

**This is a preliminary transcript of a Committee markup. It has not yet been subject to a review process to ensure that the statements within are appropriately attributed to the witness or member of Congress who made them, to determine whether there are any inconsistencies between the statement within and what was actually said at the proceeding, or to make any other corrections to ensure the accuracy of the record.**

1 {York Stenographic Services, Inc.}

2 RPTS MEYERS

3 HIF335.160

4 MARKUP ON H.R. \_\_\_\_\_, ``JUMPSTARTING OPPORTUNITY WITH

5 BROADBAND SPECTRUM ACT OF 2011''

6 THURSDAY, DECEMBER 1, 2011

7 House of Representatives,

8 Subcommittee on Communications and Technology

9 Committee on Energy and Commerce

10 Washington, D.C.

11 The Subcommittee met, pursuant to call, at 10:18 a.m.,  
12 in Room 2123 of the Rayburn House Office Building, Hon. Greg  
13 Walden [Chairman of the Subcommittee] presiding.

14 Members present: Representatives Walden, Terry,  
15 Stearns, Shimkus, Bono Mack, Blackburn, Rogers, Bilbray,  
16 Bass, Gingrey, Scalise, Latta, Guthrie, Kinzinger, Barton,  
17 Upton (ex officio), Eshoo, Markey, Matsui, Barrow, Towns,  
18 Pallone, Rush, DeGette, Dingell and Waxman (ex officio).

19 Staff present: Gary Andres, Staff Director; Jim  
20 Barnette, General Counsel; Ray Baum, Senior Policy  
21 Advisor/Director of Coalitions; Michael Beckerman, Deputy  
22 Staff Director; Allison Busbee, Legislative Clerk; Nicholas  
23 Degani, Detailee, FCC; Neil Fried, Chief Counsel,  
24 Communications and Technology; Kirby Howard, Legislative  
25 Clerk; Debbie Keller, Press Secretary; Heidi King, Chief  
26 Economist; Jeff Mortier, Professional Staff Member; Katie  
27 Novaria, Legislative Clerk; David Redl, Counsel, Telecom;  
28 Kristin Amerling, Democratic Chief Counsel and Oversight  
29 Staff Director; Phil Barnett, Democratic Staff Director; Jen  
30 Berenholz, Democratic Chief Clerk; Shawn Chang, Democratic  
31 Counsel; Jeff Cohen, FCC Detailee; Elizabeth Letter,  
32 Democratic Assistant Press Secretary; Karen Lightfoot,  
33 Democratic Communications Director, and Senior Policy  
34 Advisor; Roger Sherman, Democratic Chief Counsel,  
35 Communications and Technology; and Kara van Stralen,  
36 Democratic Special Assistant.

|  
37 H.R. \_\_\_\_\_

38 Mr. {Walden.} Good morning. The subcommittee will come  
39 to order, and the chair recognizes himself for an opening  
40 statement.

41 Good morning. Today, a year's worth of negotiations,  
42 hearings, and incredible work by members and our staffs have  
43 come to a head. Today, we have the unique opportunity to get  
44 good things done for the American people. Today, we will  
45 mark up and pass the Jumpstarting Opportunity with Broadband  
46 Spectrum Act of 2011, easily known as the JOBS Act.  
47 Primarily, this legislation is about getting America's  
48 economy going again. It is a bill that frees up vast swaths  
49 of valuable spectrum, both licensed and unlicensed, and when  
50 put into service will unleash new technologies. It will spur  
51 innovation in America. And both sides agree it will create  
52 as many as 100,000 new American jobs.

53 Think what the advent of wireless broadband has meant to  
54 our country, our culture and our economy. The JOBS Act takes  
55 all of that innovation to a new level and creates real  
56 private sector jobs. And in the process, the companies who  
57 want this spectrum will pay the taxpayers for it, generating  
58 upwards of \$15 billion toward paying down the deficit and  
59 finally meeting the needs of our valued public safety

60 officials by building them their own nationally interoperable  
61 public safety broadband network.

62         The JOBS Act does all of these things and more. For the  
63 Nation's free, over-the-air broadcasters who just went  
64 through an expensive and difficult, federally mandated  
65 conversion to digital, the JOBS Act provides their viewers  
66 the best protections of any competing legislation to make  
67 sure Americans can continue to watch their favorite shows and  
68 get their news, even if their stations have to shift  
69 frequencies.

70         The JOBS Act didn't just drop out of the sky. It is a  
71 thoughtful and carefully crafted piece of legislation that  
72 finds the right balances. Its provisions were improved as a  
73 result of the input and counsel from five hearings, 11 months  
74 of discussions with members of both sides of this committee,  
75 the FCC, the NTIA, the industries that rely on spectrum to  
76 bring us television and broadband, broadcasters, amateur  
77 radio operators, and public safety officials who help us when  
78 we need it most.

79         Throughout this process my staff and I have worked in  
80 good faith to find a bipartisan solution. Ms. Eshoo and I  
81 met on nine separate occasions, the last of which included  
82 Mr. Waxman in October. A week after that meeting, however,  
83 Mr. Waxman wrote to the Super Committee and asked them to

84 take up the spectrum issue as part of their efforts. We have  
85 a copy of his letter for the record. It was at that point  
86 that our discussions were indeed suspended while the Super  
87 Committee was given the opportunity to see if they could work  
88 out this issue between the House and the Senate. However, I  
89 have long been committed privately and publicly to getting  
90 legislation done by the end of this year. Our economy needs  
91 the help, Americans need the new jobs, we need to generate  
92 revenue to reduce our debt, and we need to fulfill our  
93 commitment to public safety, which this bill does. The JOBS  
94 Act does all of these things and does them well. So today,  
95 despite calls for delay, we are moving forward.

96 [The prepared statement of Mr. Walden follows:]

97 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
98           Mr. {Walden.} I yield the balance of my time to the  
99 gentlelady from Tennessee, Ms. Blackburn.

100           Mrs. {Blackburn.} Thank you, Chairman Walden, and I  
101 want to thank you for bringing the JOBS Act forward and to  
102 commend you and your staff for the diligent work that you  
103 have done in a bipartisan measure to developed balance  
104 language that will address the spectrum crisis.

105           One idea I would like to see adopted is to prevent the  
106 FCC from using the licensing process to impose regulations  
107 that aren't explicitly based on their statutory authority on  
108 wireless providers, and I hope we can get to that amendment  
109 today. But the bottom line is this: America desperately  
110 needs more commercial spectrum for jobs creation, and you  
111 have accomplished that here. Cisco reports that by 2015,  
112 there will be 15 billion network connections, more than two  
113 for every person on the planet. This JOBS measure will  
114 reduce the debt without raising taxes. It will enhance  
115 American innovation and jobs creation. That is why we should  
116 continue to move the JOBS Act forward, and I yield back the  
117 balance of my time.

118           [The prepared statement of Mrs. Blackburn follows:]

119 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
120           Mr. {Walden.} The gentlelady yields back the balance of  
121 her time, and I yield back the balance of mine, and I now  
122 yield to the gentlelady from California, Ms. Eshoo, for 5  
123 minutes.

124           Ms. {Eshoo.} Thank you, Mr. Chairman, and good morning,  
125 colleagues.

126           Today, our subcommittee considers legislation that has  
127 real meaning for our country and our economy, for innovation  
128 and competitiveness, and it even helps to pay down our  
129 national debt. The mobile revolution represents billions of  
130 dollars in ongoing investment and millions of American jobs.  
131 Our action on spectrum policy would define our country's  
132 ability to lead the world in wireless broadband applications  
133 and services.

134           Given the importance of getting spectrum policy right,  
135 the chairman, myself and the dedicated majority and minority  
136 staff have worked hard and worked well with each other to  
137 shape a bipartisan bill, but we didn't complete our work.  
138 There was a delay. We asked for a delay in the markup  
139 because of the late notification of the majority's draft, but  
140 here we are today and we are ready to roll our sleeves up and  
141 produce the best product possible. I am hopeful we can  
142 resolve some of the policy differences and reach a bipartisan

143 agreement, which has been the long-held tradition of this  
144 subcommittee. The Democratic spectrum bill, I believe, will  
145 contribute to the substance of our work today.

146 That said, I applaud many of the provisions in the  
147 chairman's draft. I am very pleased, and I hope it still  
148 will remain on public safety. We know--and I want to welcome  
149 the representatives of public safety that have come from  
150 different parts of the country to be here with us today--that  
151 the 9/11 Commission in one of its top recommendations a  
152 decade ago said that we have to establish a nationwide  
153 interoperable telecommunications network for the safety of  
154 the American people, and I am very proud that we have that in  
155 our bill.

156 I am also pleased that the legislation moves incentive  
157 auction authority forward to provide a voluntary process for  
158 broadcast spectrum to be converted to mobile broadband.  
159 Wireless broadband is transforming our lives and our economy.  
160 A study released by Ericsson projects that global mobile  
161 broadband subscriptions will approach 5 billion by 2015, and  
162 a Deloitte study reports investment in 4G mobile broadband  
163 networks in the United States will add up to \$151 billion in  
164 GDP growth over the next 4 years, creating approximately  
165 771,000 new jobs. Nowhere in the country are these  
166 innovations and what is being brought forward more prominent

167 than in the 14th Congressional District in the heart of  
168 Silicon Valley, which I have the privilege of representing.

169       What I am deeply disappointed in, and I hope that we can  
170 have a good discussion on this and work together to make some  
171 of the changes is what I consider the unfortunate policy  
172 objective in the chairman's bill regarding unlicensed  
173 spectrum. Under this proposal, unlicensed use would be off  
174 limits and all spectrum bands subject to incentive auction.  
175 Closing spectrum bands to future innovation is foolhardy, and  
176 I am going to say that again. Closing spectrum bands to  
177 future innovation is foolhardy.

178       Just last month, the FCC Chairman told international  
179 stakeholders ``Unlicensed spectrum fosters the kind of  
180 experimentation that leads to vitally important mobile  
181 innovations such as Wi-Fi, cordless phones and Bluetooth.  
182 The Senate, in a bipartisan agreement, included language to  
183 ensure that the FCC can make an informed decision on  
184 unlicensed in the TV band, recognizing that we never close  
185 the door to future innovation. Today, unlicensed devices  
186 generate between \$16 billion to \$37 billion per year to the  
187 U.S. economy.

188       With regard to public safety, again, I hope that the  
189 majority's view and our view is one and the same. It should  
190 be for the American people, and I think that that is one of

191 the major tenets of this legislation.

192 But just as funding and spectrum are essential elements  
193 of a nationwide public safety network, so is a strong  
194 national governance body. Without such a structure, I think  
195 we risk repeating many of the mistakes of the past.

196 Prominent organizations including the National Governors  
197 Association and the U.S. Conference of mayors have expressed  
198 a desire for a national governance body with certain core  
199 oversight responsibilities. We should be working with these  
200 organizations to adopt language that retains a national  
201 architecture while providing significant opportunity for  
202 State and local input. That is a balanced and wise and  
203 prudent approach. And as we are equipping our first  
204 responders in the field, I urge all of my colleagues on this  
205 subcommittee to support the Shimkus-Eshoo bipartisan  
206 amendment that will ensure 911 call centers have the tools  
207 needed to improve the quality and speed of emergency  
208 response.

209 I think I am over my time, so I will just close on this  
210 note, Mr. Chairman. I appreciate the time and the effort  
211 that you have put into this, that our respective staffs have.  
212 I have said from the beginning, I want bipartisan  
213 legislation. It is in the tradition of this subcommittee. I  
214 believe today we can produce spectrum policy that is going to

215 serve all of the people of our country well. That is what we  
216 are here for. That is what our constituents sent us here  
217 for. I am committed to working with you and members of the  
218 subcommittee to attain this goal, and I yield back the time  
219 that I don't have to yield back. Thank you.

220 [The prepared statement of Ms. Eshoo follows:]

221 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
222 Mr. {Walden.} I thank the gentlelady for her comments.

223 I now recognize the chairman of the full committee, the  
224 distinguished gentleman from Michigan, Mr. Upton, for 5  
225 minutes.

226 The {Chairman.} Well, thank you, Mr. Chairman.

227 As you stated, this subcommittee has held five hearings  
228 to examine how the right spectrum policy can provide much-  
229 needed additional broadband for consumers, meet the needs of  
230 public safety, so important, create the jobs that we want,  
231 reduce the deficit, and foster innovation across all  
232 spectrum-based services.

233 The legislation that we take up today represents what we  
234 believe to be a very solid base for achieving all of those  
235 goals.

236 Most importantly, the bill will provide the  
237 communications and technology sectors with the very tools  
238 that they need to create the jobs and the economic growth.  
239 Some estimates of the impact of spectrum legislation have  
240 predicted as many as 100,000 jobs to be created by the  
241 policies that we consider today. America's unemployed and the  
242 overall economy cannot wait any longer.

243 Jobs are essential, but they are not the only benefit of  
244 this bill. Through incentive auctions, the JOBS Act will

245 meet the growing demand for commercial wireless broadband  
246 services and all the innovation that comes with expanded  
247 spectrum availability. The bill will also generate in the  
248 neighborhood of \$15 billion--that is right, with a B, B for  
249 big--in auction revenue for the American taxpayer.

250         The JOBS Act also responds to the needs of public  
251 safety. It reallocates the D block to give public safety the  
252 20 megahertz of contiguous spectrum that they have  
253 consistently requested, along with a governance model and  
254 funding to help make an interoperable public safety broadband  
255 network a reality.

256         And finally, the bill takes the lessons learned in  
257 previous auctions of government spectrum and fine-tunes the  
258 process. This is going to help meet the needs of the  
259 government agencies that are reallocating. It will also make  
260 the repurposed spectrum available for commercial services  
261 more quickly.

262         So as a result, we are moving forward today with a draft  
263 that does not necessarily have the bipartisan support at the  
264 onset that we had hoped for but one that nonetheless  
265 incorporates many of the suggestions made by the Democrats  
266 throughout the negotiation process, and I would urge my  
267 colleagues to support this bill, and I yield back.

268         [The prepared statement of Mr. Upton follows:]

269 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
270 Mr. {Walden.} The gentleman yields back the balance of  
271 his time.

272 The chair now recognizes the gentleman from California,  
273 foreman chairman of the committee, Mr. Waxman, for 5 minutes.

274 Mr. {Waxman.} Thank you very much, Mr. Chairman.

275 I want to comment on both the process that brings us  
276 here today and the substance of the bill before us. The bad  
277 news is that the process has broken down and the substance is  
278 in need of serious repair. The good news is that both are  
279 fixable.

