



# Memorandum

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

**SUBJECT:** SEE BELOW

**DATE:** April 5, 2012

Approved

Date

4/5/12

**SUBJECT: FEDERAL RELATIONS UPDATE – CONGRESSIONAL SPRING RECESS 2012**

## RECOMMENDATION

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

## OUTCOME

Presentation by Patton Boggs staff on the City's federal activities in Washington, D.C. in the 112<sup>th</sup> Congress in 2011-12.

## BACKGROUND

The firm of Patton Boggs, LLP, provided the attached update on their lobbyist activities on behalf of the City in Washington, D.C. in a memorandum dated April 4, and is being submitted to the Rules and Open Government Committee for the purposes of discussion with Patton Boggs' staff.

## ANALYSIS

The attached report describes in detail Patton Boggs various activities, including, but not limited to: the City's interests regarding the FY 2012 and 2013 federal budgets and appropriations process; the transportation and Federal Aviation Administration reauthorizations; energy and water resources issues; tax issues; telecommunications, and advocacy efforts with federal agencies and other governmental bodies. This Federal legislative update reflects the City's 2011 and 2012 legislative policy goals and priorities and the City's efforts to work with our federal partners to advocate on issues of concern and interest to the City.

### 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 April, this document will be posted on the City's website with the April 11 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 our Washington, D.C. lobbyist firm of Patton Boggs, LLP.



BETSY SHOTWELL  
Director, Intergovernmental Relations

Attachment: Patton Boggs, LLP, Overview of Federal Activities Relevant to San Jose Interests.

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:** April 4, 2012  
**Subject:** Overview of Federal Activities Relevant to San Jose Interests

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This memorandum provides summary highlights of notable federal legislative and regulatory issues Patton Boggs has undertaken on behalf of the City over the last year, and details the most recent legislative activities of particular interest. A comprehensive update on these and other policy issues of interest to local governments will be provided prior to Congress returning from the Spring break on April 16<sup>th</sup>. Our weekly in-session *Capital Thinking* reports also provide updates on pending issues.

### 2012 Context and Outlook

Partisan divides over spending and deficit reduction have dominated and hindered Congressional activity in the 112<sup>th</sup> Congress. A debt ceiling crisis nearly forced the U.S. Treasury into default last year, but was avoided at the last minute with enactment of the Budget Control Act of 2011; however, the subsequent failure of the “Super Committee” to produce a deficit reduction plan to offset the final debt ceiling installment will create another platform for political divide throughout 2012. In all, less than 100 bills were enacted into law in 2011 and even fewer are expected in 2012.

With the Republican Presidential primaries well underway and the upcoming elections in November, we expect the acrimonious tone and high level of political rhetoric to continue. We also anticipate that there will be a very active “lame duck” session of Congress after the November elections given the accumulative legislative build-up – including how to address expiring and expired tax credits, as further discussed below.

### America Invents Act

The U.S. Patent and Trademark Office (USPTO) is tasked with implementing the Leahy-Smith America Invents Act, signed into law by President Obama on September 16, 2011. Section 23 requires USPTO to establish three or more “satellite offices” within three years of enactment. (We expect only three satellite offices total.) We have arranged meetings for Mayor Reed and Silicon Valley business leaders to discuss San Jose’s strong interest in and benefits of hosting a satellite office expected to be sited in the Western United States, gleaned and helped identify which specific

issues should be addressed to best strengthen San Jose's application, and have been working with the City's Congressional delegation to support the City's nominating application.

### **Budget and Appropriations**

#### *FY2012 Spending*

Discretionary spending levels for FY2012 adhere to the overall cap established in the Budget Control Act of 2011 of \$1.043 trillion. This cap is slightly lower than the FY2011 discretionary spending level of \$1.05 trillion, but higher than the \$1.019 trillion cap proposed in the House FY2012 Budget Resolution.

Despite the limited overall reduction in discretionary spending, many priority programs for local governments, particularly FEMA first responder grants and the Department of Housing and Urban Development's HOME Investment Partnership Program, are significantly reduced. Moreover, while overall FY2012 funding for the Community Development Block Grant program and HOME was cut by 11% and 38%, respectively, many cities experienced further cuts due to new Census data and the addition of 17 new grantees.

On a positive note, our advocacy efforts to exclude the House provision to limit the CDBG administrative cost cap to 10% (from the current 20%) from the final bill were successful. We continue to urge our Congressional delegation to retain maximum funding for CDBG, HOME, transportation, and other priority local government programs throughout the appropriations process.

