H. R. 2976

To enhance public safety by making more spectrum available to public safety agencies, to facilitate the development of a wireless public safety broadband network, to provide standards for the spectrum needs of public safety agencies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 2011

Mr. ROTHMAN of New Jersey (for himself and Mr. KING of New York) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To enhance public safety by making more spectrum available to public safety agencies, to facilitate the development of a wireless public safety broadband network, to provide standards for the spectrum needs of public safety agencies, and for other purposes.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Help Emergency Responders Operate Emergency Sys-
tems Act of 2011” or the “HEROES Act of 2011”.


(b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ALLOCATION AND ASSIGNMENT OF PUBLIC SAFETY LICENSES

Sec. 101. Findings.
Sec. 102. Allocation and assignment of public safety licenses.
Sec. 103. Standards.
Sec. 104. Rule of construction.

TITLE II—FUNDING

Sec. 201. Definitions.
Sec. 202. Funding.
Sec. 203. Public safety interoperable broadband network construction.
Sec. 204. Public safety interoperable broadband maintenance and operation.
Sec. 205. Audits.
Sec. 206. Auction of spectrum to fund the interoperable broadband network construction fund, the operation and maintenance fund, and the narrowbanding compliance assistance program.
Sec. 207. Narrowbanding assistance.
Sec. 208. Extension of auction authority and assurance of open auctions.

3 TITLE I—ALLOCATION AND ASSIGNMENT OF PUBLIC SAFETY LICENSES

6 SEC. 101. FINDINGS.

The Congress finds the following:

(1) The communications capabilities of first responders and other public safety agencies directly affect the public safety of the people of the United States and our national security.

(2) As events such as the terrorist attacks of September 11, 2001, and Hurricane Katrina revealed, the inability of local, State, tribal, and Fed-
eral first responders to communicate effectively during an emergency impairs operations to respond to terrorist acts and natural disasters.

(3) Many public safety communications systems rely on commercially available systems that lack broadband capabilities or otherwise fail to provide the level of service necessary to meet the mission-critical needs of public safety agencies.

(4) A wireless public safety broadband network is needed to guarantee priority access for public safety use and first responder interoperability across the United States.

(5) Allocating the paired electromagnetic spectrum bands of 758–763 megahertz and 788–793 megahertz, referred to as the D Block, to public safety agencies will fulfill the needs of public safety agencies for sufficient spectrum and would help reduce the complexity and future operating cost of public safety communications systems.

(6) Because the communications needs of public safety agencies may differ by geographic region (including whether they require a dedicated communications system or can rely on a system shared with commercial users), each region requires flexibility to develop a model that meets its local needs without
sacrificing the interoperability of the nationwide system.

(7) The most timely and cost-effective way to achieve nationwide interoperability in public safety communications will be to leverage commercial infrastructure without compromising the mission-critical needs of public safety agencies.

(8) The use by public safety agencies of standardized technologies commonly employed in the commercial telecommunications sector will provide significant benefits, including improved capabilities, greater economies of scale, and more rapid adoption of technological innovations.

(9) When it is in the interest of public safety, the Federal Communications Commission should encourage any public safety licensee or spectrum lessee to consider using existing or planned commercial infrastructure.

SEC. 102. ALLOCATION AND ASSIGNMENT OF PUBLIC SAFETY LICENSES.

(a) SPECTRUM ALLOCATION.—Section 337(a) of the Communications Act of 1934 (47 U.S.C. 337(a)) is amended—

(1) in paragraph (1), by striking “24” and inserting “34”; and
(2) in paragraph (2), by striking “36” and inserting “26”.

(b) ASSIGNMENT.—Section 337(b) of the Communications Act of 1934 (47 U.S.C. 337(b)) is amended to read as follows:

“(b) ASSIGNMENT.—

“(1) IN GENERAL.—Not later than 60 days after the date of enactment of the HEROES Act of 2011, the Commission shall allocate the paired electromagnetic spectrum bands of 758–763 megahertz and 788–793 megahertz for public safety broadband communications and shall license such paired bands to the public safety broadband licensee.

