To amend the Communications Act of 1934 to provide public safety providers an additional 10 megahertz of spectrum to support a national, interoperable wireless broadband network and authorize the Federal Communications Commission to hold incentive auctions to provide funding to support such a network, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 25 (legislative day, JANUARY 5), 2011

Mr. ROCKEFELLER (for himself, Mr. LAUTENBERG, Mr. NELSON of Florida, Ms. KLOBUCHAR, Mr. CARDIN, and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Communications Act of 1934 to provide public safety providers an additional 10 megahertz of spectrum to support a national, interoperable wireless broadband network and authorize the Federal Communications Commission to hold incentive auctions to provide funding to support such a network, 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 “Public Safety Spectrum and Wireless Innovation Act”.

1

2

3

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5
(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

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**TITLE I—NATIONWIDE INTEROPERABLE PUBLIC SAFETY BROADBAND NETWORK**

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**SEC. 2. DEFINITIONS.**

In this Act:

1. **(1) 700 MHz BAND.**—The term “700 MHz band” means the portion of the electromagnetic spectrum between the frequencies from 698 megahertz to 806 megahertz.

2. **(2) 700 MHZ D BLOCK SPECTRUM.**—The term “700 MHz D block spectrum” means the portion of the electromagnetic spectrum between the frequencies from 758 megahertz to 763 megahertz and between the frequencies from 788 megahertz to 793 megahertz.
(3) ASSISTANT SECRETARY.—The term “Assistant Secretary” means the Assistant Secretary of Commerce for Communications and Information.

(4) COMMISSION.—The term “Commission” means the Federal Communications Commission.

(5) CONSTRUCTION FUND.—The term “construction fund” means the fund established in section 201(a)(1)(A).

(6) EXISTING PUBLIC SAFETY BROADBAND SPECTRUM.—The term “existing public safety broadband spectrum” means the portion of the electromagnetic spectrum between the frequencies from 763 megahertz to 768 megahertz and between the frequencies from 793 megahertz to 798 megahertz.

(7) MAINTENANCE AND OPERATION FUND.—The term “maintenance and operation fund” means the fund established in section 201(a)(2)(A).

(8) NARROWBAND SPECTRUM.—The term “narrowband spectrum” means the portion of the electromagnetic spectrum between the frequencies from 769 megahertz to 775 megahertz and between the frequencies from 799 megahertz to 805 megahertz.
(9) NTIA.—The term “NTIA” means the National Telecommunications and Information Administration.

**TITLE I—NATIONWIDE INTEROPERABLE PUBLIC SAFETY BROADBAND NETWORK**

**SEC. 101. ESTABLISHMENT OF NETWORK.**

(a) IN GENERAL.—The Commission shall take all actions necessary to ensure the deployment of a nationwide public safety interoperable broadband network in the 700 MHz band, including—

(1) developing and implementing nationwide technical and operational requirements for the network;

(2) adopting any rules necessary to achieve interoperability in the network; and

(3) adopting user authentication and encryption requirements for the network.

(b) COVERAGE.—The Commission shall ensure that the network is deployed and interoperable in rural, as well as urban, areas, including necessary build out of communications infrastructure in rural areas to accommodate network access and functionality.

**SEC. 102. REALLOCATION OF D BLOCK TO PUBLIC SAFETY.**

(a) REALLOCATION OF D BLOCK.—
(1) IN GENERAL.—The Commission shall realloc- 
cate the 700 MHz D block spectrum for use by pub-
lie safety entities in accordance with the provisions 
of this Act.

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

(A) by striking “24” in paragraph (1) and 
inserting “34”; and

(B) by striking “36” in paragraph (2) and 
inserting “26”.