#### *Urban Area Security Initiative (UASI) Funding*

Overall FEMA "first responder" funding was reduced by nearly \$1 billion in FY2012. Of concern is the potential UASI program funding cut and, in particular, the Bay Area's 40% funding reduction in FY2012. In conjunction with San Francisco's federal representatives, we have worked to raise strong concerns directly with Department of Homeland Security Secretary Janet Napolitano through the Bay Area Congressional delegation. Senator Dianne Feinstein and House Democratic Leader Nancy Pelosi sent letters in March, and we have also worked directly with Representatives Mike Honda and Zoe Lofgren to co-lead a House Bay Area delegation effort to raise serious concerns about the disproportionate funding reduction and to seek corrections in FY2013.

#### *SAFER Grant*

Throughout 2011, we worked closely with Congresswoman Zoe Lofgren's staff and coordinated efforts for Mayor Reed to successfully appeal directly to FEMA for more flexible maintenance-of-effort and retention requirements for the Fire Department's nearly \$15 million FY2010 Staffing for Adequate Fire and Emergency Response (SAFER) grant so that the City could afford to accept the grant and hire/retain firefighters in out years. The Federal Emergency Management Agency awarded a total of \$400 million to localities across the nation for firefighter retention efforts, with grants averaging approximately \$900,000. (The City received the single highest grant award amount out of

all 438 grants offered in FY2010.) The grant allowed the Fire Department to reinstate 22 firefighters who were laid off in July 2010.

### *FY2013 Budget Proposal*

We provided our annual comprehensive analysis of the President's FY2013 Budget Proposal in February. The Office of Management and Budget directed all federal agencies to submit budget requests that are 5% below FY2011 discretionary levels and to identify additional reductions that would lower the requests 10% further. President Obama's budget plan is not expected to gain traction in the 112<sup>th</sup> Congress.

### *Earmarks*

The current temporary earmark moratoriums were informally established at the beginning of the 112<sup>th</sup> Congress by the House and Senate – in the Senate for the first session (FY2011 and FY2012) and in the House for the entire Congress (FY2011 through FY2013). In the last Congressionally-directed projects appropriations cycle (FY2011), we had successfully advanced over \$5 million in direct appropriations projects for San Jose before earmarks were ultimately dropped from consideration. Now, some Members of Congress have introduced legislation to permanently ban all earmarks.

### Transportation Reauthorization

The nation's surface transportation programs have now been extended nine times, with the current short-term extension expiring on June 30. Before leaving for the Spring recess, Congress passed and the President signed into law a three-month extension, despite calls by Senate and House Democrats for the House to instead take up and pass the Senate's two-year reauthorization bill, which passed the Senate by a bipartisan vote of 74-22 on March 14.

The three-month extension reflects the realities of the legislative calendar – with the House focused on health care and budget matters before leaving for a two week spring recess, as well as the continuing effort to build consensus around a longer-term highway bill tied to increased domestic energy production (a key election-year issue for Republicans, at a time of increasing concern about rising gas prices). However, the fundamental questions of how to pay for the legislation and what its duration should be remain unresolved and continue to pose a real and significant challenge to enacting a multi-year reauthorization.

Unfortunately, our efforts to include additional funding for high speed rail and address Metropolitan Planning Organization governance reform have not gained traction – particularly not in the Republican-controlled House given the current fiscal environment and that both were originally Democrat-backed proposals.

On other transportation-related issues, we worked with Bay Area D.C.-based representatives on federal agency and Congressional delegation outreach efforts to obtain a "Buy America" waiver for a \$3 million Bay Area electric vehicle demonstration project. The Department of Transportation later granted a partial waiver and committed to additional flexibility surrounding funding considerations.

We worked with Representatives Mike Honda and Zoe Lofgren to secure a number of support letters for highly competitive transportation grant solicitations (including the "TIGER" program). Unfortunately, these proposals were unsuccessful due to the highly competitive and over subscribed nature of the programs.

### Federal Aviation Administration Reauthorization

After 23 short-term extensions of FAA Programs dating back to 2007, Congress finally agreed to a compromise multi-year authorization bill, which the President signed in law on February 14. While some portrayed the legislation as a significant investment in the future, most observers were more relieved than pleased with the final legislative project. As enacted, the authorization covers the rest of FY2012 and Fiscal Years 2013-2015.

