

111TH CONGRESS
2D SESSION

S. 3625

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

IN THE SENATE OF THE UNITED STATES

JULY 21, 2010

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 agencies, to facilitate the development of a wireless public safety broadband network, to provide standards for the spectrum needs of public safety agencies, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “First Responders Pro-
5 tection Act of 2010”.

1 **TITLE I—ALLOCATION AND AS-**
2 **SIGNMENT OF PUBLIC SAFE-**
3 **TY LICENSES**

4 **SEC. 101. FINDINGS.**

5 The Congress finds the following:

6 (1) The communications capabilities of first re-
7 sponders and other public safety agencies directly af-
8 fect the public safety of the people of the United
9 States and our national security.

10 (2) As events such as the terrorist attacks of
11 September 11, 2001, and Hurricane Katrina re-
12 vealed, the inability of local, State, tribal, and Fed-
13 eral first responders to communicate effectively dur-
14 ing an emergency impairs operations and the ability
15 to mitigate terrorist acts and natural disasters.

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

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

1 (5) Allocating the paired electromagnetic spec-
2 trum bands of 758–763 megahertz and 788–793
3 megahertz, referred to as the D Block, to public
4 safety agencies is the only assured way of meeting
5 public safety’s needs for sufficient spectrum and
6 would help reduce the complexity and future oper-
7 ating cost of public safety communications systems.

8 (6) Because the communications needs of public
9 safety agencies may differ by geographic region (in-
10 cluding whether they require a dedicated commu-
11 nications system or can rely on a system shared with
12 commercial users), each region requires flexibility to
13 develop a model that meets its needs without sacri-
14 ficing the interoperability of the system as a whole.

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

20 (8) The use by public safety agencies of stand-
21 ardized technologies commonly employed in the com-
22 mercial telecommunications sector will provide sig-
23 nificant benefits, including improved capabilities,
24 greater economies of scale, and more rapid adoption
25 of technological innovations.

1 (9) When it is in the interest of public safety,
 2 the Federal Communications Commission should en-
 3 courage any public safety licensee or spectrum lessee
 4 to consider using existing or planned commercial in-
 5 frastructure.

6 **SEC. 102. ALLOCATION AND ASSIGNMENT OF PUBLIC SAFE-**
 7 **TY LICENSES.**

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

11 (1) in paragraph (1), by striking “24” and in-
 12 serting “34”; and

13 (2) in paragraph (2), by striking “36” and in-
 14 serting “26”.

15 (b) ASSIGNMENT.—Section 337(b) of the Commu-
 16 nications Act of 1934 (47 U.S.C. 337(b)) is amended to
 17 read as follows:

18 “(b) ASSIGNMENT.—

19 “(1) IN GENERAL.—Not later than 60 days
 20 after the date of enactment of the First Responders
 21 Protection Act of 2010, the Commission shall allo-
 22 cate the paired electromagnetic spectrum bands of
 23 758–763 megahertz and 788–793 megahertz for
 24 public safety broadband communications and shall li-

1 cense such paired bands to the public safety
2 broadband licensee.

3 “(2) ESTABLISHMENT OF RULES.—

4 “(A) IN GENERAL.—The Commission shall
5 establish rules to permit the public safety
6 broadband licensee to authorize providers of
7 public safety services to construct and operate
8 a wireless public safety broadband network in
9 the spectrum licensed to the public safety
10 broadband licensee if the public safety
11 broadband licensee determines that such au-
12 thorization would expedite the deployment of
13 public safety broadband communications.

14 “(B) NETWORK REQUIREMENTS.—The
15 Commission shall require that any such wireless
16 public safety broadband network shall—

17 “(i) be fully interoperable and remain
18 interoperable with, and in conformance
19 with the same broadband technology stand-
20 ards as, all other public safety broadband
21 systems deployed or authorized;

22 “(ii) provide for roaming by local,
23 State, tribal, and Federal Government and
24 other authorized users of the spectrum li-

1 censed to the public safety broadband li-
2 censee;

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

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

7 “(v) ensure that networks of such sys-
8 tems have the appropriate level of cyber se-
9 curity; and

10 “(vi) ensure that authorized users
11 have control over all local network uses
12 consistent with rules established by the
13 Commission.