(b) INTEGRATION WITH EXISTING PUBLIC SAFETY 
BROADBAND SPECTRUM.—The Commission shall—

(1) determine the licensing for the 700 MHz D 
block spectrum reallocated under section 337 of the 
Communications Act of 1934 (47 U.S.C. 337), as 
amended by subsection (a);

(2) determine how best to integrate the 700 
MHz D block spectrum reallocated with the existing 
public safety spectrum; and

(3) determine whether the 20 megahertz of 
public safety broadband spectrum should be licensed 
on a nationwide, regional, or statewide basis, or 
some combination thereof, in accordance with the 
public interest.
SEC. 103. FLEXIBLE USE OF NARROWBAND SPECTRUM.

The Commission shall allow the narrowband spectrum to be used in a flexible manner, including usage for public safety broadband communications, subject to such technical and interference protection measures as the Commission may require.

SEC. 104. SECONDARY USE OF PUBLIC SAFETY SPECTRUM.

(a) In General.—Notwithstanding section 337 of the Communications Act of 1934 (47 U.S.C. 337), the Commission may authorize any public safety licensee or licensees to allow access to spectrum licensed to such licensee or licensees to non-public safety governmental users, commercial users, utilities, including organizations providing or operating critical infrastructure, including electric, gas, and water utilities, and other Federal agencies and departments.

(b) Limitations and Conditions.—The Commission shall—

(1) authorize the provision of access to such spectrum only on a secondary basis;

(2) require secondary access agreements to be in writing and to be submitted to the Commission for review and approval;

(3) require that the public safety entity retain the right to use any such spectrum on a primary, preemptible basis;
(4) consider whether it is in the public interest to require multiple secondary leases per licensee; and

(5) require that all funds received from such secondary access pursuant to such written agreements be reinvested in the public safety interoperable broadband network by using such funds only for constructing, maintaining, improving, or purchasing equipment to be used in conjunction with the network, by deposit into the Maintenance and Operation Fund established by section 201 or otherwise.

SEC. 105. INTEROPERABILITY.

(a) IN GENERAL.—The Commission shall ensure that the nationwide public safety broadband network is fully interoperable on a nationwide basis.

(b) TECHNICAL AND OPERATIONAL RULES.—

(1) INSURING INTEROPERABILITY.—The Commission shall establish technical and operational rules to ensure nationwide interoperability, including rules that—

(A) establish requirements for nationwide roaming ability among any licensee, licensees, lessees, and secondary users;

(B) will ensure the safety of State broadband public safety networks, including re-
quirements for protecting and monitoring the network to protect against cyber-attack;

(C) will promote competition in the device market for public safety communications by requiring devices for use on a public safety network to be—

(i) built to open standards;

(ii) capable of being used by any vendor and across all public safety systems; and

(iii) backward-compatible with existing second and third generation commercial networks;

(D) authorize public safety entities to execute partnerships with other public or private entities to build or operate the State’s public safety broadband network;

(E) encourage public safety entities to utilize, to the greatest extent possible, existing commercial, State, or Federal Government infrastructure;

(F) will ensure that the interoperability plan includes integration with 9–1–1 call centers; and
(G) require any licensee or licensees to file annual reports on—

(i) the status of public safety broadband network construction and interoperability; and

(ii) the status and deployment of existing public safety broadband and narrowband systems.

(2) FACTORS TO BE CONSIDERED.—In carrying out paragraph (1), the Commission shall, at a minimum, consider—

(A) the extent to which particular technologies and user equipment are, or are likely to be, available in the commercial marketplace;

(B) the availability of necessary technologies and equipment on reasonable and non-discriminatory licensing terms; and

(C) the ability of particular technologies and equipment—

(i) to evolve with technological developments in the commercial marketplace; and

(ii) to accommodate prioritization for public safety transmissions.

