112TH CONGRESS
1ST SESSION

S. 1040

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

IN THE SENATE OF THE UNITED STATES

MAY 19, 2011

Mr. LIEBERMAN (for himself and Mr. MCCAIN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

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

Be it enacted by the Senate and House of Representatives 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 “Broadband for First Responders Act of 2011”.

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

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Sec. 1. Short title; table of contents.

TITLE I—ALLOCATION AND ASSIGNMENT OF PUBLIC SAFETY LICENSES AND ESTABLISHMENT OF RULES

Sec. 101. Definitions relating to public safety broadband.
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TITLE I—ALLOCATION AND ASSIGNMENT OF PUBLIC SAFETY LICENSES AND ESTABLISHMENT OF RULES

SEC. 101. DEFINITIONS RELATING TO PUBLIC SAFETY BROADBAND.

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

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

(2) by inserting before paragraph (3), as so redesignated, 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 adopted November 19, 2007 (FCC 07–199), by the Commission to be the licensee for the 763–768/793–798 MHz.

“(2) Public safety broadband spectrum.—The term ‘public safety broadband spectrum’ 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. 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) Allocation of Paired Bands.—Not later than 30 days after the date of enactment of the Broadband for First Responders 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.

“(2) Licensing of Paired Bands.—Not later than 60 days after the date of enactment of the Broadband for First Responders Act of 2011, the Commission shall license the paired electromagnetic spectrum bands described under subparagraph (A) to the public safety broadband licensee.”.

SEC. 103. ESTABLISHMENT OF RULES GOVERNING PUBLIC SAFETY BROADBAND NETWORK.

(a) Establishment of Rules.—Not later than 180 days after the date of enactment of this Act, the Federal Communications Commission shall establish the following rules:

(1) Authorizing the construction and operation of a public safety broadband net-
work.—The Commission shall 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 pub-
lic safety broadband spectrum.

(2) Establishing network requirements.—The Commission shall require that the
wireless public safety broadband network described
under paragraph (1) shall—

(A) 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;

(B) provide for roaming by Federal, State,
local, and tribal governments and other author-
ized users of the spectrum licensed to the public
safety broadband licensee;

(C) provide priority access to public safety
entities;

(D) be built to survive most disasters;

(E) ensure that networks of such systems
have the appropriate level of cyber security; and

(F) ensure that authorized users have the
ability to develop a local network, provided that
the uses for such network are consistent with
rules established by the Commission.

(3) ALLOWING FOR SHARED USE OF PUBLIC
SAFETY BROADBAND SPECTRUM AND NETWORK IN-
FRASTRUCTURE.—The Commission shall—

(A) authorize the shared use, sublicensing,
or leasing of the public safety broadband spec-
trum and network infrastructure by entities
that are not defined as public safety services,
subject to the requirements that public safety
services retain priority access to the spectrum,
pursuant to procedures adopted by the Commis-
sion, provided that—

(i) the needs of other governmental
entities are considered before commercial
entities; and

(ii) such use is approved by the public
safety broadband licensee;

(B) allow use of the public safety
broadband spectrum by emergency response
providers;

(C) ensure that any revenues derived from
any such shared use, sublicensing, or lease are
deposited in the Public Safety Interoperable
Broadband Network Maintenance and Oper-
ation Fund established under section 202(a)(2); and

(D) ensure that the Commission retains, for the 60-day period following submission of a request for such shared use, sublicensing, or lease the right to review and approve of any such shared use, sublicensing, or lease.

(4) PROVIDING FOR INTEROPERABILITY AND ROAMING AGREEMENTS.—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 Federal, State, local, and tribal public safety agencies, shall establish rules that enable—

(A) nationwide interoperability between wireless public safety broadband networks and commercial broadband networks; and 

(B) roaming by public safety entities operating on a wireless public safety broadband network across any commercial network so as to gain guaranteed access to a resilient and reliable commercial network in times of an emergency.

(b) DEFINITIONS.—As used in this section—
(1) the term “emergency response provider” has the same meaning as in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101); and

(2) the terms “public safety broadband licensee”, “public safety broadband spectrum”, and “public safety services” shall have the same meaning as in section 337(f) of the Communications Act of 1934 (47 U.S.C. 337(f)).

