

110TH CONGRESS
2D SESSION

S. 3420

To require the Federal Communications Commission to auction spectrum for a free and open access wireless service.

IN THE SENATE OF THE UNITED STATES

AUGUST 1, 2008

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require the Federal Communications Commission to auction spectrum for a free and open access wireless service.

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 “Open Wireless Internet
5 Act”.

6 **SEC. 2. OPEN ACCESS SPECTRUM AUCTION.**

7 Section 309(j) of the Communications Act of 1934
8 (47 U.S.C. 309(j)) is amended by adding at the end the
9 following new paragraph:

10 “(17) OPEN ACCESS SPECTRUM AUCTION.—

1 “(A) AUCTIONS REQUIRED.—The Commis-
2 sion shall promote nationwide broadband com-
3 petition through the use of wireless services by
4 issuing nationwide licenses, for a term of not
5 less than 15 years, for 2 bands of frequencies
6 that consist of an initial band and a second
7 band of frequencies—

8 “(i) each of which shall be composed
9 of 20 megahertz of unpaired contiguous
10 spectrum;

11 “(ii) the initial band of which shall be
12 spectrum located between 2155 and 2180
13 megahertz, inclusive; and

14 “(iii) the second band of which shall
15 be spectrum that—

16 “(I) is located under 3 gigahertz;

17 and

18 “(II) is not part of the recovered
19 analog spectrum, as such term is de-
20 fined in paragraph (15)(C)(vi).

21 “(B) DEADLINES FOR INITIAL AUCTION.—
22 The Commission shall carry out the initial auc-
23 tions required by this paragraph by—

24 “(i) commencing an auction of a sin-
25 gle nationwide license for the initial band

1 described in subparagraph (A)(ii) not later
2 than 180 days after the date of enactment
3 of the Open Wireless Internet Act of 2008;
4 and

5 “(ii) depositing the proceeds of such
6 auction in accordance with paragraph
7 (8)(A) not later than 210 days after such
8 date of enactment.

9 “(C) SECOND AUCTION.—The Commission
10 shall commence and complete a separate rule-
11 making or other procedures for licensing
12 through auction additional unpaired contiguous
13 spectrum of 20 megahertz below 3 gigahertz
14 within 1 year of such date of enactment. Such
15 auction shall be conducted without the condi-
16 tions specified in subparagraph (F) unless the
17 Commission finds it is in the public interest to
18 do so pursuant to a rulemaking.

19 “(D) INTERFERENCE PROTECTION.—

20 “(i) IN GENERAL.—The Commission
21 shall ensure that licensees of spectrum ob-
22 tained pursuant to an auction under this
23 paragraph do not cause harmful inter-
24 ference to, and are protected from harmful
25 interference from, licensees of adjacent

1 spectrum, including by establishing tech-
2 nical and operational rules that are con-
3 sistent with technical specifications estab-
4 lished by telecommunications standards
5 bodies for use of the 2110 through 2170
6 megahertz band.

7 “(ii) PREVENTING HARMFUL INTER-
8 FERENCE.—

9 “(I) STUDY.—The Commission
10 shall conduct a study on the potential
11 for harmful interference between spec-
12 trum bands from operations in the
13 spectrum band described under sub-
14 paragraph (A)(ii), including receiver
15 overload, excessive out-of-band emis-
16 sions, mobile-to-mobile interference
17 for voice and data services, and the
18 mitigating effect, if any, of handset
19 filters installed in mobile stations used
20 in adjacent spectrum bands.

21 “(II) CONTENTS OF STUDY.—
22 The study required under subclause
23 (I) shall reflect real deployment condi-
24 tions and actual equipment that has
25 either been deployed, or is expected to

1 be deployed, in the adjacent spectrum
2 bands and the band described under
3 subparagraph (A)(ii) at the time of
4 the study.

5 “(iii) TIMING AND INPUT.—Not later
6 than 60 days after the date of enactment
7 of the Open Wireless Internet Act, the
8 Commission shall commence the study re-
9 quired under clause (ii). The Commission
10 shall solicit the input and expertise of the
11 National Telecommunications and Infor-
12 mation Administration and other parties
13 and organizations, as recommended by the
14 Institute of Electrical and Electronics En-
15 gineers, for help in conducting the study.

16 “(iv) ADOPTION OF TECHNICAL
17 RULES.—Based on the results of the study
18 required under clause (ii), the Commission
19 shall adopt technical rules to ensure that
20 licensees of spectrum obtained under this
21 paragraph are fully protected from, and
22 fully protect, licensees of adjacent spec-
23 trum from harmful interference, including
24 receiver overload and excessive out-of-band
25 emissions.