“(2) ESTABLISHMENT OF RULES.—

“(A) IN GENERAL.—The Commission shall establish rules to permit the public safety broadband licensee to authorize providers of public safety services to construct and operate a wireless public safety broadband network in the spectrum licensed to the public safety broadband licensee if the public safety broadband licensee determines that such authorization would expedite the deployment of public safety broadband communications.
“(B) Network Requirements.—The Commission shall require that any such wireless public safety broadband network shall—

“(i) be fully interoperable and remain interoperable with, and in conformance with the same broadband technology standards as, all other public safety broadband systems deployed or authorized;

“(ii) provide for roaming by local, State, tribal, and Federal governments and other authorized users of the spectrum licensed to the public safety broadband licensee;

“(iii) provide priority access to public safety agencies;

“(iv) be built to survive most large-scale disasters;

“(v) ensure that networks of such systems have the appropriate level of cyber security;

“(vi) ensure that authorized users have control over all local network uses consistent with rules established by the Commission; and
“(vii) be consistent with the Statewide Interoperable Communications Plans adopted by each State and the National Emergency Communications Plan, as adopted by the Department of Homeland Security.

“(C) Deadlines.—

“(i) Rules.—The Commission shall establish rules under this paragraph not later than 9 months after the date of enactment of the HEROES Act of 2011.

“(ii) Report.—

“(I) In general.—Not later than 60 days after the date of enactment of the HEROES Act of 2011, the public safety broadband licensee shall submit a report to the appropriate committees of Congress on the phased network deployment plan of such spectrum bands.

“(II) Definitions.—For purposes of subclause (I), the term ‘appropriate committees of Congress’ means—
“(aa) the Committee on Homeland Security and Governmental Affairs of the Senate;

“(bb) the Committee on Commerce, Science, and Transportation of the Senate;

“(cc) the Committee on Energy and Commerce of the House of Representatives; and

“(dd) the Committee on Homeland Security of the House of Representatives.”.

(e) NETWORK-SHARING AGREEMENTS.—Section 337 of the Communications Act of 1934 (47 U.S.C. 337) is amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following:

“(f) RULEMAKING REQUIRED.—The Commission shall establish regulations to—

“(1) authorize the shared use of the public safety broadband spectrum and network infrastructure by entities that are not defined as public safety services in subsection (g)(1), subject to the requirement
that public safety services retain priority access to
the spectrum, pursuant to procedures adopted by the
Commission, so long as the needs of other govern-
mental entities needs are considered before commer-
cial entities; and

“(2) allow use of the public safety broadband
spectrum by emergency response providers, as de-
fined in section 2 of the Homeland Security Act of
2002 (6 U.S.C. 101).”.

(d) DEFINITION.—Section 337(g) of the Communi-
tations Act of 1934 (as so redesignated) is amended—

(1) by redesignating paragraphs (1) and (2) as
paragraphs (3) and (4), respectively; and

(2) by inserting before paragraph (3), as so re-
designated, the following:

“(1) PUBLIC SAFETY BROADBAND LICENSEE.—
The term ‘public safety broadband licensee’ means a
licensee as defined by the Commission in its Second
Report and Order adopted July 31, 2007 (FCC 07–
132), and selected in the Commission’s Order adopt-
ed November 19, 2007 (FCC 07–199), by the Com-
mmission to be the licensee for spectrum between
763–768 and 793–798 megahertz.

“(2) PUBLIC SAFETY BROADBAND SPEC-
TRUM.—The term ‘public safety broadband spec-
trum’ means the electromagnetic spectrum between 758 megahertz and 768 megahertz, inclusive, and 788 megahertz and 798 megahertz, inclusive, and any additional electromagnetic frequencies allocated by the Commission for public safety broadband use.”.

SEC. 103. STANDARDS.

(a) INTEROPERABILITY REQUIREMENTS.—Not later than 180 days after the date of enactment of this Act, the Chairman of the Federal Communications Commission, in consultation with the Director of the National Institute of Standards and Technology, the Secretary of Homeland Security, the Attorney General, and local, State, tribal, and Federal public safety agencies, shall develop a public safety agency statement of requirements that enables nationwide interoperability and roaming across any communications system using public safety broadband spectrum, as defined in section 337(g) of the Communications Act of 1934.

(b) SPECIFICATIONS.—The Secretary of Homeland Security, in coordination with the Director of the National Institute of Standards and Technology, shall establish an appropriate standard, or set of standards, for meeting the public safety agency statement requirements developed under subsection (a), taking into consideration—
(1) the extent to which particular technologies and user equipment are, or are likely to be, available in the commercial marketplace;

(2) the availability of necessary technologies and equipment on reasonable and nondiscriminatory licensing terms;

(3) the ability to evolve with technological developments in the commercial marketplace;

(4) the ability to accommodate prioritization for public safety transmissions;

(5) the ability to accommodate appropriate security measures for public safety transmissions; and

(6) any other considerations the Federal Communications Commission deems appropriate.