(c) RFP STANDARDS.—
(1) IN GENERAL.—The Commission shall establish procedural and substantive requirements for requests for proposals related to the nationwide public safety broadband network that—

(A) require such requests to meet the technical requirements under subsection (b) that ensure interoperability of the broadband network to which it relates and ensure that nothing will interfere with such interoperability;

(B) limit the authority for issuing such requests to States or multi-State organizations, except to the extent delegated to an agency or political subdivision;

(C) will ensure that the request-for-proposals process is open, transparent, and competitive;

(D) require any such request—

(i) to be issued on a Statewide or multi-State basis and to be coordinated with the appropriate State chief executive or the executive’s designee;

(ii) to demonstrate that the State has a plan for interoperability, with provision for both urban and rural build out; and
(iii) to cover any necessary relocation
of incumbent narrowband operations in the
existing public safety broadband spectrum;

(E) authorize States to issue requests for
proposals that will build on a State broadband
network; and

(F) require the term of any contract under
the process to be reasonable and, in any event,
for less than the term of the underlying license.

(2) Model RFPS.—The Commission may en-
courage the use of the requests-for-proposal model
or form developed by the Government Accountability
Office under section 207 of this Act.

(d) Rural Build Out Requirements.—The Com-
mission shall—

(1) establish rural build out targets for the pub-
lic safety broadband network, including targets for
States or smaller areas;

(2) require contracts awarded through the re-
quest-for-proposals process in connection with the
network to include deployment phases with substan-
tial rural coverage milestones as part of each phase
where appropriate; and

(3) in collaboration with the Assistant Sec-
retary, make funding for each build out phase after
the first contingent on meeting build out targets for
the preceding phase to the extent feasible.

(c) Development and Maintenance of Inter-
operability, Security, and Functionality Stand-
ard.s.—The Commission and through agreements exe-
cuted with the National Institute of Standards and Tech-
nology, shall develop, maintain, and update such require-
ments and standards as may be necessary to ensure inter-
operability, security, and functionality.

(f) Authorization of Appropriations.—There
are authorized to be appropriated to the Commission, for
use by the Emergency Response and Interoperability Cen-
ter in carrying out its responsibilities under this Act,
$5,500,000 for each of fiscal years 2013 through 2018.

SEC. 106. COMMERCIAL NETWORK ROAMING AND PRIORITY
ACCESS.

The Commission may adopt rules, if necessary in the
public interest, to improve the ability of public safety net-
works to roam onto commercial networks and to gain pri-
ority access to commercial networks in an emergency if—

(1) the public safety entity equipment is tech-
nically compatible with the commercial network;

(2) the commercial network is reasonably com-
pensated; and

(3) it is consistent with the public interest.
SEC. 107. PUBLIC SAFETY ADVISORY BOARD.

(a) In General.—Not later than 90 days after the date of enactment of this Act, the Commission shall establish a public safety advisory board to advise the Commission on—

(1) carrying out its duties under section 101; and

(2) the implementation of improvements to the public safety interoperable broadband network under that section.

(b) Composition.—The Commission shall determine the composition of the advisory board, which shall include, at a minimum, representatives from each of the following:

(1) State, local, and tribal governments.

(2) Public safety organizations.

(3) Providers of commercial mobile service.

(4) Manufacturers of communications equipment.

(c) Reports.—The Commission shall consult with the advisory board on any study or report on public safety spectrum.

(d) FACA Inapplicable.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory board.

(e) Termination.—The advisory board shall terminate 10 years after the date of enactment of this Act.
TITLE II—FUNDING

SEC. 201. ESTABLISHMENT OF FUNDS.

(a) In General.—

(1) Construction 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 Construction Fund.

(B) Purpose.—The Assistant Secretary shall establish and administer the grant program under section 202 using the funds deposited in the Construction Fund.

(C) Credit.—

(i) Borrowing Authority.—The Assistant 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 implement section 202.

(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.
Fund, but in no case later than December 31, 2015.

(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 Commission shall use the funds deposited in the Maintenance and Operation Fund to carry out section 203.

(b) 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, as determined by the Assistant Secretary.

(c) Transfer of Funds to the Treasury.—The Secretary 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 that begins after the date of the completion of the construction phase, as determined by the Assistant Secretary.

