

DON'T BREAK UP THE T-BAND ACT OF 2020

SEPTEMBER 18, 2020.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PALLONE, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 451]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 451) to repeal the section of the Middle Class Tax Relief and Job Creation Act of 2012 that requires the Federal Communications Commission to reallocate and auction the T-Band spectrum, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

CONTENTS

	Page
I. Purpose and Summary	4
II. Background and Need for the Legislation	4
III. Committee Hearings	5
IV. Committee Consideration	6
V. Committee Votes	6
VI. Oversight Findings	6
VII. New Budget Authority, Entitlement Authority, and Tax Expenditures	6
VIII. Federal Mandates Statement	7
IX. Statement of General Performance Goals and Objectives	7
X. Duplication of Federal Programs	7
XI. Committee Cost Estimate	7
XII. Earmarks, Limited Tax Benefits, and Limited Tariff Benefits	7
XIII. Advisory Committee Statement	7
XIV. Applicability to Legislative Branch	7
XV. Section-by-Section Analysis of the Legislation	8
XVI. Changes in Existing Law Made by the Bill, as Reported	9

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Don’t Break Up the T-Band Act of 2020”.

SEC. 2. REPEAL OF REQUIREMENT TO REALLOCATE AND AUCTION T-BAND SPECTRUM.

(a) **REPEAL.**—Section 6103 of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1413) is repealed.

(b) **CLERICAL AMENDMENT.**—The table of contents in section 1(b) of such Act is amended by striking the item relating to section 6103.

SEC. 3. CLARIFYING ACCEPTABLE 9-1-1 OBLIGATIONS OR EXPENDITURES.

Section 6 of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615a-1) is amended—

(1) in subsection (f)—

(A) in paragraph (1), by striking “as specified in the provision of State or local law adopting the fee or charge” and inserting “consistent with the purposes and functions designated in the final rules issued under paragraph (3) as purposes and functions for which the obligation or expenditure of such a fee or charge is acceptable”;

(B) in paragraph (2), by striking “any purpose other than the purpose for which any such fees or charges are specified” and inserting “any purpose or function other than the purposes and functions designated in the final rules issued under paragraph (3) as purposes and functions for which the obligation or expenditure of any such fees or charges is acceptable”; and

(C) by adding at the end the following:

“(3) **ACCEPTABLE OBLIGATIONS OR EXPENDITURES.**—

“(A) **RULES REQUIRED.**—In order to prevent diversion of 9-1-1 fees or charges, the Commission shall, not later than 180 days after the date of the enactment of this paragraph, issue final rules designating purposes and functions for which the obligation or expenditure of 9-1-1 fees or charges, by any State or taxing jurisdiction authorized to impose such a fee or charge, is acceptable.

“(B) **PURPOSES AND FUNCTIONS.**—The purposes and functions designated under subparagraph (A) shall be limited to the support and implementation of 9-1-1 services provided by or in the State or taxing jurisdiction imposing the fee or charge and operational expenses of public safety answering points within such State or taxing jurisdiction. In designating such purposes and functions, the Commission shall consider the purposes and functions that States and taxing jurisdictions specify as the intended purposes and functions for the 9-1-1 fees or charges of such States and taxing jurisdictions, and determine whether such purposes and functions directly support providing 9-1-1 services.

“(C) **CONSULTATION REQUIRED.**—The Commission shall consult with public safety organizations and States and taxing jurisdictions as part of any proceeding under this paragraph.

“(D) **DEFINITIONS.**—In this paragraph:

“(i) **9-1-1 FEE OR CHARGE.**—The term ‘9-1-1 fee or charge’ means a fee or charge applicable to commercial mobile services or IP-enabled voice services specifically designated by a State or taxing jurisdiction for the support or implementation of 9-1-1 services.

“(ii) **9-1-1 SERVICES.**—The term ‘9-1-1 services’ has the meaning given such term in section 158(e) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942(e)).