280 We feel Democrats have not been well treated in this  
281 process. During the spring and summer, there were many staff  
282 discussions and our ranking member, Ms. Eshoo, met often with  
283 Mr. Walden. When these discussions intensified in September,  
284 I also became personally involved. We made a lot of  
285 progress. When Ms. Eshoo and I met with Mr. Walden on  
286 October 4, we had narrowed our differences to four member-  
287 level issues. We gave Mr. Walden written proposals on two of  
288 those issues, and he promised to give us language on a third,  
289 the governance issue.

290 But then the Republicans abruptly stopped talking with  
291 us. They did not respond to our offers or give us their  
292 language. We were told they were going to negotiate with

293 Senator Kerry on the Super Committee, not us. I didn't like  
294 that answer, but I understood it.

295 I wrote, as required by the law, to the Super Committee  
296 that, as they look at all the issues that are in our  
297 committee's jurisdiction for dealing with the deficit, this  
298 area is one area they should look at, but I had hoped before  
299 they even reviewed the money part of it, that they would have  
300 a bipartisan compromise presented to them.

301 Despite our requests to put off this markup and resume  
302 talks, we have been told that we don't have the time to do  
303 this. But to go forward without further discussions I think  
304 is shortsighted. We can move this legislation a lot faster  
305 if we work together than if we fight with each other.

306 Turning to the substance, there are only a few issues  
307 that are unresolved, but they are significant, and we hope we  
308 can have a meeting at least halfway to close them out.

309 On the plus side, you have made, Mr. Chairman, a big  
310 step by allocating the D block to public safety. One of the  
311 stumbling blocks to an agreement has now been removed.

312 But on four other key issues, we are still far apart.  
313 These are governance, unlicensed spectrum, auction  
314 eligibility, and funding levels. Democratic staff prepared an  
315 excellent memorandum that summarizes these issues, and I  
316 ask that it be made part of today's record.

317 Mr. {Walden.} Without objection.

318 [The information follows:]

319 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
320           Mr. {Waxman.} First, unlicensed spectrum. Super Wi-Fi  
321 is emerging as the defining digital spectrum resource for  
322 this decade and beyond. We are not asking that the FCC  
323 allocate broadcast spectrum for super Wi-Fi, but we believe  
324 it is important that the agency retain the flexibility to do  
325 so if necessary.

326           Second, auction bidding. We don't want to preclude the  
327 super carriers, Verizon and AT&T, from bidding, but we do  
328 want to make sure that the FCC can ensure that competition  
329 survives.

330           Third, and perhaps most important, governance. Our  
331 members stand squarely with the public safety community and  
332 support reallocation of the D block but it would be foolhardy  
333 to set up a network with a faulty governance model. The  
334 Republican approach is cumbersome, bureaucratic, and will  
335 lead to a patchwork of 50 separate State networks. It will  
336 doom us to repeat the mistakes of the past.

337           We would rather work these issues out than fight them  
338 out, Mr. Chairman. That is why we are going to hold off  
339 offering many of the amendments today. We hope you will  
340 return to the negotiating table after today's markup as we  
341 move to the full committee.

342           This legislation is one of the last pieces of unfinished

343 business from that terrible day 10 years ago when planes  
344 crashed into the World Trade Center, the Pentagon and a field  
345 in Pennsylvania. We should honor the memory of those who  
346 sacrificed so much by coming together to craft a bill we can  
347 all support.

348       There are issues that we have genuine philosophical  
349 differences to fight out. This is an issue where we have  
350 strong support on both sides of the aisle to accomplish the  
351 goals. It seems to me that we ought to work out these  
352 differences, reach the compromises, present a bill that we  
353 know will be law, and will address the concerns that members  
354 have.

355       I yield back my time.

356       [The prepared statement of Mr. Waxman follows:]

357 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
358           Mr. {Walden.} The gentleman yields back the balance of  
359 his time.

360           The chair now recognizes the former chairman of the  
361 committee, Mr. Barton, for 5 minutes.

362           Mr. {Barton.} Thank you, Mr. Chairman.

363           It is great to have you as chairman of this  
364 subcommittee. These markups, what we ought to do is just  
365 close our eyes and listen to you because you have got that  
366 great radio voice, and it is very soothing.

367           Mr. {Walden.} You never know when you may need a former  
368 job back, you know, in this business.

369           Mr. {Barton.} Just to hear you run the subcommittee.

370           Mr. Waxman in his opening statement, Mr. Chairman,  
371 talked about good news and bad news, and I tend to agree with  
372 him on a lot of what he said. The good news is that we are  
373 having a good markup today, and that is always good for the  
374 process to have markups at subcommittee. The bad news is  
375 that we are marking a bill up that we really haven't seen  
376 until yesterday or the day before, and I do think the  
377 minority has got a legitimate issue in that something this  
378 important should have some more time.

379           Having said that, I understand your concern and the full  
380 committee chairman's concern that because we are late in the

381 year and there is work to be done, sometimes you have to kind  
382 of press the process, so to speak, so I understand that.

383         The issue before us in this bill is not a new issue.  
384 Back in 2005 when I was the full committee chairman, we  
385 addressed it as a part of the Digital Television Act. We  
386 allocated 24 megahertz of spectrum to the public sector, the  
387 public safety sector, and set aside 10 megahertz to be  
388 auctioned. I thought that was a fair compromise then and I  
389 still think it is a fair compromise today. It still is the  
390 law of the land.

391         Now, there are many advocates in the public safety  
392 community that don't support that, and I want to give you and  
393 Chairman Upton kudos for trying to solve that political  
394 problem or maybe whatever kind of a problem it is and that  
395 you do allocate the 10 megahertz to the public safety  
396 community but over time they have to give back, as I  
397 understand the draft, 14, and that is a new way of thinking  
398 and a new way of looking at it, and it is something that  
399 needs to be considered. In my outreach to the stakeholders  
400 in the last day or so, I have had people on both sides be  
401 supportive of that and I have had people on both sides be  
402 somewhat reluctant, but it is certainly something that is  
403 worth looking at.

404         The basic problem that this draft addresses and that the

405 subcommittee and the full committee addressed is, which way  
406 to go. Those of us on the Republican side tend to prefer  
407 markets, and we trust markets as long as they are open and  
408 transparent. Most of my friends on the minority side don't  
409 trust the market as much and they want more of a regulation  
410 or more of an allocation approach. Your draft tries to  
411 address both sides of that issue, and I think it does it in a  
412 way that is worthy of consideration.

413         So at the end of the day, I will be voting for this  
414 bill, even though I do think that just an unfettered  
415 allocation of that 10 megahertz would be the best public  
416 policy and the simplest public policy to allocate. But I  
417 understand what you are trying to do and the issue in the  
418 Senate, and I am willing to move forward with the process.

419         With that, Mr. Chairman--

420         [The prepared statement of Mr. Barton follows:]

421 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
422 Mr. {Walden.} Would the gentleman yield?

423 Mr. {Barton.} I would be happy to yield.

424 Mr. {Walden.} I assume when you say unfettered  
425 allocation, you mean auction--

426 Mr. {Barton.} Yes, sir.

427 Mr. {Walden.} --of the D block is your preference?

428 Mr. {Barton.} Yes. I think you for correcting that.

429 Mr. {Walden.} I just didn't want you out there where  
430 you didn't belong.

431 Mr. {Barton.} I am glad to have a chairman who protects  
432 me.

433 Mr. {Walden.} I try.

434 Mr. {Barton.} I yield back, Mr. Chairman.

435 Mr. {Walden.} Thank you, Mr. Chairman.

436 I now recognize the chairman emeritus, the gentleman  
437 from Michigan, Mr. Dingell, for 5 minutes.

438 Mr. {Dingell.} Mr. Chairman, this will surprise you.  
439 First of all, thank you for the recognition. Second of all,  
440 I appreciate your kindness. Third of all, my daddy taught me  
441 that I should not speak when I could not improve on silence.

442 I will be offering an amendment a little later with my  
443 friend, Mr. Bilbray, and we hope that the committee will  
444 adopt it.

445 I thank you for this courtesy and I will expedite the  
446 business of the committee by yielding back the balance of my  
447 time. Thank you.

448 [The prepared statement of Mr. Dingell follows:]

449 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
450 Mr. {Walden.} I thank the gentleman very much for his  
451 courtesy and his kind comments.

452 I now recognize the distinguished vice chairman of the  
453 subcommittee, the gentleman from Omaha, Nebraska, Mr. Lee  
454 Terry.

455 Mr. {Terry.} Thank you, Mr. Chairman, for recognizing  
456 me and holding this markup.

457 I believe that this bill can be a jumpstart to our  
458 economy and creating new jobs and reducing the federal  
459 deficit. I believe that this is one of those win-win-win  
460 situations. This bill will allocate spectrum that is  
461 absolutely necessary in the private sector as we evolve to a  
462 super Wi-Fi mobile society. Frankly, we are right in the  
463 middle of that. And the only thing that is preventing us  
464 from going further as much as the world has with mobile  
465 devices is lack of spectrum. This benefits consumers. I  
466 have been blessed with three sons, two of which are  
467 teenagers. I can't even imagine how much broadband they use  
468 every day from morning until late at night.

469 So it is a win for consumers. It is a win for the  
470 taxpayer in that this asset can actually bring dollars in to  
471 reduce the deficit. So in essence, taxpayers and consumers  
472 win twice. I only have two minutes, don't I?

473 Mr. {Walden.} One.

474 Mr. {Terry.} One. Never mind. So I think it is  
475 imperative that we pass this bill, and the third is, public  
476 sector wins with this because they get the D block that many  
477 of us were not on page of giving them in the early parts, and  
478 that is a big movement on our part. I am sorry that it is  
479 not being recognized here today, and I yield back.

480 [The prepared statement of Mr. Terry follows:]

481 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
482           Mr. {Walden.} The gentleman yields back the balance of  
483 his time.

484           The chair now recognizes the gentlelady from California,  
485 Ms. Matsui, for 1 minute.

486           Ms. {Matsui.} Thank you, Mr. Chairman. Thank you for  
487 yielding me time.

488           After months of hearings and debate on spectrum, I,  
489 unfortunately, do not believe we are at the point where we  
490 should be, which is considering a proposal based on sound  
491 policy.

492           The majority bill before us today does not provide  
493 public safety with a path towards an effective and efficient  
494 nationwide interoperability network and it does not  
495 adequately protect taxpayer monies with a strong governance  
496 structure. Instead, the majority deal currently gives  
497 awesome power to a single private company to manage the  
498 network without any oversight and without meaningful  
499 consultation with States and the public safety community.

500           Further, I am concerned that the bill severely limits  
501 the FCC's ability to preserve or allocate unlicensed  
502 spectrum, which will ultimately hurt America's innovators and  
503 in turn job creation in this country.

504           I do thank Chairman Walden for including 5 gigahertz

505 language, but I am looking forward to continued working in a  
506 bipartisan manner to improve it, to ensure the Wi-Fi economy  
507 meets future demand and innovation. It is my hope the  
508 majority will work with the Democrat side to reach a  
509 bipartisan agreement.

510 I yield back the balance of my time.

511 [The prepared statement of Ms. Matsui follows:]

512 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
513           Mr. {Walden.} The gentlelady yields back the balance of  
514 her time.

515           The chair now recognizes the gentleman from Florida, Mr.  
516 Stearns, for 1 minute.

517           Mr. {Stearns.} Thank you, Mr. Chairman.

518           I support the bill today. It contains important  
519 repacking protections for local broadcast stations and their  
520 viewers. These are critical to ensure that free over-the-air  
521 TV is preserved and that mobile DTV deployment will continue.

522           Second, I would like to recognize that the treatment of  
523 the 1755 to 1780 megahertz band of frequently is proper,  
524 relocating the dozen federal agencies currently in this band,  
525 then auctioning it off to wireless providers will generate  
526 billions of dollars for the Treasury, and I hope NTIA will  
527 act quickly.

528           Today, we take the important first step towards bringing  
529 more spectrum to the market. More spectrum will promote  
530 jobs, reduce our deficit, and it is estimated that wireless  
531 broadcast will create as many as 205,000 jobs by 2015 and  
532 every \$1 invested in wireless broadband will create an  
533 additional \$7 to \$10 billion for GDP.

534           I hope these important facts as well as our flexibility  
535 and compromising on the D block will ensure passage of this

536 bill.

537 [The prepared statement of Mr. Stearns follows:]

538 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
539 Mr. {Walden.} The gentleman--

540 Mr. {Stearns.} And I yield back.

541 Mr. {Walden.} --yields back the balance of his time.

542 The chair recognizes Mr. Barrow for 1 minute.

543 Mr. {Barrow.} Thank you, Mr. Chairman.

544 Today we take on the important task of marking up  
545 spectrum legislation. As we move forward, I think it is  
546 essential that we address our national spectrum needs by  
547 adopting a spectrum policy that creates financial incentives  
548 for licensees who voluntarily relinquish spectrum while  
549 making sure that we have sufficient protections for  
550 broadcasters and our public safety community.

551 I am disappointed we weren't able to come to a  
552 compromise and mark up a consensus spectrum bill today. I  
553 intend to support the Eshoo-Waxman substitute because I  
554 believe it does the right thing from a public safety  
555 standpoint but I believe the Walden bill is a step in the  
556 right direction when it comes to generating as much as we can  
557 in spectrum auctions. I believe there are a lot of good  
558 parts to both of these bills and that there is still time for  
559 us to resolve some of our differences before the next markup.

560 I thank the ranking member for the time, and I yield  
561 back.

562 [The prepared statement of Mr. Barrow follows:]

563 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
564 Mr. {Walden.} I thank the gentleman for his comments.

565 I now recognize the gentleman from Illinois, Mr.

566 Shimkus, for 1 minute.

567 Mr. {Shimkus.} Thank you, Mr. Chairman.

568 I also want to thank you and your staff and my friend,  
569 Anna Eshoo, on working on the next generation 911 amendment.

570 It is going to be tweaked a little bit, but the basic thing  
571 is, if we moved to this new digital age, the PSAPs have to be  
572 up to date, and this will help provide money there. So if  
573 you want to get some stuff done, work with Anna sometimes and  
574 you can get it done, so Chairman, thank you on that.

575 And just a side note on the unlicensed issue.

576 Approximately there is 675 megahertz of spectrum below 6  
577 gigahertz is dedicated to unlicensed use right now. That  
578 doesn't even include the white spaces, some of which will  
579 remain even after broadcasting repacking. That is over 100  
580 megahertz more than is available for licensed use below 6  
581 gigahertz.

582 So remember that a spectrum bill is more than just D  
583 block. There is a lot of moving pieces, and I just wanted to  
584 get that on the record, and I yield back.

585 [The prepared statement of Mr. Shimkus follows:]

586 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
587           Mr. {Walden.} I thank the gentleman, and the gentleman  
588 yields back.