(d) Authorization of Appropriations.—
1 (1) CONSTRUCTION FUND.—There are author-
2 ized to be appropriated to the Assistant Secretary
3 for deposit in the Construction Fund in and after
4 fiscal year 2013 such sums as necessary subject to
5 paragraph (3).
6
7 (2) MAINTENANCE AND OPERATION FUND.—
8 There are authorized to be appropriated to the Com-
9 mission for deposit in the Maintenance and Oper-
10 ation Fund in and after fiscal year 2013 such sums
11 as necessary subject to paragraph (3).
12
13 (3) LIMITATION.—The authorization of appro-
14 priations under paragraphs (1) and (2) may not ex-
15 ceed a total of $11,000,000,000.
16
17 SEC. 202. PUBLIC SAFETY INTEROPERABLE BROADBAND
18 NETWORK CONSTRUCTION.
19
20 (a) CONSTRUCTION GRANT PROGRAM ESTABLISH-
21 MENT.—The Assistant Secretary, in consultation with the
22 Commission, shall take such action as is necessary to es-
23 tablish a grant program to assist public safety entities to
24 establish a nationwide public safety interoperable
25 broadband network in the 700 MHz band.
26
27 (b) PROJECTS.—Grants may be made under this sec-
28 tion for the construction of a public safety interoperable
29 broadband network, including improvement of existing
30 commercial and noncommercial networks and facilities
1. and construction of new infrastructure to meet public safety requirements, as defined by the Commission, that operate as part of the public safety interoperable broadband network in the 700 MHz band.

(c) Matching Requirements.—

(1) Federal share.—

(A) In general.—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 Assistant Secretary in consultation with the Commission.

(B) Waiver.—The Assistant Secretary may waive, in whole or in part, the requirements of subparagraph (A) for good cause shown if it determines that such a waiver is in the public interest.

(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 Assistant Secretary, in consultation with the Commission, shall establish grant program requirements including the following:
(1) Demonstrated compliance with applicable Commission request-for-proposal and license terms and service rules, including interoperability and technical rules, construction requirements, and secondary use rules.

(2) Defining entities that are eligible to receive a grant under this section.

(3) Defining eligible costs for purposes of subsection (e)(1).

(4) Determining the scope of network infrastructure eligible for grant funding under this section.

(5) Prioritizing grants for projects that ensure coverage in rural as well as urban areas.

SEC. 203. PUBLIC SAFETY INTEROPERABLE BROADBAND MAINTENANCE AND OPERATION.

(a) MAINTENANCE AND OPERATION REIMBURSEMENT PROGRAM.—The Commission 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 date of enactment of this Act, the Commission shall submit to Congress a report on whether to continue to provide funding for the Maintenance and Operation Fund after the end of the 10-year period that begins after the date of the completion of the construction phase, as determined by the Assistant Secretary.

SEC. 204. AUCTION OF SPECTRUM.

(a) IN GENERAL.—

(1) IDENTIFICATION OF SPECTRUM.—Not later than 1 year after the date of enactment of this Act, the Assistant Secretary shall identify, at a minimum, 25 megahertz of contiguous spectrum at frequencies located between 1675 megahertz and 1710 megahertz, inclusive, to be made available for immediate reallocation.

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

(A) The spectrum between the frequencies of 2155 megahertz and 2180 megahertz, inclusive.

(B) The spectrum identified pursuant to paragraph (1).
20

(3) PROCEEDS.—The proceeds (including de-
posits and up front payments from successful bid-
ders) from the auction shall be deposited in the Con-
struction Fund.

