



# Memorandum

**TO:** RULES AND OPEN GOVERNMENT COMMITTEE      **FROM:** Betsy Shotwell

**SUBJECT:** SEE BELOW

**DATE:** August 24, 2010

Approved

Date

8/24/10

**SUBJECT: STATUS OF NOTABLE FEDERAL LEGISLATION RELEVANT TO LOCAL GOVERNMENT INTERESTS – AUGUST RECESS 2010**

## RECOMMENDATION

Acceptance of the attached status report from the City's Federal advocacy firm of Patton Boggs, LLP, in Washington, D.C.

## OUTCOME

That the Rules and Open Government Committee and the City Council have the opportunity to review the status report by Patton Boggs staff on pending federal legislation in Washington, D.C. mid-way way through the second session of the 111<sup>th</sup> Congress in 2010.

## BACKGROUND

The firm of Patton Boggs, LLP, is providing the attached update on the status and prospects of pending federal legislation of particular relevance and interest to local governments. This activity supports the City's advocacy and education in promoting our federal legislative priorities.

## ANALYSIS

The attached report describes in detail the status of high-profile federal legislation of interest to the City and serves as an update to Patton Boggs' summary that was provided to the Council in July. The report references the status of the reauthorization of Federal Aviation Administration programs and SAFETEA-LU (transportation), FY 2011 Appropriations, extensions for Medicaid reimbursements and unemployment insurance, and the federal climate/energy agenda over the past few months -- driven largely by the Deepwater Horizon catastrophe in the Gulf of Mexico. This report details Congressional action taken on these and other items in late July and early August as well as what we can anticipate when Congress returns from recess in mid-September.

**PUBLIC OUTREACH**

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

By providing this document to the Rules and Open Government Committee in July, this document will be posted on the City's website with the September 1 meeting agenda and interested public will have the opportunity to review the document prior to the full Council acceptance.

**COORDINATION**

This memo was coordinated with the City's Washington, D.C. lobbyist firm of Patton Boggs, LLP.



BETSY SHOTWELL  
Director, Intergovernmental Relations

Attachment: Patton Boggs, LLP memorandum, "Status of Notable Federal Legislation Relevant to Local Government Interests – August Recess 2010"

For more information contact: Betsy Shotwell, Director of Intergovernmental Relations at (408) 535-8270.

## MEMORANDUM

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**To:** City of San Jose  
**From:** Patton Boggs LLP  
**Date:** August 20, 2010  
**Subject:** Status of Notable Federal Legislation Relevant to Local Government Interests – August Recess 2010

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This memorandum provides a comprehensive update on the status and prospects of pending, high-profile federal legislation with particular relevance to local governments as Members of Congress spend six weeks working in their home District / State. Specifically, the memo addresses –

- FY2010 Supplemental Appropriations (H.R. 4899 / P.L. 111-188)
- Federal Medical Assistance Percentages (FMAP) Extension and Teacher Aid (H.R. 1586 / P.L. 111-226)
- FY2011 Appropriations
  - Earmark Transparency Act of 2010 (H.R. 5258 / S. 3335)
- Unemployment Compensation Act of 2010 (H.R. 4213 / P.L. 111-205)
- Restoring American Financial Stability Act of 2010 (H.R. 4173 / P.L. 111-517)
- Livable Communities Act (S. 1619 / H.R. 4690)
- Public Housing legislation
- Small Business Lending Fund Act of 2010 (H.R. 5297)
- SAFETEA-LU Reauthorization
- Federal Aviation Administration Reauthorization
- Climate / Energy legislation
- Public Safety Interoperability/ D Block Spectrum Allocation (draft *Public Safety Broadband Act of 2010* / S. 3625 / S. 3756 / H.R. 5081)
- Public Safety Employer-Employee Cooperation Act (H.R. 413 / S. 1611 / S. 3194)

The Senate and House are adjourned until mid-September, with the Senate set to return on September 13 and the House on September 14. Currently, the Senate is scheduled to adjourn again on October 8 and return on November 15 for a lame-duck session (with a week-long break for Thanksgiving on November 22 to 28). The House calendar for the remainder of the year has not yet been announced.