589           I recognize Mr. Towns for 1 minute if he has an opening  
590 statement.

591           Mr. {Towns.} Thank you very much, Mr. Chairman,  
592 Chairman Walden and of course Ranking Member Eshoo. I want  
593 to applaud my colleagues for coming this far, and I pledge to  
594 work in a bipartisan manner to try to get a bill that both  
595 sides can support as we move on. We must move forward  
596 because consumer demands for more mobile broadband is  
597 undeniable.

598           In addition and most importantly, we need to provide our  
599 public safety community with a modern national interoperable  
600 broadband network, and a significant amount of auction  
601 proceeds dedicated to helping them get organized and started  
602 without reversing gains they have already made.

603           I see many folks from New York in the room, and I  
604 appreciate your coming to show how important this is to our  
605 city and Nation. It is also critically important that we  
606 have the opportunity to encourage innovative uses of  
607 unlicensed spectrum on a national scale.

608           And finally, many of my disadvantaged and elderly  
609 constituents want to be certain that the free over-the-air

610 digital television is still available.

611 On that note, Mr. Chairman, I yield back.

612 [The prepared statement of Mr. Towns follows:]

613 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
614           Mr. {Walden.} The gentleman yields back the balance of  
615 his time.

616           The chair recognizes the gentlelady from California, Ms.  
617 Bono Mack, for 1 minute.

618           Mrs. {Bono Mack.} Thank you, Mr. Chairman.

619           I want to first start by thanking you for your hard work  
620 and your dedication on this important legislation. This  
621 legislation is the culmination of much effort on the part of  
622 many people. I believe the JOBS Act strikes an appropriate  
623 balance between enhancing public safety and providing the  
624 wireless sector with the spectrum it needs to accommodate  
625 incredible demand brought about by the Information Age.  
626 Indeed, the rapid growth of mobile broadband has been one of  
627 the few bright spots in an otherwise difficult economy.

628           Today, as we consider ways to make a good bill better,  
629 it is important to remember that spectrum is a finite public  
630 resource. No doubt we need a more effective interoperable  
631 public safety network, and this legislation moves us in the  
632 right direction. It is also important that we take steps  
633 today to ensure we can meet the spectrum needs of tomorrow.

634           As I sit here right now, iPod in pocket or iPod in purse  
635 and iPad in hand, I can't help but wonder what the technology  
636 of tomorrow will bring. It is exciting, and we should do

637 more to promote investment in such an innovative sector.

638           But finally, Mr. Chairman, broadcasters are also an  
639 important part of our communities, promoting localism and  
640 contributing to a multitude of media voices. I have worked  
641 closely with you to ensure that local broadcasters receive  
642 fair treatment as part of this process, and I thank you again  
643 for your efforts in this regard. I look forward to  
644 continuing to work with you to ensure that everyone impacted  
645 by spectrum reallocation including low-power stations are  
646 treated fairly and equitably.

647           Thank you again, Mr. Chairman, and I yield back the  
648 balance of my time.

649           [The prepared statement of Mrs. Bono Mack follows:]

650 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
651           Mr. {Walden.} The gentlelady yields back the balance of  
652 her time.

653           The chair recognizes the gentleman from Illinois, Mr.  
654 Rush, for a minute.

655           Mr. {Rush.} I want to thank you, Mr. Chairman, and  
656 thank the ranking member for holding this hearing.

657           Mr. Chairman, I am extremely pleased that this  
658 subcommittee has decided to act on one of our Nation's most  
659 pressing public safety deficiencies, ensuring that they are  
660 reliable interoperable communications among our valued and  
661 heroic public safety and first responders.

662           First, I would like to welcome our public safety and  
663 first responder representatives, those who are here today who  
664 are really true heroes from States across our Nation and  
665 localities all across our Nation. I salute you for all that  
666 you have done in continuing to make your case persuasively  
667 and consistently for the immediate reallocation of D block  
668 spectrum to public safety. I support you unconditionally in  
669 your endeavors and I look forward to today's markup in which  
670 we will debate and raise concerns about the workings of the  
671 Republican discussion draft which is before us this very  
672 moment.

673           Our American citizens must know that they will be as

674 secure as possible in times of emergency and in times of  
675 crisis. What we are setting out to accomplish as part of  
676 today's markup is how to best go about funding and deploying  
677 a nationwide interoperable wireless public safety network and  
678 clearing spectrum for public safety and commercial wireless  
679 broadband uses. As an early supporter of D block allocation  
680 for the public safety sector, I will continue to work  
681 fervently through today's markup and in ensuing discussions  
682 between the majority and minority to ensure that we achieve  
683 those very aims and objectives.

684 With that, Mr. Chairman, I yield back the balance of my  
685 time.

686 [The prepared statement of Mr. Rush follows:]

687 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
688           Mr. {Walden.} The gentleman yields back the balance of  
689 his time.

690           The chair now recognizes the gentlelady from Tennessee,  
691 because I had yielded to her part of my time, so you actually  
692 would be in order to have a minute if you want it or--

693           Mrs. {Blackburn.} I would yield it back to you.

694           Mr. {Walden.} Then I would recognize the gentleman from  
695 California, Mr. Bilbray, for 1 minute.

696           Mr. {Bilbray.} Thank you very much, Mr. Chairman.

697           Mr. Chairman, the 34 or so million people of California  
698 are facing 12 percent unemployment, but the 3 million people  
699 of San Diego County are facing, one in 10 are unemployed.  
700 And this committee may be aware that a major issue of  
701 telecommunications is a major employer in San Diego County.  
702 So I am glad to see this bill brought forward but more  
703 importantly the people of San Diego desperately need to see  
704 us bring this bill forward, Washington to finally set the  
705 guidelines and rules so we can move forward at creating the  
706 jobs and opportunity that we talk about a lot here but  
707 obviously don't do enough action.

708           I appreciate you bringing this forward sooner rather  
709 than lately but mostly the people of San Diego County and  
710 that one in 10 that is unemployed. Thank you for bringing

711 this forward and hopefully we will be able to set the rules,  
712 set the guidelines and allow the private sector to create the  
713 miracle that we call economic growth to finally be legal  
714 again in this country.

715           So thank you very much, and I yield back my time.

716           [The prepared statement of Mr. Bilbray follows:]

717 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
718           Mr. {Walden.} The gentleman yields back the balance of  
719 his time.

720           The chair recognizes from Colorado, the gentlelady Ms.  
721 DeGette, for 1 minute.

722           Ms. {DeGette.} Thank you very much, Mr. Chairman.

723           This committee has an enormous opportunity to impact job  
724 creation and foster bipartisanship on the issues of spectrum  
725 policy and public safety broadband. As a cosponsor of the  
726 Waxman-Eshoo Wireless Innovative and Public Safety Act, which  
727 most closely resembles S. 911, the Senate Commerce Committee  
728 legislation that passed by a bipartisan 21 to 4 vote, I  
729 believe establishing a nonprofit national body is the most  
730 efficient way to build a nationwide interoperable public  
731 safety broadband network for police and firefighters from  
732 California to Florida.

733           In my home State of Colorado, the emergency responders  
734 have been working with the public safety communications  
735 research program in Boulder, collaborating among local, State  
736 and federal users on how to achieve an interoperable  
737 broadband network. This model offers a better way to  
738 integrate the technology already being developed and used.  
739 However, the threats we face and the response capability we  
740 need should not be pursued on a State-by-State basis.

741           It has been 10 years since September 11. We are behind  
742 in our work. We need to seize our common ground and unity of  
743 purpose and we need to finally act in the wake of these  
744 attacks to be better prepared for these disasters.

745           Thank you, Mr. Chairman.

746           [The prepared statement of Ms. Eshoo follows:]

747 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
748           Mr. {Walden.} I thank the gentlelady for her comments  
749 and now will look to Mr. Bass from New Hampshire, who I want  
750 to also thank for his good work in speaking up for public  
751 safety.

752           Mr. {Bass.} Thank you, Mr. Chairman, and I thank you  
753 for bringing this discussion draft markup.

754           This is a bill that will create real stimulus. It will  
755 reduce our Nation's deficit significantly and while at the  
756 same time creating a nationwide interoperable public safety  
757 broadband network.

758           I believe that the hard work of our chairman and others  
759 of this subcommittee has yielded a compromise. It is a good  
760 one to reach the three balancing points that I outlined a  
761 second or two ago. I urge the adoption of this bill. And if  
762 there are differences that still exist between the two sides  
763 of the aisle that they can be worked out between now and the  
764 time we bring it to full committee, and I yield back.

765           [The prepared statement of Mr. Bass follows:]

766           \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
767           Mr. {Walden.} The chair now recognizes the gentleman  
768 from Georgia, Mr. Gingrey, for 1 minute.

769           Dr. {Gingrey.} Mr. Chairman, I want to thank you for  
770 calling today's markup on Jumpstarting Opportunity through  
771 Broadband Spectrum Act, the JOBS Act of 2011.

772           Throughout this year, this subcommittee, as you so well  
773 pointed out in your opening remarks, has held five hearings  
774 on the issue of spectrum, and I am glad that we are finally  
775 here today with a bill that represents solid policy for an  
776 industry that even in these challenging times is creating  
777 jobs. Most importantly, I believe that this legislation  
778 represents a balanced approach to the future of spectrum.

779           In particular, Mr. Chairman, I commend you and your  
780 staff for working with me on the usage of existing  
781 infrastructure from the utility companies. At the same time  
782 that we move forward with this legislation, I hope to  
783 continue working with you to further clarify and improve  
784 utilities' access to the network.

785           So I urge all of my colleagues to support this  
786 legislation that will make spectrum available to the  
787 marketplace. It will help create jobs and reduce our federal  
788 deficit, and I yield back.

789           [The prepared statement of Dr. Gingrey follows:]

790 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
791           Mr. {Walden.} The gentleman yields back the balance of  
792 his time.

793           The chair recognizes the gentleman from Louisiana, Mr.  
794 Scalise, for a minute.

795           Mr. {Scalise.} Thank you, Mr. Chairman. I want to  
796 start off by commending you for the hard work you have done  
797 threading the needle on this complex issue.

798           The JOBS Act before us today is a balanced approach that  
799 reallocates the requested D block to public safety, provides  
800 funding for a nationwide interoperable broadband network,  
801 frees up much needed spectrum for commercial use, and is  
802 projected to generate billions of dollars to pay down our  
803 record-high national debt.

804           In my experiences through Hurricane Katrina, I saw  
805 firsthand what our Nation recognized in the aftermath of  
806 9/11: Our first responders need and deserve a nationwide  
807 interoperable network. I applaud the eventual transfer of  
808 spectrum to meet the wireless broadband demands that are  
809 growing during the repackaging process for broadcasters that  
810 elect not to participate, however, it is important that the  
811 FCC make every effort to maintain their existing signal  
812 contours.

813           The net effect of a truly voluntary incentive auction

814 process will be the creation of tens of thousands of private  
815 sector jobs, which our economy desperately needs. In fact,  
816 continued 4G buildout today projected to provide between \$25  
817 billion to \$50 billion in private sector infrastructure  
818 investment, and that translates into as many as 750,000 new  
819 American jobs. We can't risk stopping that powerful economic  
820 growth by kicking this issue down the road.

821 I thank the chairman for bringing this bill, and I yield  
822 back the balance of my time.

823 [The prepared statement of Mr. Scalise follows:]

824 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
825           Mr. {Walden.} The gentleman yields back the balance of  
826 his time.

827           The chair recognizes the gentleman from Ohio, Mr. Latta,  
828 for a minute.

829           Mr. {Latta.} Thank you, Mr. Chairman, and thank you  
830 very much for holding the markup on the JOBS Act. I greatly  
831 appreciate the extensive hearings that the subcommittee has  
832 held to examine the very important issue of spectrum. It is  
833 critical that we get this right for innovation, job creation  
834 and public safety. There is no reason that Congress  
835 shouldn't act on incentive auctions as soon as possible.

836           Earlier this year I introduced H.R. 1622, the Spectrum  
837 Innovation Act, which would authorize the FCC to conduct  
838 incentive auctions, thus unleashing much needed airways for  
839 mobile broadband. I am a strong supporter of the incentive  
840 auction provisions in this bill, and I appreciate the  
841 protections for broadcasters included in the legislation.  
842 These auctions can generate at least \$15 billion, which will  
843 go to reducing our astronomical debt in this Nation.

844           For America to lead the world in technological  
845 advancement, the spectrum crunch cannot come to a breaking  
846 point. Approximately 100,000-plus new American jobs are at  
847 stake. America is and must continue to be the leader and

848 innovator in this field.

849           And Mr. Chairman, I thank you again for the hearing and

850 I yield back the balance of my time.

851           [The prepared statement of Mr. Latta follows:]

852 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
853           Mr. {Walden.} The gentleman yields back the balance of  
854 his time.

855           The chair recognizes the gentleman from Kentucky if he  
856 has an opening statement. He does not. The gentleman from  
857 Illinois does not. I believe then everyone has been given an  
858 opportunity to offer an opening statement, and I thank you  
859 all for your participation.

860           The chair now calls up the discussion draft and asks the  
861 clerk to report.

862           The {Clerk.} A discussion draft to promote job growth  
863 by making available additional spectrum for wireless  
864 broadband services, to reduce the deficit, to promote the  
865 deployment of nationwide interoperable public safety  
866 broadband network and for other purposes.

867           [H.R. \_\_\_\_ follows:]

868 \*\*\*\*\* INSERT 1 \*\*\*\*\*

|  
869           Mr. {Walden.} Without objection, the first reading of  
870 the bill is dispensed with and the bill will be open for  
871 amendment at any point. So ordered.

872           Ms. Eshoo, do you want to offer the Democrat alternative  
873 at this point?

874           Ms. {Eshoo.} Thank you, Mr. Chairman. There is an  
875 amendment at the desk.

876           Mr. {Walden.} The clerk will report that amendment.

877           The {Clerk.} Amendment in the nature of a substitute to  
878 discussion draft offered by Ms. Eshoo of California.

879           [The amendment follows:]

880 \*\*\*\*\* INSERT 2 \*\*\*\*\*

|  
881           Mr. {Walden.} Without objection, the reading of the  
882 amendment is dispensed with, and the gentlelady is recognized  
883 for 5 minutes in support of the amendment.

884           Ms. {Eshoo.} Thank you, Mr. Chairman.

885           Earlier this week, together with Mr. Waxman and eight of  
886 our Democratic colleagues from this subcommittee, we  
887 introduced the Wireless Innovation and Public Safety Act of  
888 2011. The significance of this legislation to our Nation's  
889 economy, job creation and the future of U.S. innovation  
890 cannot be overstated, and I think every member on both sides  
891 of the aisle has stated the case quite eloquently over and  
892 over and over again.

