

108TH CONGRESS  
2D SESSION

# S. 2820

To ensure the availability of certain spectrum for public safety entities by amending the Communications Act of 1934 to establish January 1, 2009, as the date by which the transition to digital television shall be completed, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2004

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

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## A BILL

To ensure the availability of certain spectrum for public safety entities by amending the Communications Act of 1934 to establish January 1, 2009, as the date by which the transition to digital television shall be completed, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Spectrum Availability for Emergency-Response and Law-  
6 Enforcement To Improve Vital Emergency Services Act”  
7 or the “SAVE LIVES Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Setting a specific date for the availability of spectrum for public safety organizations and creating a deadline for the transition to digital television.
- Sec. 4. Studies of communications capabilities and needs.
- Sec. 5. Statutory authority for the Department of Homeland Security’s “SAFECOM” program.
- Sec. 6. Grant program to provide enhanced interoperability of communications for first responders.
- Sec. 7. Digital transition public safety communications grant and consumer assistance fund.
- Sec. 8. Digital transition program.
- Sec. 9. Label requirement for analog television sets.
- Sec. 10. Report on consumer education program requirements.
- Sec. 11. FCC to issue decision in certain proceedings.
- Sec. 12. Definitions.

3 **SEC. 2. FINDINGS.**

4 The Congress finds the following:

5 (1) In its final report, the 9–11 Commission ad-  
 6 vocated that Congress pass legislation providing for  
 7 the expedited and increased assignment of radio  
 8 spectrum for public safety purposes. The 9–11 Com-  
 9 mission stated that this spectrum was necessary to  
 10 improve communications between local, State and  
 11 Federal public safety organizations and public safety  
 12 organizations operating in neighboring jurisdictions  
 13 that may respond to an emergency in unison.

14 (2) Specifically, the 9–11 Commission report  
 15 stated “The inability to communicate was a critical  
 16 element at the World Trade Center, Pentagon and  
 17 Somerset County, Pennsylvania, crash sites, where

1 multiple agencies and multiple jurisdictions re-  
2 sponded. The occurrence of this problem at three  
3 very different sites is strong evidence that compat-  
4 ible and adequate communications among public  
5 safety organizations at the local, State, and Federal  
6 levels remains an important problem.”.

7 (3) In the Balanced Budget Act of 1997, the  
8 Congress directed the FCC to allocate spectrum cur-  
9 rently being used by television broadcasters to public  
10 safety agencies to use for emergency communica-  
11 tions. This spectrum has specific characteristics that  
12 make it an outstanding choice for emergency com-  
13 munications because signals sent over these fre-  
14 quencies are able to penetrate walls and travel great  
15 distances, and can assist multiple jurisdictions in de-  
16 ploying interoperable communications systems.

17 (4) This spectrum will not be fully available to  
18 public safety agencies until the completion of the  
19 digital television transition. The need for this spec-  
20 trum is greater than ever. The Nation cannot risk  
21 further loss of life due to public safety agencies’ first  
22 responders’ inability to communicate effectively in  
23 the event of another terrorist act or other crisis,  
24 such as a hurricane, tornado, flood, or earthquake.

1           (5) In the Balanced Budget Act of 1997, Con-  
2           gress set a date of December 31, 2006, for the ter-  
3           mination of the digital television transition. Under  
4           current law, however, the deadline will be extended  
5           if fewer than 85 percent of the television households  
6           in a market are able to continue receiving local tele-  
7           vision broadcast signals.

8           (6) Federal Communications Commission  
9           Chairman Michael K. Powell testified at a hearing  
10          before the Senate Commerce, Science, and Transpor-  
11          tation Committee on September 8, 2004, that, ab-  
12          sent government action, this extension may allow the  
13          digital television transition to continue for “decades”  
14          or “multiples of decades”.

15          (7) The Nation’s public safety and welfare can-  
16          not be put off for “decades” or “multiples of dec-  
17          ades”. The Federal government should ensure that  
18          this spectrum is available for use by public safety or-  
19          ganizations by January 1, 2009.