SEC. 104. ESTABLISHMENT OF STANDARDS.

Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security, in coordination with the Director of the National Institute of Standards and Technology, shall establish an appropriate set of public safety requirements for meeting the interoperability and roaming requirements developed under section 103(a)(4) 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 of such requirements to evolve with technological developments in the commercial marketplace;
(4) the ability of such requirements to accommodate prioritization for public safety transmissions;

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

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

SEC. 105. SUBMISSION AND APPROVAL OF INTEROPERABILITY COMMUNICATIONS PLANS BY STATES.

(a) In General.—Not later than 6 months after the date of publication in the Federal Register of the rules required by section 103 and the date of release of the standards required by section 104, each State shall submit a plan to the Secretary of Homeland Security and the Federal Communications Commission detailing the terms and aspects of the phased deployment for the wireless public safety broadband network to be constructed in the public safety broadband spectrum pursuant to section 103(a)(1).

(b) Approval.—Not later than 120 days after the submission of a plan under subsection (a), the Secretary of Homeland Security and the Federal Communications Commission shall either jointly approve or disapprove of the plan.
SEC. 106. RULE OF CONSTRUCTION FOR PUBLIC SAFETY

BROADBAND LICENSEE.

Nothing in this Act, or the amendments made by this Act, shall be construed to overturn, supersede, or otherwise preempt the Federal Communications 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(f) of the Communications Act of 1934) and the Federal Communications Commission, except that the following shall, 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 shall 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.
• (J) Association of Public-Safety Communications Officials, International.
• (K) National Emergency Management Association.
• (L) International Association of Emergency Managers.
• (M) Police Executive Research Forum.
• (N) National Criminal Justice Association.
• (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 Services 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 Management 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.

(NN) National Emergency Number Association.


**TITLE II—FUNDING**

**SEC. 201. DEFINITIONS.**

In this title—

(1) 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;

(2) the term “Assistant Secretary” means the Assistant Secretary of Commerce for Communications and Information;

(3) the term “Commission” means the Federal Communications Commission;
(4) the term “Construction Fund” means the Public Safety Interoperable Broadband Network Construction Fund established under section 202(a)(1);

(5) the term “Indian tribe” has the same meaning as in section 4 of the Indian Self Determination Act (25 U.S.C. 450b);

(6) the term “Maintenance and Operation Fund” means the Public Safety Interoperable Broadband Network Maintenance and Operation Fund established under section 202(a)(2);

(7) the term “NTIA” means the National Telecommunications and Information Administration;

(8) the term “public safety entity” means an entity that provides public safety services, including a State, municipality, or locality;

(9) the term “public safety services” has the same meaning as in section 337(f) of the Communications Act of 1934 (47 U.S.C. 337(f)); and

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

SEC. 202. FUNDING.

(a) Establishment of Funds.—

(1) Construction Fund.—
(A) ESTABLISHMENT.—There is estab-
lished 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 estab-
lish 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 on October
1, 2011, such sums as may be necessary,
but not to exceed $2,000,000,000, to im-
plement 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 Interoperable 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.

(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 up front payments from successful bidders) from the auction of the spectrum described in section 206 in the following manner:

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

(2) All proceeds exceeding $5,500,000,000 but not more than $11,000,000,000 shall be deposited in the Maintenance and Operation Fund and shall be made available to the Secretary without further appropriations.
(3) Any proceeds in excess of $11,000,000,000 shall be deposited in the General Fund of the Treasury, where such amounts shall be dedicated for the sole purpose of deficit reduction.

(c) **Transfer of Funds at Completion of Construction**.—The Secretary of the Treasury shall transfer to the Maintenance and Operation Fund any funds remaining in the Construction Fund after the date of the completion of the construction phase of the nationwide public safety interoperable broadband network to be established under section 203, as such completion date is determined by the Secretary.

(d) **Transfer of Funds to Treasury**.—Any funds remaining in the Maintenance and Operation Fund after the end of the 10-year period following the determination by the Secretary that construction of the nationwide public safety interoperable broadband network to be established under section 203 has been completed shall be transferred to the General Fund of the Treasury, where such amounts shall be dedicated for the sole purpose of deficit reduction.

