

116TH CONGRESS  
2D SESSION

# S. 3246

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.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2020

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

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## 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 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Spectrum Management  
5 And Reallocation for Taxpayers Act” or the “SMART  
6 Act”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

1           (1) C-BAND REIMBURSEMENT AND IMPLEMEN-  
2           TATION FUND; C-BAND FUND.—The term “C-Band  
3           Reimbursement and Implementation Fund” or “C-  
4           Band Fund” means the fund established under sec-  
5           tion 5(a).

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

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

11          (4) NATIVE AMERICANS.—The term “Native  
12          Americans” has the meaning given the term in sec-  
13          tion 736(g) of the Public Health Service Act (42  
14          U.S.C. 293(g)).

15          (5) NEXT GENERATION 9–1–1 TRUST FUND.—  
16          The term “Next Generation 9–1–1 Trust Fund”  
17          means the trust fund established under section  
18          4(a)(1)(B).

19          (6) TRUST LAND.—The term “trust land” has  
20          the meaning given the term in section 3765 of title  
21          38, United States Code.

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

23          (a) IN GENERAL.—Not later than 1 year after  
24          issuing rules for reallocating a portion of the electro-  
25          magnetic spectrum described in subsection (b) through a

1 public auction, if the Commission issues such rules during  
2 the year 2020, the Commission shall—

3 (1) identify 300 megahertz of that spectrum for  
4 reallocation consistent with this section;

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

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

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

17 (A) flexible-use service rules; and

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

22 (b) ELECTROMAGNETIC SPECTRUM DESCRIBED.—  
23 The electromagnetic spectrum described in this subsection  
24 is the spectrum between 3700 megahertz and 4200 mega-  
25 hertz, inclusive.

1           (c) AUCTION PROCEEDS.—Section 309(j)(8) of the  
2 Communications Act of 1934 (47 U.S.C. 309(j)(8)) is  
3 amended—

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

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

8           (3) by adding at the end the following:

9           “(H) CERTAIN PROCEEDS DESIGNATED  
10 FOR C-BAND REALLOCATION, BROADBAND IN-  
11 FRASTRUCTURE DEPLOYMENT, AND NEXT GEN-  
12 ERATION 9–1–1 SERVICES.—Notwithstanding  
13 subparagraph (A) and except as provided in  
14 subparagraph (B), of the proceeds (including  
15 deposits and upfront payments from successful  
16 bidders) from the use of a system of competitive  
17 bidding under this subsection pursuant to sec-  
18 tion 3 of the Spectrum Management And Re-  
19 allocation for Taxpayers Act—

20           “(i) the Commission shall use such  
21 amounts as are necessary to reimburse the  
22 general fund of the Treasury for any  
23 amounts borrowed under section 5(b) of  
24 that Act;

1           “(ii) after compliance with clause (i)  
2           of this subparagraph, the Commission shall  
3           deposit the next \$5,000,000,000 in the  
4           general fund of the Treasury for the sole  
5           purpose of deficit reduction; and

6           “(iii) after compliance with clauses (i)  
7           and (ii) of this subparagraph, the Commis-  
8           sion shall deposit all amounts remaining in  
9           accordance with section 4(b) of that Act.”.

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

12           (1) LICENSES.—

13           (A) ISSUANCE.—The Commission shall  
14           issue any new licenses or license modifications  
15           required to clear electromagnetic spectrum  
16           under subsection (a)(2) as expeditiously as pos-  
17           sible after the date of enactment of this Act.

18           (B) PROTESTS.—The right of a licensee to  
19           protest a proposed order of modification of its  
20           license under section 316 of the Communica-  
21           tions Act of 1934 (47 U.S.C. 316) shall not  
22           apply in the case of a modification made under  
23           subparagraph (A) of this paragraph.

24           (2) PROTECTION OF C-BAND USERS.—The  
25           Commission shall clear electromagnetic spectrum

1 under subsection (a)(2) in a manner that ensures  
2 that persons or entities that used the spectrum be-  
3 fore the clearing of the spectrum receive—

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

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

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

16 **SEC. 4. TRUST FUNDS.**

17 (a) **ESTABLISHMENT.**—

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

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

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

1           (2) AVAILABILITY.—Amounts deposited in the  
2           trust funds established under paragraph (1) shall re-  
3           main available until expended.

4           (b) DEPOSIT OF FUNDS.—With respect to the  
5           amounts described in subparagraph (H)(i)(II) of section  
6           309(j)(8) of the Communications Act of 1934 (47 U.S.C.  
7           309(j)(8)), as added by section 3 of this Act, the Commis-  
8           sion shall deposit—

9           (1) one-third of those amounts, but not to ex-  
10          ceed \$12,500,000,000, in the Next Generation 9–1–  
11          1 Trust Fund; and

12          (2) any remaining amounts in the Digital Di-  
13          vide Trust Fund.