“(iii) **STATE OR TAXING JURISDICTION.**—The term ‘State or taxing jurisdiction’ means a State, political subdivision thereof, Indian Tribe, or village or regional corporation serving a region established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

“(4) **PARTICIPATION.**—If a State or taxing jurisdiction (as defined in paragraph (3)(D)) receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942) after the date of the enactment of this paragraph, such State or taxing jurisdiction shall, as a condition of receiving such grant, provide the information requested by the Commission to prepare the report required by paragraph (2).

“(5) **PETITION REGARDING ADDITIONAL PURPOSES AND FUNCTIONS.**—

“(A) **IN GENERAL.**—A State or taxing jurisdiction (as defined in paragraph (3)(D)) may submit to the Commission a petition for a determination that an obligation or expenditure of a 9-1-1 fee or charge (as defined in such paragraph) by such State or taxing jurisdiction for a purpose or function other than a purpose or function designated under paragraph (3)(A) should be treated as such a purpose or function. If the Commission finds that the State or taxing jurisdiction has provided sufficient documentation to make the demonstration described in subparagraph (B), the Commission shall grant such petition.

“(B) DEMONSTRATION DESCRIBED.—The demonstration described in this subparagraph is a demonstration that the purpose or function—

“(i) supports public safety answering point functions or operations; or
“(ii) has a direct impact on the ability of a public safety answering point to—

“(I) receive or respond to 9–1–1 calls; or
“(II) dispatch emergency responders.”; and

(2) by adding at the end the following:

“(j) SEVERABILITY CLAUSE.—If any provision of this section or the application thereof to any person or circumstance is held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.”.

SEC. 4. PROHIBITION ON 9–1–1 FEE OR CHARGE DIVERSION.

(a) IN GENERAL.—If the Commission obtains evidence that suggests the diversion by a State or taxing jurisdiction of 9–1–1 fees or charges, the Commission shall submit such information, including any information regarding the impact of any underfunding of 9–1–1 services in the State or taxing jurisdiction, to the interagency strike force established under subsection (c).

(b) REPORT TO CONGRESS.—Beginning with the first report under section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615a–1(f)(2)) that is required to be submitted after the date that is 1 year after the date of the enactment of this Act, the Commission shall include in each report required under such section all evidence that suggests the diversion by a State or taxing jurisdiction of 9–1–1 fees or charges, including any information regarding the impact of any underfunding of 9–1–1 services in the State or taxing jurisdiction.

(c) INTERAGENCY STRIKE FORCE TO END 9–1–1 FEE OR CHARGE DIVERSION.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this Act, the Commission shall establish an interagency strike force to study how the Federal Government can most expeditiously end diversion by a State or taxing jurisdiction of 9–1–1 fees or charges. Such interagency strike force shall be known as the “Ending 9–1–1 Fee Diversion Now Strike Force” (in this section referred to as the “Strike Force”).

(2) DUTIES.—In carrying out the study under paragraph (1), the Strike Force shall—

(A) determine the effectiveness of any Federal laws, including regulations, policies, and practices, or budgetary or jurisdictional constraints regarding how the Federal Government can most expeditiously end diversion by a State or taxing jurisdiction of 9–1–1 fees or charges;

(B) consider whether criminal penalties would further prevent diversion by a State or taxing jurisdiction of 9–1–1 fees or charges; and

(C) determine the impacts of diversion by a State or taxing jurisdiction of 9–1–1 fees or charges.

(3) MEMBERS.—The Strike Force shall be composed of such representatives of Federal departments and agencies as the Commission considers appropriate, in addition to—

(A) State attorneys general;

(B) States or taxing jurisdictions found not to be engaging in diversion of 9–1–1 fees or charges;

(C) States or taxing jurisdictions trying to stop the diversion of 9–1–1 fees or charges;

(D) State 9–1–1 administrators;

(E) public safety organizations;

(F) groups representing the public and consumers; and

(G) groups representing public safety answering point professionals.