14 “(C) DEADLINES.—

15 “(i) RULES.—The Commission shall
16 establish rules under this paragraph not
17 later than 180 days after the date of en-
18 actment of the First Responders Protec-
19 tion Act of 2010.

20 “(ii) REPORT.—

21 “(I) IN GENERAL.—Not later
22 than 60 days after the date of enact-
23 ment of the First Responders Protec-
24 tion Act of 2010, the public safety
25 broadband licensee shall submit a re-

port to the appropriate committees of Congress on the phased network deployment plan of such spectrum bands.

“(II) DEFINITIONS.—For purposes of subclause (I), the term ‘appropriate committees of Congress’ means—

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

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

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

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

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

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

1 (2) by inserting after subsection (e) the fol-
 2 lowing:

3 “(f) RULEMAKING REQUIRED.—The Commission
 4 shall establish regulations, subject to requirements that
 5 the public safety broadband licensee retain control over
 6 the use of the spectrum, to—

7 “(1) authorize the shared use of the public safe-
 8 ty broadband spectrum and network infrastructure
 9 by entities that are not defined as public safety serv-
 10 ices in subsection (g)(1), subject to requirements
 11 that public safety services retain priority access to
 12 the spectrum, pursuant to procedures adopted by the
 13 Commission, as long as other governmental entities’
 14 needs are considered before commercial entities; and

15 “(2) allow use of the public safety broadband
 16 spectrum by emergency response providers, as de-
 17 fined in section 2 of the Homeland Security Act of
 18 2002 (6 U.S.C. 101).”.

19 (d) DEFINITION.—Section 337(g) of the Communica-
 20 tions Act of 1934 (as so redesignated) is amended—

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

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

1 “(1) PUBLIC SAFETY BROADBAND LICENSEE.—

2 The term ‘public safety broadband licensee’ means a
3 licensee, as defined by the Commission in its Second
4 Report and Order adopted July 31, 2007 (FCC 07–
5 132), and selected in the Commission’s Order adopt-
6 ed November 19, 2007 (FCC 07–199), by the Com-
7 mission to be the licensee for the 763–768/793–
8 798MHz.

9 “(2) PUBLIC SAFETY BROADBAND SPEC-
10 TRUM.—The term ‘public safety broadband spec-
11 trum’ means the electromagnetic spectrum between
12 758 megahertz and 768 megahertz, inclusive, and
13 788 megahertz and 798 megahertz, inclusive and
14 any additional electromagnetic frequencies allocated
15 for public safety use that the Commission shall des-
16 ignate for public safety broadband use.”.

17 **SEC. 103. STANDARDS.**

18 (a) INTEROPERABILITY REQUIREMENTS.—Not later
19 than 180 days after the date of enactment of this Act,
20 the Federal Communications Commission, in consultation
21 with the Director of the National Institute of Standards
22 and Technology, the Secretary of Homeland Security, the
23 Attorney General, and local, State, tribal, and Federal
24 public safety agencies, shall develop a public safety agency
25 statement of requirements that enables nationwide inter-

1 operability and roaming across any communications sys-
2 tem using public safety broadband spectrum, as defined
3 in section 337(g) of the Communications Act of 1934.

4 (b) SPECIFICATIONS.—The Secretary, in coordination
5 with the Director of the National Institute of Standards
6 and Technology, shall establish an appropriate standard,
7 or set of standards, for meeting the public safety agency
8 statement requirements developed under subsection (a)
9 which shall take into consideration—

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

13 (2) the availability of necessary technologies
14 and equipment on reasonable and non-discriminatory
15 licensing terms;

16 (3) the ability to evolve with technological devel-
17 opments in the commercial marketplace;

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

20 (5) the ability to accommodate appropriate se-
21 curity measures for public safety transmissions; and

22 (6) any other considerations the Federal Com-
23 munications Commission deems appropriate.