20          (8) Any plan to end the digital television transi-  
21          tion would be incomplete if it did not ensure that  
22          consumers would be able to continue to enjoy over-  
23          the-air broadcast television with minimal disruption.  
24          If broadcasters air only a digital signal, some con-  
25          sumers may be unable to view digital transmissions

1 using their analog-only television set. Local broad-  
2 casters are truly an important part of our homeland  
3 security and often an important communications ve-  
4 hicle in the event of a national emergency. There-  
5 fore, consumers who rely on over-the-air television,  
6 particularly those of limited economic means, should  
7 be assisted.

8 (9) The New America Foundation has testified  
9 before Congress that the cost to assist these 17.4  
10 million exclusively over-the-air households to con-  
11 tinue to view television is less than \$1 billion dollars  
12 for equipment, which equates to roughly 3 percent  
13 of the Federal revenue likely from the auction of the  
14 analog television spectrum.

15 (10) Specifically, the New America Foundation  
16 has estimated that the Federal Government's auc-  
17 tion of this spectrum could yield \$30-to-\$40 billion  
18 in revenue to the Treasury. Chairman Powell stated  
19 at the September 8, 2004, hearing that "estimates  
20 of the value of that spectrum run anywhere from  
21 \$30 billion to \$70 billion".

22 (11) Additionally, there will be societal benefits  
23 with the return of the analog broadcast spectrum.  
24 Former FCC Chairman Reed F. Hundt, at an April  
25 28, 2004, hearing before the Senate Commerce,

1 Science, and Transportation Committee, testified  
2 that this spectrum “should be the fit and proper  
3 home of wireless broadband”. Mr. Hundt continued,  
4 “Quite literally, [with this spectrum] the more mil-  
5 lions of people in rural America will be able to afford  
6 Big Broadband Internet access, the more hundreds  
7 of millions of people in the world will be able to af-  
8 ford joining the Internet community.”.

9 (12) Due to the benefits that would flow to the  
10 Nation’s citizens from the Federal Government re-  
11 claiming this analog television spectrum—including  
12 the safety of our Nation’s first responders and those  
13 protected by first responders, additional revenues to  
14 the Federal treasury, millions of new jobs in the  
15 telecommunications sector of the economy, and in-  
16 creased wireless broadband availability to our Na-  
17 tion’s rural citizens—Congress finds it necessary to  
18 set January 1, 2009, as a firm date for the return  
19 of this analog television spectrum.

1 **SEC. 3. SETTING A SPECIFIC DATE FOR THE AVAILABILITY**  
2 **OF SPECTRUM FOR PUBLIC SAFETY ORGANI-**  
3 **ZATIONS AND CREATING A DEADLINE FOR**  
4 **THE TRANSITION TO DIGITAL TELEVISION.**

5 (a) IN GENERAL.—Section 309(j)(14) of the Commu-  
6 nications Act of 1934 (47 U.S.C. 309(j)(14)) is amend-  
7 ed—

8 (1) by striking “2006.” in subparagraph (A)  
9 and inserting “2008.”;

10 (2) by striking subparagraph (B) and redesign-  
11 ating subparagraphs (C) and (D) as subparagraphs  
12 (B) and (C);

13 (3) by striking “subparagraph (A) or (B),” in  
14 subparagraph (B), as redesignated, and inserting  
15 “subparagraph (A),”; and

16 (4) by striking “subparagraph (C)(i),” in sub-  
17 paragraph (C), as redesignated, and inserting “sub-  
18 paragraph (B)(i),”.

19 (b) CERTAIN COMMERCIAL USE SPECTRUM.—The  
20 Commission shall assign the spectrum described in section  
21 337(a)(2) of the Communications Act of 1934 (47 U.S.C.  
22 337(a)(2)) allocated for commercial use by competitive  
23 bidding pursuant to section 309(j) of that Act (47 U.S.C.  
24 309(j)) no later than 1 year after the Commission trans-  
25 mits the report required by section 4(a) to the Congress.