The anticipated Senate agenda will drive any legislative action because that is where procedural challenges have created a backlog of bills. Majority Leader Harry Reid (D-NV) has expressed intent to complete pending small business lending and tax legislation (H.R. 5297), the defense authorization bill (S. 3280), and several narrow energy proposals before breaking in October. September debate also will include whether to extend tax cuts enacted under former President Bush that are set to expire at the end of the year.

A focus on election politics and deficit concerns will continue to occupy much of the debate and delay most legislative action until after the November elections. What happens next will depend on election outcomes, which will impact the motivation of Members during a "lame-duck" session, particularly if there is a change in the majority party.

Items currently anticipated for consideration during a lame-duck session include outstanding FY2011 appropriations and transportation reauthorization extension. Other topics may cover further energy/climate legislation, and recommendations due December 1 from the bipartisan Deficit Reduction Commission established by President Obama, although neither is likely to pass.

#### **FY2010 Supplemental Appropriations ("War Supplemental")**

After months of debate over domestic funding additions proposed by the House, Congress ultimately passed the Senate version of the FY2010 Supplemental Appropriations bill (H.R. 4899) focused solely on war funding, veterans, and disaster assistance.

However, several of the unrelated domestic spending provisions previously included in the House version of the bill subsequently were passed as stand-alone measures, such as border security, enhanced Medicaid reimbursements to States (FMAP), and aid to retain teacher jobs (detailed below).

#### **Federal Medical Assistance Percentages (FMAP) Extension and Teacher Aid**

On August 10, the President signed into law a package (H.R. 1586) that provides \$26.1 billion to States -- \$16.1 billion to extend increased federal Medicaid reimbursements to states for six months, and \$10 billion for elementary and secondary education jobs. While this federal aid will not provide direct resources for local governments, it will help to avert potential additional cuts in State intergovernmental transfers or program / project expenditures that benefit local activities. This will be of particular importance in the nearly 30 states that already had assumed the Medicaid supplement as part of their annual budgets.

The education jobs funding will provide emergency support to local school districts to prevent layoffs. The Department of Education will administer the fund and distribute the money to states

through a formula based on total population and school age population. States will distribute the funds to school districts through their primary funding formula or through the Title I formula. The bill includes strict provisions that require states to use this funding only to preserve, rehire or hire new employees in elementary and secondary education. However, it also requires state maintenance of effort for funding both public higher education and elementary and secondary schools in order to receive federal aid, indirectly protecting state funding levels for public colleges and universities.

These provisions previously were rejected by the Senate, both in the context of tax extender legislation and most recently in the context of the war supplemental bill. However, supporters significantly reduced the funding levels and offset the spending with a package of tax increases on offshore earnings of multinational companies and spending cuts via rescission of some stimulus funding administered by different Departments.

### **FY2011 Appropriations**

Partisanship over spending levels continued to delay the appropriations process and made it even more challenging than in recent years. Republicans and Democrats remain far apart on their proposed FY2011 discretionary funding caps; however it appears that Senate Democrats ultimately may concede to the lower Republican number in an effort to get the votes needed to pass the bills and get them done before the end of the year. Debate in the House will remain contentious.

Despite a flurry of markups in late-June and through July, the FY2011 appropriations process still remains behind schedule.

- In the House, all twelve appropriations bills made it through subcommittee consideration, but only two -- MilCon-Veterans Affairs and Transportation-Housing -- were approved by the full committee. Both bills subsequently were passed by the full House.
- In the Senate, nine bills were approved by the full committee following subcommittee action and now await a full Senate vote; three bills have not yet been considered by their respective subcommittees -- Defense, Interior-Environment, and Legislative Branch.

The House and the Senate should continue bringing individual appropriations measures to the floor throughout September. However, with the six-week August recess leaving only two weeks in session before the start of the new fiscal year on October 1, a short-term continuing resolution (CR) funding the federal government from October 1 through sometime in November is a certainty. This will likely occur during the last week of September.

