

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3125, AS AMENDED
OFFERED BY MR. WAXMAN OF CALIFORNIA, MR.
BOUCHER OF VIRGINIA, MR. BARTON OF
TEXAS, AND MR. STEARNS OF FLORIDA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Radio Spectrum Inven-
3 tory Act”.

4 SEC. 2. SPECTRUM INVENTORY.

5 Part B of title I of the National Telecommunications
6 and Information Administration Organization Act (47
7 U.S.C. 921 et seq.) is amended by adding at the end the
8 following:

9 “SEC. 119. SPECTRUM INVENTORY.

10 “(a) RADIO SPECTRUM INVENTORY.—In order to
11 promote the efficient use of the electromagnetic spectrum,
12 the NTIA and the Commission shall coordinate and carry
13 out each of the following activities not later than 1 year
14 after the date of enactment of this section:

15 “(1) Except as provided in subsection (e), cre-
16 ate an inventory of each radio spectrum band of fre-

1 frequencies listed in the United States Table of Fre-
2 quency Allocations, from 225 megahertz to, at a
3 minimum, 3.7 gigahertz, and to 10 gigahertz unless
4 the NTIA and the Commission determine that the
5 burden of expanding the inventory outweighs the
6 benefit, that includes—

7 “(A) the radio services authorized to oper-
8 ate in each band of frequencies;

9 “(B) the identity of each Federal or non-
10 Federal user within each such radio service au-
11 thorized to operate in each band of frequencies;

12 “(C) the activities, capabilities, functions,
13 or missions (including whether such activities,
14 capabilities, functions, or missions are space-
15 based, air-based, or ground-based) supported by
16 the transmitters, end-user terminals or receiv-
17 ers, or other radio frequency devices authorized
18 to operate in each band of frequencies;

19 “(D) the total amount of spectrum, by
20 band of frequencies, assigned or licensed to
21 each Federal or non-Federal user (in percent-
22 age terms and in sum) and the geographic
23 areas covered by their respective assignments or
24 licenses;

1 “(E) the approximate number of transmit-
2 ters, end-user terminals or receivers, or other
3 radio frequency devices authorized to operate,
4 as appropriate to characterize the extent of use
5 of each radio service in each band of fre-
6 quencies;

7 “(F) an approximation of the extent to
8 which each Federal or non-Federal user is
9 using, by geography, each band of frequencies,
10 such as the amount and percentage of time of
11 use, number of end users, or other measures as
12 appropriate to the particular band and radio
13 service; and

14 “(G) to the greatest extent possible—

15 “(i) contour maps or other informa-
16 tion that illustrate the coverage area, re-
17 ceiver performance, and other parameters
18 relevant to an assessment of the avail-
19 ability of spectrum in each band;

20 “(ii) for each band or range of fre-
21 quencies, the identity of each entity offer-
22 ing unlicensed services and the types and
23 approximate number of unlicensed inten-
24 tional radiators verified or certified by the

1 Commission that are authorized to operate;
2 and

3 “(iii) for non-Federal users, any com-
4 mercial names under which facilities-based
5 service is offered to the public using the
6 spectrum of the non-Federal user, includ-
7 ing the commercial names under which the
8 spectrum is being offered through resale.

9 “(2) Except as provided in subsection (e), cre-
10 ate a centralized portal or Web site to make the in-
11 ventory of the bands of frequencies required under
12 paragraph (1) available to the public.

13 “(b) USE OF AGENCY RESOURCES.—In creating the
14 inventory described in subsection (a)(1), the NTIA and
15 the Commission shall first use agency resources, including
16 existing databases, field testing, and recordkeeping sys-
17 tems, and only request information from Federal and non-
18 Federal users if such information cannot be obtained
19 using such agency resources.

20 “(c) REPORTS.—

21 “(1) IN GENERAL.—Except as provided in sub-
22 section (e), not later than 2 years after the date of
23 enactment of this section and biennially thereafter,
24 the NTIA and the Commission shall submit a report
25 to the Committee on Commerce, Science, and Trans-

1 portation of the Senate and to the Committee on
2 Energy and Commerce of the House of Representa-
3 tives containing—

4 “(A) the results of the inventory created
5 under subsection (a)(1), including any update
6 to the information in the inventory pursuant to
7 subsection (d);

8 “(B) a description of any information the
9 NTIA or the Commission determines is nec-
10 essary for such inventory but that is unavail-
11 able; and

12 “(C) a description of any information not
13 provided by any Federal or non-Federal user in
14 accordance with subsection (e)(1)(B)(ii) and
15 (e)(2)C(ii).

16 “(2) RELOCATION REPORT.—

17 “(A) IN GENERAL.—Except as provided in
18 subsection (e), the NTIA and the Commission
19 shall submit a report to the Committee on Com-
20 merce, Science, and Transportation of the Sen-
21 ate and the Committee on Energy and Com-
22 merce of the House of Representatives con-
23 taining a recommendation of which spectrum, if
24 any, should be reallocated or otherwise made

1 available for shared access and an explanation
2 of the basis for that recommendation.

