

the last decade. On his watch, the council oversaw multiple public and private development projects, among them the building of City Hall, the Teen Centre Vibe, the North Peninsula Jewish Community Center, the redevelopment of Miramar and Marlin Cove and the redevelopment of the Gilead Science Campus, the Pilgrim/Triton and Chess/Hatch projects. Everyone in Foster City has benefitted from Rick's outstanding work.

Rick was born in Sacramento. He earned his Bachelor and Masters Degrees in Public Administration from San Diego State University and the University of Southern California respectively.

Before attending college, Rick worked as a beach life guard for the United States Coast Guard from 1960–64. While attending San Diego State University, he became an administrative intern in Oceanside in San Diego County in February 1968. That was clearly where he caught the public service bug. The same year Rick became the administrative assistant to the city manager of Yorba Linda in Orange County where he stayed for two years. From 1970–73, he was assistant manager and administrative assistant in Buena Park, Orange County, until he became the manager for this city of 62,000 residents.

In 1977 Rick moved north to the San Francisco Peninsula to assume his position as city manager of Foster City. He successfully dealt with past political and administrative turmoil and put in place a professional team that managed the needs of the city. Rick also served as manager of the Estero Municipal Improvement District and as executive director to the Redevelopment Agency.

From 1994–95, he served as interim public works director of South San Francisco where he oversaw a freeway interchange and railroad grade separation. He returned to the department in 1997 as a special Projects coordinator. The same year he became interim director of Community Redevelopment in Morgan Hill and acting public works director in Daly City. During his time in Daly City, Mother Nature presented Rick with a special challenge: an "El Nino" that year with heavy rains, wind and mudslides made his work overseeing streets and storm drains no picnic, but of course he saw the city through this most difficult of times.

From 1999–2000, Rick served as interim public works director in San Bruno. He was deeply involved in the negotiations regarding the BART station and the extension of underground lines through the city.

Rick has also served on the boards of directors of numerous organizations including the Industrial Emergency Council, the ABAG Plan Corp., the Bay Area Water Supply and Conservation Agency and the San Mateo County Advance Life Support Joint Powers Authority. Additionally he has 30 years of experience as a volunteer fire fighter.

Rick married his wife Judie 48 years ago and they raised two children, Carey and Dennis.

Mr. Speaker, I ask this body to rise with me to honor the work of Rick Wykoff, my friend and an extraordinary public servant who has improved the lives of tens of thousands of Californians.

HONORING THE LOS ANGELES SELECTS HOCKEY PEEWEE AAA TEAM

HON. DANA ROHRBACHER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 28, 2012

Mr. ROHRBACHER. Mr. Speaker, I would like to commend the members of the Los Angeles Selects Hockey Peewee AAA team for winning the prestigious Peewee World Championship Tournament in Quebec on February 19, 2012. In the 53-year history of the tournament, this accomplishment marks the first time that a California team has won the event at the highest level of competition.

The L.A. Selects defeated the Vancouver North Shore Hockey Club in the championship game tournament by a score of 4–2 in hockey's equivalent of the Little League World Series. The Selects defeated teams from Russia, Slovakia, Detroit and Canada on their way to the title.

Over 100 teams comprised of 12- and 13-year old hockey players and representing 14 countries competed in the event. Over 10,000 people watched the championship game that took place in the Quebec Colisee, home of the former NHL Quebec Nordiques. Many NHL stars, such as Wayne Gretzky and Mario Lemieux, played in this tournament as youngsters. Since 1960, the Quebec tournament is the pinnacle of hockey competition where nearly 200,000 hockey fans attend the twelve-day event.

The L.A. Selects Peewee AAA Championship Roster included constituents from my district as well as a number of other high caliber players from the surrounding area: Cooper Haar (Huntington Beach), Jordan Bonner (Huntington Beach), Brett Rudy (Huntington Beach), Dexter Russo (Laguna Beach), Cayla Barnes (Corona), Jacob McGrew (Orange), Jack St. Ivany (Manhattan Beach), Vanya Lodnia (Anaheim), Cole Guttman (Northridge), Brandon McDonald (Valencia), Rhett Bruckner (Las Vegas), Brannon McManus (Upland), Nikolai Gruzdev (Valencia), Jesse Lycan (Escondido), Lukas Uhler (Upland).