1 **SEC. 4. STUDIES OF COMMUNICATIONS CAPABILITIES AND**  
2 **NEEDS.**

3 (a) IN GENERAL.—The Commission, in consultation  
4 with the Secretary of Homeland Security, shall conduct  
5 a study to assess strategies that may be used to meet pub-  
6 lic safety communications needs, including—

7 (1) the short-term and long-term need for addi-  
8 tional spectrum allocation for Federal, State, and  
9 local first responders, including an additional alloca-  
10 tion of spectrum in the 700 megaHertz band;

11 (2) the need for a nationwide interoperable  
12 broadband mobile communications network;

13 (3) the ability of public safety entities to utilize  
14 wireless broadband applications; and

15 (4) the communications capabilities of first re-  
16 ceivers such as hospitals and health care workers,  
17 and current efforts to promote communications co-  
18 ordination and training among the first responders  
19 and the first receivers.

20 (b) REALLOCATION STUDY.—The Commission shall  
21 conduct a study to assess the advisability of reallocating  
22 any amount of spectrum in the 700 megaHertz band for  
23 unlicensed broadband uses. In the study, the Commission  
24 shall consider all other possible users of this spectrum, in-  
25 cluding public safety.

1 (c) REPORT.—The Commission shall report the re-  
2 sults of the studies, together with any recommendations  
3 it may have, to the Senate Committee on Commerce,  
4 Science, and Transportation and the House of Represent-  
5 atives Committee on Energy and Commerce within 1 year  
6 after the date of enactment of this Act.

7 **SEC. 5. STATUTORY AUTHORITY FOR THE DEPARTMENT OF**  
8 **HOMELAND SECURITY'S "SAFECOM" PRO-**  
9 **GRAM.**

10 Section 302 of the Homeland Security Act of 2002  
11 (6 U.S.C. 182) is amended—

12 (1) by inserting “(a) IN GENERAL.—” before  
13 “The”; and

14 (2) by adding at the end the following:

15 “(b) SAFECOM AUTHORIZED.—

16 “(1) IN GENERAL.—In carrying out subsection  
17 (a), the Under Secretary shall establish a program  
18 to address the interoperability of communications  
19 devices used by Federal, State, tribal, and local first  
20 responders, to be known as the Wireless Public Safe-  
21 ty Interoperability Communications Program, or  
22 ‘SAFECOM’. The Under Secretary shall coordinate  
23 the program with the Director of the Department of  
24 Justice’s Office of Science and Technology and all  
25 other Federal programs engaging in communications

1 interoperability research, development, and funding  
2 activities to ensure that the program takes into ac-  
3 count, and does not duplicate, those programs or ac-  
4 tivities.

5 “(2) COMPONENTS.—The program established  
6 under paragraph (1) shall be designed—

7 “(A) to provide research on the develop-  
8 ment of a communications system architecture  
9 that would ensure the interoperability of com-  
10 munications devices among Federal, State, trib-  
11 al, and local officials that would enhance the  
12 potential for a coordinated response to a na-  
13 tional emergency;

14 “(B) to support the completion and pro-  
15 mote the adoption of mutually compatible vol-  
16 untary consensus standards developed by a  
17 standards development organization accredited  
18 by the American National Standards Institute  
19 to ensure such interoperability; and

20 “(C) to provide for the development of a  
21 model strategic plan that could be used by any  
22 State or region in developing its communica-  
23 tions interoperability plan.

1           “(3) AUTHORIZATION OF APPROPRIATIONS.—

2           There are authorized to be appropriated to the Sec-  
3           retary to carry out this subsection—

4                   “(A) \$22,105,000 for fiscal year 2005;

5                   “(B) \$22,768,000 for fiscal year 2006;

6                   “(C) \$23,451,000 for fiscal year 2007;

7                   “(D) \$24,155,000 for fiscal year 2008;

8                   and

9                   “(E) \$24,879,000 for fiscal year 2009.