SEC. 104. RULE OF CONSTRUCTION.

Nothing in this Act, or the amendments made by this Act, shall be construed to overturn, supersede, or otherwise preempt the Federal Communication Commission’s Order adopted on November 19, 2007 (FCC 07–199), setting forth the roles and responsibilities of the public safety broadband licensee (as such term is defined in section 337(g) of the Communications Act of 1934) and the Federal Communications Commission, except that the following may, by rule or order, be modified by the Commission:
(1) Any organization seeking membership to the board of directors of the public safety broadband licensee may be voted in by a simple majority of the then serving members of the Board of Directors.

(2) The Board of Directors of the public safety broadband licensee shall include the following organizations:

(A) International Association of Chiefs of Police.

(B) International Association of Fire Chiefs.

(C) National Sheriffs’ Association.

(D) International Association of Fire Fighters.

(E) National Volunteer Fire Council.

(F) Fraternal Order of Police.

(G) Major Cities Chiefs Association.

(H) Metropolitan Fire Chiefs Association.

(I) Major County Sheriffs’ Association.


(K) National Emergency Management Association.

(L) International Association of Emergency Managers.
(M) Police Executive Research Forum.
(O) National Association of Police Organizations.
(P) National Organization of Black Law Enforcement Executives.
(Q) Association of Air Medical Services.
(R) Advocates for Emergency Medical Services.
(S) Emergency Nurses Association.
(T) National Association of Emergency Medical Services Physicians.
(U) National Association of Emergency Medical Technicians.
(V) National Association of State Emergency Medical Service Officials.
(W) National Emergency Medical Services Management Association.
(X) International Municipal Signal Association.
(Z) National Governors Association.
(AA) National Association of Counties.
(BB) National League of Cities.
(CC) United States Conference of Mayors.

(DD) Council of State Governments.

(EE) International City/County Managers Association.

(FF) National Conference of State Legislatures.

(GG) National Association of Regional Councils.

(HH) Utilities Telecom Council.

(II) American Association of State Highway Transportation Officials.

(JJ) American Hospital Association.

(KK) Forestry Conservation Communications Association.

(LL) National Association of State 911 Administrators.

(MM) National Troopers Coalition.


**TITLE II—FUNDING**

**SEC. 201. DEFINITIONS.**

In this title—

(1) the term “Assistant Secretary” means the Assistant Secretary of Commerce for Communications and Information;
(2) the term “appropriate committees of Congress” means—

(A) the Committee on Homeland Security and Governmental Affairs of the Senate;

(B) the Committee on Commerce, Science, and Transportation of the Senate;

(C) the Committee on Energy and Commerce of the House of Representatives; and

(D) the Committee on Homeland Security of the House of Representatives;

(3) the term “Construction Fund” means the Public Safety Interoperable Broadband Network Construction Fund established under section 202;

(4) the term “Maintenance and Operation Fund” means the Public Safety Interoperable Broadband Network Maintenance and Operation Fund established under section 202; and

(5) the term “Secretary” means the Secretary of Homeland Security.

SEC. 202. FUNDING.

(a) Establishment of Funds.—

(1) Construction Fund.—

(A) Establishment.—There is established in the Treasury of the United States a fund to be known as the Public Safety Inter-
operable Broadband Network Construction Fund.

(B) PURPOSE.—The Secretary shall establish and administer the grant program under section 203 using the funds deposited in the Construction Fund.

(C) CREDIT.—

(i) Borrowing authority.—The Secretary may borrow from the general fund of the Treasury beginning October 1, 2011, such sums as may be necessary, but not to exceed $2,000,000,000, to implement section 203.

(ii) Reimbursement.—The Secretary of the Treasury shall reimburse the general fund of the Treasury, without interest, for any amounts borrowed under clause (i) as funds are deposited into the Construction Fund, but in no case later than December 31, 2014.

(2) MAINTENANCE AND OPERATION FUND.—

(A) Establishment.—There is established in the Treasury of the United States a fund to be known as the Public Safety Inter-
• operable Broadband Network Maintenance and Operation Fund.

(B) PURPOSE.—The Secretary shall use the funds deposited in the Maintenance and Operation Fund to carry out section 204.