Finally, Mr. Speaker, I submit the following article, from Youth1.com about the team and the tournament.

LA SELECTS WIN QUEBEC INTERNATIONAL PEEWEE HOCKEY TOURNAMENT

(By Dan Lio)

The No. 5 LA Selects rebounded from their opening game loss to win five straight games en route to capturing the tournament title at the 53rd Annual Quebec International Peewee Hockey Tournament, a tournament that lasted over a week long.

In their opening game on Monday, the Selects gave up a 3rd period lead, falling 3–2 to the St. Louis Blues. After the loss, their offense was in full force in their next game last Wednesday as they defeated Bratislava 14–0. In the win the Selects received hat tricks from three different players, including Jake McGrew, Cole Guttman and Vanya Lodnia. Also scoring in the win were Cayla Barnes, Brannon McManus, Jesse Lycan, Lukas Uhler and Brett Rudy. The Selects were back in action the following day to take on No. 4 ranked Compuware. In a well-played game by both team the Selects defeated Compuware 3–2 behind two goals from McManus and one from Guttman. Picking up the win inbetween the pipes was Rhett

Bruckner. The Selects blew out Russia Forward in their next game, defeating them 8–1. Offensively, McManus led the way with four goals and one assist, while Guttman pitched in with two goals and an assist. Both Jake McGrew and Cooper Haar also found the back of the net in the win, while goalie Brandon McDonald picked up his second win of the tournament.

The Selects battled the Whitby Wildcats in their next game, with the winner advancing to the championship game. It was all Selects from the get go as they eventually took home the 6–2 win. In the win they received goals from six different players, including McGrew, Lodnia, Guttman, Haar, Lycan and Jordan Bonner.

In the championship game the Selects took on the previously undefeated North Shore Winter Club. In a total team effort, the Selects were able to double up North Shore, taking home the 4–2 victory to win the championship. Brannon McManus and Vanya Lodnia each had two goals and an assist in the win, while Jake McGrew and Cayla Barnes each pitched in with an assist. Playing phenomenal in net was Rhett Bruckner as he picked up his third straight win.

Congratulations to all members of the team, including coaches Shawn Pitcher, Greg Chinarian, Andrew Cohen, Igor Nikulin, Barry McManus and players Brandon McDonald, Rhett Bruckner, Jack St. Ivany, Jake McGrew, Vanya Lodnia, Dexter Russo, Cole Guttman, Jordan Bonner, Cayla Barnes, Brannon McManus, Cooper Haar, Nikolai Gruzdev, Jesse Lycan, Lukas Uhler and Brett Rudy.

CONFERENCE REPORT ON H.R. 3630, MIDDLE CLASS TAX RELIEF AND JOB CREATION ACT OF 2012

SPEECH OF

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 17, 2012

Mr. WAXMAN. Mr. Speaker, on February 24, 2012, Rep. FRED UPTON, the Chairman of the Energy and Commerce Committee, inserted into the record a section-by-section discussion of the spectrum provisions in H.R. 3630, the Middle Class Tax Relief and Job Creation Act of 2012. This is a one-sided and after-the-fact attempt to influence interpretation of the Act by the Federal Communications Commission (FCC) and reviewing courts. Although there are a number of inaccuracies in the section-by-section analysis, Rep. UPTON's commentary on section 6404, which adds a new paragraph 17 to section 309(j) of the Communications Act addressing participation in auctions, is particularly egregious.

Rep. UPTON made two unsuccessful attempts prior to the passage of this legislation to have the conferees adopt his views on the consensus language in section 6404. First, on February 15, 2012, Rep. UPTON's staff proposed that language be inserted into the Joint Explanatory Statement of the Conference Committee stating that a "full spectrum of bidders" must be allowed to buy spectrum in incentive auctions. The conferees rejected this suggested language. In particular, it did not reflect the provision in the final bill that preserved the authority of the FCC to adopt rules that protect competition in any market, such as by requiring carriers that win licenses at auction to divest spectrum.

