



December 2011

House Republican Extenders Bill: Spectrum Provisions

Committee on Energy and Commerce, Democratic Staff

Title IV of the legislation would grant the Federal Communications Commission authority to conduct incentive auctions, provide for the deployment of a public safety broadband network, and address spectrum usage by federal agencies. These are critically important priorities, but the Republican legislation has six significant flaws: (1) its diffuse governance provisions for the public safety network; (2) its prohibition on allocating spectrum from the incentive auctions for unlicensed use; (3) its limitations on the FCC's authority to craft auction rules in the public interest; (4) its limitations on the FCC's ability to impose conditions on spectrum licenses; (5) its funding allocations, which shortchange public safety and are overly generous to broadcasters; and (6) its requirement that public safety return spectrum currently utilized for mission critical communications.

Governance of the Public Safety Broadband Network. Effective management and oversight of the public safety network is essential to building a nationwide, interoperable public safety network. The Republican legislation establishes an overly bureaucratic, costly, and cumbersome governance model that places significant authority in a private for-profit entity that lacks meaningful oversight. It compounds these problems by adopting a state-by-state network deployment model that will lead to balkanization of the network and wasteful and unnecessary redundancies and increased costs. This approach creates significant questions about whether nationwide interoperability will be achieved.

This approach is contrary to the recommendations of public safety officials, the National Governors Association, the National Association of Counties, the National League of Cities, and the U.S. Conference of Mayors among others. They have said that they want "a single national network" or "interconnected regional networks," not a patchwork of 50 separate state networks. These groups also recommend that this national network be overseen by a "national body" to ensure nationwide interoperability.

Unlicensed Spectrum. Unlicensed spectrum has given rise to WiFi and countless wireless devices. The Republican legislation could impede this vital area of innovation and economic growth by preventing the FCC from allocating any future spectrum reclaimed from incentive auctions for unlicensed use. Allowing unlicensed use of the broadcast television spectrum could lead to the creation of "super Wi-Fi," with the ability to reach hard-to-penetrate areas, enhance rural coverage, and add capacity to carry more data traffic than traditional Wi-Fi services. Prohibiting unlicensed use of this spectrum could foreclose this opportunity.

Spectrum Auction Bidder Eligibility. Under current law, the FCC has broad authority to craft auction rules in the public interest. The agency has used this authority to ensure that communications markets remain competitive and spectrum is not concentrated in the hands of only one or two providers. The Republican legislation restricts the FCC's future ability to limit participation in all future spectrum auctions, regardless of the size or market dominance of potential bidders. This would prevent the agency from structuring auction rules to protect consumers and guard against future monopolies.

License Conditions. The Republican legislation would prohibit the FCC from setting conditions that require licensees to apply reasonable network management, transparency, and nondiscrimination

principles in the administration of their networks. It would also foreclose conditions related to wholesale access or wireless roaming. This severely limits the Commission's ability to impose requirements on wireless providers that might be beneficial to consumers or competition.

Funding for Public Safety. The Republican bill provides approximately \$5 billion to build the public safety network, which station and local officials, as well as leading public safety organizations say is insufficient. In contrast, the Democratic House bill and the bipartisan Senate bill provide more than twice that amount. In addition, the Republican bill does not fund research and development in public safety communications, a critical omission considering public safety's unique communications requirements.

Funding for Broadcasters. The Republican legislation includes a provision that will provide broadcasters with up to \$3 billion to cover relocation expenses that result from the proposed auction. This is three times the amount CBO says is necessary to conduct such relocation activities.

Public Safety Communications 700 MHz Spectrum Give Back. Public safety presently depends upon use of 700 MHz narrowband spectrum to satisfy capacity needs, especially in urban areas where all public safety bands are highly congested. The Republican legislation could put state and local investments in these networks at risk by forcing premature return of this spectrum.