893           I offer this amendment as a substitute to the chairman's  
894 proposal. Our bill addresses three key areas in which I  
895 continue to have significant concerns. The first, the  
896 governance provisions for the public safety network; two, the  
897 limitations on the FCC's ability to ensure auction rules  
898 preserve the public interest; and third, the treatment of  
899 unlicensed spectrum.

900           I am going to use my time to focus on unlicensed, which  
901 is so critical to entrepreneurs, innovators and startups, and  
902 you see the chart. Actually, the chart should be the other  
903 way around. I want members to see it. I think it is great

904 that the audience has had a glimpse but they don't have a  
905 vote in this, so whomever put that up, if you could take it  
906 downstairs and turn it around so that--

907 Mr. {Walden.} Filling in for Vanna White.

908 Ms. {Eshoo.} I don't know that they can see it from  
909 there. Good. Very good. Thank you, Diane.

910 Whether we recognize it or not, unlicensed is a part of  
911 our daily lives. As the chart highlights, unlicensed  
912 spectrum is enabling small businesses and entrepreneurs to  
913 innovate from wireless baby monitors to cordless phones,  
914 security alarm system and home Wi-Fi, unlicensed has and will  
915 continue to change the way we communicate and live our lives.  
916 It is also removing the barriers to entry that exist with  
917 licensed spectrum.

918 Over 20 years ago, the FCC opened up the 2.4 gigahertz  
919 band for unlicensed use. No one could have imagined the  
920 possibilities that would have emerged. The possibilities for  
921 extending that innovation for unlicensed applications and  
922 services into the TV band are limitless with some estimating  
923 the economic value of unlicensed spectrum at \$16 billion to  
924 \$37 billion per year. I don't think we can afford to  
925 overlook both the short- and long-term benefits of unlicensed  
926 spectrum.

927 During our in-district work periods, I make a point to

928 go out and meet with the employees of startups in my  
929 district. One in particular, Eye-Fi, was highly instructive  
930 to me, and I think it would be to everyone on the committee  
931 as well. The common message I heard from them and so many of  
932 the others that I met with--now, these are startups, these  
933 are small, small businesses, 20, 30, 40 to 50 employees, I  
934 mean, truly small businesses that I met with--is that  
935 Congress should not shut the door on opportunities to free up  
936 new unlicensed spectrum.

937         This amendment includes language that will give the FCC  
938 to flexibility to make spectrum available for unlicensed use  
939 after an incentive auction. The chairman's proposal would  
940 prohibit the FCC from setting aside unlicensed spectrum for  
941 any incentive auction including an incentive auction of the  
942 TV band. So there is a big difference here.

943         So Mr. Chairman, many of my Democratic colleagues intend  
944 to discuss the other aspects of this amendment, of our  
945 amendment, and why each is essential to our Nation's future,  
946 and I hope our discussion will allow us to bring our  
947 differences and provide a path toward a bipartisan bill.

948         And with that, I will yield back the balance of my time.

949         Mr. {Walden.} The gentlelady yields back the balance of  
950 her time. The chair recognizes himself for 5 minutes in  
951 opposition to the amendment.

952           And let me start with this discussion about unlicensed.  
953 We have come a long way on this issue. I am actually a fan  
954 of unlicensed spectrum usage. We started out with a proposal  
955 that because of this huge value just referenced, \$30, \$40  
956 billion worth, thought maybe there is an auction model that  
957 could be used so that these companies that will benefit from  
958 the unlicensed spectrum could actually pay something for it.  
959 These are some of the country's biggest, most successful  
960 companies in some cases, and some of them are the smallest,  
961 startups and great innovators.

962           And so we looked at a model that originally had come  
963 from some economists at the FCC and decided after many  
964 discussions with Democrats and others in the wireless  
965 community that that model really didn't work. So we dropped  
966 that. But one of the things that we held as a core principle  
967 was, if we were going to ask the taxpayers in effect to use  
968 auction proceeds to pay for the clearing of broadcast  
969 spectrum, we should not set aside a chunk of that for others  
970 to go use for free. And that is really the philosophical and  
971 fundamental differences between our bills and this provision.

972           And so what we are saying is, the FCC, you can't go  
973 carve out for primary use a chunk of this spectrum we are  
974 trying to free up and pay to free up. However, after the  
975 auction, if there are, as I think Commissioner McDowell

976 referred to them, carpet remnants, if you will, if there are  
977 little bits and pieces and blocks of spectrum as there are  
978 today available, they would still have the authority to allow  
979 unlicensed use for that. It is just not that we are going to  
980 carve out a chunk, that we are going to pay to carve out off  
981 the broadcast spectrum and then say to the unlicensed world,  
982 you are going to have your own chunk here nationwide of this  
983 very valuable public spectrum to do with as you want.

984         So it would score, I believe, a billion dollars is what  
985 is at issue here for the taxpayers. A billion dollars if we  
986 go the route of the Democrat alternative. And yet already  
987 there are 675 megahertz of spectrum below 6 gigs dedicated  
988 for unlicensed use that it doesn't even include the white  
989 spaces, which we leave intact, and they will remain there  
990 even after repacking. There is 100 megahertz more that is  
991 available for unlicensed use below 6 gigs. So I believe this  
992 is correct: there is more unlicensed available today than  
993 there is licensed, under 6 gigahertz.

994         And so the bill does not stop the FCC from creating more  
995 in certain circumstances. It does not prevent the FCC from  
996 allocating some of the cleared spectrum for unlicensed use on  
997 a secondary shared non-interfering basis like the current 5-  
998 gig Wi-Fi spectrum nor does it prevent the FCC from  
999 allocating for unlicensed use on a primary dedicated basis

1000 other spectrum not cleared by the legislation. It just  
1001 prevents the FCC from giving away any of the spectrum we are  
1002 going to use, we are going through such expense to clear  
1003 because we think the higher value there for the taxpayers is  
1004 not to give away the billion and instead to make this  
1005 available for wireless broadband buildout.

1006 Are there other members on my side seeking recognition?  
1007 If not, I recognize the gentlelady from California--yield to  
1008 her as part of my time.

1009 Ms. {Eshoo.} Thank you, Mr. Chairman.

1010 On this whole issue of unlicensed allocation versus  
1011 licensed, some supporters of the Republican proposal have  
1012 argued that there are currently over 600 megahertz of  
1013 spectrum allocated for unlicensed use. Now, that number  
1014 distorts the fact that the vast majority of those unlicensed  
1015 frequencies are available only above 5 gigahertz and  
1016 frequencies that are shared with military radar and have poor  
1017 propagation characteristics. So that means the airways that  
1018 are traveling in those bands don't penetrate buildings and  
1019 they are not useful for rural broadband.

1020 Mr. {Walden.} Reclaiming my time because I would like  
1021 to address some of these. There is 83-1/2 megahertz of  
1022 spectrum used for Wi-Fi between the 2400 and 2483.5 meg band.  
1023 That is where Wi-Fi is. I would defer to our counsel, Mr.

1024 Redl.

1025 {Counsel.} That is correct, sir.

1026 Mr. {Walden.} And on unlicensed PCS, there is 10  
1027 megahertz in the 1920, 1930 megs?

1028 {Counsel.} Correct, Mr. Chairman.

1029 Mr. {Walden.} And in terms of white spaces that are  
1030 available out there in unlicensed, what is available?

1031 {Counsel.} Those are available in the UHF television  
1032 band between 512 megahertz and 698 megahertz.

1033 Mr. {Walden.} And in the 900 meg unlicensed?

1034 {Counsel.} It is also available for unlicensed use.

1035 Mr. {Walden.} My time is expired.

1036 Is there anyone on the Democrat side seeking time? Mr.  
1037 Waxman is recognized for 5 minutes.

1038 Mr. {Waxman.} Thank you, Mr. Chairman.

1039 I strongly support the substitute offered by Ms. Eshoo  
1040 for the reasons outlined in my opening statement. The  
1041 Democratic substitute is preferable to the Republican  
1042 discussion draft in several respects. The most important  
1043 issues involve the treatment of unlicensed spectrum, which we  
1044 have already started to discuss, public safety network  
1045 governance and auction eligibility and funding levels.

1046 First of all, this unlicensed spectrum issue. The  
1047 substitute does not mandate that the FCC allocate broadcast

1048 spectrum for Super Wi-Fi but we believe it is important the  
1049 agency retain the flexibility to do so if necessary.  
1050 Unlicensed spectrum has given rise to countless wireless  
1051 devices and services, and we saw--maybe the audience didn't  
1052 see--a list of a lot of things that have used this spectrum  
1053 such as baby monitors, garage door openers, connected alarm  
1054 systems, smart grid monitoring. In fact, unlicensed wireless  
1055 technologies have become a critical part of our national  
1056 infrastructure. Wireless health care, for example, is 80  
1057 percent unlicensed. Smart grid communications are 70 percent  
1058 unlicensed. And American businesses utilize unlicensed to  
1059 develop their own innovative solutions to provide better  
1060 service. UPS, for example, uses unlicensed spectrum to  
1061 manage its fleet management systems. Exxon Mobile uses  
1062 unlicensed for its speed pass payment system. Walmart uses  
1063 unlicensed RFID tags for inventory management. And  
1064 unlicensed is also a critical part of wireless carrier  
1065 business models. Studies have shown that mobile data  
1066 offloaded to Wi-Fi from the networks of mobile operators is  
1067 expected to reach 90 percent by 2015.

1068 Another issue--we don't want to preclude the super  
1069 carriers, Verizon and AT&T, from bidding but we do want to  
1070 make sure that the FCC can ensure that competition survives.  
1071 We reached out to numerous smaller and mid-sized wireless

1072 carriers about the Republican language, and they are very  
1073 concerned and see this is an effort by AT&T and Verizon to  
1074 maximize their spectrum dominance. We should retain the  
1075 status quo. We don't expect that the FCC will restrict big  
1076 companies from bidding but there could be future situations  
1077 when it is prudent to do so, and the substitute would allow  
1078 the FCC to do so in those extreme cases.

1079         The governance issues in the Republican discussion draft  
1080 raise concerns. It is unprecedented and inappropriate to  
1081 provide private companies with the FCC license for public  
1082 safety spectrum, much less highly valuable spectrum of value  
1083 upwards of \$5.5 billion. Even with checks on the permitted  
1084 use of this license, a profit-motivated private company could  
1085 find ways to monetize the value of this license in its  
1086 business dealings.

1087         The draft also implements policies that repeat mistakes  
1088 of the past. The critical need to build a nationwide  
1089 interoperable broadband public safety network reflects the  
1090 failure. Despite decades of effort of individual  
1091 jurisdictions to effectively coordinate with each other to  
1092 make this happen, by having each State build out its own  
1093 network, the draft ignores this history while putting at risk  
1094 billions of additional federal dollars in the process.

1095         According to the Congressional Research Service, since

1096 2001 at least \$3.5 billion in federal funds has been  
1097 dedicated toward achieving public safety communications  
1098 interoperability. The draft would provide only slightly more  
1099 than that amount to construct 50 separate State networks  
1100 based on a far more technically complex technology and where  
1101 no readily available standard exists to interconnect those  
1102 networks.

1103 The draft does not allow for network access by federal  
1104 first responders, agencies like the FBI, and thus ignores the  
1105 critical role played by federal entities in emergency  
1106 response, a gaping hole that could cost lives. This also  
1107 removes the benefit of sharing federal infrastructure for  
1108 network build, especially very rural and border areas where  
1109 federal assets are located.

1110 For these reasons, I urge support for the Democratic  
1111 substitute, and I want to point out, going back to this white  
1112 space issue, our staff talked to a lot of the experts and  
1113 they feel that following an incentive auction of the  
1114 broadcast television spectrum, the amount of white spaces or  
1115 empty channels would be greatly reduced. And when you come  
1116 to markets there are already a lot of television channels  
1117 such as New York or Los Angeles, the white spaces are  
1118 expected to disappear. That means there may not be any  
1119 spectrum left for unlicensed devices in the television band.

1120 Thank you, Mr. Chairman.

1121 Mr. {Walden.} The gentleman's time has expired.

1122 Are there members seeking recognition? Mr. Stearns is  
1123 recognized.

1124 Mr. {Stearns.} Thank you, Mr. Chairman.

1125 Let me ask counsel a couple questions. You know, a lot  
1126 of this discussion has been about the procedures in the bill  
1127 and the difference. Let me ask counsel, has CBO scored the  
1128 Democrat bill?

1129 {Counsel.} Not to my knowledge. The closest thing to  
1130 the structure that is seen in the Democratic amendment in the  
1131 nature of a substitute was a structure that appears in the  
1132 Senate version S. 911. That bill scored as a savings for  
1133 deficit reduction of around \$6 billion, and the structure  
1134 that was created to govern public safety scored as losing \$1  
1135 billion over the first 10 years of its existence.

1136 Mr. {Stearns.} And the CBO scored our bill, the  
1137 Republican bill that we have, the main bill?

1138 {Counsel.} We have not received an official score but  
1139 staff discussions with CBO indicate that we will get in the  
1140 range of \$15 billion for deficit reduction.

1141 Mr. {Stearns.} So to review, you are saying the bill we  
1142 have here is likely to score \$15 billion for taxpayers and  
1143 the Democrat would score at \$6-1/2 billion. Is that fair?

1144 {Counsel.} The Senate version scored at \$6-1/2 billion.

1145 Mr. {Stearns.} The Senate version. And is this that  
1146 much different than the Senate?

1147 {Counsel.} They have fewer spends than the Senate  
1148 version but the structure for public safety remains. The  
1149 portion that caused the billion-dollar loss in the Senate  
1150 version remains here.

1151 Mr. {Stearns.} Let me ask you a little bit about in the  
1152 Democrat bill the Public Safety Trust Corporation. How much  
1153 a year is this going to have to be funded by the taxpayers?  
1154 This is a not-for-profit corporation that is set up under the  
1155 Democrat bill and it is funded every year, is it?

1156 {Counsel.} It is unclear how much it will actually cost  
1157 over the course of the 10-year CBO scoring window.

1158 Mr. {Stearns.} So over 10 years this not-for-profit  
1159 corporation is set up much like--would it be fair to say it  
1160 is an analogy like we set up with Amtrak or we set up with  
1161 other not-for-profits?

1162 {Counsel.} I would say it is a fair analogy in that it  
1163 is also a federally created not-for-profit corporation.

1164 Mr. {Stearns.} Right. So it is a federally created  
1165 not-for-profit but at this point it is not clear in the  
1166 Democrat bill how much this would cost every year?

1167 {Counsel.} That is correct.