While it is possible that one or more appropriations measures could be enacted into law before the election, the majority of bills most likely will be packaged into an omnibus measure enacted during the lame-duck session, or early in 2011. Again, election outcomes will determine Congressional action during the lame-duck session. A change in majority may even create a dynamic like FY2007, when the switch in control to Democrats delayed passage of appropriations into the next calendar year (and the next Congressional session at which point they took control of Congress) and ultimately resulted in a stripped-down, year-long continuing resolution. While the scenario does not seem likely at this point, it remains a possibility in the event of a majority switch. Democrats have

incentive to pass the FY2011 measures which contain funding increases for priority policy initiatives reflecting the vision of Democratic leadership, as well as project earmarks; but House Republicans have no incentive to act now given a self-imposed, year-long moratorium on project submissions, which several Senate Republicans also followed.

It is clear that project earmarks in the FY2011 appropriations bills have substantially decreased over FY2010 and prior baseline levels. Driven by election year politics, heightened concern with the deficit and federal spending, and the tone set by the Republican moratorium on earmarks, Members in the House are routinely receiving less than half the number of earmarks as in previous years. The number and amount of earmarks in the Senate also is down significantly over FY2010 and prior year levels.

### *Earmark Transparency Act*

As previously reported, earlier this year President Obama called for increased earmark transparency and submitted a proposal to Congress to provide the Executive Office with expedited rescission power. Implementing bills were introduced in May as the *Reduce Unnecessary Spending Act of 2010* (H.R. 5454 / S. 3474), but only amassed 41 co-sponsors in the House and 21 co-sponsors in the Senate, with no real action taken.

Also in May, the bipartisan *Earmark Transparency Act of 2010* (S. 3335 / H.R. 5258) was introduced, building on President Obama's call for additional disclosure during his State of the Union address. The bill is led by Senators Tom Coburn (R-OK), Russ Feingold (D-WI), Kirsten Gillibrand (D-NY) and John McCain (R-AZ) and Representatives Bill Cassidy (R-LA) and Jackie Speier (D-CA). While much of the information that the bill aims to provide already is available to the public, the legislation would:

- Create a user-friendly, searchable and sortable online database – the first ever database where citizens can sort, search and download earmark requests and final approved projects.
- Provide project details to the public: including the amount of initial request, amount approved by the committee, amount approved in final legislation, sponsor name, sponsor state or district, project name, and other relevant information.
- Allow a point of order to be raised against the consideration of any legislation where earmarks are not first disclosed in accordance with the bill.

On July 28, the Senate Homeland Security and Government Affairs Committee passed the Senate bill out of committee, despite concerns, principally voiced by Senator Carl Levin (D-MI), about technical feasibility and the supposed requirement to post information that Members would not readily have available. Concern also was raised about the disclosure of potentially proprietary information, which pertains really to for-profit defense earmarks that currently are only allowed in the Senate.

This bill may provide an opportunity for House Republicans and reluctant Democrats to reverse their stance against earmarking on the grounds that they have reformed the process to something they can support and participate in.

### **Unemployment Compensation Act of 2010**

On July 22, the President signed into law the narrow measure (H.R. 4213) that will extend eligibility for unemployment insurance and 100% federal funding for unemployment benefits through November 30, 2010. The provision is retroactive to June 2, 2010, when the current law expired. The law does not extend additional weekly benefits of \$25 that were included in the 2009 American Recovery and Reinvestment Act.

Originally introduced as part of a broader package of benefits in the American Jobs and Closing Tax Loopholes Act ("tax extender" bill / H.R. 4213), the measure was pared-down to only extend employment insurance as a means to garner enough support to pass in the Senate.

### **Restoring American Financial Stability Act of 2010 ("Financial Services Reform")**

On July 18, President Obama signed financial services overhaul legislation (H.R. 4173) into law with several provisions relevant to local governments. Specifically, the measure includes several new funding and rules for local government programs and priorities:

- **Neighborhood Stabilization Program Round 3 (NSP3)**: Provides an additional \$1 billion and included some retroactive flexibility fixes to meet low-income set-asides through rehab of vacant properties, both sought after by localities.
- **Emergency Mortgage Relief**: Provides \$1 billion for bridge loans to qualified unemployed homeowners with reasonable prospects for reemployment to help cover mortgage payments until they are reemployed, as advocated by localities.
- **Foreclosure Legal Assistance**: Authorizes a new program administered by the U.S. Department of Housing and Urban Development (HUD) for grants to provide foreclosure legal assistance to low- and moderate-income homeowners and tenants related to home ownership preservation and home foreclosure prevention.

