116TH CONGRESS
2D SESSION

S.

To amend the Communications Act of 1934 to direct the Federal Communications Commission to conduct a public auction of the C-band, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. KENNEDY (for himself, Mr. SCHATZ, and Ms. CANTWELL) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Communications Act of 1934 to direct the Federal Communications Commission to conduct a public auction of the C-band, 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
4 SECTION 1. SHORT TITLE.
5 This Act may be cited as the “Spectrum Management
6 And Reallocation for Taxpayers Act” or the “SMART
7 Act”.
8
9 SEC. 2. DEFINITIONS.
10 In this Act:
(1) C-BAND REIMBURSEMENT AND IMPLEMENTATION FUND; C-BAND FUND.—The term “C-Band Reimbursement and Implementation Fund” or “C-Band Fund” means the fund established under section 5(a).

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

(3) DIGITAL DIVIDE TRUST FUND.—The term “Digital Divide Trust Fund” means the trust fund established under section 4(a)(1)(A).

(4) NATIVE AMERICANS.—The term “Native Americans” has the meaning given the term in section 736(g) of the Public Health Service Act (42 U.S.C. 293(g)).

(5) NEXT GENERATION 9–1–1 TRUST FUND.—The term “Next Generation 9–1–1 Trust Fund” means the trust fund established under section 4(a)(1)(B).

(6) TRUST LAND.—The term “trust land” has the meaning given the term in section 3765 of title 38, United States Code.

SEC. 3. PUBLIC AUCTION OF C-BAND SPECTRUM.

(a) IN GENERAL.—Not later than 1 year after issuing rules for reallocating a portion of the electromagnetic spectrum described in subsection (b) through a
public auction, if the Commission issues such rules during
the year 2020, the Commission shall—

(1) identify 300 megahertz of that spectrum for
re Reallocation consistent with this section;

(2) clear the spectrum identified under para-
graph (1) consistent with subsection (d);

(3) reallocate the spectrum identified under
paragraph (1) for terrestrial broadband use, reserv-
ing 20 megahertz of the spectrum as a guard band;

and

(4) notwithstanding paragraph (15)(A) of sec-
tion 309(j) of the Communications Act of 1934 (47
U.S.C. 309(j)), commence a system of competitive
bidding under that section to grant new initial li-
censes for the use of the spectrum identified under
paragraph (1) of this subsection, subject to—

(A) flexible-use service rules; and

(B) the requirement to protect incumbent
uses of the spectrum not otherwise cleared
under paragraph (2) of this subsection from
harmful interference.

(b) ELECTROMAGNETIC SPECTRUM DESCRIBED.—
The electromagnetic spectrum described in this subsection
is the spectrum between 3700 megahertz and 4200 mega-
hertz, inclusive.
(c) AUCTION PROCEEDS.—Section 309(j)(8) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)) is amended—

(1) in subparagraph (A), by striking “and (G)” and inserting “(G), and (H)”; 

(2) in subparagraph (C)(i), by striking “and (G)” and inserting “(G), and (H)”; and 

(3) by adding at the end the following:

“(H) CERTAIN PROCEEDS DESIGNATED FOR C-BAND REALLOCATION, BROADBAND INFRASTRUCTURE DEPLOYMENT, AND NEXT GENERATION 9–1–1 SERVICES.—Notwithstanding subparagraph (A) and except as provided in subparagraph (B), of the proceeds (including deposits and upfront payments from successful bidders) from the use of a system of competitive bidding under this subsection pursuant to section 3 of the Spectrum Management And Reallocation for Taxpayers Act—

“(i) the Commission shall use such amounts as are necessary to reimburse the general fund of the Treasury for any amounts borrowed under section 5(b) of that Act;
“(ii) after compliance with clause (i) of this subparagraph, the Commission shall deposit the next $5,000,000,000 in the general fund of the Treasury for the sole purpose of deficit reduction; and

“(iii) after compliance with clauses (i) and (ii) of this subparagraph, the Commission shall deposit all amounts remaining in accordance with section 4(b) of that Act.”.

(d) CLEARING OF C-BAND SPECTRUM FOR AUC-TION.—

(1) LICENSES.—

(A) ISSUANCE.—The Commission shall issue any new licenses or license modifications required to clear electromagnetic spectrum under subsection (a)(2) as expeditiously as possible after the date of enactment of this Act.

(B) PROTESTS.—The right of a licensee to protest a proposed order of modification of its license under section 316 of the Communications Act of 1934 (47 U.S.C. 316) shall not apply in the case of a modification made under subparagraph (A) of this paragraph.

(2) PROTECTION OF C-BAND USERS.—The Commission shall clear electromagnetic spectrum
under subsection (a)(2) in a manner that ensures
that persons or entities that used the spectrum be-
fore the clearing of the spectrum receive—

(A) service that is equivalent to or better
than the service received before the clearing of
the spectrum; and

(B) service at a level described in subpara-
graph (A) continuously throughout the clearing
of the spectrum.

(e) ADDITIONAL PROTECTIONS.—In promulgating
rules regarding the use of spectrum in the covered band,
the Commission shall ensure that aviation safety and other
safety-of-life uses operating in the covered band or in adja-
cent spectrum bands are protected from harmful inter-
ference.

SEC. 4. TRUST FUNDS.