10           “(c) NATIONAL BASELINE STUDY OF PUBLIC SAFE-  
11           TY COMMUNICATIONS INTEROPERABILITY.—By December  
12           31, 2005, the Under Secretary of Homeland Security for  
13           Science and Technology shall complete a study to develop  
14           a national baseline for communications interoperability  
15           and develop common grant guidance for all Federal grant  
16           programs that provide communications-related resources  
17           or assistance to State and local agencies, any Federal pro-  
18           grams conducting demonstration projects, providing tech-  
19           nical assistance, providing outreach services, providing  
20           standards development assistance, or conducting research  
21           and development with the public safety community with  
22           respect to wireless communications. The Under Secretary  
23           shall transmit a report to the Senate Committee on Com-  
24           merce, Science, and Transportation and the House of Rep-  
25           resentatives Committee on Energy and Commerce con-

1 taining the Under Secretary’s findings, conclusions, and  
2 recommendations from the study.”.

3 **SEC. 6. GRANT PROGRAM TO PROVIDE ENHANCED INTER-**  
4 **OPERABILITY OF COMMUNICATIONS FOR**  
5 **FIRST RESPONDERS.**

6 (a) IN GENERAL.—The Secretary of Homeland Secu-  
7 rity shall establish a program to help State, local, tribal,  
8 and regional first responders acquire and deploy interoper-  
9 able communications equipment, purchase such equip-  
10 ment, and train personnel in the use of such equipment.  
11 The Secretary, in cooperation with the heads of other Fed-  
12 eral departments and agencies who administer programs  
13 that provide communications-related assistance programs  
14 to State, local, and tribal public safety organizations, shall  
15 develop and implement common standards to the greatest  
16 extent practicable.

17 (b) APPLICATIONS.—To be eligible for assistance  
18 under the program, a State, local, tribal, or regional first  
19 responder agency shall submit an application, at such  
20 time, in such form, and containing such information as  
21 the Under Secretary of Homeland Security for Science  
22 and Technology may require, including—

23 (1) a detailed explanation of how assistance re-  
24 ceived under the program would be used to improve  
25 local communications interoperability and ensure

1 interoperability with other appropriate Federal,  
2 State, local, tribal, and regional agencies in a re-  
3 gional or national emergency;

4 (2) assurance that the equipment and system  
5 would—

6 (A) not be incompatible with the commu-  
7 nications architecture developed under section  
8 302(b)(2)(A) of the Homeland Security Act of  
9 2002;

10 (B) would meet any voluntary consensus  
11 standards developed under section 302(b)(2)(B)  
12 of that Act; and

13 (C) be consistent with the common grant  
14 guidance established under section 302(b)(3) of  
15 the Homeland Security Act of 2002.

16 (c) GRANTS.—The Under Secretary shall review ap-  
17 plications submitted under subsection (b). The Secretary,  
18 pursuant to an application approved by the Under Sec-  
19 retary, may make the assistance provided under the pro-  
20 gram available in the form of a single grant for a period  
21 of not more than 3 years.

1 **SEC. 7. DIGITAL TRANSITION PUBLIC SAFETY COMMUNICA-**  
2 **TIONS GRANT AND CONSUMER ASSISTANCE**  
3 **FUND.**

4 (a) **IN GENERAL.**—There is established on the books  
5 of the Treasury a separate fund to be known as the “Dig-  
6 ital Transition Consumer Assistance Fund”, which shall  
7 be administered by the Secretary, in consultation with the  
8 Assistant Secretary of Commerce for Communications and  
9 Information.

10 (b) **CREDITING OF RECEIPTS.**—The Fund shall be  
11 credited with the amount specified in section 309(j)(8)(D)  
12 of the Communications Act of 1934 (47 U.S.C.  
13 309(j)(8)(D)).

14 (c) **FUND AVAILABILITY.**—

15 (1) **APPROPRIATIONS.**—

16 (A) **CONSUMER ASSISTANCE PROGRAM.**—

17 There are appropriated to the Secretary from  
18 the Fund such sums, not to exceed  
19 \$1,000,000,000, as are required to carry out  
20 the program established under section 8 of this  
21 Act.

