



## MEMORANDUM

**TO: PUBLIC SAFETY SUPPORTERS**  
**FR: APCO INTERNATIONAL GOVERNMENT RELATIONS STAFF**  
**RE: UPDATE STATUS ON PUBLIC SAFETY SPECTRUM LEGISLATION**  
**DATE: THURSDAY, DECEMBER 22, 2011**

We would like to say thank you to everyone for your support on the calls to action and for sticking with us over the last couple of years as we fight this battle to provide public safety with the D Block spectrum, funding and a strong governance model that will include the proper structure to insure nationwide build out while allowing for local control of the network. As you will see after reading this update, we have gained considerable ground over the last couple of months but the fight is not over; we must continue to put pressure on Capitol Hill until a bill is passed with each of the key components.

### BACKGROUND INFORMATION

On Friday, December 9, 2011, the House passed H.R. 3630, the payroll tax reduction extension legislation on an overwhelmingly party line vote of 234-193. As passed, H.R. 3630 includes the provisions of Congressman Greg Walden's *Jumpstarting Opportunity with Broadband Spectrum (JOBS) Act of 2011* as *Title IV* of the bill. Walden's JOBS Act passed the House Energy and Commerce Committee's Communications and Technology subcommittee recently on a 17-6 party line vote. The provisions of the JOBS Act included language that would allow the FCC to conduct incentive-based spectrum auctions, allocation of the D Block spectrum to public safety, and \$5 billion guaranteed funding for the Public Safety Broadband Network (PSBN) with the potential for an additional \$1.5 billion to build out the network, for a total possible allocation of \$6.5 billion. While public safety greatly appreciates House approval of legislation to allocate D block to public safety and provide funding for the Public Safety Broadband Network, we have grave concerns about several provisions contained in the Walden JOBS Act.

**700 MHz Narrowband Giveback** – Representative Greg Walden's (R – OR 02) *Jumpstarting Opportunity with Broadband Spectrum (JOBS) Act of 2011* (now *Title IV of H.R. 3630*) would require public safety to give back a total of 14 MHz of spectrum in the 700 MHz band, which is currently being used for statewide and local interoperable mission-critical voice communications and guard bands to protect against harmful interference. Public safety has been fighting to get access to this spectrum for more than 15 years, and in 2009, when broadcasters finally cleared it, we have begun to aggressively deploy interoperable mission-critical voice communications systems in more than 35 states. Thousands of licenses have been granted to use the spectrum, and today hundreds of thousands of users rely on the 700 MHz narrowband mobile radios for both day-to-day

operations and when responding to acute natural and manmade disasters. State and local governments have invested an average of between \$100 - \$400 million to build out their networks, and many of these 700 MHz narrowband systems have only come online within the last couple of years or will be coming on line within the next year. Indeed, in the greater Washington, DC metropolitan area alone (VA, MD, DC), nearly \$1 billion has been spent in federal, state and local taxpayer dollars, including the issuance of bonds that state and local governments will have to pay back for many years to come. These 700 narrowband systems include the DC Metropolitan Police Department's new system currently being implemented, which will improve interoperability in the National Capitol Region. These systems protect the members of Congress, government officials, state and local agencies and visitors to the National Capitol Region. The DC Metro Police move to the 700 Narrowband spectrum was precipitated by the fact that all of the Public Safety 800 MHz channels in the DC Metro area are already in use.

Additionally, as Louisiana Governor Bobby Jindal highlighted in his February 17, 2011 letter in support of allocating D Block spectrum to public safety, many of the Gulf states, including Florida, Mississippi, Louisiana and parts of Alabama have deployed and integrated their 700 narrowband systems using hurricane recovery funds to create a multi-state, interoperable system, GulfWIN. The legislation currently in the House, H.R. 3630, would force public safety to vacate this spectrum five years after an Administrator certifies "the availability of standards for public safety voice over broadband." This certification does not require that the "voice over broadband" meet "mission-critical voice" requirements nor that there be low cost "public safety voice over broadband" technology that is adequately field-tested, commercially available or at a reasonable price for public safety to purchase. So, public safety would have to give up reliable and proven critical interoperable communications without the assurance that public safety could actually have the mission-critical voice over broadband communications capability or the spectrum needed to protect America.

Finally, auctioning off the guard bands will likely lead to interference on the public safety broadband network, similar to interference issues that were caused in the 800 MHz band which has cost more than \$5 billion to fix. In sum, states and localities have spent billions of federal, state and local tax dollars to plan and build these networks in the past five years, and cannot justify abandoning them without a viable alternative within the next 10 years or more.

*"To force public safety to give up critical communications capabilities is wholly irresponsible and dangerous. I do not oppose having public safety return some spectrum allocated to it in return for the allocation of the "D-Block;" however, I do not support language that requires public safety to return spectrum in the 700 MHz that they fought for over many years."* Senator John McCain

**"Administrator" Governance model** – The PSA strongly objects to provisions of the Walden JOBS Act that would set up a third-party Administrator at the National Telecommunications and Information Administration. A Public Safety Communications Planning Board is contemplated in the Walden JOBS bill, but it's not clear that the Administrator would be accountable to the public safety end-users or to anybody else. The bipartisan Rockefeller-Hutchison bill (*S. 911; Public Safety Spectrum and Wireless Innovation Act of 2011*) envisions a public-private non-profit corporation to oversee the construction and operation of the network. Public safety and state and local government would be represented on the board of the proposed corporation, and we strongly believe this system ensures better transparency and accountability, especially to the end-users. The "administrator model" (proposed in the Walden JOBS bill) is being utilized for the current Sprint-Nextel rebanding initiative in the 800 MHz band, which has considerably delayed the process and resulted in millions of dollars being spent on legal costs. This delay has placed public safety systems in jeopardy of interference and cost local government hundreds of man-hours negotiating with the administrator to protect our systems.