The law also includes additional municipal securities industry rules:

- **Registers Municipal Advisors**: Requires registration of municipal advisors and subjects them to rules written by the Municipal Securities Rulemaking Board (MSRB) and enforced by the Securities Exchange Commission.
- **MSRB Board Independence**: Mandates that the MSRB must have a majority of independent members to ensure that the public interest is better protected in the regulation of municipal securities.

- **Fiduciary Duty:** Imposes a fiduciary duty on advisors to ensure that they adhere to the highest standard of care when advising municipal issuers.

### **Livable Communities Act**

On August 3, the Senate Banking Committee passed the *Livable Communities Act* (S. 1619). In essence, the bill provides a multi-year authorizing structure for the Sustainable Communities Initiative -- including the local and regional integrated planning grants that currently are being competed. More significantly, the bill would provide follow-on implementation money to develop certain transit and transportation projects identified in approved regional plans.

The bill authorizes \$475 million in planning funds and \$2.2 billion in grants for transportation and other infrastructure projects that yield certain benefits for local communities, such as better access to public transportation, lowered greenhouse gas emissions, and more affordable housing. This Sustainability Challenge Grant Program would receive \$100 million in fiscal year 2011, \$500 million in fiscal 2012, \$700 million in fiscal 2013, and \$900 million in fiscal 2014. Any funding is subject to annual appropriations.

Eligible projects include transit infrastructure upgrades and bicycle and pedestrian paths that improve access to transit. Money also may be used to pay the operating expenses of demonstration transit projects. An amendment to the bill also authorizes a \$100 million loan and loan guarantee program to promote transit-oriented development; and \$80 million for a regeneration grant program that would fund projects in areas with substantial population loss.

The measure also formally creates an Interagency Council on Sustainable Development made up of officials from HUD, the U.S. Department of Transportation (DOT), and the Environmental Protection Agency (EPA). The council would be tasked with identifying barriers that communities face when planning and building sustainable projects.

Senator Dodd has made passage a priority before his retirement at the end of this year, so it is possible for the full Senate to act this session. However, the House companion bill has more difficulties at the committee level. In the Senate, the Banking Committee has jurisdiction over both HUD and DOT, which makes moving this kind of cross-cutting legislation easier. Jurisdiction in the House is split between the Transportation & Infrastructure and Financial Services Committees. There also is more wariness from the House authorizing committees to making such livability policy changes outside of a comprehensive surface transportation reauthorization.

In addition, citing the lack of detail on what "livability" means and how the program would be implemented, a number of Republicans in both chambers have voiced hesitation at backing the program and any additional spending associated with it.

### **Public Housing Legislation**

On July 27, the House Financial Services Committee favorably reported two significant public housing bills, the *Housing Preservation and Tenant Protection Act of 2010* (HR 4868) and the *Public Housing Reinvestment and Tenant Protection Act* (HR 5814).

The *Housing Preservation and Tenant Protection Act of 2010* would address issues with expiring Section 8 properties by providing grants and loans to both for-profit and non-profit housing sponsors, in order to help ensure property is recapitalized and remains affordable. It also establishes a first right of refusal that provides state housing agencies with an opportunity to purchase a property from willing owners and allows owners to request project-based assistance in lieu of enhanced vouchers.

The *Public Housing Reinvestment and Tenant Protection Act* establishes the Choice Neighborhoods Initiative (revamping HOPE VI), as well as creating some new financing and program tools for public housing preservation and improvements. In authorizing Choice Neighborhoods, the bill provides sought-after flexibility in program activities and eligibility of nonprofit organizations and public housing authorities, also addressing displacement concerns by requiring a one-for-one replacement of public housing. The bill also establishes a program to provide loan guarantees for the public housing capital fund to make unit improvements and allow housing authorities to finance energy-efficient improvements. In addition, the bill creates an in-home health care aide training program for elderly or disabled public housing residents.