1168 Mr. {Stearns.} Now, in the Republican bill, there is an  
1169 administrator to do essentially coordination between, as I  
1170 understand it, the 50 States, and this administrator would be  
1171 funded by the taxpayers?

1172 {Counsel.} It would be funded out of auction receipts  
1173 from the auctions authorized by the JOBS Act.

1174 Mr. {Stearns.} Okay. So the main difference between  
1175 the two bills is that a federal not-for-profit organization  
1176 is set up and be funded every year whereas as we are  
1177 delegating it to the States. The administrator will be paid  
1178 on the federal level to coordinate between all the States  
1179 based upon the sale at the auction? Is that fair to say?

1180 {Counsel.} Yes.

1181 Mr. {Waxman.} Will the gentleman yield to--

1182 Mr. {Stearns.} Well, let me just--I am almost finished  
1183 here.

1184 Another major difference between the two bills is the  
1185 unlicensed auction of the spectrum, the taxpayers, we get  
1186 paid, whereas on the Democrat bill it would be essentially  
1187 gifted to people. Is that correct?

1188 {Counsel.} Licensed that is allocated as a primary  
1189 allocation for unlicensed instead of being auctioned would be  
1190 funds that could have been recovered through auctions, yes,  
1191 sir.

1192 Mr. {Stearns.} I mean, the Democrat plan, though,  
1193 whereas the Republican plan we get paid, the taxpayers get  
1194 paid, but under the Democrat plan, it is set aside and the  
1195 taxpayers don't get reimbursed. Is that correct?

1196 {Counsel.} Under the Democrat plan, the FCC would be--  
1197 would retain the authority to give away as much unlicensed  
1198 spectrum as it deems in the public interest.

1199 Mr. {Stearns.} Now, a larger question is, how would  
1200 they decide who to give it to? Would they give it to small  
1201 people or big people? Are they talking about--what is the  
1202 criteria in the Democrat bill for the FCC to decide who to  
1203 give that too?

1204 {Counsel.} The FCC retains full discretion to decide  
1205 how much.

1206 Mr. {Stearns.} So there is nothing in the bill to  
1207 decide who they are going to give it to? This is very  
1208 valuable. This unlicensed spectrum is very valuable so I  
1209 think we as Members of Congress have to decide. We are  
1210 giving the FCC this authority but this authority allows them  
1211 at their discretion, at their will to give to whomever they  
1212 want this very valuable spectrum. Is that a fair estimate?

1213 {Counsel.} Unlicensed spectrum as a matter of law is  
1214 not given to someone per se but it would give the FCC the  
1215 authority to forego selling a license for that spectrum,

1216 which would generate money for the Treasury, in favor of  
1217 giving away spectrum for general use.

1218 Mr. {Stearns.} So just to take perhaps one scenario  
1219 would be the FCC would have this unlicensed spectrum. They  
1220 would hold it in trust and then over a period of time they  
1221 would give it to whomever they want. That, as I understand,  
1222 in the bill allows them to do that. Is that correct?

1223 {Counsel.} That is one situation that could arise, yes.

1224 Mr. {Stearns.} Okay. I would be glad with the balance  
1225 of my time to give the gentleman from California.

1226 Mr. {Waxman.} Thank you very much.

1227 I just wanted to clarify. In the Eshoo substitute,  
1228 there is a limit, a maximum of \$50 million for administrative  
1229 expenses for this nonprofit committee. You said it could go  
1230 up to a billion dollars. Are you aware of that limit in the  
1231 bill?

1232 {Counsel.} I am not, but I will go back and look at it.  
1233 I am also aware that the Democratic--I mean the amendment in  
1234 the nature of a substitute permits the corporation to assess  
1235 user fees in order to collect funds directly from--

1236 Mr. {Stearns.} Reclaiming my time. I will close with  
1237 this, Mr. Chairman. So I think that is something else. You  
1238 are saying that in the Democrat bill they are allowed to tax  
1239 with these user fees?

1240           {Counsel.} They are allowed to collect from end-users  
1241 that use the network fees in the same way that a commercial  
1242 entity charges--

1243           Mr. {Stearns.} And the amount of this user fee that  
1244 they can assess, is there any limit on that?

1245           Mr. {Walden.} The gentleman's time is expiring.

1246           Mr. {Stearns.} If he can just answer the question, then  
1247 I am complete.

1248           {Counsel.} If you give me a second, we will have to  
1249 look it up.

1250           Mr. {Stearns.} Sure. I think this is important to know  
1251 for all the--

1252           {Counsel.} Unless the Democratic counsel would like to  
1253 answer the question.

1254           Mr. {Walden.} We will do that. We will move on while  
1255 they look that up, and I will recognize Mr. Markey for 5  
1256 minutes.

1257           Mr. {Markey.} Thank you, Mr. Chairman, very much.

1258           Let me begin by just saying that I want to praise the  
1259 Republicans for including a reallocation of the D block  
1260 spectrum to public safety rather than auctioning it. I think  
1261 that is an improvement in your legislation.

1262           But at the same time, let me say that the Republican  
1263 draft does include a significant limitation on the FCC's

1264 future authority to design the auctions. Under current law,  
1265 the FCC has broad authority to craft auction rules in the  
1266 public interest. The agency has used that authority to  
1267 ensure that communications markets remain competitive and  
1268 that the spectrum is not concentrated in the hands of only  
1269 one or two providers. Democrats are not saying that the  
1270 largest companies should be prohibited from bidding. We want  
1271 them to bid, and we want them to spend lots of money, which  
1272 goes into the public treasuries, on licenses to serve the  
1273 American public and fund our public safety networks. But we  
1274 need to preserve the expert agency's ability to provide and  
1275 to consider the market conditions so that they remain  
1276 vigorous, competitive marketplaces, that they are Darwinian,  
1277 that they induce paranoia, that they ensure innovation and  
1278 that they not suffer from the complacency of only having one  
1279 or two companies that have a monopoly or a duopoly because  
1280 that in the long run reduces the amount of innovation,  
1281 reduces our chances of being number one, looking over our  
1282 shoulders at number two and three and four in the world.  
1283 That is who we have to be, and only by creating Darwinian  
1284 conditions.

1285         So simply put, we have no idea what the wireless  
1286 marketplace will look like in future years yet the Republican  
1287 bill will ensure that the FCC does not have the ability to

1288 prohibit future wireless monopolies from emerging, and at the  
1289 end of the day, that is what makes us number one. It is that  
1290 we are an idea economy. We have to be the idea economy.  
1291 That is what differentiates us from India, from China, from  
1292 other countries in the world, that we get the new ideas first.  
1293 You do not get that by having a monopoly or duopoly  
1294 marketplace.

1295 Mr. {Walden.} Would the gentleman yield?

1296 Mr. {Markey.} Just let me finish because I am limited,  
1297 if I may.

1298 So I just think the governance structure for the public  
1299 safety network is weak. It is cumbersome. It lacks the  
1300 necessary uniformity. It limits the FCC's authority to craft  
1301 the auction rules in the public interest and it prohibits  
1302 allocating spectrum from incentive auctions for unlicensed  
1303 use. That is what Ranking Member Eshoo's substitute seeks to  
1304 remedy. It goes right to the heart of what it is that has  
1305 made us special since we moved over the 200 megahertz in 1993  
1306 out of this committee. We created a paranoia-inducing  
1307 marketplace out there. We moved rapidly from analog to  
1308 digital. We moved rapidly from narrowband to broadband. We  
1309 did it all in 3 or 4 years. And that is what has given us  
1310 the lead in the world. We don't hear about Nokia anymore.  
1311 We don't hear about these other technologies from other

1312 countries. People hear about our technologies, our  
1313 innovators.

1314 So just by creating that kind of an environment, that is  
1315 what has changed the world, and at the same time, the  
1316 Democratic substitute just lays out, and I thank them for  
1317 including this language, for television broadcasters it is  
1318 voluntary. And I think Ms. Eshoo and Mr. Waxman for  
1319 including that language in the Democratic substitute that we  
1320 are now considering.

1321 But that is my point, Mr. Chairman, if I may say that to  
1322 you, and I would be glad to yield to you on the larger point  
1323 that we have to give the FCC that authority to have the  
1324 discretion to protect the marketplace and remain competitive.

1325 Mr. {Walden.} I appreciate the gentleman yielding  
1326 because I would like to ask counsel, I think there is a  
1327 misunderstanding of what our bill does and does not do.  
1328 Counsel, is it not correct that our bill, while it makes sure  
1329 that everybody can participate in the auction, it does not  
1330 take away the FCC's ability in a market-by-market basis to  
1331 exercise public interest standard requirements?

1332 {Counsel.} That is correct, Mr. Chairman. Section  
1333 309(a) of the act requires the FCC to make a public interest  
1334 finding before granting the license at the conclusion of an  
1335 auction and the choosing of a successful bidder.

1336 Mr. {Walden.} And on the other issue of a monopoly, is  
1337 there not also still all of the law there in terms of the  
1338 Federal Trade Commission and all equal justice?

1339 Mr. {Markey.} If the gentleman would yield, just so I  
1340 can respond to counsel? The language in the Republican bill  
1341 is ambiguous. It is vague. It is not clear in terms of the  
1342 FCC's authority, and that is why we are concerned about it.  
1343 We have to make sure that the expert agency can ensure that  
1344 there is a competitive marketplace here, and the language  
1345 that is in the Republican substitute does not provide that  
1346 clarity. It would be litigated from here to kingdom come,  
1347 and we all know that the smallest companies are vindicated  
1348 posthumously when they are battling corporations with  
1349 hundreds of lawyers. We have to protect--

1350 Mr. {Walden.} The gentleman's--

1351 Mr. {Markey.} --that smaller entry company. I yield  
1352 back.

1353 Mr. {Walden.} The gentleman yields back.

1354 Mr. {Terry.} I move to strike the last word.

1355 Mr. {Walden.} The gentleman from Nebraska is  
1356 recognized, and would he yield to me for just a second?

1357 Mr. {Terry.} Sure. I yield to the chairman.

1358 Mr. {Walden.} Thank you.

1359 Counsel, since this is an issue that is clearly before

1360 us right now and is of great importance, would you mind  
1361 reviewing the language regarding the FCC's authority related  
1362 to public interest?

1363         {Counsel.} Sure. Section 105 of the JOBS Act amends  
1364 section 309(j) of the Communications Act to add new paragraph  
1365 17: Certain conditions on auction participation prohibited  
1366 and states that the commission may not impose any condition  
1367 on eligibility for participation in a system of competitive  
1368 bidding under this subsection that is not related to the  
1369 qualifications of an applicant under section 308(b) or  
1370 section 310. Section 308(b) and section 310 state that  
1371 financial citizenship and ethnical qualifications of  
1372 potential bidders, and the language here by conditions on  
1373 eligibility for participation in a system of competitive  
1374 bidding would only apply to letting someone bid in the  
1375 auction. Once the provisionally winning bidders have been  
1376 chosen, the system of competitive bidding has ended and  
1377 section 309(a) takes over, which is the public interest  
1378 determination that the FCC must make prior to granting a  
1379 license to the provisionally winning bidder.

1380         Mr. {Walden.} And does anything in the Republican  
1381 alternative affect that section?

1382         {Counsel.} No.

1383         Mr. {Walden.} So we do not affect the FCC's underlying

1384 authority when it comes to public interest standards in the  
1385 market? We are not changing that. There is no vague  
1386 language there because there is no language affect it,  
1387 correct?

1388 {Counsel.} Correct.

1389 Mr. {Walden.} I yield back to the gentleman.

1390 Mr. {Terry.} Reclaiming--

1391 Mr. {Markey.} Would the gentleman yield? May I ask--

1392 Mr. {Terry.} I reclaim my time, and sure, I will get to  
1393 my statement in a while, but I will proudly yield to the  
1394 gentleman from Massachusetts.

1395 Mr. {Markey.} And that is just to ask counsel--and I  
1396 thank the gentleman for yielding--traditionally, the FCC has  
1397 structured auctions in which one block of spectrum auction  
1398 may be set aside to promote entrepreneurial and small  
1399 business access to spectrum licenses. The FCC has also  
1400 imposed conditions in the past limiting the number of blocks  
1401 for which licenses could be won in the auction by any one  
1402 applicant. Is that clear in the language here that the  
1403 Republicans have in their bill that the FCC can still do that  
1404 under the Republican bill?

1405 {Counsel.} That is a compound question, sir. Which one  
1406 would you like the answer to?

1407 Mr. {Markey.} Both.

1408           {Counsel.} With respect to the entrepreneurial  
1409 language, it is my understanding that the FCC has not used  
1410 the pioneers preference in decades, and that hasn't been an  
1411 issue.

1412           With respect to whether or not they can--would you  
1413 repeat the second part of the question?

1414           Mr. {Markey.} The second part of the question, has  
1415 imposed conditions in the past limiting the number of blocks  
1416 for which licenses could be won in an auction and to any one  
1417 applicant so that competitive conditions are maintained in  
1418 the marketplace. Do they retain that ability--

1419           {Counsel.} The FCC--

1420           Mr. {Markey.} --under the majority's legislation we  
1421 consider today?

1422           {Counsel.} The FCC would not be able to structure the  
1423 auction in a way that prohibited participation. They would,  
1424 however, still be able to prohibit undue concentration of  
1425 licenses to the public interest test under 309(a).

1426           Mr. {Markey.} And so you are saying there is, though,  
1427 now a limitation in their bill in terms of who the  
1428 participants can be in any particular auction. Is that  
1429 correct?

1430           {Counsel.} Yes. They cannot impose a condition on  
1431 eligibility for participation.

1432 Mr. {Markey.} I think that that goes right to how big--

1433 Mr. {Terry.} I am going to reclaim my time.

1434 Mr. {Markey.} I thank the--

1435 Mr. {Walden.} Mr. Terry controls the time.

1436 Mr. {Terry.} All right. Thank you.

1437 So we don't interfere or mandate in essence small  
1438 business set asides as a condition proceeding at the auctions  
1439 but we preserve the public interest ability and obligation of  
1440 the FCC because we don't change that law?

1441 {Counsel.} Yes, sir, and more recently for small  
1442 businesses, the FCC has used bidding credits as opposed to  
1443 set asides.

1444 Mr. {Terry.} And real quick, with my minute, I do want  
1445 to get back to Mr. Stearns' FCC user fees and whether or not  
1446 there are limits within there as to how--are there controls  
1447 on the FCC on the user fees?

1448 {Counsel.} About the Democrat amendment in the nature  
1449 of a substitute?

1450 Mr. {Terry.} Yes.

1451 {Counsel.} In the Democrats' amendment--

1452 Mr. {Terry.} Answer Mr. Stearns' question is what I am  
1453 saying.

1454 {Counsel.} Yes. The administrative fees are alluded to  
1455 sufficient to cover the cost of the corporation but nothing

1456 limits the corporation's ability to use that as a way to get  
1457 funds above and beyond the \$50 million cap that is imposed on  
1458 their direct appropriations.