22 (B) **PSO GRANT PROGRAM.**—To the extent  
23 that amounts available in the Fund exceed the  
24 amount required to carry out that program,  
25 there are authorized to be appropriated to the  
26 Secretary of Homeland Security, such sums as

1 are required to carry out the program estab-  
2 lished under section 6 of this Act, not to exceed  
3 an amount, determined by the Director of the  
4 Office of Management and Budget, on the basis  
5 of the findings of the National Baseline Inter-  
6 operability study conducted by the SAFECOM  
7 Office of the Department of Homeland Secu-  
8 rity.

9 (2) REVERSION OF UNUSED FUNDS.—Any auc-  
10 tion proceeds in the Fund that are remaining after  
11 the date on which the programs under section 6 and  
12 8 of this Act terminate, as determined by the Sec-  
13 retary of Homeland Security and the Secretary of  
14 Commerce respectively, shall revert to and be depos-  
15 ited in the general fund of the Treasury.

16 (d) DEPOSIT OF AUCTION PROCEEDS.—Paragraph  
17 (8) of section 309(j) of the Communications Act of 1934  
18 (47 U.S.C. 309(j)) is amended—

19 (1) by inserting “or subparagraph (D)” in sub-  
20 paragraph (A) after “subparagraph (B)”; and

21 (2) by adding at the end the following new sub-  
22 paragraph:

23 “(D) DISPOSITION OF CASH PROCEEDS  
24 FROM AUCTION OF CHANNELS 52 THROUGH  
25 69.—Cash proceeds attributable to the auction

1 of any eligible frequencies between 698 and 806  
2 megaHertz on the electromagnetic spectrum  
3 conducted after the date of enactment of the  
4 SAVE LIVES Act shall be deposited in the  
5 Digital Transition Consumer Assistance Fund  
6 established under section 7 of that Act.”.

7 **SEC. 8. DIGITAL TRANSITION PROGRAM.**

8 (a) IN GENERAL.—The Secretary, in consultation  
9 with the Commission and the Director of the Office of  
10 Management and Budget, shall establish a program to as-  
11 sist households—

12 (1) in the purchase or other acquisition of dig-  
13 ital-to-analog converter devices that will enable tele-  
14 vision sets that operate only with analog signal proc-  
15 essing to continue to operate when receiving a dig-  
16 ital signal;

17 (2) in the payment of a one-time installation fee  
18 (not in excess of the industry average fee for the  
19 date, locale, and structure involved, as determined  
20 by the Secretary) for installing the equipment re-  
21 quired for residential reception of services provided  
22 by a multichannel video programming distributor (as  
23 defined in section 602(13) of the Communications  
24 Act of 1934 (47 U.S.C. 602(13)); or

1           (3) in the purchase of any other device that will  
2           enable the household to receive over-the-air digital  
3           television broadcast signals, but in an amount not in  
4           excess of the average per-household assistance pro-  
5           vided under paragraphs (1) and (2).

6           (b) PROGRAM CRITERIA.—The Secretary shall ensure  
7           that the program established under subsection (a)—

8                   (1) becomes publicly available no later than  
9                   January 1, 2008;

10                   (2) gives first priority to assisting lower income  
11                   households (as determined by the Director of the  
12                   Bureau of the Census for statistical reporting pur-  
13                   poses) who rely exclusively on over-the-air television  
14                   broadcasts;

15                   (3) gives second priority to assisting other  
16                   households who rely exclusively on over-the-air tele-  
17                   vision broadcasts;

18                   (4) is technologically neutral; and

19                   (5) is conducted at the lowest feasible adminis-  
20                   trative cost.