1 **SEC. 104. RULE OF CONSTRUCTION.**

2 Nothing in this Act, or the amendments made by this
3 Act, shall be construed to overturn, supercede, or other-
4 wise preempt the Commission's Order adopted on Novem-
5 ber 19, 2007 (FCC 07-199), and setting forth the roles
6 and responsibilities of the public broadband safety licensee
7 (as such term is defined in section 337(g) of the Commu-
8 nications Act of 1934) and the Federal Communications
9 Commission, except that the following may, by rule or
10 order, be modified by the Commission:

11 (1) Any organization seeking membership to the
12 Board of Directors of the Public Safety Broadband
13 Licensee may be voted in by a simple majority of the
14 then serving members of the Board of Directors.

15 (2) The Board of Directors of the Public Safety
16 Broadband Licensee shall include the following orga-
17 nizations:

18 (A) International Association of Chiefs of
19 Police.

20 (B) International Association of Fire
21 Chiefs.

22 (C) National Sheriffs' Association.

23 (D) International Association of Fire
24 Fighters.

25 (E) National Volunteer Fire Council.

26 (F) Fraternal Order of Police.

1 (G) Major Cities Chiefs Association.

2 (H) Metropolitan Fire Chiefs Association.

3 (I) Major County Sheriffs' Association.

4 (J) Association of Public-Safety Commu-
5 nications Officials, International.

6 (K) National Emergency Management As-
7 sociation.

8 (L) International Association of Emer-
9 gency Managers.

10 (M) Police Executive Research Forum.

11 (N) National Criminal Justice Association.

12 (O) National Association of Police Organi-
13 zations.

14 (P) National Organization of Black Law
15 Enforcement Executives.

16 (Q) Association of Air Medical Services.

17 (R) Advocates for Emergency Medical
18 Services.

19 (S) Emergency Nurses Association.

20 (T) National Association of Emergency
21 Medical Services Physicians.

22 (U) National Association of Emergency
23 Medical Technicians.

24 (V) National Association of State Emer-
25 gency Medical Service Officials.

1 (W) National Emergency Medical Services
2 Management Association.

3 (X) International Municipal Signal Asso-
4 ciation.

5 (Y) American Probation and Parole Asso-
6 ciation.

7 (Z) National Governors Association.

8 (AA) National Association of Counties.

9 (BB) National League of Cities.

10 (CC) United States Conference of Mayors.

11 (DD) Council of State Governments.

12 (EE) International City/County Managers
13 Association.

14 (FF) National Conference of State Legis-
15 latures.

16 (GG) National Association of Regional
17 Councils.

18 (HH) Utilities Telecom Council.

19 (II) American Association of State High-
20 way Transportation Officials.

21 (JJ) American Hospital Association.

22 (KK) Forestry Conservation Communica-
23 tions Association.

24 (LL) National Association of State 911
25 Administrators.

TITLE II—FUNDING

2 SEC. 201. DEFINITIONS.

3 In this title—

4 (1) the term “Assistant Secretary” means the
5 Assistant Secretary of Commerce for Communica-
6 tions and Information;

7 (2) the term “appropriate committees of Con-
8 gress” means—

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

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

13 (C) the Committee on Energy and Com-
14 merce of the House of Representatives; and

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

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

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

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

1 **SEC. 202. FUNDING.**

2 (a) ESTABLISHMENT OF FUNDS.—

3 (1) CONSTRUCTION FUND.—

4 (A) ESTABLISHMENT.—There is estab-
5 lished in the Treasury of the United States a
6 fund to be known as the Public Safety Inter-
7 operable Broadband Network Construction
8 Fund.

9 (B) PURPOSE.—The Secretary shall estab-
10 lish and administer the grant program under
11 section 203 using the funds deposited in the
12 Construction Fund.

13 (C) CREDIT.—

14 (i) BORROWING AUTHORITY.—The
15 Secretary may borrow from the general
16 fund of the Treasury beginning on October
17 1, 2010, such sums as may be necessary,
18 but not to exceed \$2,000,000,000, to im-
19 plement section 203.

20 (ii) REIMBURSEMENT.—The Secretary
21 of the Treasury shall reimburse the general
22 fund of the Treasury, without interest, for
23 any amounts borrowed under clause (i) as
24 funds are deposited into the Construction
25 Fund, but in no case later than December
26 31, 2014.

1 (2) MAINTENANCE AND OPERATION FUND.—

2 (A) ESTABLISHMENT.—There is estab-
3 lished in the Treasury of the United States a
4 fund to be known as the Public Safety Inter-
5 operable Broadband Network Maintenance and
6 Operation Fund.