(e) **Authorization of Appropriations**.—

(1) **Construction Fund**.—There are authorized to be appropriated to the Secretary for deposit in the Construction Fund in and after fiscal year
2012 a total amount not to exceed $5,500,000,000 minus any amounts equal to the amount deposited in the Construction Fund pursuant to subsection (b)(1).

(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 a total amount not to exceed $5,500,000,000 minus any amounts equal to the amount deposited in the Maintenance and Operation Fund pursuant to subsection (b)(2).

SEC. 203. PUBLIC SAFETY INTEROPERABLE BROADBAND NETWORK CONSTRUCTION.

(a) ESTABLISHMENT OF CONSTRUCTION GRANT PROGRAM.—The Secretary shall take such action as is necessary to establish a grant program to assist States, municipalities, and Indian tribes to establish a nationwide public safety interoperable broadband network in the 700 MHz 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 in the 700 MHz band.
Improvement of the existing public safety networks and construction of new infrastructure to meet public safety requirements in the 700 MHz band, the 800 MHz band, or the 4.9 GHz band.

Migration of public safety entity use to the 700 MHz band.

Matching Requirements.—

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 Commission.

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.

Requirements.—Not later than 1 year after the date of enactment of this Act, the Secretary shall establish requirements for the grant program established under this section, including the following:

(1) Defining eligible costs for purposes of subsection (e)(1).
(2) Determining the scope of network infrastructure eligible for grant funding under this section.

(3) Conditioning grant funding on compliance with the licensing terms of the Commission.

(4) Ensuring that all grant funds are in compliance 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 shall enhance the Office of Emergency Communications Technical Assistance Program to assist recipients of grant amounts under this section with best practices and guidance in implementing projects for which the recipient received a construction grant under this section.

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

(a) Maintenance and Operation Reimbursement Program.—The Secretary shall administer a program through which not more than 50 percent of maintenance and operational expenses associated with the public safety interoperable broadband network may be reimbursed from the Maintenance and Operation Fund for those expenses that are attributable to the maintenance,
operation, and improvement of the public safety interoperable broadband network.

(b) REPORT.—Not later than 7 years after the commencement of the reimbursement program established under subsection (a), the Secretary shall submit to the appropriate committees of Congress a report on whether to continue to provide funding for the Maintenance and Operation Fund following completion 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 thereafter, the Comptroller General of the United States shall perform an audit of the financial statements, records, and accounts of the—

(1) Construction Fund established under section 202(a)(1);

(2) 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.
SEC. 205. GAAP.—Each audit required under subsection (a) shall be conducted in accordance with generally acceptable 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 CONSTRUCTION AND MAINTENANCE AND OPERATION FUNDS.

(a) IDENTIFICATION OF SPECTRUM.—Not later than 1 year after the date of enactment of this Act, the Assistant Secretary shall identify, at a minimum, 15 megahertz of contiguous spectrum at frequencies located between 1675 megahertz and 1710 megahertz, inclusive, to be made available for immediate reallocation.

(b) AUCTION.—Not later than January 31, 2014, the Commission shall conduct the auction of the following licenses, by commencing the bidding for:

(1) The spectrum between the frequencies of 1915 megahertz and 1920 megahertz, inclusive.

(2) The spectrum between the frequencies of 1995 megahertz and 2000 megahertz, inclusive.

(3) The spectrum between the frequencies of 2020 megahertz and 2025 megahertz, inclusive.
(4) The spectrum between the frequencies of 2175 megahertz and 2180 megahertz, inclusive.

(5) The spectrum between the frequencies of 2155 megahertz and 2175 megahertz, inclusive.

(6) The spectrum between the frequencies of 1755 megahertz and 1850 megahertz, inclusive.

(7) The spectrum identified pursuant to subsection (a).


(d) Eligibility.—The 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, on account of its size or amount of its other spectrum holdings.

SEC. 207. ACHIEVING LONG-TERM INTEROPERABILITY AND EFFICIENT USE OF PUBLIC SAFETY SPECTRUM.