21 **SEC. 9. LABEL REQUIREMENT FOR ANALOG TELEVISION**

22 **SETS.**

23           (a) IN GENERAL.—Section 303 of the Communica-  
24           tions Act of 1934 (47 U.S.C. 303) is amended by adding  
25           at the end the following:

1       “(z) Require that any apparatus described in para-  
2 graph (s) sold or offered for sale in or affecting interstate  
3 commerce after September 30, 2005, that is incapable of  
4 receiving and displaying a digital television broadcast sig-  
5 nal without the use of an external device that translates  
6 digital television broadcast signals into analog television  
7 broadcast signals have affixed to it and, if it is sold or  
8 offered for sale in a container, affixed to that container,  
9 a label that states that the apparatus will be incapable  
10 of displaying over-the-air television broadcast signals re-  
11 ceived after December 31, 2008, without the purchase of  
12 additional equipment.”.

13       (b) SHIPMENT PROHIBITED.—Section 330 of the  
14 Communications Act of 1934 (47 U.S.C. 330) is amend-  
15 ed—

16           (1) by redesignating subsection (d) as sub-  
17 section (e); and

18           (2) by inserting after subsection (c) the fol-  
19 lowing:

20       “(d) SHIPMENT OF UNLABELED OBSOLESCEMENT TEL-  
21 EVISION SETS.—No person shall ship in interstate com-  
22 merce or manufacture in the United States any apparatus  
23 described in section 303(s) of this Act except in accord-  
24 ance with rules prescribed by the Commission under sec-  
25 tion 303(z) of this Act.”.

1           (c) POINT OF SALE WARNING.—The Commission, in  
2 consultation with the Federal Trade Commission, shall re-  
3 quire the display at, or in close proximity to, any commer-  
4 cial retail sales display of television sets described in sec-  
5 tion 303(z) of the Communications Act of 1934 (47  
6 U.S.C. 303(z)) sold or offered for sale in or affecting  
7 interstate commerce after September 30, 2005, of a print-  
8 ed notice that clearly and conspicuously states that the  
9 sets will be incapable of displaying over-the-air television  
10 broadcast signals received after December 31, 2008, with-  
11 out the purchase or lease of additional equipment.

12 **SEC. 10. REPORT ON CONSUMER EDUCATION PROGRAM RE-**  
13 **QUIREMENTS.**

14           Within 1 year after the date of enactment of this Act,  
15 the Assistant Secretary of Commerce for Communications  
16 and Information, after consultation with the Commission,  
17 shall transmit a report to the Senate Committee on Com-  
18 merce, Science, and Transportation and the House of Rep-  
19 resentatives Committee on Energy and Commerce con-  
20 taining recommendations with respect to—

21           (1) an effective program to educate consumers  
22           about the transition to digital television broadcast  
23           signals and the impact of that transition on con-  
24           sumers' choices of equipment to receive such signals;

1           (2) the need, if any, for Federal funding for  
2 such a program;

3           (3) the date of commencement and duration of  
4 such a program; and

5           (4) what department or agency should have the  
6 lead responsibility for conducting such a program.

7 **SEC. 11. FCC TO ISSUE DECISION IN CERTAIN PRO-**  
8 **CEEDINGS.**

9 The Commission shall issue a final decision before—

10           (1) January 1, 2005, in the Matter of Carriage  
11 of Digital Television Broadcast Signals; Amend-  
12 ments to Part 76 of the Commission’s Rules, CS  
13 Docket No. 98-120;

14           (2) January 1, 2005, in the Matter of Public  
15 Interest Obligations of TV Broadcast Licensees, MM  
16 Docket No. 99-360; and

17           (3) January 1, 2006, in the Implementation of  
18 the Satellite Home Viewer Improvement Act of  
19 1999; Local Broadcast Signal Carriage Issues, CS  
20 Docket No. 00–96.

21 **SEC. 12. DEFINITIONS.**

22 In this Act:

23           (1) COMMISSION.—The term “Commission”  
24 means the Federal Communications Commission.

1           (2) FUND.—The term “Fund” means the Dig-  
2           ital Transition Consumer Assistance Fund estab-  
3           lished by section 7.

4           (3) SECRETARY.—Except where otherwise ex-  
5           pressly provided, the term “Secretary” means the  
6           Secretary of Commerce.

○