#### **Small Business Lending Fund**

As previously reported, on June 17 the House passed the *Small Business Lending Fund Act of 2010* (H.R. 5297) which would create a \$30 billion lending fund intended to help small banks expand credit availability to small businesses. The House bill also would establish a \$2 billion state small business credit initiative to aid state and local programs that provide small businesses access to capital; a \$1 billion Small Business Administration program to help develop small businesses; and a \$300 million borrower assistance program to help small businesses experiencing difficulty in paying loans. The cost of the bill is offset by tax incentives. Funds would be administered by the Treasury Department, which would be required to certify its decisions are based on economic fundamentals and merits.

The Senate bill differs from the House bill primarily with regard to tax provisions. The Senate bill also includes an extension of the expired "bonus depreciation" provision that enabled small businesses to write off 50% of equipment and machinery assets in an expedited manner (up to a certain funding level). It's also likely the Senate bill will address small business government contracts.

A political showdown over amendments – Democrats wanted to prevent Republicans from offering controversial amendments regarding nuclear loan guarantees and reauthorization of the estate tax – and the Democratic inclusion, and subsequent withdrawal of \$1.5 billion in agricultural disaster assistance – prevented the Senate from voting on a Small Business package before adjourning for the August recess.

With Democrats needing at least one Republican to advance the bill, it seems a compromise has been reached that will enable a mid-September Senate vote on the bill. Republican Senator George Voinovich (R-OH) announced he would vote to advance the bill if a vote on Democratic and Republican alternatives addressing the healthcare reform tax compliance law took place. The Republican amendment would repeal a provision enacted in healthcare reform (P.L. 111-148, P.L. 111-152) that would require companies to file IRS reports for purchases from vendors that exceed

\$600 / tax year, beginning in 2012. The amendment would offset the \$19.2 million in revenue by decreasing a fund for preventative care and weakening the individual health insurance mandate. The Democratic alternative would not repeal the provision, but would exempt businesses with fewer than 25 employees and would raise the \$600 purchase threshold to \$5,000. It would also exempt credit card purchases. A cloture vote on the amendment is tentatively scheduled for September 14.

### **SAFETEA-LU Reauthorization**

The prospects for a reauthorization bill this year remain minimal, although staff and other sources continue to indicate that the Senate Environment and Public Works Committee (which has jurisdiction over the highway title) will mark-up their title in September.

Passage of a multi-year bill remains constrained by the lack of adequate revenue. In testimony before the House Transportation and Infrastructure Committee on July 27, Secretary LaHood reiterated the Administration's opposition to raising the gas tax while the economy is recovering.

Instead, Secretary LaHood emphasized the Administration's interest in an infrastructure fund or other alternative means of funding a long-term surface transportation bill like TIFIA credit assistance, public-private partnerships and tolling. Such mechanisms, however, are generally seen as important supplementary tools but insufficient to fund a robust multi-year bill such as Chairman Oberstar's Surface Transportation Authorization Act.

Secretary LaHood also indicated that the Administration will be releasing its reauthorization framework to Congress in the near future.

### **Federal Aviation Administration Reauthorization**

With the fifteenth extension of Federal Aviation Administration programs enacted just before Congress left for its August recess, the new target date for the House and Senate to reach an agreement has moved to September 30, giving Congress less than three weeks following its recess to reach an agreement and enact a bill. At recess, the Senate still had failed to reach consensus among its Members regarding how many additional non-stop operations it would authorize between Reagan National Airport and cities outside the 1,250 mile perimeter, and in what manner these additional outside the perimeter slots would be awarded. Once the Senate decides this issue among itself, it is expected to pass a bill and send it to the House, with the expectation of some that the House will simply accept the Senate bill. But the House leadership has not given any indication that it would accept the Senate bill without making one or more changes.

The most recent Senate proposal, pushed by a bipartisan group of Senators from Western states, would (1) accept that the House-passed provision that would add ten additional beyond-the-perimeter slots at Reagan National Airport (five round trips), withdrawing ten inside-the-perimeter slots at non-peak hours, and (2) authorize up to another 32 inside-the-perimeter slots now used to go to large hub airports to be exchanged for a beyond-the-perimeter slot to any airport. Thus, this proposal would not add any net additional operations at Reagan National, but the Virginia Senators reportedly still oppose any additional beyond-the-perimeter slot, on environmental grounds. We

expect some additional beyond-the-perimeter flights are likely to be included in the final compromise.