When the dust settled, and the compromise language was revealed, airports were justifiably disappointed, although not surprised, while airline labor unions were also disappointed as well as justifiably surprised. Airlines, on the other hand, were not subject to any new onerous requirements.

The major issue that resulted in the impasse for most of 2011 was a provision in the House-passed bill to reverse a 2009 National Mediation Board ruling that counts as votes in organizing elections only those who participate in that election. In the compromise bill, this provision was removed. However, other changes to the Railway Labor Act favorable to airlines were substituted for the repeal provision. The law now requires organizers to receive at least 50% of support from the craft or class in order to trigger a representation election. Also, in any runoff election for which there are three or more options on the ballot (including the option of not being represented by a union) and no such option receives a majority of the votes cast, the NMB will hold a second election between the options receiving the largest and second largest number of votes. Heretofore, even if the no-union option received the most votes among the three or more options (although not a majority), the runoff would be between the top two vote-getting unions.

Another big compromise involved beyond-the-perimeter slots at Reagan National Airport. As predicated, the compromise was not as expansive as the Senate bill. A total of 16 new beyond-the-perimeter slots (8 daily roundtrips) are now available, and DOT did not waste any time in initiating slot selection proceedings. The compromise bill permits the four "incumbent" carriers to select a roundtrip without having to compete for these slots with other carriers, although each must surrender a daily roundtrip to a city inside-the-perimeter. Delta picked Salt Lake City, United picked San Francisco, American picked Los Angeles, and US Airways picked San Diego. Several "new entrant" and "limited incumbent" carrier are competing for another 4 daily roundtrips (Virgin America, San Francisco; Sun Country, Las Vegas; Air Canada, Vancouver; Southwest, Austin; Frontier, Colorado Springs; Jet Blue, San Juan; and Alaska, San Diego and Portland). The law requires DOT to award these slots by May 14.

As noted, airports did not fare well in this legislation. The one positive is that a multi-year reauthorization of the Airport Improvement Program will restore some certainty and predictability essential to cost-effective and efficient airport construction and other projects. The biggest disappointment, although not a surprise, is that the bill does not increase the Passenger Facility

Charge maximum. Airport Improvement Program funding was authorized at \$3.35 billion each year for FY 2012-2015, a compromise between the House and Senate bills – and a slight decrease from the \$3.5 billion authorized under the previous reauthorization legislation. It remains to be seen whether Congress will appropriate the full amount of this authorization. Airports remain focused on increasing the PFC. It remains to be seen whether airports must await the next FAA authorization bill in 2015, or will seek an increase in some other legislative vehicle before then.

The compromise bill also includes additional provisions to protect passengers during tarmac delays. DOT did not wait for the enactment of an FAA reauthorization bill to impose requirements on air carriers, issuing two final rules to date. The bill goes beyond DOT rules in requiring airports (large, medium, small and non-hub airports) to develop tarmac delay contingency plans and submit the plan to DOT by May 14, 2012. DOT has 60 days from receipt of a plan to review and approve it. If DOT fails to act by the 60<sup>th</sup> day, the plan is deemed approved.

Two other laws that benefited airports over the last few years – the Build America Bonds program and providing Alternative Minimum Tax (AMT) relief on airport private activity bonds – expired at the end of 2010 and were not included in the FAA reauthorization legislation. However, an AMT holiday (limited only to calendar year 2012) is included in S. 1813, the Senate-passed surface transportation bill. Its fate is uncertain. And the Administration's proposed FY2013 budget would renew the Build America Bonds provision, with a 30% subsidy of borrowing costs in FY2013 and 28% for FY2014 and 2015. Its fate is also uncertain, and perhaps less likely than an AMT fix.

In addition, we are currently working with Senator Boxer's staff to encourage her participation in a California Airports Council's summer board meeting, hosted in San Jose. We also worked with lead Congressional staff on potentially troublesome legislation, the End Discriminatory State Taxes for Automobile Renters Act of 2011 (H.R. 2469) on a potential amendment to address San Jose- and California-specific airport concerns, and worked with the City's delegation to successfully oppose a "limousine amendment" that would have prohibited airports from charging any fee to any provider of pre-arranged ground transportation services.