(3) NARROWBANDING COMPLIANCE ASSISTANCE PROGRAM.—

(A) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the Narrowbanding Compliance Assistance Program.

(B) PURPOSE.—The Secretary shall use the funds deposited in the Narrowbanding Compliance Assistance Program to carry out section 207.

(b) INITIAL DISTRIBUTION OF AUCTION PROCEEDS IN FUNDS.—Notwithstanding subparagraphs (A) and (D) of section 309(j)(8) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)), the Secretary of the Treasury shall deposit the proceeds (including deposits and upfront payments from successful bidders) from the auction of the spectrum described in section 205 in the following manner:

(1) All proceeds less than or equal to $5,500,000,000 shall be deposited in the Construc-
tion Fund and shall be made available to the Sec-
retary without further appropriations.

(2) Any proceeds exceeding $5,500,000,000
shall be deposited in the Maintenance and Operation
Fund and shall be made available to the Secretary
without further appropriations.

(e) TRANSFER OF FUNDS AT COMPLETION OF CON-
STRUCTION.—The Secretary of the Treasury shall transfer
to the Maintenance and Operation Fund any funds re-
maining in the Construction Fund after the date of the
completion of the construction phase, as determined by the
Secretary.

(d) TRANSFER OF FUNDS TO TREASURY.—The Sec-
retary of the Treasury shall transfer to the general fund
of the Treasury any funds remaining in the Maintenance
and Operation Fund after the end of the 10-year period
following receipt of notice by the Secretary of Homeland
Security that construction of the nationwide system has
been completed.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) CONSTRUCTION FUND.—There are author-
ized to be appropriated to the Secretary for deposit
in the Construction Fund in and after fiscal year
2012 an amount not to exceed the amount set forth
in paragraph (4).
(2) MAINTENANCE AND OPERATION FUND.—

There are authorized to be appropriated to the Secretary for deposit in the Maintenance and Operation Fund in and after fiscal year 2012 an amount not to exceed the amount set forth in paragraph (4).

(3) NARROWBANDING COMPLIANCE ASSISTANCE PROGRAM.—There are authorized to be appropriated to the Secretary for deposit in the Narrowbanding Compliance Assistance Program in and after fiscal year 2012 an amount not to exceed the amount set forth in paragraph (4).

(4) LIMITATION.—The authorization of appropriations under paragraphs (1) and (2) may not exceed a total of $5,500,000,000 and paragraph (3) may not exceed $400,000,000.

SEC. 203. PUBLIC SAFETY INTEROPERABLE BROADBAND NETWORK CONSTRUCTION.

(a) CONSTRUCTION GRANT PROGRAM ESTABLISHMENT.—The Secretary shall take such action as is necessary to establish a grant program to assist public safety entities to establish a nationwide public safety interoperable broadband network in the 700 megahertz band.

(b) PROJECTS.—The projects for which construction grants may be made under this section are the following:
(1) Construction of a new public safety interoperable broadband network using public safety infrastructure or commercial infrastructure, or both, in the 700 megahertz band.

(2) Improvement of the existing public safety and commercial networks and construction of new infrastructure to meet public safety requirements.

(c) Matching Requirements.—

(1) Federal share.—The Federal share of the cost of carrying out a project under this section may not exceed 80 percent of the eligible costs of carrying out a project, as determined by the Secretary in consultation with the Chairman of the Federal Communications Commission.

(2) Non-Federal share.—The non-Federal share of the cost of carrying out a project under this section may be provided through an in-kind contribution.

(d) Requirements.—Not later than 6 months after the date of enactment of this Act, the Secretary shall establish grant program requirements including the following:

(1) Defining entities that are eligible to receive a grant under this section.
(2) Defining eligible costs for purposes of sub-
section (e)(1).

(3) Determining the scope of network infra-
structure eligible for grant funding under this sec-
tion.

(4) Conditioning grant funding on compliance
with the Federal Communications Commission’s li-
cense terms.

(5) Ensuring that all grant funds are in compli-
ance with and support the goals of the National
Emergency Communications Plan and the Statewide
Communication Interoperability Plans for each State
and territory.

(e) TECHNICAL ASSISTANCE.—The Secretary will en-
hance the Office of Emergency Communications Technical
Assistance Program to assist grantees with best practices
and guidance in implementing these projects.

SEC. 204. PUBLIC SAFETY INTEROPERABLE BROADBAND
MAINTENANCE AND OPERATION.