(4) REPORT TO CONGRESS.—Not later than 270 days after the date of the enactment of this Act, the Strike Force shall publish on the website of the Commission and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the findings of the study under this subsection, including—

(A) any recommendations regarding how to most expeditiously end the diversion by a State or taxing jurisdiction of 9–1–1 fees or charges, including actions that can be taken by Federal departments and agencies and appropriate changes to law or regulations; and

(B) a description of what progress, if any, relevant Federal departments and agencies have made in implementing the recommendations under subparagraph (A).

(d) FAILURE TO COMPLY.—Notwithstanding any other provision of law, any State or taxing jurisdiction identified by the Commission in the report required under section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615a–1(f)(2)) as engaging in diversion of 9–1–1 fees or charges shall be ineligible to participate or send a representative to serve on any committee, panel, or council established under section 6205(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1425(a)) or any advisory committee established by the Commission.

SEC. 5. RULE OF CONSTRUCTION.

Nothing in this Act, the Wireless Communications and Public Safety Act of 1999 (Public Law 106–81), or the Communications Act of 1934 (47 U.S.C. 151 et seq.) shall be construed to prevent a State or taxing jurisdiction from requiring an annual audit of the books and records of a provider of 9–1–1 services concerning the collection and remittance of a 9–1–1 fee or charge.

SEC. 6. DEFINITIONS.

In this Act:

(1) 9–1–1 FEE OR CHARGE.—The term “9–1–1 fee or charge” has the meaning given such term in subparagraph (D) of paragraph (3) of section 6(f) of the Wireless Communications and Public Safety Act of 1999, as added by this Act.

(2) 9–1–1 SERVICES.—The term “9–1–1 services” has the meaning given such term in section 158(e) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942(e)).

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

(4) DIVERSION.—The term “diversion” means, with respect to a 9–1–1 fee or charge, the obligation or expenditure of such fee or charge for a purpose or function other than the purposes and functions designated in the final rules issued under paragraph (3) of section 6(f) of the Wireless Communications and Public Safety Act of 1999, as added by this Act, as purposes and functions for which the obligation or expenditure of such a fee or charge is acceptable.

(5) STATE OR TAXING JURISDICTION.—The term “State or taxing jurisdiction” has the meaning given such term in subparagraph (D) of paragraph (3) of section 6(f) of the Wireless Communications and Public Safety Act of 1999, as added by this Act.

Amend the title so as to read:

A bill to repeal the requirement to reallocate and auction the T-Band spectrum, to amend the Wireless Communications and Public Safety Act of 1999 to clarify acceptable 9–1–1 obligations or expenditures, and for other purposes.

I. PURPOSE AND SUMMARY

H.R. 451, the “Don’t Break Up the T-Band Act of 2020”, was introduced on January 10, 2019, by Representatives Eliot L. Engel (D–NY), Lee M. Zeldin (R–NY), Al Green (D–TX), and Peter T. King (R–NY), and the bill was referred to the Committee on Energy and Commerce. H.R. 451 would repeal a provision of law requiring the Federal Communications Commission (FCC) to reallocate and auction a band of electromagnetic spectrum in the 470–512 MHz band, commonly known as the “T-Band spectrum.” Additionally, H.R. 451 directs the FCC to take steps to end the practice of 9–1–1 fee diversion by States and taxing jurisdictions.

II. BACKGROUND AND NEED FOR LEGISLATION

In 1970, the FCC granted public safety entities and business-industrial users in 11 major metropolitan areas access to certain portions of the electromagnetic spectrum between 470 MHz and 512 MHz on a shared basis with incumbent TV broadcast users.¹ Since

¹Federal Communications Commission, *Amendment of Parts 2, 89, 91, and 93, First Report and Order*, Docket No. 18261, 23 FCC 2d 325 (1970). The 11 major metro areas utilizing the

1971, local and regional public safety and law enforcement entities have built out radio and data communications systems that today serve a combined population of more than 90 million Americans.²