3 “(B) DEADLINES.—The report required
4 under subparagraph (A) shall be submitted not
5 later than 4 years after the date of enactment
6 of this section and every 4 years thereafter.

7 “(3) INVENTORY REPORT.—If the NTIA and
8 the Commission have not conducted an inventory
9 under subsection (a) to 10 gigahertz at least 90 days
10 before the third report required under paragraph (1)
11 is submitted, the NTIA and the Commission shall in-
12 clude an evaluation in such report and in every re-
13 port thereafter of whether the burden of expanding
14 the inventory to 10 gigahertz outweighs the benefit
15 until such time as the NTIA and the Commission
16 have conducted the inventory to 10 gigahertz.

17 “(d) MAINTENANCE AND UPDATING OF INFORMA-
18 TION.—After the creation of the inventory required by
19 subsection (a)(1), the NTIA and the Commission shall
20 make all reasonable efforts to maintain and update the
21 information required under such subsection on a quarterly
22 basis, including when there is a transfer or auction of a
23 license or a change in a permanent assignment or license.

24 “(e) NATIONAL SECURITY AND PUBLIC SAFETY IN-
25 FORMATION.—

1 “(1) NONDISCLOSURE.—

2 “(A) IN GENERAL.—If the head of an ex-
3 ecutive agency of the Federal Government de-
4 termines that public disclosure of certain infor-
5 mation held by that agency or a licensee of non-
6 Federal spectrum and required by subsection
7 (a), (c), or (d) would reveal classified national
8 security information or other information for
9 which there is a legal basis for nondisclosure
10 and such public disclosure would be detrimental
11 to national security, homeland security, or pub-
12 lic safety, the agency head shall notify the
13 NTIA of that determination and shall include
14 descriptions of the activities, capabilities, func-
15 tions, or missions (including whether they are
16 space-based, air-based, or ground-based) sup-
17 ported by the information being withheld.

18 “(B) INFORMATION PROVIDED.—The
19 agency head shall provide to NTIA—

20 “(i) the publicly releasable informa-
21 tion required by subsection (a)(1);

22 “(ii) to the maximum extent prac-
23 ticable, a summary description, suitable for
24 public release, of the classified national se-
25 curity information or other information for

1 which there is a legal basis for nondisclo-
2 sure; and

3 “(iii) a classified annex, under appro-
4 priate cover, containing the classified na-
5 tional security information or other infor-
6 mation for which there is a legal basis for
7 nondisclosure that the agency head has de-
8 termined must be withheld from public dis-
9 closure.

10 “(2) PUBLIC SAFETY NONDISCLOSURE.—

11 “(A) IN GENERAL.—If a licensee of non-
12 Federal spectrum determines that public disclo-
13 sure of certain information held by that licensee
14 and required to be submitted by subsection (a),
15 (c), or (d) would reveal information for which
16 public disclosure would be detrimental to public
17 safety, or the licensee is otherwise prohibited by
18 law from disclosing the information, the licensee
19 may petition the Commission for a partial or
20 total exemption from inclusion on the central-
21 ized portal or Web site under subsection (a)(2)
22 and in the report required by subsection (c).

23 “(B) BURDEN.—The licensee seeking an
24 exemption under this paragraph bears the bur-
25 den of justifying the exemption and shall pro-

1 vide clear and convincing evidence to support
2 such an exemption.

3 “(C) INFORMATION REQUIRED.—If an ex-
4 emption is granted under this paragraph, the li-
5 censee shall provide to the Commission—

6 “(i) the publicly releasable informa-
7 tion required by subsection (a)(1) for the
8 inventory;

9 “(ii) to the maximum extent prac-
10 ticable, a summary description, suitable for
11 public release, of the information for which
12 public disclosure would be detrimental to
13 public safety or the licensee is otherwise
14 prohibited by law from disclosing; and

15 “(iii) an annex, under appropriate
16 cover, containing the information that the
17 Commission has determined should be
18 withheld from public disclosure.

19 “(3) ADDITIONAL DISCLOSURE.—The annexes
20 required under paragraphs (1)(B)(iii) and (2)(C)(iii)
21 shall be provided to the congressional committees
22 listed in subsection (c), but shall not be disclosed to
23 the public under subsection (a) or subsection (d) or
24 provided to any unauthorized person through any
25 other means.

1 “(4) NATIONAL SECURITY COUNCIL CONSULTA-
2 TION.—Prior to the release of the inventory under
3 subsection (a), any updates to the inventory result-
4 ing from subsection (d), or the submission of a re-
5 port under subsection (e)(1), the NTIA and the
6 Commission shall consult with the National Security
7 Council for a period not to exceed 30 days for the
8 purposes of determining what additional informa-
9 tion, if any, shall be withheld from the public.

10 “(f) PROPRIETARY INFORMATION.—In creating and
11 maintaining the inventory, centralized portal or Web site,
12 and reports under this section, the NTIA and the Commis-
13 sion shall follow their rules and practice regarding con-
14 fidential and proprietary information. Nothing in this sub-
15 section shall be construed to compel the Commission to
16 make publicly available any confidential or proprietary in-
17 formation.”.