The following day, as the Joint Explanatory Statement was being finalized, Rep. UPTON's staff proposed a section-by-section summary of the Act for insertion into the report. This summary was also rejected by the conferees. As a result, the final Joint Explanatory Statement contains a section-by-section summary of only the language in H.R. 3630 as it passed the House, not as it was modified by the conferees. This section-by-section summary of the House-passed language was prepared by the Congressional Research Service as an aid to the conferees.

The conferees, including Rep. UPTON, did agree to include in the Joint Explanatory Statement the following general language to describe the spectrum provisions in the final legislation: "The public safety and spectrum provisions of this legislation advance wireless broadband service by clearing spectrum for commercial auction, promoting billions of dollars in private investment, and creating tens of thousands of jobs. These provisions also deliver on one of the last outstanding recommendations of the 9/11 Commission by creating a nationwide interoperable broadband communications network for first responders and generating billions of dollars of Federal revenue." This is the only summary of the final legislation approved by the conferees.

Accordingly, Rep. UPTON's insertion of his own section-by-section analysis of the bill, offered after passage and without approval by the other conferees, carries no special weight. It is an effort by one member of the Conference Committee to advance an interpretative spin that does not fairly reflect the language of new paragraph 17 and was specifically rejected by the conferees as a whole.

Like Rep. UPTON, I was a conferee. The language in question was negotiated over multiple meetings by the staff of three members of the House and five members of the Senate. The three House members represented in these meetings were all conferees: Rep. UPTON, the Chairman of the House Energy and Commerce Committee, Rep. WALDEN, the Chairman of the Subcommittee on Communications and Technology, and myself, the Ranking Member of the Energy and Commerce Committee. The five Senators represented were two conferees, Senator BAUCUS, the Chairman of the Senate Finance Committee, and Senator KYL, a member of the Finance Committee and the Republican Whip; two Senators with special expertise in spectrum policy, Senator ROCKEFELLER, the Chairman of the Senate Commerce Committee, and Senator HUTCHINSON, the Ranking Member of the Commerce Committee; and Senate Majority Leader HARRY REID.

My staff in particular played a leading role in writing and negotiating the language in paragraph 17 that ended up in the final bill, including the very savings language Rep. UPTON glosses over, which was inserted specifically to protect FCC authority. I have a very different perspective on the language my staff put forward than the one Rep. UPTON suggests.

Rep. UPTON states that the "sole qualifications" of bidders under paragraph 17 are that they "abide by the auction procedures and other requirements to protect the auction process, and that they meet the technical, financial, character, and citizenship requirements under 303(1)(1), 308(b), and 310 of the Communications Act" either at the time of the bid-

ding or before grant of the license if they submit a winning bid. What this interpretation fails to reflect is that the prohibition in subparagraph 17(A) is only a prohibition on "prevent[ing] a person from participating in a system of competitive bidding." A "system of competitive bidding" under the Communications Act can include multiple groups of licenses or blocks of licenses. It therefore would be permissible for the FCC to set aside blocks of licenses within an auction on which particular bidders may not bid. This would limit a person's participation in the system of competitive bidding, which subparagraph 17(A) allows, but not prevent participation, which subparagraph 17(A) prohibits. For example, a system of competitive bidding in which the FCC established two blocks of licenses, and allowed bidders to bid on either of the two blocks, but not both, would be consistent with subparagraph 17(A).