As part of the Middle Class Tax Relief and Job Creation Act of 2012, Congress directed the FCC to reallocate the T-Band spectrum used by public safety entities for commercial use.³ The FCC is required to commence an auction of the T-Band spectrum by February 2021 and clear all public safety operations from the band by early 2023.⁴ Proceeds from the auction would then go toward covering relocation costs imposed on displaced public safety users through a grant program administered by the National Telecommunications and Information Administration.⁵

According to a June 2019 Government Accountability Office report, however, FCC officials estimate that revenues from auctioning the entire T-Band would not reach \$2 billion, while the costs associated with relocating the incumbent public safety users are estimated to exceed \$5 to \$6 billion.⁶

Separately, each State has the authority to impose and collect fees or charges, applicable to commercial mobile services or IP-enabled voice services, for the support or implementation of 9-1-1 or enhanced 9-1-1 services.⁷ The FCC is required to submit an annual report to Congress on these fees and other charges that States collect to support 9-1-1 services.⁸ In its most recent report, the FCC found that States and other reporting jurisdictions collected roughly \$2.68 billion in 9-1-1 fees or charges in 2018.⁹ According to the FCC's Public Safety and Homeland Security Bureau, five of the 56 jurisdictions that responded to the FCC's data request were found to have diverted or transferred a combined \$187 million in 9-1-1 fees or charges for purposes other than funding 9-1-1 or Enhanced 9-1-1 services or system upgrades.¹⁰

III. COMMITTEE HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress, the following hearing was used to develop or consider H.R. 451:

The Subcommittee on Communications and Technology held a legislative hearing on February 27, 2020, entitled "Strengthening Communications Networks to Help Americans in Crisis." The Subcommittee received testimony from the following witnesses:

- Matthew Gerst, Vice President, Regulatory Affairs, CTIA;
- Sue Ann Atkerson, CEO, Behavioral Health Link;
- Anthony Gossner, Fire Chief, City of Santa Rosa (Calif.);

T-Band are: New York City, Los Angeles, Chicago, Washington/Baltimore, Philadelphia, San Francisco, Boston, Dallas/Fort Worth, Houston, Miami, and Pittsburgh.

²See National Public Safety Telecommunications Council, *T-Band Update Report (May 2016)*.

³Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 1603 (codified at 47 U.S.C. § 1413).

⁴See National Public Safety Telecommunications Council, *T-Band Report (Mar. 2013)*.

⁵Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 1603 (codified at 47 U.S.C. § 1413).

⁶Government Accountability Office, *Emergency Communications: Required Auction of Public Safety Spectrum Could Harm First Responder Capabilities* (Jun. 2019) (GAO-19-508).

⁷New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283 (codified at 47 U.S.C. § 615a-1(f)(1)).

⁸*Id.* at § 615a-1(f)(2).

⁹Federal Communications Commission, *Eleventh Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges* at 32 (Dec. 19, 2019).

¹⁰*Id.* at 39. The States identified as diverting 911 funds in 2018 were Nevada, New Jersey, New York, Rhode Island, and West Virginia.

- Joseph Torres, Senior Director of Strategy and Engagement, Free Press and Free Press Action;
- Daniel Henry, Regulatory Counsel and Director of Government Affairs, National Emergency Number Association; and
- Allen F. Bell, Distribution Manager, Georgia Power Company.

IV. COMMITTEE CONSIDERATION

Representatives Engel (D–NY), Zeldin (R–NY), Green (D–TX), and King (R–NY) introduced H.R. 451, the “Don’t Break Up the T-Band Act of 2019”, on January 10, 2019, and the bill was referred to the Committee on Energy and Commerce. Subsequently, H.R. 451 was referred to the Subcommittee on Communications and Technology on January 25, 2019. A legislative hearing was held on the bill on February 27, 2020.

On March 10, 2020, the Subcommittee on Communications and Technology met in open markup session, pursuant to notice, to consider H.R. 451. During consideration of the bill, an amendment offered by Mr. Walden of Oregon was agreed to by a voice vote. Subsequently, the Subcommittee on Communications and Technology agreed by a voice vote to a motion by Mr. Doyle, Chairman of the subcommittee, to favorably forward H.R. 451, amended, to the full Committee on Energy and Commerce.

