
The Committee on Energy and Commerce

July 13, 2011



Memorandum

To: Members and Staff, Subcommittee on Communications and Technology

From: Majority Committee Staff

Subject: “Legislative Hearing to Address Spectrum and Public Safety Issues”

The Subcommittee on Communications and Technology will hold a legislative hearing Friday, July 15, 2011, at 8:30 a.m. in 2123 Rayburn House Office Building on spectrum and public safety issues. One panel of witnesses will testify:

Christopher Guttman-McCabe
Vice President, Regulatory Affairs
CTIA–The Wireless Association

Christopher M. Moore
Chief of Police
San Jose Police Department

Peter Cramton
Professor of Economics
University of Maryland

The Honorable Gordon Smith
President and CEO
National Association of Broadcasters

Michael Calabrese
Senior Research Fellow
Open Technology Initiative
New America Foundation

I. Overview

Good spectrum policy can help bring interoperable broadband communications to public safety officials, advance wireless broadband service, reduce the deficit by tens of billions of dollars, and create jobs. 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, and consumer demand for wireless broadband is rapidly outpacing the amount of spectrum available for commercial use. All told, we have allocated approximately 100 MHz of nationwide spectrum for public safety use and a June 23, 2011, Congressional Research Service report estimates we have given First Responders \$13 billion in federal funding over the last decade. Yet former 9/11 Commission Chair Thomas Kean and Vice

Chair Lee Hamilton said in a March 2010 FCC blog that “we have made little progress” in meeting our public safety goals. And while the 700 MHz band auction required by the 2005 DTV Act was successful overall, public safety and network neutrality conditions the FCC placed on the C- and D-blocks prevented the D-block from selling, hindered participation by smaller wireless providers, and probably reduced the proceeds by at least \$3 billion.

In its 2010 National Broadband Plan, the FCC concluded that the best way to meet public safety and wireless broadband goals was to auction the D-block to commercial providers and use the proceeds to help fund the public safety network. In endorsing the proposal, Kean and Hamilton’s 2010 FCC blog said “[i]t will provide public safety users throughout the country with access to wireless broadband capabilities that will enable them to communicate effectively across departments and jurisdictions, while encouraging public safety to partner with commercial providers and leverage the investments they already have made.” They said they hoped “all stakeholders will work with the Commission to refine the plan as needed and make it a reality.” In a January 2011 editorial, former 9/11 Commissioner Slade Gorton said that:

[w]hile the 112th Congress may be sharply divided over many issues, both parties have an opportunity to address this vital national-security priority by supporting the FCC's broadband plan for public-safety communications. Quite simply, I believe it is the best way to guarantee that a national interoperable network is built for first responders in both urban and rural areas. Some critics of the FCC auction plan have embraced recommendations that call for reallocating the D-Block directly to public-safety officials. As a former member of the 9/11 Commission, I believe their approach offers public-safety officials none of the tools or resources they need to build the network.

In February 2011, however, President Obama said he endorsed proposals to give the D-block to public safety. FCC Chairman Genachowski nonetheless continues to support an auction approach, stating as recently as a June 2011 Communications and Technology Subcommittee hearing that he stands by the broadband plan proposal.

This legislative hearing will focus on two documents. The first is a discussion draft that authorizes an as yet unspecified amount for construction of an interoperable public safety network on the 24 MHz of spectrum cleared for public safety by the 2005 DTV legislation, creates a governance structure for construction and operation of the public safety network, and authorizes incentive auctions. Staff for Mr. Waxman and Ms. Eshoo has been involved in discussions regarding the draft from the beginning and the draft incorporates some of their suggestions, including changes on incentive auctions and governance. The draft also incorporates suggestions from the FCC. The second document is H.R. 3019, the Inslee-Upton-Boucher government relocation bill from the 111th Congress.

None of the language is set in stone and the hope is that bipartisan discussions will continue as we move toward a markup vehicle.

II. Section-by-Section

A. *Discussion Draft*

Sections 1-4. Short title; definitions; provision permitting the FCC to use the enforcement authority it has under the Communications Act of 1934 to enforce the provisions of the bill.

Section 101. Instructs the FCC to auction no later than 10 years from enactment a variety of spectrum blocks, including portions of the AWS-2 band, the AWS-3 band, and a number of bands currently occupied by government users. Also instructs the NTIA to relocate federal users from the spectrum identified unless such use is necessary for critical communications, in which case the NTIA is to make the spectrum available for secondary use through a database.

Sections 102-103. Establishes the Commission's general authority to conduct incentive auctions as well as specific authority for a single, voluntary, broadcast incentive auction. The broadcast-specific incentive auction provisions contain certain safeguards for broadcasters as well as some additional flexibility for the FCC. While broadcasters may participate in subsequent incentive auctions pursuant to the general incentive auction authority, neither the broadcaster safeguards nor the additional FCC flexibility would apply. Requires the FCC to keep confidential the identities of broadcasters that volunteer to exit the market until such time as they exit so as not to harm their ongoing business. Requires the FCC to make reasonable efforts to preserve broadcasters' existing service area and prohibits the FCC from compelling a broadcaster to move from UHF to VHF without compensation.