## Energy/Climate Change

### *Energy Tax Legislation*

Because Congress allowed a host of tax breaks to expire at the end of last year, it will continue to be under pressure in the next few months to move a tax bill that would extend these expired tax provisions and those that will expire at the end of this year. However, with Congress having agreed in late February to extend the payroll tax holiday, unemployment insurance benefits, and the Medicare "doc fix" until the end of the year, Congress is unlikely to consider any further tax legislation prior to the elections—even though Democrats will likely try to use rising gasoline prices as a reason for Congress to eliminate tax breaks enjoyed by "big oil" prior to November.

As part of discussions leading to the agreement to extend the payroll tax holiday, Congress considered but decided not to address the expiring and expired tax provisions largely because the cost of doing so was so high. To "pay for" an extension, such as renewable energy tax credits, Democrats had urged their colleagues to eliminate energy tax incentives available to the major

integrated oil and gas companies, but failed to do so in the end. As had happened last year, a bill to extend and expand alternative energy tax incentives and help reduce the national deficit by repealing certain “big oil” tax incentives failed when the same three “oil patch” Democrats crossed party lines to vote against the bill. A similar bill fell nine votes short of the 60 necessary to advance in the Senate last month.

Republican lawmakers are expected to continue criticizing the Administration over “green” stimulus programs heading up to the elections. House Republican leaders have thus far principally focused on legislative efforts intended to address high gas prices and spur energy-related job growth. The House has also already passed legislation to expand domestic offshore oil and gas production – including off the Southern California coast – and expedite onshore and offshore permitting. We do not anticipate that any of the energy legislation approved by the House in the 112<sup>th</sup> Congress will move through the Senate in the foreseeable future.

#### *Development of a National “Clean Energy Standard”*

In his 2011 State of the Union Address, President Obama called on Congress to enact legislation that would increase the percentage of electricity generated from clean energy sources (including nuclear and natural gas) to 80% by 2035.

Despite the difficulty a “CES” would face in the current Congress, Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-NM) introduced the Clean Energy Standard Act of 2012 (S. 2146) in March. It would require larger utilities to gradually increase their clean energy portfolios over the next 40 years, beginning with a 45% target in 2035 and increasing to a 95% target in 2050. An independent report concluded that Chairman Bingaman’s base CES would significantly reduce coal-fired generation while increasing renewables generation; it would also raise natural gas prices due to “fuel switching” in early years and ultimately raise electricity prices in out years.

Chairman Bingaman himself has acknowledged the difficult prospects for enacting such a bill. As Ranking Member Lisa Murkowski (R-AK) put it, if a CES bill becomes known as “cap and trade under a different name... then CES is not going to happen.”

#### *Property Assessment Clean Energy (PACE) Home Energy Program*

Approximately 25 states have enacted programs that allow homeowners to take advantage of up-front municipal financing benefits to upgrade home energy systems that are then repaid via property tax assessments. The popular program effectively stalled when the Federal Housing Finance Agency raised repayment concerns should a PACE-retrofitted home resident foreclose on their mortgage. Bipartisan House (H.R. 2599) and Senate (S. 1737) legislation to reauthorize the PACE program, which reflects compromise language intended to rectify FHFA’s concerns, has been introduced. The U.S. Chamber of Commerce, Center for American Progress, Natural Resources Defense Council, and U.S. Green Building Council all support the effort. Prospects for the legislation are uncertain. While it stands a better chance than many other bills that require funding in the current fiscal environment, it is not expected to move as stand-alone legislation and will likely need a moving legislative vehicle to reach the President’s desk.

We continue PACE advocacy efforts and, on a regulatory front, provided early notification of a California court-ordered FHFA rulemaking procedure and request for comments on preparing an Environmental Impact Statement for mortgage assets affected by PACE programs.

### *EPA's Greenhouse Gas and Related Regulatory Agenda*

The Environmental Protection Agency continues to forge ahead with its greenhouse agenda, and House and Senate Republicans continue to press for legislation that would preclude EPA from doing so. To date, the House has passed legislation that would block EPA implementation of the following initiatives: pollution control requirements for industrial boilers and incinerators ("Boiler MACT"), regulations for cement kilns, cross-state air pollution rule for coal ash, and the proposed Mercury and Air Toxics Standards rule for coal plants. The House is likely to consider further legislation on a host of other environmental policy matters. By contrast, every effort by Republicans and coal-State Democrats in the Senate has failed to generate sufficient votes for any of these EPA policy riders to move forward. In any event, given that any such legislation would be vetoed by the President in the unlikely event it cleared the Senate, we don't expect anything to be enacted into law this year that would preclude EPA from moving forward on any of these initiatives.