1459 Mr. {Terry.} That is interesting. Thank you.

1460 I will yield back my 13 seconds.

1461 Mr. {Walden.} The gentleman yields back.

1462 Are there other members--Ms. Matsui is recognized for 5  
1463 minutes.

1464 Ms. {Matsui.} Thank you, Mr. Chairman.

1465 Mr. Chairman, I strongly support the Eshoo substitute  
1466 amendment. This amendment is one based on sound policy, one  
1467 that will finally provide public safety with a nationwide  
1468 interoperable network that they need and deserve and one that  
1469 will continue to foster American innovation and ingenuity all  
1470 while maintaining sound fiscal discipline. We believe that  
1471 governance is paramount and critical to ensure America's  
1472 first responders have an efficient and effective nationwide  
1473 interoperable network.

1474 We have held several subcommittee hearings this year on  
1475 spectrum, and the Eshoo substitute amendment is a true  
1476 reflection of those hearings, responsibly taking into account  
1477 prevailing views and needs of America's first responders and  
1478 America's innovators.

1479 During many of these hearings, I remained focused on the

1480 need to responsibly govern any nationwide public safety  
1481 interoperable network. I was asking the questions, who would  
1482 govern and oversee the public safety network that will  
1483 ultimately possess significant responsibilities. I was also  
1484 asking the question, how can we ensure taxpayer money is  
1485 spent wisely and effectively so America's first responders  
1486 end up with a network they need and deserve. I was asking  
1487 those questions because it will have the responsibility over  
1488 highly valuable D block spectrum, billions of dollars of  
1489 public funding, not to mention needing to ensure the success  
1490 of this vitally important network for first responders.

1491         The Eshoo substitute amendment answers these questions.  
1492 Among other provisions, it will establish a private nonprofit  
1493 public safety broadband corporation as a national governance  
1494 vehicle that ensures the primary goal of achieving a  
1495 nationwide level of interoperability for our Nation's first  
1496 responders while assuring that fiscal responsibility and  
1497 accountability called for.

1498         Unfortunately, the majority bill falls short on  
1499 responsible governance structure. Instead, it gives  
1500 significant powers to a single private company without any  
1501 meaningful oversight to manage 50 separate State networks and  
1502 make many numerous decisions on every State contract and  
1503 aspects of the network deployments. In fact, State and local

1504 government organizations and public safety have voiced their  
1505 concerns with the governance structure outlined in the  
1506 majority bill. That should give us all pause, considering  
1507 they are the major stakeholders and have every reason to  
1508 ensure the success of nationwide public safety systems. We  
1509 should not delegate the core responsibilities to a private  
1510 profit-driven company, which may or may not be beholden to  
1511 shareholders, especially in the absence of any real oversight  
1512 over its decisions with regard to public safety interests and  
1513 protecting this country.

1514         Simply put, governance is a linchpin of the public  
1515 safety broadband network that will determine success or  
1516 failure. It must be done right from the outset. It must  
1517 protect taxpayers' monies and prove to be effective and  
1518 efficient.

1519         Mr. Chairman, it is my hope that we will provide public  
1520 safety with interoperable capabilities that they need and  
1521 deserve to protect our Nation during challenging times. The  
1522 Eshoo substitute amendment does just that, and I urge my  
1523 colleagues to support it.

1524         I yield back the balance of my time.

1525         Mr. {Walden.} The gentlelady yields back the balance of  
1526 her time. Did you want to yield to--

1527         Ms. {Matsui.} Yes, I would like to yield to the

1528 gentlelady.

1529 Mr. {Walden.} I think there was a minute and 37 left.

1530 Ms. {Eshoo.} I thank the gentlewoman.

1531 This is a very, very, very important part of this  
1532 legislation. We have on our side congratulated the majority  
1533 for moving on the allocation of the D block, and that is  
1534 significant, and we are congratulating and grateful for that  
1535 all over again. But most frankly, if the governance model is  
1536 not right, it ain't gonna work.

1537 Now, there is a reason for the nonpartisan  
1538 organizations, the Public Safety Alliance, the National  
1539 Governors Association, the National League of Cities, the  
1540 U.S. Conference of Mayors, the National Association of  
1541 Counties, the International City and County Management  
1542 Association and many others have endorsed the Democratic  
1543 proposal, and a good amount of that support comes in and  
1544 around the governance model. The governance model. This  
1545 needs to be national in scope with important participation  
1546 from State and local jurisdictions.

1547 We stayed away from something that was bureaucratic. We  
1548 examined--

1549 Mr. {Walden.} The gentlelady's--

1550 Ms. {Eshoo.} --what the Senate had to offer, and I  
1551 think if we don't get this governance portion of the

1552 legislation right, then most frankly, we are going to fail on  
1553 the public safety front because that is the body that is  
1554 going to oversee the implementation of establishing a  
1555 national interoperable telecommunications network for public  
1556 safety people across the country.

1557         So we need to work on this, Mr. Chairman, and I don't  
1558 think that the underlying legislation really meets the high  
1559 standard that is required here.

1560         Mr. {Walden.} The gentlelady's time has expired.

1561         The chair now recognizes the gentleman from Michigan to  
1562 yield to the chair perhaps?

1563         Mr. {Rogers.} Yes.

1564         Mr. {Walden.} That is what I thought.

1565         Mr. {Rogers.} Thank you, Mr. Chairman, for that  
1566 opportunity to yield you time.

1567         Mr. {Walden.} I appreciate that, and I would like to  
1568 ask the counsel, does the Republican draft and the way the  
1569 administrator position is structured allow the administrator  
1570 to set policy or is policy under the draft set by the board?

1571         {Counsel.} Policy is set by the board, Mr. Chairman.

1572         Mr. {Walden.} And could you explain from the draft any  
1573 further obligations under the proposed law the Republicans  
1574 would put in place that that administrator would have?

1575         {Counsel.} The role of the administrator is largely to

1576 ensure that the policy set by the board is followed through  
1577 the contracts, negotiations and requests for proposals done  
1578 on a State-by-State basis by the State broadband offices  
1579 established under the Act. So once a State has conducted a  
1580 negotiation and has a proposed contract to build the  
1581 broadband network for public safety within their State, they  
1582 are told to submit that form to the administrator to ensure  
1583 that the State plan complies with national interoperability  
1584 standards.

1585 Mr. {Walden.} And are there other models in the  
1586 government that use an administrator concept similar to this?

1587 {Counsel.} There are others that use an administrator  
1588 model. This one has taken into account some of the lessons  
1589 learned from other administrator models. Within public  
1590 safety, there is an administrator model used for the 800  
1591 megahertz rebanding. That project has gone on a while and a  
1592 lot of the lessons that have been learned from that process  
1593 have been incorporated into the Republican draft.

1594 Mr. {Walden.} I will recognize Mr. Terry now and yield  
1595 the remainder of my time to him since he was so generous--oh,  
1596 I yield back to Mr. Rogers.

1597 Mr. {Terry.} Mr. Rogers, would you yield me--

1598 Mr. {Rogers.} I would like to reclaim my time and yield  
1599 it to Mr. Terry.

1600 Mr. {Terry.} On the issue of governance, and I would  
1601 like to ask the chairman here, now, in the State of Nebraska,  
1602 our public safety commission has done what I would think a  
1603 great job in being able to use a variety of technologies to  
1604 make sure that the interoperability has progressed. Would  
1605 this shut down or preempt what States have already done  
1606 successfully?

1607 Mr. {Walden.} If the gentleman would yield, the answer  
1608 would be no. In fact, it is designed to build on and--

1609 Mr. {Terry.} Let me ask the gentlelady from California,  
1610 with her amendment, would this preempt what States have  
1611 already done? How would this national structure work with  
1612 States and municipalities and counties have done when they  
1613 have been working together? Because there are success  
1614 stories out there.

1615 Ms. {Eshoo.} Well, I think that it is a very strong  
1616 governance model in that we know that it has to be national  
1617 but there is a very strong element of State and local that is  
1618 bound to it. Very interestingly, in the Republican  
1619 discussion draft, we believe it is a relatively weak board  
1620 with all of the resources, the staffing, the facilities and  
1621 the administrative support provided by the FCC. Surprise,  
1622 surprise. We want the FCC to do it. The FCC doesn't want  
1623 to. So it--

1624 Mr. {Terry.} All right. I am going to reclaim, and Mr.  
1625 Rogers, do you want--

1626 Mr. {Rogers.} I yield back my time. Is there any other  
1627 member that seeks time? I would yield back my time to the  
1628 chairman.

1629 Mr. {Walden.} The gentleman yields back his time.

1630 Are there other members seeking recognition or are we  
1631 ready to proceed to a vote on the substitute? If there are  
1632 no other members seeking recognition, the chair now asks for  
1633 a vote on the amendment. All those in favor of the amendment  
1634 will vote aye. Those opposed, no. The nos appear to have it  
1635 and the nos have it.

1636 Ms. {Eshoo.} I request a roll call vote.

1637 Mr. {Walden.} The minority would like a roll call vote  
1638 so a roll call vote is requested, and the clerk will call the  
1639 roll.

1640 The {Clerk.} Mr. Terry?

1641 Mr. {Terry.} No.

1642 The {Clerk.} Mr. Terry votes no.

1643 Mr. Stearns?

1644 Mr. {Stearns.} No.

1645 The {Clerk.} Mr. Stearns votes no.

1646 Mr. Shimkus?

1647 [No response.]

1648 The {Clerk.} Mrs. Bono Mack?  
1649 Mrs. {Bono Mack.} No.  
1650 The {Clerk.} Mrs. Bono Mack votes no.  
1651 Mr. Rogers?  
1652 Mr. {Rogers.} No.  
1653 The {Clerk.} Mr. Rogers votes no.  
1654 Mrs. Blackburn?  
1655 Mrs. {Blackburn.} No.  
1656 The {Clerk.} Mrs. Blackburn votes no.  
1657 Mr. Bilbray?  
1658 Mr. {Bilbray.} No.  
1659 The {Clerk.} Mr. Bilbray votes no.  
1660 Mr. Bass?  
1661 Mr. {Bass.} No.  
1662 The {Clerk.} Mr. Bass votes no.  
1663 Mr. Gingrey?  
1664 Dr. {Gingrey.} No.  
1665 The {Clerk.} Mr. Gingrey votes no.  
1666 Mr. Scalise?  
1667 Mr. {Scalise.} No.  
1668 The {Clerk.} Mr. Scalise votes no.  
1669 Mr. Latta?  
1670 Mr. {Latta.} No.  
1671 The {Clerk.} Mr. Latta votes no.

1672 Mr. Guthrie?  
1673 Mr. {Guthrie.} No.  
1674 The {Clerk.} Mr. Guthrie votes no.  
1675 Mr. Kinzinger?  
1676 Mr. {Kinzinger.} No.  
1677 The {Clerk.} Mr. Kinzinger votes no.  
1678 Mr. Barton?  
1679 Mr. {Barton.} No.  
1680 The {Clerk.} Mr. Barton votes no.  
1681 Mr. Upton?  
1682 The {Chairman.} No.  
1683 The {Clerk.} Mr. Upton votes no.  
1684 Ms. Eshoo?  
1685 Ms. {Eshoo.} Aye.  
1686 The {Clerk.} Ms. Eshoo votes aye.  
1687 Mr. Markey?  
1688 Mr. {Markey.} Votes aye.  
1689 The {Clerk.} Mr. Markey votes aye.  
1690 Mr. Doyle?  
1691 [No response.]  
1692 The {Clerk.} Ms. Matsui?  
1693 Ms. {Matsui.} Aye.  
1694 The {Clerk.} Ms. Matsui votes aye.  
1695 Mr. Barrow?

1696 Mr. {Barrow.} Votes aye.

1697 The {Clerk.} Mr. Barrow votes aye.

1698 Ms. Christensen?

1699 [No response.]

1700 The {Clerk.} Mr. Towns?

1701 Mr. {Towns.} Aye.

1702 The {Clerk.} Mr. Towns votes aye.

1703 Mr. Pallone?

1704 [No response.]

1705 The {Clerk.} Mr. Rush?

1706 Mr. {Rush.} Aye.

1707 The {Clerk.} Mr. Rush votes aye.

1708 Ms. DeGette?

1709 Ms. {DeGette.} Aye.

1710 The {Clerk.} Ms. DeGette votes aye.

1711 Mr. Waxman?

1712 Mr. {Waxman.} Aye.

1713 The {Clerk.} Mr. Waxman votes aye.

1714 Chairman Walden?

1715 Mr. {Walden.} No.

1716 The {Clerk.} Chairman Walden votes no.

1717 Mr. {Walden.} Are there other members who have not

1718 voted? Mr. Shimkus?

1719 Mr. {Shimkus.} No.

1720           The {Clerk.} Mr. Shimkus votes no.

1721           Mr. {Walden.} Are there other members who have not  
1722 voted? If not, the clerk will report the tally.

1723           The {Clerk.} Mr. Chairman, on that vote, there are  
1724 eight ayes, 16 nays.

1725           Mr. {Walden.} Eight ayes, 16 nays. The amendment is  
1726 not approved.

1727           Are there bipartisan amendments to the JOBS Act?

1728           Mr. {Bilbray.} Mr. Chairman.

1729           Mr. {Walden.} The chair recognizes the gentleman from  
1730 California, Mr. Bilbray.

1731           Mr. {Bilbray.} Mr. Chairman, I have the honor to have  
1732 an amendment at the desk with Chairman Dingell.

1733           Mr. {Walden.} The clerk will report the title of the  
1734 amendment.

1735           The {Clerk.} Amendment to discussion draft offered by  
1736 Mr. Bilbray of California and Mr. Dingell of Michigan.

1737           [The amendment follows:]

1738 \*\*\*\*\* INSERT 3 \*\*\*\*\*

|  
1739           Mr. {Walden.} The gentleman from California is  
1740 recognized to speak on his amendment.

1741           Mr. {Bilbray.} Thank you, Mr. Chairman, and we have a  
1742 pretty extensive amendment here, and really, it is two  
1743 sentences. I guess we will all remember the classic movie  
1744 American Graffiti where Richard Dreyfuss was running around  
1745 looking for Wolfman Jack and where he was transmitting his  
1746 radio show, and one of the characters talks about well, he is  
1747 on a hill in Tijuana broadcasting from there, and he covers  
1748 the whole world. Well, I happen to have grown up in a  
1749 neighborhood that looked up at the hill where those  
1750 broadcasting stations exist, and the issue of cross-border,  
1751 international cross-border transmission and interference and  
1752 problems is very extensive. It is something that to this day  
1753 still hasn't been addressed from everything from Wolfman Jack  
1754 to having Baja cellular confiscate calls in the San Diego  
1755 region.