7 (B) PURPOSE.—The Secretary shall use
8 the funds deposited in the Maintenance and Op-
9 eration Fund to carry out section 204.

10 (b) INITIAL DISTRIBUTION OF AUCTION PROCEEDS
11 IN FUNDS.—Notwithstanding subparagraphs (A) and (D)
12 of section 309(j)(8) of the Communications Act of 1934
13 (47 U.S.C. 309(j)(8)), the Secretary of the Treasury shall
14 deposit the proceeds (including deposits and upfront pay-
15 ments from successful bidders) from the auction of the
16 spectrum described in section 205 in the following man-
17 ner:

18 (1) All proceeds less than or equal to
19 \$5,500,000,000 shall be deposited in the Construc-
20 tion Fund and shall be made available to the Sec-
21 retary without further appropriations.

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

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

7 (d) TRANSFER OF FUNDS TO TREASURY.—The Sec-
8 retary of the Treasury shall transfer to the general fund
9 of the Treasury any funds remaining in the Maintenance
10 and Operation Fund after the end of the 10-year period
11 that begins after the date of the completion of the con-
12 struction phase, as determined by the Secretary.

13 (e) AUTHORIZATION OF APPROPRIATIONS.—

14 (1) CONSTRUCTION FUND.—There are author-
15 ized to be appropriated to the Secretary for deposit
16 in the Construction Fund in and after fiscal year
17 2012 such as sums as necessary subject to para-
18 graph (3).

19 (2) MAINTENANCE AND OPERATION FUND.—
20 There are authorized to be appropriated to the Sec-
21 retary for deposit in the Maintenance and Operation
22 Fund in and after fiscal year 2012 such as sums as
23 necessary subject to paragraph (3).

1 (3) LIMITATION.—The authorization of appro-
 2 priations under paragraphs (1) and (2) may not ex-
 3 ceed a total of \$5,500,000,000.

4 **SEC. 203. PUBLIC SAFETY INTEROPERABLE BROADBAND**
 5 **NETWORK CONSTRUCTION.**

6 (a) CONSTRUCTION GRANT PROGRAM ESTABLISH-
 7 MENT.—The Secretary shall take such action as is nec-
 8 essary to establish a grant program to assist public safety
 9 entities to establish a nationwide public safety interoper-
 10 able broadband network in the 700 megahertz band.

11 (b) PROJECTS.—The projects for which construction
 12 grants may be made under this section are the following:

13 (1) Construction of a new public safety inter-
 14 operable broadband network using public safety in-
 15 frastructure or commercial infrastructure, or both,
 16 in the 700 megahertz band.

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

20 (c) MATCHING REQUIREMENTS.—

21 (1) FEDERAL SHARE.—The Federal share of
 22 the cost of carrying out a project under this section
 23 may not exceed 80 percent of the eligible costs of
 24 carrying out a project, as determined by the Sec-

1 retary in consultation with the Federal Communica-
2 tions Commission.

3 (2) NON-FEDERAL SHARE.—The non-Federal
4 share of the cost of carrying out a project under this
5 section may be provided through an in-kind con-
6 tribution.

7 (d) REQUIREMENTS.—Not later than 6 months after
8 the date of enactment of this Act, the Secretary shall es-
9 tablish grant program requirements including the fol-
10 lowing:

11 (1) Defining entities that are eligible to receive
12 a grant under this section.

13 (2) Defining eligible costs for purposes of sub-
14 section (c)(1).

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

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

21 **SEC. 204. PUBLIC SAFETY INTEROPERABLE BROADBAND**
22 **MAINTENANCE AND OPERATION.**

23 (a) MAINTENANCE AND OPERATION REIMBURSE-
24 MENT PROGRAM.—The Secretary shall administer a pro-
25 gram through which not more than 50 percent of mainte-

1 nance and operational expenses associated with the public
 2 safety interoperable broadband network may be reim-
 3 bursed from the Maintenance and Operation Fund for
 4 those expenses that are attributable to the maintenance,
 5 operation, and improvement of the public safety interoper-
 6 able broadband network.