### **Water Resources and Water Financing**

#### *Clean Water Act*

Whereas Democratic leaders in the 111<sup>th</sup> Congress moved legislation through congressional committees that would have reformed and dramatically expanded the scope of the Clean Water Act, a large coalition of bipartisan House Members have pressed EPA to abandon efforts to craft (non-binding) Clean Water Protection Guidance in the 112<sup>th</sup> Congress. Opponents to expanding the Act's scope believe it will usurp local jurisdiction and negatively impact the economy; proponents continue to believe that reform is necessary to restore CWA integrity and to better protect the environment. Legislative efforts to strengthen the Clean Water Act are unlikely to gain Republican approval in the House.

EPA received 230,000 public comments on its proposed "Draft Guidance on Identifying Waters Protected by the Clean Water Act" by the July 31 submittal deadline. Numerous commenters requested that the agency undertake a traditional rulemaking process that would provide for additional public comments and agency briefings rather than simply finalizing the draft (non-binding) guidance. EPA, in conjunction with the Army Corp of Engineers, is now working on developing a proposed Clean Water Protection Rule "for determining whether a waterway, water body, or wetland is protected by the Clean Water Act" that we expect to be issued later this month.

Senate Democrats were able to block a House Republican-desired "policy rider" to the FY2012 Interior-Environment appropriations bill that would essentially prohibit the EPA (and, by extension, the Army Corp of Engineers through a similar rider included in the FY2012 Energy-Water appropriations bill) from spending funds to implement or enforce the draft guidance. Upon reviewing a draft copy of the latest guidance obtained from the Hill, EPA apparently intends to make clear which waterbodies are and are not protected under the Clean Water Act.

While we expect additional legislative and procedural efforts to block EPA's guidance or rulemaking, the Administration may also delay release of the guidance until later this year or early next year.

#### *Water Infrastructure Finance and Innovation Act (WIFIA)*

Legislative activity continues on WIFIA – modeled after a similar and popular transportation program, TIFIA – as the authorizing committees in the House and Senate are turning increased attention to addressing the nation's water infrastructure investment needs. Congressional committees in both the House and Senate have held hearings on alternative/innovative water financing mechanisms, with a focus on WIFIA, Private Activity Bonds, and methods for attracting private investment. A House bill is expected to be introduced later this month. We have worked together with an industry coalition to advance WIFIA legislation and continue discussions with the House Subcommittee Chairman's senior staff on the bill.

#### Chemical Security

The Department of Homeland Security's Chemical Facility Anti-Terrorism Standards (CFATS) program will continue through October 4, with enactment of the Consolidated Appropriations Act of 2012. (The standards were otherwise set to expire in mid-December without an Act of Congress to continue programmatic funding through the appropriations process.) DHS has also been directed to "provide a report that details the Department's definition of inherently safer technology as it relates to chemical facilities".

CFATS currently does *not* apply to drinking water or wastewater facilities. (In the prior Congress, we had successfully advocated that any such expansion to water facilities be exclusively under the Environmental Protection Agency's jurisdiction, rather than create a dual regulatory regime with the Department of Homeland Security which lacks technical expertise, and that there be a statutory appeals process for any facility designated as "high risk".)

Legislative progress now seems stalled. After an internal DHS memo was leaked to the press earlier this year, which was critical of program implementation and indicated that high-level Administration officials and Members of Congress believed that the program was further along than it was, Congress may not complete long-term reauthorization until a new Congress commences in 2013.

#### Health Care

##### *Early Retiree Reinsurance Program*

Given City interest, we provided early notification and regular updates regarding the Centers for Medicare and Medicaid Services implementation, stoppage, and reimbursement deadline criteria for the Early Retiree Reinsurance Program. The 2010 Affordable Care Act included a provision that established the temporary program which provides reimbursement to eligible sponsors of employment-based plans for a portion of the costs of providing health coverage to early retirees (and eligible spouses, surviving spouses, and dependents of such retirees) through January 1, 2014.

**Tax Issues**

There continues to be broad bipartisan support in the business community for a comprehensive rewrite of the tax code to make it simpler and to help make U.S. businesses more competitive—and that could eventually lead to legislation, but not until next year at the earliest. The Chairman of the House Ways and Means Committee, for example, responded positively to the Administration's February 22<sup>nd</sup> proposal as a basis to continue the dialogue on how best to overhaul the tax code.