1756           And all we are asking for, and I am honored to work with  
1757 Mr. Dingell on this, is that we make sure that in this bill  
1758 that we address those issues, be they in Tijuana or be they  
1759 in Detroit. I think this is something that the federal  
1760 government has not only the right but the responsibility to  
1761 specifically address not just for those of us along the

1762 frontiers but across the entire country, and I would ask that  
1763 we consider this amendment.

1764         At this time, I would yield to my colleague from  
1765 Michigan.

1766         Mr. {Dingell.} I thank my good friend, and I am very  
1767 happy to join him in sponsorship of this legislation.

1768         I begin, Mr. Chairman, by commending you for holding  
1769 this markup, and I would also like to commend you for the  
1770 progress you have made in your discussion draft toward  
1771 addressing issues that affect public safety and broadcasters.  
1772 Ensuring our Nation's first responders have the resources  
1773 they need to protect Americans and making sure that our  
1774 constituents still have access to free over-the-air  
1775 broadcasting are goals of the utmost importance. I do not  
1776 doubt your commitment to seeing them to a successful  
1777 resolution, and I thank you and your staff for your  
1778 willingness to consider all manner of suggestions to achieve  
1779 this end.

1780         The amendment that my friend and colleague, Mr. Bilbray  
1781 of California, and I are offering will clarify the Federal  
1782 Communications Commission may not reorganize broadcast  
1783 frequencies without coordinating with Canada and Mexico. I  
1784 fought for many months to get information from the commission  
1785 about precisely this issue, and unfortunately to no avail.

1786 The commission has been secreted, and quite honestly has  
1787 given me the impression of some dishonesty by the way it has  
1788 conducted itself on this matter. The commission has been  
1789 totally unwilling to grant my requests for information and  
1790 gives me dark suspicions that viewers in the border areas all  
1791 along the Mexican-U.S. border and all along the Canadian-U.S.  
1792 border and the Alaska-Canadian border have real reason to  
1793 fear that we will lose or find our television signals  
1794 degraded or indeed worse. Our amendment will prevent that,  
1795 and I urge all my colleagues to support that.

1796 I would like to now request an answer to a question from  
1797 counsel. Counsel, this only requires a yes or no answer.  
1798 Does the--

1799 Mr. {Walden.} There is a new technique.

1800 Mr. {Dingell.} Well, let us hope it works, Mr.  
1801 Chairman.

1802 Does this amendment require the United States to  
1803 complete the coordination process with Canada and Mexico  
1804 before the FCC reassigns channels for the remaining  
1805 broadcasters?

1806 {Counsel.} Yes.

1807 Mr. {Dingell.} Thank you, counsel.

1808 Mr. Chairman, I would ask that the committee report  
1809 reflect this exchange, and I want to thank you and my

1810 colleagues for your courtesy. I also want to thank my  
1811 colleague from California for his leadership and his help and  
1812 his friendship.

1813 I would simply observe if your district is anywhere near  
1814 any of the national borders of the United States with any of  
1815 our neighboring nations, you have a strong interest in seeing  
1816 to it that this amendment is adopted and the failure to do so  
1817 may strip your people of proper service or degrade the  
1818 service that you receive, and it will comfort this committee  
1819 to know that the FCC will be compelled to do something that  
1820 they have indicated no inclination to do up to this time, and  
1821 that is to see to it that border States and the broadcasters  
1822 and listeners in those border States receive proper service.

1823 I commend my colleague, and Mr. Chairman, I thank you.  
1824 You are proving today that when the regular order is  
1825 followed, good consequences are likely to follow. I thank  
1826 you.

1827 Mr. {Bilbray.} Mr. Chairman, thank you for the time.

1828 Just as--even though Mr. Dreyfuss never did find the  
1829 elusive blond running around in the T-bird, I hope the quest  
1830 that we have of equal protection for our communication  
1831 capabilities along the border will be a lot more successful  
1832 than Mr. Dreyfuss was.

1833 Thank you very much and I yield back.

1834 Mr. {Walden.} I recognize the gentlewoman from  
1835 California.

1836 Ms. {Eshoo.} Thank you, Mr. Chairman. I just want to  
1837 thank the chairman emeritus for what he is offering with Mr.  
1838 Bilbray. It is very important for those that live along the  
1839 borders that they not in any way, shape or form lose the  
1840 broadcasts that they are entitled to in our country. After  
1841 all, these are the public airwaves and I think that they have  
1842 added something to the legislation that all of us can and  
1843 should support reflecting the importance and the substance of  
1844 the amendment, and I yield back.

1845 Mr. {Walden.} The chair recognizes himself to say we  
1846 support the amendment. We thank the gentleman from San Diego  
1847 and the gentleman from Detroit for bringing this legislation  
1848 forward, or who represents the Detroit market, at least, for  
1849 bringing this amendment forward. And if there is no further  
1850 discussion, we would be prepared to go for a vote.

1851 The question is on the amendment. All those in favor of  
1852 the amendment will say aye. Those opposed, nay. The ayes  
1853 clearly have it and the amendment is adopted.

1854 Are there further amendments?

1855 Mr. {Stearns.} Mr. Chairman.

1856 Mr. {Walden.} The chair recognizes the gentleman from  
1857 Florida, Mr. Stearns.

1858           Mr. {Stearns.} Thank you, Mr. Chairman. I have an  
1859 amendment at the desk.

1860           Mr. {Walden.} The clerk will report the title of the  
1861 amendment.

1862           The {Clerk.} Amendment to discussion draft offered by  
1863 Mr. Stearns of Florida.

1864           [The amendment follows:]

1865           \*\*\*\*\* INSERT 4 \*\*\*\*\*

|  
1866 Mr. {Walden.} The gentleman is recognized for 5 minutes  
1867 to speak on his amendment.

1868 Mr. {Stearns.} Thank you, Mr. Chairman.

1869 Mr. Chairman, if the Jumpstarting Opportunity with  
1870 Broadband Spectrum Act of 2011 is signed into law, we are  
1871 giving the Federal Trade Commission the authority to create a  
1872 spectrum auction that will determine the fate of our wireless  
1873 future, and while the contours of this auction will largely  
1874 be crafted at the staff level, the commissioners will  
1875 supervise, guide and shape the ultimate policy. Although the  
1876 legal and policy advisor to the commissioners continue to  
1877 serve an important role, I believe it is time that we also  
1878 allow commissioners to appoint an engineer to inform their  
1879 decisions.

1880 A few months ago, Verizon President McAdam emphasized  
1881 that current government policy causes a spectrum crunch that  
1882 we find ourselves in today. In the past, the FCC auctions  
1883 carved out spectrum into too small of chunks to be usable or  
1884 encourage entities to buy spectrum, hold it, and then flip it  
1885 in the next 10 years. My colleagues, if we are to provide  
1886 the FCC with the authority to hold auctions, we must arm it  
1887 with the appropriate tools so they can succeed.

1888 Therefore, this simple amendment incorporates my

1889 bipartisan bill, H.R. 2102, the FCC Commissioners' Technical  
1890 Resource Enhancement Act, into the spectrum legislation we  
1891 have before us today. Importantly, my bill is already  
1892 cosponsored by my colleague, Bobby Rush, Jerry McNerney and  
1893 Tom Petri of Wisconsin.

1894       Specifically, this bill modifies existing law so that  
1895 each commissioner may hire an additional staff member, an  
1896 electrical engineer or a computer scientist, to provide an  
1897 in-depth technical consultation as well as an interfere with  
1898 the Office of Engineering and Technology and other  
1899 commissioner technical staff. Currently, the statute limits  
1900 each commissioner to appoint three professional assistants,  
1901 which typically, my friends, are legal advisors. By having  
1902 both legal and technical advisors, we will provide the FCC  
1903 commissioners with the necessary, I think, balanced staff  
1904 experience to proper address increasingly, increasingly  
1905 complex technical and legal matters.

1906       Importantly, CBO has already estimated that the net  
1907 budgetary impact of the bill would be insignificant. The  
1908 language only permits commissioners to hire an engineer. It  
1909 does not require a commissioner to do so. Moreover, fees  
1910 collected by the commission would offset the compensation for  
1911 this type of employee.

1912       So my colleagues, my purpose with this amendment is to

1913 provide the necessary support to the agency that we are  
1914 entrusting with determining the future of our country's  
1915 spectrum policy. I would hope all my colleagues on both  
1916 sides of the aisle would ultimately support this amendment.  
1917 However, after talking with the staff and talking with the  
1918 chairman, I understand that there is some concern about its  
1919 jurisdiction and its applicability under this process.

1920         So under those circumstances, Mr. Chairman, I look  
1921 forward to working with you in the future, and I decided that  
1922 in this case and under these circumstances, I am happy to  
1923 withdraw this amendment at this time so we can work in the  
1924 future to help the full committee in its markup, and more  
1925 importantly, to give the FCC the opportunity so each  
1926 commissioner can appoint an electrical engineer or computer  
1927 scientist to help them in this very innovative age we are  
1928 moving into with new technology, and I thank the chairman.

1929         Ms. {Eshoo.} Would the gentleman yield?

1930         Mr. {Stearns.} I would be glad to yield.

1931         Ms. {Eshoo.} I want to thank the gentleman for the  
1932 thinking that is embedded in the amendment that you are  
1933 withdrawing. I raised the point that you are making in the  
1934 amendment when the FCC testified, and because I thought it  
1935 was important along with you and what you laid out that they  
1936 have this opportunity. But I was very surprised that they

1937 turned it down. The FCC said that they thought that they had  
1938 the resources that were necessary and that you and what was  
1939 embedded in my question to them had really essentially been  
1940 taken care of.

1941 So I appreciate your raising it, because they really  
1942 should have access to what you outlined, but just to enlarge  
1943 on the discussion here, they thought that they had what they  
1944 needed. So I offer that, and thank you for raising it. We  
1945 were both thinking the same thing.

1946 Mr. {Stearns.} I would just say to the gentlelady if  
1947 you ask a lot of lawyers if you need an engineer, they will  
1948 probably say no.

1949 Ms. {Eshoo.} No, this was specifically on what you just  
1950 outlined. It had nothing to do with lawyers. I asked very  
1951 specifically about technologists and what you raised, and  
1952 that was their answer.

1953 Mr. {Stearns.} I appreciate the encouragement from the  
1954 gentlelady.

1955 Ms. {Eshoo.} Thank you.

1956 Mr. {Rush.} Mr. Chairman.

1957 Mr. {Walden.} For what purpose does the gentleman from  
1958 Illinois, Mr. Rush, seek recognition?

1959 Mr. {Rush.} Mr. Chairman, I have an amendment at the  
1960 desk.

1961 Mr. {Walden.} The clerk will read the title of the  
1962 amendment.

1963 Mr. {Terry.} At this time I will reserve a point of  
1964 order.

1965 Mr. {Walden.} The gentleman reserves a point of order.

1966 The {Clerk.} Amendment to discussion draft offered by  
1967 Mr. Rush of Illinois.

1968 [The amendment follows:]

1969 \*\*\*\*\* INSERT 5 \*\*\*\*\*

|  
1970           Mr. {Walden.} The gentleman from Illinois is recognized  
1971 for 5 minutes on his amendment.

1972           Mr. {Rush.} I want to thank you, Mr. Chairman.

1973           Mr. Chairman, providing for the needs of public safety  
1974 and doing what we can through the incentive auctions process  
1975 to tame growing U.S. deficits are our overarching priorities.  
1976 With the national unemployment rate above 9 percent, we  
1977 cannot afford to put all of our eggs in one basket. The  
1978 spectrum policy approach that Congress decides to take will  
1979 affect the number of jobs that we can create as well as the  
1980 additional domestic economic growth we can generate. In  
1981 doing so, we must not and cannot afford to foreclose smaller  
1982 companies and entities from meaningfully participating in  
1983 future FCC spectrum auctions. Further concentration of media  
1984 and communications ownership is not the antidote to job  
1985 losses and a shrinking GDP and a shrinking economy. Nor will  
1986 these gains be based on the expectancy that government should  
1987 make as much new spectrum as possible unlicensed. Our  
1988 commercial end game cannot only be about making sure that as  
1989 many of our country's wireless subscribers can get 4G service  
1990 or that broadcasters get the fairest shake possible and make  
1991 the most money possible. These measures may make for larger  
1992 subscriber bases but they aren't the rifle shots necessary

1993 for curing job wounds that slick commercials and some self-  
1994 serving interest groups may want the American public to  
1995 believe.

1996           Undoubtedly, these are very important goals that will be  
1997 instrumental in ensuring that as much spectrum is cleared and  
1998 reallocated as possible for public safety and commercial  
1999 purposes. But, Mr. Chairman, we must see this time as a real  
2000 opportunity to create jobs and to grow our economy in the  
2001 process. Rolling out new wireless broadband services and  
2002 consumer wireless devices that operate in these new licensed  
2003 and unlicensed spectrum bands may help to catalyze some job  
2004 creation and make us more productive in our daily lives but  
2005 the statistics clearly show that small business jobs and  
2006 hiring will propel most of our future job growth and will put  
2007 our Nation back on its feet and our American workers back to  
2008 working.

2009           That is why I took the time to draft an amendment which  
2010 I will be withdrawing, Mr. Chairman, to institute a tax  
2011 certificate program that will provide incentives for  
2012 broadcasters who decide to relinquish their over-the-air TV  
2013 licenses to invest in small and disadvantaged businesses in  
2014 the communications and information services sectors. In  
2015 coming days, I will be very working very actively to receive  
2016 support among my esteemed colleagues on this committee from

2017 both sides of the aisle and with others for my proposal.

2018 Mr. Chairman, with that, I will yield back the balance  
2019 of my time.

2020 Mr. {Walden.} Does the gentleman withdraw his  
2021 amendment?

2022 Mr. {Rush.} Mr. Chairman, I will withdraw the  
2023 amendment.

2024 Mr. {Walden.} The gentleman withdraws his amendment.

2025 The gentleman yields back the balance of his time.

2026 Are there other members seeking recognition for  
2027 amendments? Let us go to Mr. Rogers. We will recognize the  
2028 gentleman from Michigan, Mr. Rogers.

2029 Mr. {Rogers.} Thank you, Mr. Chairman. I have an  
2030 amendment at the desk.

2031 Mr. {Walden.} The clerk will report the title of the  
2032 amendment.

2033 The {Clerk.} Amendment to discussion draft offered by  
2034 Mr. Rogers of Michigan.

2035 [The amendment follows:]

2036 \*\*\*\*\* INSERT 6 \*\*\*\*\*

|  
2037           Mr. {Walden.} The gentleman is recognized for 5 minutes  
2038 on his amendment.