Section 104. Requires that any spectrum made available for commercial use must be done so through auction, regardless whether the spectrum is to be made available on a licensed or unlicensed basis. If the sum of the bids of the parties that prefer unlicensed use of particular spectrum exceeds the highest individual bid for licensed use, the spectrum will be made available on an unlicensed basis. This approach is modeled after FCC Office of Strategic Planning Working Paper No. 43. This section also requires new unlicensed devices to coordinate with a database to determine which spectrum bands are available for operation.

Section 105. Limits the authority of the FCC to use spectrum license conditions to accomplish policy goals that are properly addressed through notice and comment rulemaking. Would prohibit the Commission from placing restrictions on licenses that are related to network management practices, wholesale access, caps on total spectrum holdings, and any other restrictions on eligibility to bid at spectrum auction that are unrelated to the bidders qualifications or fitness to be a Commission licensee. Does not affect any authority the FCC has to impose regulations through a rulemaking.

Sections 106-107. Extends the Commission's auction authority until 2021. Requires the FCC to use the proceeds from the auctions the draft requires to cover incentive auction and relocation costs and directs an as yet unspecified amount for deficit reduction.

Section 201. Requires the FCC to grant to the states the licenses for the 24 MHz of spectrum cleared by the 2005 DTV legislation for construction of an interoperable broadband network. Also freezes expansion of narrowband voice services in that spectrum to facilitate transition to broadband use.

Sections 202-205. Establishes a board of federal, state and commercial members to govern construction and operation of the public safety network. The board establishes the national requirements to ensure interoperability and selects an administrator—chosen through a request-for-proposal (RFP) process—to coordinate the individual state licensees, ratify contracts and RFPs of the States to build the network, and ensure compliance with the federal interoperability requirements. The States, through public/private partnerships, shall be eligible for grants to build out needed infrastructure and to obtain compatible devices. Authorizes an as yet unspecified amount for construction of the network. Lowers infrastructure costs by removing unnecessary barriers to collocation of facilities.

Section 206. Instructs the FCC in consultation with the Office of Emergency Communications to issue a report on the uses and capabilities of amateur radio operators during emergencies.

B. H.R. 3019, the Spectrum Relocation Improvement Act

One way to make more spectrum available for commercial purposes is to use government spectrum more efficiently and reallocate the spectrum saved. That was the idea behind the Commercial Spectrum Enhancement Act (CSEA) enacted in 2004. The law is designed to provide funding to upgrade the wireless resources of government agencies while clearing additional spectrum for commercial use. Under the CSEA, government frequencies identified for reallocation are auctioned to commercial licensees and the proceeds are used to relocate the agencies' wireless facilities.

In the 111th Congress, Mr. Inslee—with Mr. Upton and then-Chairman Boucher—offered H.R. 3019 to improve this process based on lessons learned during the relocation of government incumbent users from the AWS-1 band.

Section 1. Short title.

Section 2. Subsection (a) requires public disclosure of a detailed plan regarding a government agency's transition and the sharing of frequencies with commercial entities pending relocation.

Subsection (b) requires each relocating entity to make a detailed transition plan and timetable available to the NTIA for the NTIA to post on its web site. The plan must identify the entity's current use of the spectrum, the location of its wireless facilities, the frequencies it uses, the staff responsible for the relocation, what the relocation funds will be used for, the equipment and personnel needed for the relocation, the schedule for field-testing and deploying new equipment needed for relocation, and the risk factors that could affect the entity's completion of the transition plan. The plan must be evaluated by a three-member technical panel, with the OMB, NTIA and FCC each appointing one member. The relocating entity must explain as specifically as possible the exclusion from the plan of any classified information.



Subsection (c) requires a relocating entity to share spectrum with the commercial licensee during the relocation process to the fullest extent possible. The entity must make itself available for negotiations with the commercial licensee within 30 days of a written request. It must also make any classified information regarding the relocation process available to representatives of the licensee with appropriate security clearances. The entity must complete the relocation within one year after funds are transferred to the entity unless it receives from the OMB prior permission for a different timetable and makes available to the NTIA an update on the transition at least 15 days before the halfway point of that time period. The NTIA shall publicly post that update on its web site. If a dispute arises over the execution, timing, or cost of the transition plan, either the relocating entity or the commercial licensee may seek resolution of the dispute from a 3-member board chaired by an OMB representative and also consisting of representatives of the NTIA and FCC. The board shall rule on the dispute within 28 days. Appeals may be taken to the D.C. Circuit.

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