On July 15, 2020, the full Committee met in virtual open markup session, pursuant to notice, to consider a committee print of the bill H.R. 451, showing the text of the bill as amended by the Subcommittee on Communications and Technology on March 10, 2020. There were no amendments offered to the committee print of H.R. 451. Upon conclusion of consideration of the bill, the full Committee agreed to a motion on final passage by Mr. Pallone, Chairman of the committee, to order H.R. 451 reported favorably to the House, as amended, by a voice vote, a quorum being present.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. The Committee advises that there were no record votes taken on H.R. 451, including the motion for final passage of the bill.

VI. OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee are reflected in the descriptive portion of the report.

VII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of

the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

VIII. FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

IX. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to preserve critical public safety spectrum and to end the practice of diverting 9–1–1 fees for unrelated purposes.

X. DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 451 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

XI. COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

XII. EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 451 contains no earmarks, limited tax benefits, or limited tariff benefits.

XIII. ADVISORY COMMITTEE STATEMENT

One advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

XIV. APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

XV. SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 designates that the short title may be cited as the “Don’t Break Up the T-Band Act of 2020”.

Sec. 2. Repeal of requirement to reallocate and auction T-Band spectrum

Section 2 repeals Section 6103 of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1413).

Section 6103 of the Middle Class Tax Relief and Job Creation Act of 2012 requires the FCC to reallocate the spectrum in the 470–510 MHz band, or T-Band, and begin a system of competitive bidding under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) to grant new licenses for the use of the T-Band.

Sec. 3. Clarifying acceptable 9–1–1 obligations or expenditures

Section 3 requires the FCC to issue final rules, not later than 180 days after the date of enactment of this paragraph, designating purposes and functions for which the obligation or expenditure of 9–1–1 fees or charges by a State or taxing jurisdiction is acceptable for purposes of the FCC’s 9–1–1 fee accountability report submitted annually to Congress under section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615a–1(f)(2)). This section stipulates that the purposes and functions that the FCC designates must be limited to the support and implementation of 9–1–1 services and operational expenses of public safety answering points within the State or taxing jurisdiction imposing the fee or charge. As part of any proceeding to designate purposes and functions for which the obligation or expenditure of 9–1–1 fees or charges is acceptable, the FCC is required to consider the input of public safety organizations and States and taxing jurisdictions.

Section 3 also requires any State or taxing jurisdiction that receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942) to provide information requested by the FCC regarding the 9–1–1 fees or charges imposed by the State or taxing jurisdiction, as a condition of receiving the grant.

This section also provides definitions for the terms 9–1–1 fee or charge, 9–1–1 services, and State or taxing jurisdiction.

Sec. 4. Prohibition on 9–1–1 fee or charge diversion

Section 4 directs the FCC to establish the “Ending 9–1–1 Fee Diversion Now Strike Force” (Strike Force) to study how the Federal government can end diversion of 9–1–1 fees or charges by States or taxing jurisdictions. If the FCC obtains evidence suggesting the incidence of 9–1–1 fee diversion by a State or taxing jurisdiction, the FCC is required to submit the evidence to the Strike Force, and include the evidence in the subsequent 9–1–1 fee accountability report submitted annually to Congress under section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615a–1(f)(2)).

The Strike Force is to be composed of State attorneys general, States or taxing jurisdictions found not to be engaging in diversion of 9–1–1 fees or charges, States or taxing jurisdictions trying to

stop the diversion of 9–1–1 fees or charges, State 9–1–1 administrators, public safety organizations, groups representing the public and consumers, and groups representing public safety answering point professionals. In the study required under this section, the Strike Force should determine the effectiveness of existing laws, regulations, policies, or practices to stop diversion of 9–1–1 fees or charges, as well as the impact of 9–1–1 fee diversion by States or taxing jurisdictions.

This section also directs the Strike Force to submit to Congress, and publish on the website of the FCC, a report on the findings of the study including any recommendations for how to most expeditiously end the practice of 9–1–1 fee diversion.