14          (c) USE OF DIGITAL DIVIDE TRUST FUND.—

15          (1) IN GENERAL.—The Commission shall use  
16          the amounts deposited in the Digital Divide Trust  
17          Fund for the deployment of—

18                (A) wireless broadband infrastructure in  
19                areas that the Commission has determined are  
20                underserved or unserved with respect to wire-  
21                less broadband internet access service, including  
22                areas located on trust land or used to deliver  
23                services to Native Americans;

24                (B) wired broadband infrastructure in  
25                areas that the Commission has determined are

1 underserved or unserved with respect to wired  
2 broadband internet access service, including  
3 areas located on trust land or used to deliver  
4 services to Native Americans; and

5 (C) broadband infrastructure to support  
6 other technologies, including telehealth, tele-  
7 medicine, e-government, and educational oppor-  
8 tunities at home.

9 (2) LIMITATIONS.—

10 (A) RULEMAKING REQUIRED.—

11 (i) TIMING.—Not earlier than Janu-  
12 ary 1, 2023, the Commission shall conduct  
13 a rulemaking to determine how to imple-  
14 ment paragraph (1).

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

21 (B) RELATION TO UNIVERSAL SERVICE  
22 PROGRAMS.—The amounts provided under  
23 paragraph (1) are not intended to supplant, or  
24 be commingled with, the funds collected by the  
25 Commission and distributed through any pro-



1           gram established under section 254 of the Com-  
2           munications Act of 1934 (47 U.S.C. 254).

3           (d) USE OF NEXT GENERATION 9–1–1 TRUST  
4 FUND.—The National 911 Program overseen by the Na-  
5 tional Telecommunications and Information Administra-  
6 tion and the National Highway Traffic Safety Administra-  
7 tion shall use the amounts deposited in the Next Genera-  
8 tion 9–1–1 Trust Fund for the deployment of Next Gen-  
9 eration 9–1–1 services.

10 **SEC. 5. C-BAND REIMBURSEMENT AND IMPLEMENTATION**  
11 **FUND.**

12           (a) ESTABLISHMENT.—There is established in the  
13 Treasury of the United States a fund to be known as the  
14 “C-Band Reimbursement and Implementation Fund” (re-  
15 ferred to in this section as the “C-Band Fund”).

16           (b) BORROWING AUTHORITY.—The Commission may  
17 borrow from the Treasury of the United States an amount  
18 not to exceed \$6,000,000,000 to use for payments re-  
19 quired under subsections (d) and (e).

20           (c) DEPOSIT OF FUNDS.—Any amounts borrowed  
21 under subsection (b) shall be deposited in the C-Band  
22 Fund.

23           (d) PAYMENT OF COSTS.—The Commission shall use  
24 the amounts in the C-Band Fund to reimburse costs rea-  
25 sonably incurred by—

1           (1) incumbent holders of licenses or market ac-  
2           cess rights for use of the electromagnetic spectrum  
3           identified under paragraph (1) of section 3(a), to re-  
4           duce the usage of that spectrum by those entities in  
5           accordance with that section;

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

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

11          (e) IMPLEMENTATION.—The Commission shall use  
12          not more than \$1,000,000,000 of the amounts in the C-  
13          Band Fund for payments to incentivize incumbent holders  
14          of licenses or market access rights for use of the electro-  
15          magnetic spectrum identified under paragraph (1) of sec-  
16          tion 3(a) to reduce their usage of that spectrum in accord-  
17          ance with that section in a more timely fashion.

18          (f) TRANSFER OF UNUSED FUNDS.—If any amounts  
19          remain in the C-Band Fund after the date that is 3 years  
20          after the completion of the system of competitive bidding  
21          conducted under section 3, the Secretary of the Treasury  
22          shall transfer those amounts to the Digital Divide Trust  
23          Fund.

1 **SEC. 6. SPECTRUM AUCTION PARTICIPATION.**

2 (a) IN GENERAL.—Section 309(j) of the Communica-  
3 tions Act of 1934 (47 U.S.C. 309(j)) is amended—

4 (1) in paragraph (17)(A), in the matter pre-  
5 ceding clause (i), by striking “Notwithstanding” and  
6 inserting “Subject to paragraph (19) and notwith-  
7 standing”; and

8 (2) by adding at the end the following:

9 “(19) PROHIBITION ON AUCTION PARTICIPA-  
10 TION BY ENTITIES POSING A NATIONAL SECURITY  
11 RISK.—

12 “(A) IN GENERAL.—An entity posing a na-  
13 tional security risk may not participate in any  
14 system of competitive bidding under this sub-  
15 section.

16 “(B) DEFINITION.—

17 “(i) IN GENERAL.—For purposes of  
18 this paragraph, the term ‘entity posing a  
19 national security risk’ means an entity that  
20 the Commission determines poses a na-  
21 tional security risk.

22 “(ii) DETERMINATION.—In deter-  
23 mining which entities qualify as entities  
24 posing a national security risk under this  
25 paragraph, the Commission shall rely sole-  
26 ly upon a determination by—

1           “(I) an appropriate national se-  
2           curity agency;

3           “(II) an interagency body that  
4           includes appropriate national security  
5           expertise, including the Federal Ac-  
6           quisition Security Council established  
7           under section 1322 of title 41, United  
8           States Code;

9           “(III) Congress; or

10          “(IV) the Secretary of Commerce  
11          under the program established under  
12          Executive Order 13873 (84 Fed. Reg.  
13          22689; relating to securing informa-  
14          tion and communications technology  
15          and services supply chain) or by an  
16          agency under any successor pro-  
17          gram.”.

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

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