Rep. UPTON acknowledges that nothing in paragraph 17 affects the FCC's authority to "adopt and enforce rules of general applicability," but suggests that such rules must take their form via "notice and comment rulemaking conducted separately from a particular auction" and with the input of others besides "parties courting particular spectrum." Rep. UPTON is apparently trying to create a distinction—found nowhere in the law—between "rules of general applicability" conducted through separate notice and comment rulemaking and "rules regarding particular carriers, particular classes of carriers, or particular auctions." This interpretation departs greatly from what was agreed to by the conferees. Contrary to the interpretation posited by Rep. UPTON, a "rule of general applicability" is a well-known term used in the definition of a "rule" in the Administrative Procedure Act (APA). The established APA and judicial meaning is that a rule of general applicability is a rule that is not party-specific or what is known as a "rule of particular applicability." The term "rule of general applicability" was used in the savings clause in subparagraph 17(B) to ensure that the FCC can adopt and enforce rules that apply to all licenses, apply to auctioned spectrum generally, or apply to spectrum offered in a particular auction. All of these types of rules are enforceable with respect to auctions and auctioned spectrum because they are not literally or effectively party-specific.

Rep. UPTON further states that the phrase "rules concerning spectrum aggregation that promote competition" was inserted in subparagraph 17(B) to "illustrate that the FCC retains authority to adopt such rules in an industry-wide rulemaking" if the authority for the rule "may be found elsewhere in the Communications Act and does not conflict with the prohibition on excluding bidders." There are multiple problems with this analysis. During negotiations among conferee staff, Rep. UPTON's staff proposed that the phrase "other, industry-wide" be inserted before "rules of general applicability." This proposal was considered and rejected. The final language thus preserves the FCC's authority to issue any rules of general applicability, not just those that apply "industry-wide." It also makes clear that the savings clause in the last sentence preserves all of the FCC's pre-existing authority to issue rules of general applicability, not just those that address subjects "other" than participation in auctions.

The language of the savings clause provides that "[n]othing in subparagraph (A),"

which contains the prohibition on participation in a system of competitive bidding, "affects any authority the Commission has to adopt and enforce rules of general applicability, including rules concerning spectrum aggregation that promote competition." If Rep. UPTON were correct that the rules of general applicability cannot "conflict with the prohibition on excluding bidders," the savings clause would be meaningless. The whole point of the savings clause is to preserve the FCC's pre-existing authority to issue rules of general applicability. The savings language in subparagraph 17(B) limits the reach of the prohibition in subparagraph 17(A), not vice-versa as Rep. UPTON contends.

The purpose of the agreed-upon language is simple: It prohibits the FCC from singling out a specific carrier for exclusion from a system of competitive bidding as long as that carrier complies with all auction procedures and other requirements to protect the auction process established by the Commission and either meets the technical, financial, character, and citizenship qualifications under sections 303(1)(1), 308(b), and 310 or would meet such qualifications before grant of the license. Rep. UPTON is correct in saying that every carrier is eligible to participate in a system of competitive bidding. The FCC, however, is able to require those carriers to come into compliance with applicable spectrum holding limitations, and all other license qualifications of any type, prior to granting a particular license. As adopted by the conferees, subparagraph 17(B) clarifies that Congress intends for the FCC to continue to promote competition through its spectrum policies. The FCC can adopt and enforce, for example, a spectrum cap through a rule that applies either to all licenses or to spectrum offered in a particular auction, as long as such rules are not party-specific. The agreed-upon savings clause thus preserves the FCC's ability to require, among other things, the divestiture of specific spectrum, such as spectrum below 1 GHz, in order to promote competition.

I was opposed to the language in paragraph 17 in the House-passed version of the bill. In the conference, I urged that the provision be deleted in its entirety. I was not successful in eliminating the section, but with the support of other conferees, I was successful in significantly limiting its application. Under pre-existing law, the FCC could have barred particular carriers like AT&T and Verizon from bidding on any of the relinquished broadcast spectrum if the FCC determined that excluding them would advance the public interest by promoting competition. Under the final language in paragraph 17, the FCC can no longer single out individual companies and exclude them from participating in a system of competitive bidding, but the FCC can limit their participation to discrete blocks of spectrum that are to be auctioned under the system of competitive bidding. Moreover, the FCC can require a company to divest spectrum it currently holds before awarding the company a license to new spectrum won in an auction. In effect, paragraph 17 gives companies with large spectrum holdings a choice: they can keep their existing spectrum or they can get new spectrum but give up their existing spectrum to preserve competition. Under paragraph 17, companies like AT&T and Verizon will be able to acquire new spectrum in an auction, but if the FCC determines the acquisition of that spectrum

would diminish competition, the companies can be required to divest other spectrum before they get a license to the new spectrum.