Sec. 5. Rule of construction

Section 5 clarifies that nothing in this legislation prevents a State or taxing jurisdiction from requiring an annual audit of a provider of 9–1–1 services concerning the collection and remittance of a 9–1–1 fee or charge.

Sec. 6. Definitions

Section 6 provides definitions for the terms 9–1–1 fee or charge, 9–1–1 services, Commission, diversion, and State or taxing jurisdiction.

XVI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

MIDDLE CLASS TAX RELIEF AND JOB CREATION ACT OF 2012

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Middle Class Tax Relief and Job Creation Act of 2012”.

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

Sec. 1. Short title; table of contents.

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TITLE VI—PUBLIC SAFETY COMMUNICATIONS AND ELECTROMAGNETIC SPECTRUM AUCTIONS

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Subtitle A—Reallocation of Public Safety Spectrum

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[Sec. 6103. 470-512 MHz public safety spectrum.]

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TITLE VI—PUBLIC SAFETY COMMUNICATIONS AND ELECTROMAGNETIC SPECTRUM AUCTIONS

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Subtitle A—Reallocation of Public Safety Spectrum

* * * * *

SEC. 6103. 470-512 MHZ PUBLIC SAFETY SPECTRUM.

[(a) IN GENERAL.—Not later than 9 years after the date of enactment of this title, the Commission shall—

[(1) reallocate the spectrum in the 470-512 MHz band (referred to in this section as the “T-Band spectrum”) currently used by public safety eligibles as identified in section 90.303 of title 47, Code of Federal Regulations; and

[(2) begin a system of competitive bidding under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) to grant new initial licenses for the use of the spectrum described in paragraph (1).

[(b) AUCTION PROCEEDS.—Proceeds (including deposits and upfront payments from successful bidders) from the competitive bidding system described in subsection (a)(2) shall be available to the Assistant Secretary to make grants in such sums as necessary to cover relocation costs for the relocation of public safety entities from the T-Band spectrum.

[(c) RELOCATION.—Relocation shall be completed not later than 2 years after the date on which the system of competitive bidding described in subsection (a)(2) is completed.]

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WIRELESS COMMUNICATIONS AND PUBLIC SAFETY ACT OF 1999

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SEC. 6. DUTY TO PROVIDE 9-1-1 AND ENHANCED 9-1-1 SERVICE.

(a) DUTIES.—It shall be the duty of each IP-enabled voice service provider to provide 9-1-1 service and enhanced 9-1-1 service to its subscribers in accordance with the requirements of the Federal Communications Commission, as in effect on the date of enactment of the New and Emerging Technologies 911 Improvement Act of 2008 and as such requirements may be modified by the Commission from time to time.

(b) PARITY FOR IP-ENABLED VOICE SERVICE PROVIDERS.—An IP-enabled voice service provider that seeks capabilities to provide 9-1-1 and enhanced 9-1-1 service from an entity with ownership or control over such capabilities, to comply with its obligations under subsection (a), shall, for the exclusive purpose of complying with such obligations, have a right of access to such capabilities, including interconnection, to provide 9-1-1 and enhanced 9-1-1 service

on the same rates, terms, and conditions that are provided to a provider of commercial mobile service (as such term is defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d))), subject to such regulations as the Commission prescribes under subsection (c).

(c) REGULATIONS.—The Commission—

(1) within 90 days after the date of enactment of the New and Emerging Technologies 911 Improvement Act of 2008, shall issue regulations implementing such Act, including regulations that—

(A) ensure that IP-enabled voice service providers have the ability to exercise their rights under subsection (b);

(B) take into account any technical, network security, or information privacy requirements that are specific to IP-enabled voice services; and

(C) provide, with respect to any capabilities that are not required to be made available to a commercial mobile service provider but that the Commission determines under subparagraph (B) of this paragraph or paragraph (3) are necessary for an IP-enabled voice service provider to comply with its obligations under subsection (a), that such capabilities shall be available at the same rates, terms, and conditions as would apply if such capabilities were made available to a commercial mobile service provider;

(2) shall require IP-enabled voice service providers to which the regulations apply to register with the Commission and to establish a point of contact for public safety and government officials relative to 9–1–1 and enhanced 9–1–1 service and access; and

(3) may modify such regulations from time to time, as necessitated by changes in the market or technology, to ensure the ability of an IP-enabled voice service provider to comply with its obligations under subsection (a) and to exercise its rights under subsection (b).

