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Summary of the Spectrum Provisions

Committee on Energy and Commerce
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The payroll tax relief conference has reached agreement on landmark bipartisan legislation to ease the nation's growing spectrum shortage, create a nationwide, interoperable broadband network for public safety officials, and raise $15 billion.

The legislation gives the Federal Communications Commission (FCC) the authority to pay TV broadcasters for underutilized broadcast spectrum and resell it at higher prices to wireless companies to meet the growing spectrum demands of smartphones and tablets. This provision is expected to make a large band of prime spectrum available for auction, raising over $25 billion. The bill provides $7 billion in auction proceeds and spectrum worth $2.75 billion (called the "D Block") to a new "First Responder Network Authority" to build a broadband network for police, firefighters, emergency medical service professionals, and other public safety officials. A key provision in the legislation authorizes the FCC to create guard bands in the broadcast spectrum auctioned to wireless carriers that can be used for innovative unlicensed uses like Super WiFi.

The legislation agreed to by the conferees is based upon two existing pieces of legislation: H.R. 3630, the spectrum provisions passed by the House, and S. 911, the bipartisan legislation approved by the Senate Commerce Committee. The conference report incorporates most of the auction-related provisions included in the House legislation, with changes regarding unlicensed spectrum and FCC auction rules. The public safety provisions are based on the national model outlined in S. 911, with changes to ensure flexibility for states.

The Auction Provisions

The auction provisions in the final legislation are largely the same as those in H.R. 3630 as passed by the House with two significant exceptions: (1) the provisions relating to unlicensed spectrum and (2) the provisions relating to FCC auction authority.

Unlicensed Spectrum: Unlicensed spectrum has been an engine of economic innovation and growth, enabling new forms of communication like WiFi and Bluetooth. Many advocate that allowing unlicensed use in the broadcast frequencies could lead to new breakthroughs like Super WiFi. The conference report advances this goal in three ways: (1) it gives the FCC the authority to preserve existing TV white spaces; (2) it gives the FCC the authority to optimize these white spaces for unlicensed use by consolidating them 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 create nationwide guard bands that can be used for unlicensed use, including in high-value markets that currently have little or no white spaces today. Nationwide, unlicensed access to guard bands will enable innovation, promote investment in new wireless services, and enhance the value of licensed spectrum by protecting against harmful interference and allowing carriers to "off-load" data to alleviate capacity concerns.

FCC Auction Rules: 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. H.R. 3630 would have restricted the FCC's future ability to limit participation in spectrum auctions, regardless of the size or

market dominance of potential bidders. The conference agreement modifies this prohibition by expressly preserving the FCC's ability to ensure competition through spectrum aggregation limits and other rules.

The legislation also drops a provision in the House-passed bill that would have limited the FCC's authority to set license conditions, such as open-internet requirements, on auctioned spectrum.

The Public Safety Provisions

The conference report provides our nation's first responders with access to the spectrum and advanced wireless broadband communications they need to protect the public and to communicate with each other across the country. The legislation provides for the construction of a nationwide public safety broadband network, as envisioned in the Senate bill, with an "opt-out" option for states that demonstrate the capacity to build their own networks and connect them to the national network.

The legislation creates a First Responder Network Authority (FirstNet) within the National Telecommunications and Information Administration (NTIA) and provides FirstNet with $7 billion and a license to use the "D Block" and adjacent public safety spectrum to build the nationwide public safety network. To ensure national interoperability, the legislation also creates a technical advisory board at the FCC to develop interoperability standards. States that want to construct their own portion of the national public safety network have the option to apply for federal grants to build and operate the radio access network in the state if they can demonstrate to the FCC that the network will meet the interoperability standards and to NTIA that they have the resources and capability to provide comparable coverage and security and maintain ongoing interoperability.

Unlike the House-passed bill, the legislation does not require public safety officials to return the important 700 MHz "narrowband" spectrum to the FCC for auction. Instead, the legislation requires the return of less efficient spectrum known as the "T-band." This transition occurs 11 years from the date of enactment, and public safety relocation costs will be reimbursed from any auction proceeds.

Finally, the legislation provides funding for critical public safety research and development activities and deployment of Next Generation 9-1-1 services, which will complement the advanced broadband capabilities of the public safety network by enabling the delivery of voice, text, photos, video, and other data to 9-1-1 call centers.