(b) INCENTIVE SPECTRUM AUCTION AUTHORITY.—

(1) IN GENERAL.—Paragraph (8) of section
309(j) of the Communications Act of 1934 (47
U.S.C. 309(j)) is amended—

(A) by striking “(B), (D), and (E),” in
subparagraph (A) and inserting “(B), (D), (E),
and (F),”; and

(B) by adding at the end thereof the fol-
lowing:

“(F) INCENTIVE AUCTION AUTHORITY.—

“(i) Authority.—The Commission
may if the Commission determines that it
is consistent with the public interest in uti-
лизation of the spectrum for a licensee to
relinquish voluntarily some or all of its li-
censed spectrum usage rights in order to
permit the assignment of new initial li-
censes subject to new service rules, the
Commission may disburse to that licensee
a portion of the auction proceeds related to
the new use that the Commission deter-
mines, in its discretion, are attributable to the licensee's relinquished spectrum usage.

“(ii) PROCEEDS FOR FUNDS.—Notwithstanding subparagraph (A), the proceeds (including deposits and up front payments from successful bidders) from the use of a competitive bidding system under this subsection with respect to relinquished spectrum, after deduction of any amounts disbursed to the relinquishing licensee, shall be deposited as follows:

“(I) 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 Assistant Secretary without further appropriations.

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

“(III) Any proceeds exceeding $11,000,000,000 shall be made avail-
able, as provided by appropriation Acts, for growth-enhancing infrastruc-
ture projects, including the NextGen aviation navigation system, develop-
ment of high-speed rail transport-
tation, and Smart Grid electrical power transmission and management technology.”.


(d) LIMITATION.—

(1) IN GENERAL.—The Commission may not reclaim frequencies licensed to broadcast television licensees or other licensees, directly or indirectly, on an involuntary basis for purposes of section 309(j)(8)(F) of the Communications Act of 1934.

(2) RULE OF CONSTRUCTION.—Nothing in this Act or in the amendments made by this Act shall be construed to permit the Commission to reclaim frequencies of broadcast television licensees or any other licensees directly or indirectly on an involun-
tary basis for the purpose that section.
SEC. 205. REPORT ON EFFICIENT USE OF PUBLIC SAFETY SPECTRUM.

Not later than 5 years after the date of enactment of this Act and every 5 years thereafter, the Commission shall conduct a study and submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce on the spectrum held by the public safety entities. In the report the Commission shall—

1. examine how such spectrum is being used;
2. provide a recommendation for whether more spectrum needs to be made available to meet the needs of public safety entities; and
3. assess the opportunity for return of any spectrum to the Commission for auction to commercial providers to provide revenue to the Treasury of the United States.

SEC. 206. GAO REPORT ON SATELLITE BROADBAND.

Not later than 2 years after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study and submit to Congress a report on the current and future capabilities of fixed and mobile satellite broadband to assist public safety entities during an emergency.

SEC. 207. ACCESS TO GSA SCHEDULES.

The Administrator of General Services shall—
(1) establish rules under which public safety entities may access and use the rates offered to the General Services Administration for communications services and devices;

(2) develop and furnish to the Commission a model request-for-proposals form for public safety use under section 105; and

(3) develop a procedure under which public safety entities are authorized to purchase from established GSA schedules.

SEC. 208. FEDERAL INFRASTRUCTURE SHARING.

The Administrator of General Services shall establish rules to allow any public safety licensee or licensees to have access to Federal infrastructure to construct and maintain the public safety interoperable broadband network.

SEC. 209. 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) Public Safety Interoperable Broadband Network Construction Fund established under section 201(a)(1);
(2) Public Safety Interoperable Broadband Network Maintenance and Operation Fund established under section 201(a)(2);

(3) construction grant program established under section 202; and

(4) maintenance and operation program established under section 203.

(b) 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. 210. ANTIDIVERSION PROHIBITION.

Except as provided in section 309(j)(8)(F)(ii)(III) of the Communications Act of 1934, as added by this Act, no funds made available under this Act or any amendment made by this Act may be used for any purpose other than in support of the nationwide public safety interoperable broadband network to be deployed under this Act, including the acquisition, construction, or reconstruction of infrastructure and facilities, the purchase of equipment and services, including hardware, software, and training, in accordance with rules established by the Commission.