(d) DELEGATION OF ENFORCEMENT TO STATE COMMISSIONS.—The Commission may delegate authority to enforce the regulations issued under subsection (c) to State commissions or other State or local agencies or programs with jurisdiction over emergency communications. Nothing in this section is intended to alter the authority of State commissions or other State or local agencies with jurisdiction over emergency communications, provided that the exercise of such authority is not inconsistent with Federal law or Commission requirements.

(e) IMPLEMENTATION.—

(1) LIMITATION.—Nothing in this section shall be construed to permit the Commission to issue regulations that require or impose a specific technology or technological standard.

(2) ENFORCEMENT.—The Commission shall enforce this section as if this section was a part of the Communications Act of 1934. For purposes of this section, any violations of this section, or any regulations promulgated under this section, shall be considered to be a violation of the Communications Act of 1934 or a regulation promulgated under that Act, respectively.

(f) STATE AUTHORITY OVER FEES.—

(1) **AUTHORITY.**—Nothing in this Act, the Communications Act of 1934 (47 U.S.C. 151 et seq.), the New and Emerging Technologies 911 Improvement Act of 2008, or any Commission regulation or order shall prevent the imposition and collection of a fee or charge applicable to commercial mobile services or IP-enabled voice services specifically designated by a State, political subdivision thereof, Indian tribe, or village or regional corporation serving a region established pursuant to the Alaska Native Claims Settlement Act, as amended (85 Stat. 688) for the support or implementation of 9–1–1 or enhanced 9–1–1 services, provided that the fee or charge is obligated or expended only in support of 9–1–1 and enhanced 9–1–1 services, or enhancements of such services, [as specified in the provision of State or local law adopting the fee or charge] *consistent with the purposes and functions designated in the final rules issued under paragraph (3) as purposes and functions for which the obligation or expenditure of such a fee or charge is acceptable.* For each class of subscribers to IP-enabled voice services, the fee or charge may not exceed the amount of any such fee or charge applicable to the same class of subscribers to telecommunications services.

(2) **FEE ACCOUNTABILITY REPORT.**—To ensure efficiency, transparency, and accountability in the collection and expenditure of a fee or charge for the support or implementation of 9–1–1 or enhanced 9–1–1 services, the Commission shall submit a report within 1 year after the date of enactment of the New and Emerging Technologies 911 Improvement Act of 2008, and annually thereafter, to the Committee on Commerce, Science and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives detailing the status in each State of the collection and distribution of such fees or charges, and including findings on the amount of revenues obligated or expended by each State or political subdivision thereof for [any purpose other than the purpose for which any such fees or charges are specified] *any purpose or function other than the purposes and functions designated in the final rules issued under paragraph (3) as purposes and functions for which the obligation or expenditure of any such fees or charges is acceptable.*

(3) **ACCEPTABLE OBLIGATIONS OR EXPENDITURES.**—

(A) **RULES REQUIRED.**—*In order to prevent diversion of 9–1–1 fees or charges, the Commission shall, not later than 180 days after the date of the enactment of this paragraph, issue final rules designating purposes and functions for which the obligation or expenditure of 9–1–1 fees or charges, by any State or taxing jurisdiction authorized to impose such a fee or charge, is acceptable.*

(B) **PURPOSES AND FUNCTIONS.**—*The purposes and functions designated under subparagraph (A) shall be limited to the support and implementation of 9–1–1 services provided by or in the State or taxing jurisdiction imposing the fee or charge and operational expenses of public safety answering points within such State or taxing jurisdiction. In designating such purposes and functions, the Commission shall consider the purposes and functions that States and*

taxing jurisdictions specify as the intended purposes and functions for the 9-1-1 fees or charges of such States and taxing jurisdictions, and determine whether such purposes and functions directly support providing 9-1-1 services.