Industry, as well as public safety has had significant negative experiences with the administrator model. Furthermore, by providing the public safety broadband licensee with 20 MHz of prime spectrum, along with \$400 million to administer the PSBN program, and the right to control the contractual spending of \$5 to \$11 billion by states and localities for the build out, this model concentrates too much unchecked power and control into a single for-profit entity's hands without sufficient transparency, oversight or accountability. Additionally, the PSA urges Congress to maximize state and local flexibility by allowing "secondary use" of the public safety broadband network by non-public safety entities and users, as well as with respect to forming public and private partnerships that best meet their specific needs to assure sustainment of their mission-critical public safety broadband systems.

**Funding of the Public Safety Broadband Network** – The Walden JOBS Act proposes \$5 billion dollars derived from other spectrum auctions for the construction of the PSBN, with the potential addition of up to \$1.5 billion more based on a 10% percent formula of any revenue generated from auctions above the CBO estimate of \$24.5 billion. *S.1040; the Broadband for First Responders Act of 2011*, as introduced by Senators John McCain and Joe Lieberman contemplates \$10 billion dollars for the network, and S.911 contemplates \$11 billion dollars. The PSA believes funding must be higher than the Walden JOBS Act provides to ensure expedited build out, especially in rural America.

## WHERE WE ARE TODAY

While much activity has taken place in the past week regarding *H.R. 3630; the Middle Class Payroll Tax Reduction Extension Act of 2011*, little progress has resulted at this point. The House is preparing to go to conference on H.R. 3630, as they passed it on Thursday the 15<sup>th</sup> with an overwhelming party-line vote of 289-193, which would provide a yearlong middle class tax extension. The House bill also includes the Walden JOBS Act as Title IV. Title IV includes allocation of the D Block spectrum to public safety with \$5 billion guaranteed from incentive auctions for the construction of a PSBN, with the possibility of an additional \$1.5 billion being allocated, should incentive auction proceeds exceed the Congressional Budget Office's (CBO) estimate of \$24.5 billion. Public safety would then be awarded 10% of the auction revenues generated past the \$24.5 billion benchmark, up to \$1.5 billion for a total sum of up to \$6.5 billion for the PSBN. Still, the Public Safety Alliance has raised grave concerns for other provisions in the House-passed bill.

The Senate had passed an overwhelmingly bipartisan version of H.R. 3630 on Saturday by a vote of 89-10, which only extended the Middle Class Payroll Tax Extension for 2 months, and did not include any spectrum legislation. Indeed, the Senate moved to this version after the House stopped negotiating with Senate staff on Friday evening regarding the Senate's concerns that public safety and the PSA raised with regard to provisions in Title IV including: (1) a mandated giveback of the 700 MHz narrowband spectrum, (2) the "administrator" governance model, and (3) the lack of sufficient funding provided to ensure that the expedited build out of the PSBN will happen, particularly in rural America. Indeed, further analysis of the House bill by public safety has resulted in additional concerns with other provisions that seem to restrict "secondary use" beyond current law and with respect to how much flexibility states and localities will have to develop public and private partnerships and award contracts to build out their portion of the nationwide network, as best meets their local, statewide and regional needs. While the Senate has continued to push the House for compromise on the public safety spectrum provisions within the larger payroll tax cut bill, S. 911 has been, and will continue to be a top priority of many Senators. At a PSA press event held on Capitol Hill in early December, New York Senator Charles Schumer assured attendees that he and his colleagues would seek to attach S. 911 bill language to any number of legislative vehicles to ensure its passage.

In the past few days, negotiations between the House and Senate – which had slowed considerably – came to a complete halt. And without an open dialogue, each chamber of Congress took a separate trajectory in passing their version of H.R. 3630. The House of Representatives passed a resolution calling for a conference with the Senate on the larger, more substantive bill. Indeed, House Republicans even appointed 6 conferees for the proposed conference. Meanwhile the Senate, which passed a version of H.R. 3630 that includes only a short-term two month payroll tax cut, has signaled that they will not return to session this year, nor appoint conferees to further negotiate with the House, joining House Democrats who have also decided not to appoint conferees. House Democrats have urged Republican House leadership to pass the Senate’s shorter two month bill – as they claim Speaker Boehner agreed to last week – and utilize the legislative time between the beginning of January and the end of February to negotiate a final, year-long extension that both Congressional chambers can agree to.

Therefore, public safety and its supporters are encouraged to keep up their calls to action, contact their Members of Congress in both the House and Senate, urge them to support S.911 and raise our priority concerns with the House version of H.R. 3630 and Title IV (the Walden JOBS Act). Public safety should oppose current 700 MHz narrowband giveback language, oppose “administrator” governance model language, and support additional funding for the PSBN.

## **WHERE WE GO FROM HERE**

The PSA has reiterated its strong support for *S.911; the Public Safety Spectrum and Wireless Innovation Act of 2011*, bipartisan legislation introduced by Senators John “Jay” Rockefeller, IV and Kay Bailey Hutchison respectively, as the Chairman and Ranking Member of the Senate Commerce, Science and Transportation Committee. As you know, S.911 was voted out of the Senate Commerce Committee in June by a vote of 21-4, and has subsequently been attached to several JOBS bills introduced by Senate Majority Leader Reid since that time. A third of the United States Senate is already on record either through their vote, co-sponsorship or public statements both supporting D Block allocation to public safety and \$10 billion or more in funding for the PSBN. This bill is the only bipartisan bill that has passed out of committee that has all the proper elements to successfully build and sustain a nationwide network. The PSA will continue to be unrelenting in their effort to ensure ultimate passage of a bill that meets all of public safety’s needs.