1 “(E) SERVICE AND AUCTION RULES.—At
2 least 30 days prior to the deadlines established
3 in subparagraphs (B)(i) and (C), the Commis-
4 sion shall promulgate service and auction rules
5 for the licenses issued under subparagraphs (B)
6 and (C) that—

7 “(i) make available spectrally efficient
8 nationwide broadband services; and

9 “(ii) promote the goals listed in sub-
10 paragraphs (B), (D), and (F) of paragraph
11 (4).

12 “(F) CONTENT OF SERVICE REQUIRE-
13 MENTS RULES FOR AUCTIONED SPECTRUM.—
14 The Commission shall promulgate such rules
15 and regulations as are necessary to require, as
16 conditions of the licenses for the use of the fre-
17 quencies auctioned under this paragraph, that
18 the licensees shall—

19 “(i) offer, at a minimum, always-on
20 wireless Internet services within 2 years
21 from the date of receipt of the license, and
22 complete the construction of such wireless
23 network with a signal covering at least 95
24 percent of the population of the United

1 States and its territories within 10 years
2 from the initial operation of the network;

3 “(ii) offer a data service that is faster
4 than 200 kilobits per second one way (sub-
5 ject to subparagraph (G)) for free to con-
6 sumers and authorized public safety users
7 without subscription, airtime, usage, or
8 other charges;

9 “(iii) offer all services on such spec-
10 trum consistent with the following prin-
11 ciples:

12 “(I) Users are entitled to access
13 any lawful content of their choice.

14 “(II) Users are entitled to run
15 any application and use any Internet
16 service of their choice subject to limi-
17 tations necessary for legitimate law
18 enforcement purposes.

19 “(III) Users may connect their
20 choice of legal device to the network
21 so long as that device does not harm
22 the network or substantially interfere
23 with access of other individuals to the
24 network;

1 “(iv) consistent with section 230 of
2 this Act, offer such free data service with
3 an option available to the user at the time
4 of initial connection or configuration of a
5 connected device, to have that service fil-
6 tered by means of a technology protection
7 measure or measures that prevent under-
8 age users from accessing obscene or inde-
9 cent material through such service;

10 “(v) provide such free data services on
11 a wireless network that permits open ac-
12 cess to affiliated and unaffiliated consumer
13 devices by providing, publicly and royalty-
14 free, published technical standards for de-
15 veloping and deploying subscriber equip-
16 ment that can operate on the network sub-
17 ject to this paragraph; and

18 “(vi) provide such free data services
19 using advanced and spectrally efficient
20 wireless technologies that provide services
21 to the largest feasible number of users and
22 encourages broadband competition making
23 broadband services more available and af-
24 fordable.

1 “(G) REVIEW OF FREE DATA SERVICE RE-
2 QUIREMENT.—The Commission shall evaluate
3 whether the speed of free services under sub-
4 paragraph (F) should be increased in light of
5 consumer demand, developments in wireless
6 broadband technologies, and the public interest
7 and shall conduct the first such evaluation 3
8 years after the licensee commences operations,
9 and shall conduct subsequent evaluations every
10 3 years thereafter.

11 “(H) CONGRESSIONAL APPROVAL.—Modi-
12 fication of any of the requirements described
13 under subparagraph (F) shall receive the ap-
14 proval of Congress before any such modification
15 is allowed to take effect.

16 “(I) BIENNIAL BROADBAND SPECTRUM
17 UTILIZATION REPORT.—

18 “(i) Beginning in March of 2009, the
19 Commission and the National Tele-
20 communications and Information Adminis-
21 tration shall jointly review competitive
22 market conditions with respect to avail-
23 ability and affordability of broadband as
24 well as the state of utilization of spectrum
25 under the Commission’s and the Adminis-

1 tration’s respective jurisdictions. There-
2 after, the Commission and the Administra-
3 tion shall provide Congress a joint bian-
4 nual report of their findings.

5 “(ii) Such reports shall consider the
6 state-of-the-art efficient use of all spec-
7 trum bands and shall include the basis on
8 which such utilization and efficiency are
9 determined.

10 “(iii) In making their recommenda-
11 tions, the Commission and the Administra-
12 tion shall expressly consider the techno-
13 logical advances in commercial use of the
14 spectrum as well as other relevant uses in-
15 cluding public safety, national defense and
16 other uses as determined by the public in-
17 terest.

18 “(iv) The joint report shall also pro-
19 vide specific recommendations for the re-
20 allocation or reassignment of spectrum
21 found to be underutilized in light of the
22 public interest, necessity and convenience
23 found in promoting broadband availability
24 and affordability. In the joint report, the
25 Commission and the Administration shall

1 also recommend to Congress any statutory
2 changes that would be required to imple-
3 ment any such reassignment or realloca-
4 tion within 24 months of the report.”.

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