(C) CONSULTATION REQUIRED.—The Commission shall consult with public safety organizations and States and taxing jurisdictions as part of any proceeding under this paragraph.

(D) DEFINITIONS.—In this paragraph:

(i) 9-1-1 FEE OR CHARGE.—The term “9-1-1 fee or charge” means a fee or charge applicable to commercial mobile services or IP-enabled voice services specifically designated by a State or taxing jurisdiction for the support or implementation of 9-1-1 services.

(ii) 9-1-1 SERVICES.—The term “9-1-1 services” has the meaning given such term in section 158(e) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942(e)).

(iii) STATE OR TAXING JURISDICTION.—The term “State or taxing jurisdiction” means a State, political subdivision thereof, Indian Tribe, or village or regional corporation serving a region established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(4) PARTICIPATION.—If a State or taxing jurisdiction (as defined in paragraph (3)(D)) receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942) after the date of the enactment of this paragraph, such State or taxing jurisdiction shall, as a condition of receiving such grant, provide the information requested by the Commission to prepare the report required by paragraph (2).

(5) PETITION REGARDING ADDITIONAL PURPOSES AND FUNCTIONS.—

(A) IN GENERAL.—A State or taxing jurisdiction (as defined in paragraph (3)(D)) may submit to the Commission a petition for a determination that an obligation or expenditure of a 9-1-1 fee or charge (as defined in such paragraph) by such State or taxing jurisdiction for a purpose or function other than a purpose or function designated under paragraph (3)(A) should be treated as such a purpose or function. If the Commission finds that the State or taxing jurisdiction has provided sufficient documentation to make the demonstration described in subparagraph (B), the Commission shall grant such petition.

(B) DEMONSTRATION DESCRIBED.—The demonstration described in this subparagraph is a demonstration that the purpose or function—

(i) supports public safety answering point functions or operations; or

(ii) has a direct impact on the ability of a public safety answering point to—

(I) receive or respond to 9-1-1 calls; or

(II) dispatch emergency responders.

(g) AVAILABILITY OF PSAP INFORMATION.—The Commission may compile a list of public safety answering point contact information, contact information for providers of selective routers, testing procedures, classes and types of services supported by public safety answering points, and other information concerning 9–1–1 and enhanced 9–1–1 elements, for the purpose of assisting IP-enabled voice service providers in complying with this section, and may make any portion of such information available to telecommunications carriers, wireless carriers, IP-enabled voice service providers, other emergency service providers, or the vendors to or agents of any such carriers or providers, if such availability would improve public safety.

(h) DEVELOPMENT OF STANDARDS.—The Commission shall work cooperatively with public safety organizations, industry participants, and the E–911 Implementation Coordination Office to develop best practices that promote consistency, where appropriate, including procedures for—

- (1) defining geographic coverage areas for public safety answering points;
- (2) defining network diversity requirements for delivery of IP-enabled 9–1–1 and enhanced 9–1–1 calls;
- (3) call-handling in the event of call overflow or network outages;
- (4) public safety answering point certification and testing requirements;
- (5) validation procedures for inputting and updating location information in relevant databases; and
- (6) the format for delivering address information to public safety answering points.

(i) RULE OF CONSTRUCTION.—Nothing in the New and Emerging Technologies 911 Improvement Act of 2008 shall be construed as altering, delaying, or otherwise limiting the ability of the Commission to enforce the Federal actions taken or rules adopted obligating an IP-enabled voice service provider to provide 9–1–1 or enhanced 9–1–1 service as of the date of enactment of the New and Emerging Technologies 911 Improvement Act of 2008.

(j) SEVERABILITY CLAUSE.—*If any provision of this section or the application thereof to any person or circumstance is held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.*

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