As previously reported, of primary interest for local governments and airport sponsors among the problematic issues is increasing and indexing the maximum Passenger Facility Charge (PFC) to help raise revenues for airport improvements. The House bill would increase the PFC from \$4.50 to \$7.00; the Senate has reportedly agreed to include an increase to \$5.50 in its bill (with no indexing for inflation), although there may well be an effort by some Senators to delete this increase on the Senate floor. At this time it appears that some increase in the PFC will be included in any bill that is enacted, while it remains unclear whether the House will accept this figure. Another debate relevant to localities is over a House provision that would require the FAA to adopt a rule raising standards for Aircraft Rescue and Fire Fighting (ARFF) equipment and response time, supported by firefighters but deemed extremely costly and functionally unnecessary by airport operators. This provision is not likely to be included in any Senate bill that goes to the floor in September.

If there is any progress to report from the pre-recess negotiations, it relates to a provision that previously was seen as an intractable impediment to final resolution. This House-passed provision would place FedEx ground workers under the National Labor Relations Act, equivalent to treatment of UPS, thereby permitting the Teamsters to organize locally. All indications from the Senate leadership are that no FAA reauthorization bill will be enacted unless this provision is removed, and the House may be prepared to accept this political fact, as most trade reports in recent weeks have focused entirely on the PFC and Reagan slots issues. Other provisions in the House-passed bill generating Senate resistance include a sunset of antitrust immunity granted to international code sharing agreements that would require airlines to resubmit applications subject perhaps to a different standard of review; and the relative stringency of requirements for enhanced inspection of foreign repair stations.

### Climate / Energy Legislation

The federal energy and climate agenda over the past few months largely has been driven by the Deepwater Horizon catastrophe in the Gulf of Mexico. Eleven House and Senate committees held more than three dozen hearings and Members of Congress had introduced 108 bills before adjourning for the summer recess. Just one bill – to authorize advances from the Oil Spill Liability Trust Fund to pay for oil spill response efforts – has been signed into law.

The House passed two oil response bills before adjourning, including the controversial “Consolidated Land, Energy, and Aquatic Resources (CLEAR) Act” (H.R. 3534) on a deeply partisan vote of 209-193. Senate Majority Leader Harry Reid, who earlier abandoned efforts to bring an even more expansive climate change/energy bill to the Senate floor, has packaged a more modest set of oil spill measures with additional energy measures (including funding for vehicle electrification) in the “Clean Energy Jobs and Oil Accountability Act” (S. 3663). Senate Democratic leaders failed to move their bill prior to adjournment. Whereas the Senate Democratic leadership blamed Republicans for a lack of progress, Republican leaders blamed the Democratic leadership for hastily assembling a flawed bill that was opposed even by some Democrats. Party leaders will have to work together to get anything done in the Senate this fall, but there currently is no evidence of them working towards common ground.

Although House Speaker Nancy Pelosi was able to move a comprehensive bill on the last legislative day prior to adjourning, she needed only a simple majority to do so. In contrast, Senate Majority Leader Reid needs a supermajority to pass any controversial legislation, not just energy legislation. Now lacking a 60 Democrat-strong Senate and facing pressure from prominent Gulf State Senators like Mary Landrieu (D-LA) who oppose provisions in S. 3663 and the Administration's offshore drilling moratorium in the Gulf of Mexico, Reid also must confront a Republican party united against his oil spill response bill and a White House that recently indicated that the bill could potentially be a vehicle to move even more controversial climate change legislation in a "lame duck" session in December. Unless both sides give ground, it seems nothing will get enacted this year.

Comprehensive climate change legislation appears on track to be an issue for the 112<sup>th</sup> Congress with no likelihood that the Senate can be successful in moving a bill this year. In an increasingly partisan election year with a short legislative calendar, and with the Senate already on record as lacking enough votes to overcome a filibuster, and Congress unable to assemble any bill addressing the oil spill disaster after more than three months, it is inconceivable that Senate Democratic leadership could find 60 votes to move a significant climate bill forward.