Over the coming year, the tax writing committees will continue holding hearings and developing options to reform the code in advance of a major effort in 2013-2014 to agree on legislation, irrespective of who is in the White House and which parties control the House and the Senate. In order to reduce individual and corporate tax rates while at a minimum maintaining revenue neutrality or actually reducing the deficit, Congress inevitably will need to eliminate "loopholes" and modify or eliminate a broad range of tax preferences as part of fundamental tax reform.

Congress will also be under tremendous pressure to extend certain expiring or expired tax credits – such as the renewable Production Tax Credit – although we anticipate that any such agreement will be short-term and perhaps for no more than one year.

*New Market Tax Credits*

A formal notification for the 2012 New Market Tax Credit (NMTC) round is expected this month. Because of the Congressional ban on earmarks, we had previously recommended that the City to pursue NMTC funding in 2011; the Clean Tech Center now under construction closed on a \$27 million NMTC in December. It was the first municipally-sponsored project in California to use the tax credit.

*"Three Percent Withholding"*

Section 511 of the 2005 Tax Increase Prevention and Reconciliation Act was permanently repealed with enactment of the Government Contractor Withholding Repeal Act of 2011 in November. This section would have required state and local governments that expend more than \$100 million annually in outside contracts to withhold 3% of all payments for goods and services, remit that to the IRS, and adhere to new reporting requirements. We had advocated for repeal of this provision for several years, including for interim and limited to extensions of the effective regulatory date. The successful statutory repeal lifted an immense administrative burden and provided enormous relief to the City's Finance Department.

*Pension Reform*

We do not expect broader pension reform to be included as part of a possible year-end deal reached on tax-related issues. Congresswoman Loretta Sanchez (D-CA) has introduced a bill (H.R. 2934) that would amend the 1986 tax code to clarify the treatment of certain retirement plan contributions picked up by governmental employers. (She is seeking to address the rising costs of government pensions in Orange County; a hybrid plan that provides a lower defined benefit in conjunction with

participation in a defined contribution plan with an employer-matching element.) We do not expect legislation to move forward in this Congress.

### Telecommunications

#### *Spectrum Act*

The President signed The Middle Class Tax Relief and Job Creation Act on February 22, which dedicates \$7 billion of proceeds from spectrum auctions to build a nationwide, interoperable public safety broadband network and reallocates the D Block spectrum to public safety. The Federal Communications Commission (FCC) and the Commerce Department's National Telecommunications and Information Administration (NTIA) are in the process of analyzing their statutory obligations to implement the spectrum provisions of the law, which are known as the Spectrum Act. The FCC took the first step in March, when it appointed a Technical Advisory Board to recommend interoperability standards for the network. Those recommendations must be approved by the FCC and sent to the First Responder Network Authority (FirstNet), an independent authority that will hold the public safety spectrum license and oversee network build out. NTIA must appoint FirstNet by August 20, 2012.

The FCC is expected to issue a Public Notice seeking comment on April 6 regarding the future of early adopters, including the Bay Area Cities, that have received waivers from the FCC and how they should be incorporated into the nationwide network. The public comment period is expected to be on a fast track and to close within 14 days of publication in the Federal Register.

In addition to the \$7 billion dedicated to network build out, the Spectrum Act also sets aside proceeds from voluntary spectrum auctions to provide up to \$2 billion to reimburse funds NTIA borrowed for FirstNet; \$100 million for the State and Local Implementation Fund; and \$250 million for Next Generation 9-1-1. The Spectrum Act provides an "opt-out" option for states that demonstrate the capacity to build their own networks and connect them to the national network.

#### *Online Piracy Legislation*

Both California Senators co-sponsored the Protect IP Act ("PIPA") in the Senate, companion legislation to the "Stop Online Piracy Act" ("SOPA") in the House of Representatives. In what pitted Southern California's entertainment industry against Silicon Valley's techcom industry, a massive public revolt driven by Internet industry giants including Google and Facebook upended bills that were being prepared for floor consideration earlier this year. In a 48-hour period, millions of angry phone calls and emails flooded into the offices of Members of Congress. Given that outfall, we do not expect Congress to consider online piracy legislation for the remainder of this Congress.