(a) Mandating Migration of Federal Law Enforcement.—Not later than 10 years after the date of enactment of this Act, each Federal law enforcement agency shall move all of their communications not being carried
on commercial networks to spectrum located in the 700
MHz and 800 MHz bands.

(b) Spectrum Below 512 MHz.—

(1) In general.—Beginning on the date of en-
actment of this Act, the Commission shall not renew
any license to use spectrum located on frequencies
above 170 megahertz and below 512 megahertz
granted to a public safety licensee, unless the li-
censee is able to demonstrate—

(A) that migration to a different spectrum
band will cause considerable economic hardship
to the State or local government jurisdiction in
which such licensee is located;

(B) migration to a different spectrum band
would adversely impact the ability of the li-
censee to protect and serve the community in
which such licensee is located; or

(C) there are an insufficient number of fre-
quencies above the 700 MHz band to support
the land-mobile communications needs of the li-
censee.

(2) Recommendation.—Not later than 5
years after date of enactment, the Commission, in
consultation with the Secretary, the NTIA, and Fed-
eral, State, and local public safety agencies, shall
issue a recommendation to Congress on the feasibility of public safety entities ending their use of spectrum located on frequencies above 170 megahertz and below 512 megahertz, and moving all such use to the spectrum licensed to public safety services in the 700 MHz and 800 MHz bands.

(3) Availability of Funds.—The Secretary may make amounts available from the Maintenance and Operation Fund to facilitate the migration of public safety entity use of spectrum located on frequencies above 170 megahertz and below 512 megahertz to use of spectrum licensed to public safety services in the 700 MHz and 800 MHz bands.

(e) Spectrum in the 4.9 GHz Band.—

(1) Eligibility for Use of Spectrum.—The Commission shall modify section 90.1203(b) of subpart Y or part 90 of the Code of Federal Regulations (47 C.F.R. 90.1203(b)) (relating to eligibility of use of spectrum frequencies in the 4940–4990 MHz band) to ensure that—

(A) governmental entities providing public safety services retain primary authority to use such spectrum; and

(B) non-governmental entities may use the spectrum on a secondary basis, provided that—
(i) such secondary use does not cause harmful interference to public safety users of that spectrum;

(ii) the non-governmental entity seeking such secondary use demonstrates to the Commission that such secondary use will not cause interference to public safety users of that spectrum; and

(iii) if such secondary use causes any interference to a public safety user, such entity shall immediately cease such use until such interference has been mitigated to the satisfaction of the public safety user.

(2) Fee for Secondary Use of Spectrum.—

(A) In General.—The Commission shall charge a recurring licensing fee to each non-governmental entity for any secondary use of spectrum by such entity described under paragraph (1).

(B) Treatment of Revenues.—Any revenues generated from the recurring licensing fee charged under subparagraph (A) shall be deposited in Maintenance and Operation Fund until the date identified under section 202(d), after which all such revenues shall be deposited
in the General Fund of the Treasury, where such amounts shall be dedicated for the sole purpose of deficit reduction.

(d) Reports on Efficient Use of Public Safety Spectrum.—

(1) GAO Study and Report.—Not later than 3 years after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study and submit a report to the appropriate committees of Congress that identifies—

(A) those parts of the radio spectrum above 174 MHz and below 512 MHz used by any public safety entity that could be returned to the Commission for auction in accordance with subsection (d); and

(B) the cost of migrating any such entity from use of the returned spectrum to use of alternative spectrum.

(2) FCC Study and Report.—Not later than 3 years after the date of enactment of this Act, and every 3 years thereafter, the Commission shall conduct a study and submit to the appropriate committees of Congress a report—

(A) on the spectrum held by the public safety broadband licensee;
(B) on how efficiently such spectrum is being used; and
(C) that provides a recommendation for whether more spectrum needs to be made available to meet the needs of public safety entities.

SEC. 208. REPORT ON LONG-TERM INTEROPERABILITY USING IP-BASED SOLUTIONS.
Not later than 2 years after the date of enactment of this Act, the Commission, in consultation with the Secretary and the Assistant Secretary, shall issue a report and order, after allowing time for notice and comment, including comment from public safety users, and submit such report to the appropriate committees of Congress, on whether Internet Protocol-enabled solutions could aid interoperability.