(a) MAINTENANCE AND OPERATION REIMBURSE-
MENT PROGRAM.—The Secretary shall administer a pro-
gram through which not more than 50 percent of mainte-
nance and operational expenses associated with the public
safety interoperable broadband network may be reim-
bursed from the Maintenance and Operation Fund for
those expenses that are attributable to the maintenance, 
operation, and improvement of the public safety interoper-
able broadband network.

(b) REPORT.—Not later than 7 years after the com-
mencement of the reimbursement program established 
under subsection (a), the Secretary shall submit to Con-
gress a report on whether to continue to provide funding 
for the Maintenance and Operation Fund following com-
pletion of the period provided for under section 202(d).

SEC. 205. AUDITS.

(a) IN GENERAL.—Not later than 3 years after the 
date of enactment of this Act, and every 3 years there-
after, the Comptroller General of the United States shall 
perform an audit of the financial statements, records, and 
accounts of the—

(1) Public Safety Interoperable Broadband Net-
work Construction Fund established under section 
202(a)(1);

(2) Public Safety Interoperable Broadband Net-
work Maintenance and Operation Fund established 
under section 202(a)(2);

(3) construction grant program established 
under section 203; and

(4) maintenance and operation grant program 
established under section 204.
(b) GAAP.—Each audit required under subsection (a) shall be conducted in accordance with generally accepted accounting procedures.

c) REPORT TO CONGRESS.—A copy of each audit required under subsection (a) shall be submitted to the appropriate committees of Congress.

SEC. 206. AUCTION OF SPECTRUM TO FUND THE INTEROPERABLE BROADBAND NETWORK CONSTRUCTION FUND, THE OPERATION AND MAINTENANCE FUND, AND THE NARROWBANDING COMPLIANCE ASSISTANCE PROGRAM.

(a) REALLOCATION OF SPECTRUM.—Not later than 1 year after the date of enactment of this Act, the Assistant Secretary shall reallocate for commercial use electromagnetic spectrum at 1755–1780 megahertz.

(b) AUCTION.—Not later than 18 months after the date of enactment of this Act, the Federal Communications Commission shall establish rules for pairing electromagnetic spectrum bands at 1755–1780 megahertz and 2155–2180 megahertz, inclusive, frequencies between 1780–1800 megahertz and 2180–2200 megahertz, and the frequencies between 1915–1920 megahertz and 2020–2025 megahertz, and auction the licenses for such paired
spectrum in accordance with section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)).

SEC. 207. NARROWBANDING ASSISTANCE.

(a) In General.—The Secretary shall establish a Narrowbanding Compliance Assistance Program to assist eligible recipients in meeting the January 2, 2013, narrowbanding deadline established by the Federal Communications Commission.

(b) Eligibility.—Public safety jurisdictions operating land mobile radio systems in the 150–512 megahertz radio bands are eligible to apply for funding from the Narrowbanding Compliance Assistance Program. Such applications must be submitted to the Secretary not later than six months after the completion of narrowbanding.

(c) Allowable Uses.—Funding under the Narrowbanding Compliance Assistance Program may be used to reimburse eligible recipients for costs incurred from the purchase of 12.5 kHz technology.

SEC. 208. EXTENSION OF AUCTION AUTHORITY AND ASSURANCE OF OPEN AUCTIONS.

(b) ELIGIBILITY.—The Federal Communications Commission shall ensure that no bidder is deemed ineligible for or otherwise excluded from an auction specified in this Act, or any other competitive bidding process under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)), on account of its size or amount of its other spectrum holdings.

SEC. 209. REPORT ON EFFICIENT USE OF PUBLIC SAFETY SPECTRUM.

Not later than 3 years after the date of enactment of this Act and every 3 years thereafter, the Federal Communications Commission shall conduct a study and submit to the appropriate committees of Congress a report—

(1) on the spectrum held by the public safety broadband licensee;

(2) on how efficiently such spectrum is being used; and

(3) that provides a recommendation for whether more spectrum needs to be made available to meet the needs of public safety entities.

SEC. 210. REPORT ON LONG-TERM INTEROPERABILITY USING IP-BASED SOLUTIONS.

Not later than 2 years after the date of enactment of this Act, the Federal Communications Commission, in consultation with the Secretary and the Assistant Sec-
retary, shall issue a report and order, after allowing time
for notice and comment, including comment from public
safety users, and shall submit such report to the appro-
priate committees of Congress, on whether Internet Pro-
tocol-enabled solutions could aid interoperability.