Prior to introduction of H.R. 3630 in the House, FCC staff was asked to meet with a bipartisan group of staff to review the draft House language. At that meeting, the FCC staff raised concerns regarding flaws in the proposed Republican language on bidder eligibility. Specifically, FCC staff stated that the House Republican language was overly broad and would hinder the Commission's ability to promote competition. Along with other conferees, I worked to correct these problems and provide the Commission appropriate flexibility. The conferees unequivocally rejected the original House language, which Rep. UPTON seeks to resurrect through his interpretive gloss.

The final language in paragraph 17 was not to everyone's liking. The conferees tentatively agreed to the language on Sunday, February 12. As the final language leaked out, one company launched an eleventh-hour campaign to change it. According to an article in *Politico* on February 15, AT&T was "furious with proposed language in the deal that could affect its ability to bid for the spectrum" (David Rogers and Manu Raju, *Spectrum Auction a Hold-up on Jobless Benefits Deal*, *PoliticoPro* (Feb. 15, 2012) (online at <https://www.politicopro.com/story/tech/?id=9274>)). House Republicans, *Politico* reported, "would like to appease AT&T by refining language its negotiators have already accepted" (Id.).

AT&T's effort failed. As *Politico* reported the following day, "House Republicans had hoped to appease AT&T by refining language its negotiators have already accepted—but this effort was finally dropped" (David Rogers and Manu Raju, *Payroll Tax Deal Finalized*, *PoliticoPro* (Feb. 16, 2012) (online at <http://politi.co/yHTIM4L>)). If accepted as accurate legislative history, Rep. UPTON's remarks would give AT&T through the backdoor much of what the company was not able to achieve through the actual legislative process. This effort at revisionism should be rejected by the FCC and reviewing courts interpreting this section.

I also have concerns about the discussion in Rep. UPTON's remarks of section 6407, which addresses unlicensed use of spectrum in guard bands.

Unlicensed spectrum has been an engine of economic innovation and growth. Many advocate that allowing unlicensed use in the frequencies currently occupied by broadcasters could lead to new innovations like "Super WiFi." The final legislation advances this goal in three ways: (1) it gives the FCC the authority to preserve TV white spaces; (2) it gives the FCC the authority to optimize existing TV white spaces for unlicensed use by consolidating the existing white spaces into more optimal configurations through band plans; and (3) it gives the FCC the authority to use part of the spectrum relinquished by TV broadcasters in the incentive auction to establish nationwide "guard bands," including in high value markets that currently have little or no white spaces today, creating additional, new white spaces. Experts believe nationwide, unlicensed access to guard bands will enable innovation and promote investment in new unlicensed technologies.

The relevant language is contained in sections 6402, 6403, and 6407. Section 6402 creates a new subparagraph 309(j)(8) of the

Communications Act that authorizes the FCC to pay for the voluntary relinquishment of spectrum "in order to permit the assignment of new initial licenses." Section 6403(a) provides that the reverse auction to relinquish broadcast television spectrum is conducted "in order to make spectrum available for assignment through a system of competitive bidding." Section 6407 in turn permits the FCC to use some of the relinquished spectrum to create guard bands and, as detailed below, to allow unlicensed use in those guard bands.

The final legislation does not require that existing white spaces be auctioned. Section 6403(b) gives the FCC discretion in deciding how much spectrum, if any, the agency should auction in addition to the relinquished spectrum. Section 6403(b)(1)(A) requires the FCC to "evaluate the broadcast television spectrum (including spectrum made available through the reverse auction)." Section 6403(b)(1)(B) then specifies that the FCC "may" repack the remaining broadcast spectrum, which would include white spaces, by making "such reassignments of television channels as the Commission considers appropriate." Section 6403(b)(1)(B) also provides that the FCC "may . . . reallocate such portions of such spectrum as the Commission determines are available for reallocation." Under section 6403(c), only spectrum that the FCC determines should be "reallocated" under section 6403(b)(1)(B) is required to be auctioned.