#### **Public Safety Interoperability / D Block Spectrum Allocation**

Driven by a significant public safety campaign supported by some telecom industry interests, opposition from other telecom interests, and energized government association efforts, the proposed reallocation of the D-Block Spectrum is attracting increasing attention and activity in Congress. Although generating action, prospects for enactment of legislation this year remain very uncertain given a divide in positions between House and Senate committees with jurisdiction.

On July 21, Senate Homeland Security and Governmental Affairs Committee Chairman Joe Lieberman (I-CT) and Senator John McCain (R-AZ) introduced the *First Responders Protection Act of 2010* (S. 3625 / H.R. 4992). Additionally, on August 5, Senate Commerce, Science, and Transportation Committee Chairman Jay Rockefeller (D-WV) introduced the *Public Safety Spectrum and Wireless Innovation Act* (S. 3756).

Both of these measures would direct the Federal Communications Commission (FCC) to reallocate the 10 megahertz (MHz) of spectrum in the 700 MHz band, known as the D-Block, to public safety control. They also would authorize \$11 billion for the construction and maintenance of a national public safety broadband network, using proceeds from auctions of other spectrum bands, such as the 1675-1710 MHz and 2155-2180 MHz bands. In addition, these bills allow flexible use (including public safety) of the narrowband spectrum; permit secondary access to public safety frequencies; extend the FCC's auction authority; require the General Services Administration (GSA) to draft rules to ensure public safety access to services and equipment at federal agency rates; and require a Government Accountability Office (GAO) report on the use of satellite communications by public safety. Public safety advocates have expressed concern that the proposed flexibility and secondary access provisions could hinder interoperability and create interference during emergency situations.

In sharp contrast to the Senate bills is a bipartisan draft *Public Safety Broadband Act of 2010* circulated in June by the House Energy & Commerce Committee and Subcommittee Chairs and Ranking

Members, who also held a hearing on the proposal. Rather than transfer the D-Block to public safety, the measure would auction the D-Block and impose various first responder coordination requirements for the purchaser and others, then authorize a grant mechanism with less certainty of full funding that would help finance interoperable system buildouts.

Also in the House, bipartisan co-sponsorships continue to increase on the *Broadband for First Responders Act of 2010* (H.R. 5081) introduced in April by House Homeland Security Committee Ranking Member Peter King (R-NY). This bill would allocate the D-Block to public safety but does not provide funding for construction or operations, and does not identify offsets for the cost of transfer. On July 27 the House Emergency Communications, Preparedness, and Response Subcommittee of the Homeland Security Committee held a related hearing: "Interoperable Emergency Communications: Does the National Broadband Plan Meet the Needs of First Responders". Witnesses included officials from the FCC, the Department of Homeland Security, the Association of Fire Chiefs, the New York City Police Department, and others.

Differences remain centered on a range of funding and technical issues on how to resolve lack of progress toward implementing interoperable public safety communications nationwide. The majority of the public safety community associations support the direct D-Block reallocation over the FCC alternative to auction the spectrum to commercial providers, with the Fraternal Order of Police and the International Association of Firefighters as notable exceptions. The major local and state government associations also endorse transfer to public safety, although emphasizing the need to address funding as well. The telecommunications industry remains more divided, generally between providers that want access to the new spectrum and others that already have enough or sell equipment to public safety.

#### **Public Safety Employer-Employee Cooperation Act of 2009 ("Collective Bargaining")**

As previously reported, Congress has made several attempts to pass legislation (H.R. 413 / S. 1611 / S. 3194) that would require localities and States to recognize and bargain collectively with unions representing police, firefighters, and emergency medical responders, and subject all jurisdictions to oversight by the Federal Labor Relations Authority to determine if existing laws meet minimum standards.

Most recently, the House included the provision as an amendment to its version of the FY2010 War Supplemental, but that was dropped when the Senate version ultimately was enacted into law. While these recent efforts failed, the provision has significant bipartisan support and is likely to come up again as soon as a viable legislative vehicle is presented, perhaps before the election.