7 (b) REPORT.—Not later than 7 years after the date
 8 that the rule established under subsection (b)(1) becomes
 9 effective, the Secretary shall submit to Congress a report
 10 on whether to continue to provide funding for the Mainte-
 11 nance and Operation Fund after the end of the 10-year
 12 period that begins after the date of the completion of the
 13 construction phase, as determined by the Secretary.

14 **SEC. 205. AUCTION OF SPECTRUM.**

15 (a) IN GENERAL.—

16 (1) IDENTIFICATION OF SPECTRUM.—Not later
 17 than 1 year after the date of enactment of this Act,
 18 the Assistant Secretary shall identify, at a minimum,
 19 50 megahertz of contiguous spectrum at frequencies
 20 located between 1675 megahertz and 1710 mega-
 21 hertz, inclusive, to be made available for immediate
 22 reallocation.

23 (2) AUCTION.—Not later than January 31,
 24 2013, the Federal Communications Commission

1 shall conduct the auction of the licenses, by com-
2 mencing the bidding, for the following:

3 (A) The spectrum between the frequencies
4 of 2155 megahertz and 2180 megahertz, inclu-
5 sive.

6 (B) The spectrum identified under para-
7 graph (1).

8 (b) **EXTENSION OF AUCTION AUTHORITY.**—Section
9 309(j)(11) of the Communications Act of 1934 (47 U.S.C.
10 309(j)(11)) is amended by striking “2012” and inserting
11 “2020”.

12 **SEC. 206. REPORT ON EFFICIENT USE OF PUBLIC SAFETY**
13 **SPECTRUM.**

14 Not later than 5 years after the date of enactment
15 of this Act and every 5 years thereafter, the Federal Com-
16 munications Commission shall conduct a study and submit
17 to the appropriate committees of Congress a report on the
18 spectrum held by the public safety broadband licensee and
19 shall examine how such spectrum is being used and pro-
20 vide a recommendation for whether more spectrum needs
21 to be made available to meet the needs of public safety
22 entities and the opportunity to return any spectrum to the
23 Commission for auction to commercial providers to provide
24 revenue to the Treasury of the United States.

1 **SEC. 207. AUDITS.**

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

7 (1) Public Safety Interoperable Broadband Net-
8 work Construction Fund established under section
9 202(a)(1);

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

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

15 (4) maintenance and operation program estab-
16 lished under section 204.

17 (b) GAAP.—Each audit required under subsection
18 (a) shall be conducted in accordance with generally accept-
19 able accounting procedures.

20 (c) REPORT TO CONGRESS.—A copy of each audit re-
21 quired under subsection (a) shall be submitted to the ap-
22 propriate committees of Congress.

23 **SEC. 208. REPORT ON LONG-TERM INTEROPERABILITY BY**
24 **CONSOLIDATING BAND USE.**

25 Not later than 3 years after the date of enactment
26 of this Act, the Federal Communications Commission, in

1 consultation with the Secretary of Homeland Security and
 2 the Assistant Secretary, shall issue a report and order,
 3 after allowing time for notice and comment, including
 4 comment from public safety users, and submit such report
 5 to the appropriate committees of Congress, on whether
 6 such agencies and other public safety entities could—

7 (1) end their use of Land Mobile radio spec-
 8 trum below 512 MHz; and

9 (2) begin to use either—

10 (A) the 24 MHz band of spectrum (encom-
 11 passing that part of the electromagnetic spec-
 12 trum between 763 megahertz and 775 mega-
 13 hertz and 793 megahertz and 805 megahertz)
 14 allocated to public safety services under section
 15 337(a)(1) of the Communications Act of 1934
 16 (47 U.S.C. 337(a)(1)); or

17 (B) the spectrum in the 800 MHz band.

18 **SEC. 209. REPORT ON LONG-TERM INTEROPERABILITY**
 19 **USING IP-BASED SOLUTIONS.**

20 Not later than 2 years after enactment of this Act,
 21 the Federal Communications Commission, in consultation
 22 with the Secretary of Homeland Security and the Assist-
 23 ant Secretary, shall issue a report and order, after allow-
 24 ing time for notice and comment, including comment from
 25 public safety users, and submit such report the appro-

- 1 piate committees of Congress, on whether Internet Pro-
- 2 tocol-enabled solutions could aid interoperability.