(a) Establishment.—

(1) IN GENERAL.—There is established in the
Treasury of the United States—

(A) a trust fund to be known as the “Dig-
ital Divide Trust Fund”; and

(B) a trust fund to be known as the “Next
Generation 9–1–1 Trust Fund”.

(2) Availability.—Amounts deposited in the trust funds established under paragraph (1) shall remain available until expended.

(b) Deposit of Funds.—With respect to the amounts described in subparagraph (H)(i)(II) of section 309(j)(8) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)), as added by section 3 of this Act, the Commission shall deposit—

(1) one-third of those amounts, but not to exceed $12,500,000,000, in the Next Generation 9–1–1 Trust Fund; and

(2) any remaining amounts in the Digital Divide Trust Fund.

(e) Use of Digital Divide Trust Fund.—

(1) In general.—The Commission shall use the amounts deposited in the Digital Divide Trust Fund for the deployment of—

(A) wireless broadband infrastructure in areas that the Commission has determined are underserved or unserved with respect to wireless broadband internet access service, including areas located on trust land or used to deliver services to Native Americans;

(B) wired broadband infrastructure in areas that the Commission has determined are
underserved or unserved with respect to wired broadband internet access service, including areas located on trust land or used to deliver services to Native Americans; and

(C) broadband infrastructure to support other technologies, including telehealth, telemedicine, e-government, and educational opportunities at home.

(2) LIMITATIONS.—

(A) RULEMAKING REQUIRED.—

(i) TIMING.—Not earlier than January 1, 2023, the Commission shall conduct a rulemaking to determine how to implement paragraph (1).

(ii) OBLIGATION OF AMOUNTS.—The Commission may not obligate any amounts from the Digital Divide Trust Fund under paragraph (1) until the Commission has completed the rulemaking under clause (i) of this subparagraph.

(B) RELATION TO UNIVERSAL SERVICE PROGRAMS.—The amounts provided under paragraph (1) are not intended to supplant, or be commingled with, the funds collected by the Commission and distributed through any pro-
gram established under section 254 of the Communications Act of 1934 (47 U.S.C. 254).

(d) Use of Next Generation 9–1–1 Trust Fund.—The National 911 Program overseen by the National Telecommunications and Information Administration and the National Highway Traffic Safety Administration shall use the amounts deposited in the Next Generation 9–1–1 Trust Fund for the deployment of Next Generation 9–1–1 services.

SEC. 5. C-BAND REIMBURSEMENT AND IMPLEMENTATION FUND.

(a) Establishment.—There is established in the Treasury of the United States a fund to be known as the “C-Band Reimbursement and Implementation Fund” (referred to in this section as the “C-Band Fund”).

(b) Borrowing Authority.—The Commission may borrow from the Treasury of the United States an amount not to exceed $6,000,000,000 to use for payments required under subsections (d) and (e).

(c) Deposit of Funds.—Any amounts borrowed under subsection (b) shall be deposited in the C-Band Fund.

(d) Payment of Costs.—The Commission shall use the amounts in the C-Band Fund to reimburse costs reasonably incurred by—
(1) incumbent holders of licenses or market access rights for use of the electromagnetic spectrum identified under paragraph (1) of section 3(a), to reduce the usage of that spectrum by those entities in accordance with that section;

(2) licensees or registrants of an earth station receiving signals over the spectrum identified under section 3(a)(1); and

(3) the relocation of other incumbent uses of the spectrum identified under section 3(a)(1).

(c) IMPLEMENTATION.—The Commission shall use not more than $1,000,000,000 of the amounts in the C-Band Fund for payments to incentivize incumbent holders of licenses or market access rights for use of the electromagnetic spectrum identified under paragraph (1) of section 3(a) to reduce their usage of that spectrum in accordance with that section in a more timely fashion.

(f) TRANSFER OF UNUSED FUNDS.—If any amounts remain in the C-Band Fund after the date that is 3 years after the completion of the system of competitive bidding conducted under section 3, the Secretary of the Treasury shall transfer those amounts to the Digital Divide Trust Fund.
SEC. 6. SPECTRUM AUCTION PARTICIPATION.

(a) IN GENERAL.—Section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) is amended—

(1) in paragraph (17)(A), in the matter preceding clause (i), by striking “Notwithstanding” and inserting “Subject to paragraph (19) and notwithstanding”; and

(2) by adding at the end the following:

“(19) PROHIBITION ON AUCTION PARTICIPATION BY ENTITIES POSING A NATIONAL SECURITY RISK.—

“(A) IN GENERAL.—An entity posing a national security risk may not participate in any system of competitive bidding under this subsection.

“(B) DEFINITION.—

“(i) IN GENERAL.—For purposes of this paragraph, the term ‘entity posing a national security risk’ means an entity that the Commission determines poses a national security risk.

“(ii) DETERMINATION.—In determining which entities qualify as entities posing a national security risk under this paragraph, the Commission shall rely solely upon a determination by—
“(I) an appropriate national security agency;

“(II) an interagency body that includes appropriate national security expertise, including the Federal Acquisition Security Council established under section 1322 of title 41, United States Code;

“(III) Congress; or

“(IV) the Secretary of Commerce under the program established under Executive Order 13873 (84 Fed. Reg. 22689; relating to securing information and communications technology and services supply chain) or by an agency under any successor program.”.

(b) IMPLEMENTATION.—Not later than 1 year after the date of enactment of this Act, the Commission shall take all steps necessary to implement the amendments made by subsection (a).