The savings clause found in section 6407 provides the FCC authority to use "relinquished or other spectrum" to create "guard bands" in the spectrum to be auctioned and make these guard bands available for "unlicensed use." Under this authority, the FCC could create new TV white spaces in all markets by creating the guard bands out of spectrum that is relinquished by the broadcasters.

In Rep. UPTON's summary of section 6407, he states that the section gives the FCC the authority to "create guard bands and allow secondary, unlicensed use in spectrum it has cleared with federal funds." I agree with Rep. UPTON that the FCC can create guard bands in this spectrum and allow unlicensed use in these guard bands, but such use does not need to be a "secondary" use. During the course of negotiations over section 6407, Rep. UPTON's staff proposed that the language in section 6407 include the requirement that any unlicensed use of the guard bands be "secondary" to a licensed use of the spectrum in the guard bands. This provision was not accepted by the conferees. As a result, the final language gives the FCC the discretion to decide whether to make unlicensed use the primary or secondary use of the guard bands. Of course, any unlicensed use of the guard bands may not cause harmful interference with licensed uses of the spectrum that is auctioned.

While there are other assertions made by Rep. UPTON's insertion in the CONGRESSIONAL RECORD that are inaccurate, these examples should serve to show that his statement does not fairly reflect the intent of Congress in adopting the provisions. In light of the fact that the conferees chose not to adopt a detailed summary of the provisions in this portion of the Act, it will fall to the FCC's open processes to ultimately inform its implementation of the Act's language.

HONORING GREGORY BLAKE
TAYLOR

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 28, 2012

Mr. GRAVES of Missouri. Mr. Speaker, I proudly pause to recognize Gregory Blake Taylor. Gregory is a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in the Boy Scouts of America, Troop 354, and earning the most prestigious award of Eagle Scout.

Gregory has been very active with his troop, participating in many scout activities. Over the many years Gregory has been involved with scouting, he has not only earned numerous merit badges, but also the respect of his family, peers, and community. Most notably, Gregory has also contributed to his community through his Eagle Scout project.

Mr. Speaker, I proudly ask you to join me in commending Gregory Blake Taylor for his accomplishments with the Boy Scouts of America and for his efforts put forth in achieving the highest distinction of Eagle Scout.

IN RECOGNITION OF BRUCE
HAMILTON

HON. JACKIE SPEIER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 28, 2012

Ms. SPEIER. Mr. Speaker, I rise to honor Bruce Hamilton who is retiring as Executive Director of HIP Housing after eight years of outstanding leadership.

I share many things with Bruce: a deep friendship, a birthday and a passion for his organization that has enabled thousands of San Mateo County residents to live independently and self-sufficiently in safe, low-cost homes.

Attending a HIP Housing graduation officiated by Bruce Hamilton is a bit like attending a revivalist meeting. Men, women and children traipse to the microphone for over an hour and tell stories of how HIP Housing and their own will power set them on the straight and narrow. A man just down on his luck found a home in which he can be both an aide and a friend to the homeowner. Rent? Sure, it's important to the homeowner, but in the world of Bruce and HIP Housing, what matters most is that yet another man became a success. A young mother with an abusive husband found a safe haven for herself and her three children. Another woman explained how she came to HIP and developed her life and parenting skills, earned her GED and landed a job. Bruce beamed like a proud dad. We often proclaim that we should "Make it in America". Well, Bruce Hamilton and HIP Housing make human dignity by the boatload in America, every day and all year long. Now that's a product worth making.

Before Bruce joined HIP Housing, he held an impressive variety of positions all over the country. He was the Executive Director of the Alliance on Aging in Monterey, California, Administrator at the Unitarian Church in Palo Alto, California; Executive Director of the State Bar of Arizona/Arizona Bar Foundation in