout of the state broadband networks. State-based negotiations allow the public safety network to accommodate local conditions, enables public safety officials to partner with commercial and other entities, such as utilities, that have established relationships in the community, and will promote competition.

Section 225. Streamlines the process for siting of wireless facilities by preempting the ability of state and local authorities to delay collocation of, removal of, and replacement of wireless transmission equipment. Increases access by establishing a uniform process for access to Federal rights-of-way and easements. Establishes a master contract process for siting wireless facilities on Federal government owned property and buildings.

Section 241. Establishes the Public Safety Trust Fund into which auction receipts are deposited and from which grant programs are administered. The grant program is funded with \$5 billion plus 10 percent of any net auction revenues above \$25.5 billion, up to a total of \$6.5 billion. All funds above and beyond those delineated in the section are dedicated to deficit reduction.

Title III – Federal Spectrum Relocation

Section 301. Amends the NTIA Organization Act, as amended by the Commercial Spectrum Enhancement Act, to address lessons learned in the AWS-1 clearing process. Permits the use of relocation funds to relocate government systems in order to permit spectrum sharing. Permits the use of relocation funds to upgrade government systems during the relocation process. Establishes a process for the timely publication of relocation plans by government incumbents. Creates a process for appeal of the technical and relocation decisions of government incumbents.

Section 302. Makes changes to the Spectrum Relocation Fund to accommodate the ability of the government to relocate systems in order to spectrum share. Provides a mechanism for OMB to transfer to NTIA funds to cover the pre-auction costs associated with a relocation.

Section 303. Amends the NTIA Organization Act to ensure the protection of classified and other sensitive national security information throughout the relocation process.

Title IV – Telecommunications Development Fund

Sections 401-402. Now that the Telecommunications Development Fund (TDF) is well-established, severs government ties and eliminates the requirement that the TDF maintain government officials as members of its board of directors to increase the ability of TDF to attract private capital investment.

If you need more information, please call David Redl or Neil Fried at 5-2927.