2039           Mr. {Rogers.} Thank you, Mr. Chairman.

2040           As we look to build out across the country, there is  
2041 some concern about the security of those networks, and this  
2042 legislation is intended to prevent companies that have been  
2043 deemed ``a national security concern'' by a federal agency  
2044 from participating in or contracting with the federal  
2045 government to build out public safety networks. The buildout  
2046 of our nationwide public safety network is too important for  
2047 a company with a questionable intention to come in and  
2048 underbid a project for the sole purpose of having access to  
2049 those networks. We are suffering death by a thousand cuts  
2050 right now from cyber espionage in a way that is shocking and  
2051 breathtaking and, quite frankly, intolerable from nation-  
2052 states around the world. And when they do that, it  
2053 jeopardizes nearly every sector of our economy. These cyber  
2054 espionage attacks result in massive losses of private sector  
2055 intellectual property and sensitive government information.  
2056 Senior intelligence officials estimate that \$1 trillion worth  
2057 of intellectual property government information is  
2058 stolen every single year as we go into 2012 through cyber  
2059 espionage.

2060 I urge your immediate support of this amendment and to  
2061 protect the security of our nationwide networks.

2062 Ms. {Eshoo.} Would the gentleman yield?

2063 Mr. {Rogers.} I would be honored to yield.

2064 Ms. {Eshoo.} I want to thank the gentleman for offering  
2065 this very important amendment.

2066 Our committee and its work is enhanced by having Mr.  
2067 Rogers here all of these years, but also in his added  
2068 responsibility as being chairman of the House Intelligence  
2069 Committee. As a former member having just finished 8 years  
2070 there, I know very well the depth and the breadth of this  
2071 issue. It is a national security issue. Our effort here is  
2072 strengthened with this amendment. I fully support it and I  
2073 thank him for offering it, and I yield back.

2074 Mr. {Rogers.} I thank the gentlelady, and I want to  
2075 thank her for her service on the Intelligence Committee and I  
2076 think you also bring that same experience to this committee  
2077 that is incredibly valuable.

2078 Mr. {Walden.} Would the gentleman yield?

2079 Mr. {Rogers.} I would yield to the chairman.

2080 Mr. {Walden.} I want to thank both of you for speaking  
2081 in favor of this amendment, Mr. Rogers, you for bringing it.  
2082 I am fully supportive of it and would encourage members on  
2083 both sides of the aisle to be supportive of this amendment,

2084 and I would yield back to you.

2085 Mr. {Rogers.} Any other member seeking time?

2086 I yield back my time, Mr. Chairman.

2087 Mr. {Walden.} The gentleman yields back.

2088 Are there other members seeking recognition on this  
2089 amendment? If not, the question before us is approving the  
2090 amendment. All those in favor will say aye. Those opposed,  
2091 nay. The ayes have it. The amendment is agreed to.

2092 The chair recognizes himself for purposes of an  
2093 amendment. The clerk will report the Manager's Amendment  
2094 clarification, AMD02.

2095 The {Clerk.} Manager's amendment to discussion draft  
2096 offered by Mr. Walden of Oregon.

2097 [The amendment follows:]

2098 \*\*\*\*\* INSERT 7 \*\*\*\*\*

|  
2099 Mr. {Walden.} The chair recognizes himself to discuss  
2100 the amendment.

2101 This amendment merely makes technical changes. It  
2102 clarifies the effect on low-power TV usage rights and  
2103 includes all reasonable costs for cable clarifying facilities  
2104 siting language. This is a technical amendment only in  
2105 virtually all measure, and I don't believe there is  
2106 opposition to it.

2107 Are there members seeking recognition? I would  
2108 recognize the gentlelady from California.

2109 Ms. {Eshoo.} We support this, Mr. Chairman.

2110 Mr. {Walden.} Does anyone else seek recognition on this  
2111 amendment? If not, the question before us is approval of the  
2112 Manager's Technical Amendment. All those in favor will say  
2113 aye. Those opposed, nay. The ayes have it. The amendment  
2114 is agreed to, and we will suspend for just a moment here.

2115 We have an amendment. The chair recognizes the  
2116 gentleman from Illinois. For what purpose do you seek  
2117 recognition?

2118 Mr. {Shimkus.} I have an amendment at the desk, Mr.  
2119 Chairman.

2120 Mr. {Walden.} The clerk will report the title of the  
2121 amendment.

2122           The {Clerk.} Amendment to discussion draft offered by

2123 Mr. Shimkus of Illinois and Ms. Eshoo of California.

2124           [The amendment follows:]

2125 \*\*\*\*\* INSERT 8 \*\*\*\*\*

|  
2126 Mr. {Walden.} The gentleman is recognized for 5 minutes  
2127 for purposes of debate on his amendment.

2128 Mr. {Shimkus.} Thank you, Mr. Chairman. Again, thank  
2129 you and chairman of the full committee, of course the ranking  
2130 member of the subcommittee for the work together on this.

2131 We co-chair the 911 Caucus. That technology has moved  
2132 rapidly like everything else. So we have been working on  
2133 next generation, how do we make sure that the PSAPs have the  
2134 equipment needed to meet this new era of broadband, Wi-Fi,  
2135 you name it.

2136 So in consultation with Congresswoman Eshoo and working  
2137 with this and some changes this morning, this is the product.  
2138 It would authorize \$250 million to be used to provide grants  
2139 to public safety answering points, to implement IP-based  
2140 infrastructure, next-generation 911 technology and services  
2141 and training support for the migration to next-generation  
2142 911. It is imperative that we not leave our call centers  
2143 while working towards our goal of modernization of public  
2144 safety communications in this country.

2145 Our amendment also will require the States to certify  
2146 that 911 fees collected from consumers are being used for  
2147 their intended purposes for PSAPs within that State to  
2148 qualify for funding. States all over the country including

2149 my home State of Illinois--this didn't used to be the case  
2150 when we first started this--are robbing e-911 funds blind.  
2151 It is a first step to make sure that these funds are going to  
2152 where they were intended to go and where the consumer expects  
2153 them to go. So we are leveraging part of the money to make  
2154 sure also that the State funds go in the right direction.

2155         Again, I want to thank you, Mr. Chairman, for accepting  
2156 my amendment, which I hope you will do, and thank Ranking  
2157 Member Eshoo and her staff for working with me and my staff  
2158 for a long period of time to get to this point.

2159         Mr. {Walden.} Would the gentleman yield?

2160         Mr. {Shimkus.} I would be honored to yield.

2161         Mr. {Walden.} I appreciate the gentleman yielding. I  
2162 appreciate both him and Ms. Eshoo's work on this issue for a  
2163 very long period of time and predecessor 911 issues and your  
2164 work in general on public safety over time and your  
2165 commitment to public safety has been extraordinary, and when  
2166 you brought this to my attention, I thought it was important  
2167 to include it in this legislation was appropriate. There was  
2168 a way to achieve some level of financial support for it here,  
2169 and I think it makes good policy and it is bipartisan, and we  
2170 have tried to do that wherever we could in this process. So  
2171 I am delighted to support it and I appreciate the hard work  
2172 you have put into it, and I yield back to you.

2173 Mr. {Shimkus.} Thank you, Mr. Chairman. I could yield,  
2174 unless you want your own time, Anna.

2175 Ms. {Eshoo.} I move to strike the last word.

2176 Mr. {Shimkus.} Okay. I yield back my time.

2177 Ms. {Eshoo.} Thank you. Thank you, Mr. Chairman.

2178 The reason I moved to strike the last word is that this  
2179 work has gone on for a long time. It has been almost a  
2180 decade. And I really want to thank Congressman Shimkus. He  
2181 and I are the original co-chairs of the House e-911 Caucus.  
2182 There were hardly any takers, hardly any interest on either  
2183 side of the aisle in this issue for a long, long time. We  
2184 engaged then Senators Burns and Clinton to do the same thing  
2185 in the Senate. You can tell how long ago that was because  
2186 neither one of them is there anymore. But we felt that it  
2187 was necessary that just as first responders have everything  
2188 that they need to respond to the calls for help in our  
2189 community, that the e-911 and 911 call centers have that as  
2190 well.

2191 So I know that we are probably standing between this and  
2192 lunch, and maybe members aren't all that interested in what I  
2193 am saying, but I just had to jump in because this really has  
2194 been a long, winding road, and the people that are in the  
2195 call centers in every single one of our communities, they are  
2196 the first ones right there in the trenches, and anyone that

2197 has visited their local call center knows how essential that  
2198 is. Mothers and fathers teach their little ones, one of the  
2199 first things they teach them is to dial 911 in case something  
2200 goes wrong at home.

2201           So I want to thank Mr. Shimkus. I want to thank the  
2202 chairman for including this in the legislation. The way it  
2203 will work is, the way CBO scores, they usually are very  
2204 conservative. We are counting on some money being left over.  
2205 I will take that, because we have been at it for a long, long  
2206 time. So I am going to hope and pray that money is left on  
2207 the table because it should go to the call centers to bring  
2208 them into the next generation of taking care of people in our  
2209 communities across the country, and I will yield back the  
2210 balance of my time--

2211           The {Chairman.} Will the gentlelady yield just one  
2212 moment?

2213           Ms. {Eshoo.} I would be glad to, Mr. Chairman.

2214           The {Chairman.} I just want to commend you and Mr.  
2215 Shimkus for working together on this. I think it is a great  
2216 amendment. I have always believed that we are going to  
2217 recoup more money than CBO gives us the score for, and that  
2218 has been the tradition in the past. They have almost always  
2219 been off. And this is an area that you will remember that  
2220 Bart Stupak and I worked together on the transition from

2221 analog to digital, and I think this is a nice piece to come  
2222 back, and you two have done really good work and I am glad  
2223 that it is going to be accepted as part of this bill.

2224 Ms. {Eshoo.} Thank you.

2225 The {Chairman.} Thank you, both.

2226 Ms. {Eshoo.} Thank you.

2227 Mr. {Walden.} Are there other members seeking  
2228 recognition on this important amendment to the JOBS Act? If  
2229 not, we will call the question on the amendment. Those in  
2230 favor of the amendment will vote aye. Those opposed, nay.  
2231 The ayes have it, and the amendment is adopted.

2232 We will stand in recess for just a moment. We have one  
2233 other member that wanted to offer an amendment and I believe  
2234 is on the way here to do that.

2235 [Recess.]

2236 Mr. {Walden.} The chair recognizes the gentlelady from  
2237 California, Ms. Eshoo, for 5 minutes on the underlying bill.

2238 Ms. {Eshoo.} On the underlying bill. Thank you, Mr.  
2239 Chairman.

2240 I wanted to ask, because the proposal came late and  
2241 there are still some questions, and then there are some other  
2242 parts of the bill that I hope between now and full committee  
2243 markup that you would be willing to sit down and meet with us  
2244 and see if we can't bridge some of our differences.

2245           The first question that I have is on the \$3 billion that  
2246 you have in the bill. Can you take that apart, deconstruct  
2247 it, and instruct all the members as to what these dollars are  
2248 for?

2249           Mr. {Walden.} Is that a question of counsel?

2250           Ms. {Eshoo.} Well, I don't know who can answer it.

2251 Whomever, if it is counsel can answer it or the chairman.

2252           Mr. {Walden.} I would yield to counsel, but we can do  
2253 it either way.

2254           {Counsel.} The \$3 billion that you are referencing in  
2255 the bill is a fund that is set aside from the first \$3  
2256 billion in auction receipts from broadcast incentive auctions  
2257 in order to repay the reasonably incurred relocation costs of  
2258 those broadcasters who are being asked to move in order to  
2259 clear spectrum for the FCC to auction--

2260           Ms. {Eshoo.} And how did you come up with the estimate  
2261 of \$3 billion or the \$3 billion price tag? I know in ours, I  
2262 think we had \$1 billion for that, correct? Yes.

2263           {Counsel.} The \$3 billion that is set aside is not all  
2264 to be used for that.

2265           Ms. {Eshoo.} How did you come up with it?

2266           {Counsel.} We have seen estimates that range anywhere  
2267 from \$1 billion to \$2 billion, and in the interest of not  
2268 having the FCC's hands tied by not having enough money, we

2269 put three into the fund, and--

2270 Ms. {Eshoo.} Who requested it? Did someone request it?

2271 {Counsel.} Request that it be \$3 billion or request the  
2272 relocation fund itself?

2273 Ms. {Eshoo.} The \$3 billion. Was it something that--

2274 Mr. {Walden.} I would be happy to take that. It is a  
2275 figure we thought was reasonable. It is not mandated to all  
2276 be spent. The remainder goes back. I can tell you, in  
2277 correspondence I have had with some of the public television  
2278 folks, they were relieved to know that the figure was that  
2279 high because they will have some relocation costs here, and  
2280 were actually kind of upset about the repacking until they  
2281 figured out how it worked and that there was a fund here to  
2282 help pay for their relocation costs. So we just wanted to be  
2283 reasonable about it and thought that was a good figure.

2284 Ms. {Eshoo.} I am not questioning the motivation. I  
2285 just didn't know where it came from. This was the first time  
2286 that we had seen it. We hadn't discussed it before. And I  
2287 just wanted to know what it was based on, what you came up  
2288 with.

2289 {Counsel.} If I may, the reasoning for the change from  
2290 the original draft, in the original draft, the Republican  
2291 discussion draft left the FCC full discretion to use all  
2292 funds collected from the incentive auction in order to meet

2293 the relocation needs of reasonable incurred costs. However,  
2294 because of the way the public safety trust fund which was  
2295 incorporated from the original Democrat discussion draft is  
2296 structured doing so would have held all funds from the  
2297 broadcast incentive auction in order to make sure all  
2298 relocation costs were paid prior to making any money  
2299 available for public safety. In the interests of ensuring  
2300 that any receipts that come in above the first \$3 billion are  
2301 made immediately available to meet public safety's needs, we  
2302 changed the structure and had a fixed number.

2303 Mr. {Waxman.} Will the gentlelady yield?

2304 Ms. {Eshoo.} I would be glad to.

2305 Mr. {Waxman.} I find it astounding because the CBO  
2306 estimated the cost up to \$1 billion. Counsel said that some  
2307 people estimated it \$2 billion. So you throw in an extra  
2308 billion and say \$3 billion. I thought we had problems in  
2309 this country with the budget deficit. When we talked about  
2310 the white spaces, I think one of the arguments against what  
2311 Ms. Eshoo had proposed and she and I cosponsored, one of the  
2312 arguments against it is, this could be a loss of a billion  
2313 dollars. Well, a loss of a billion dollars to foster  
2314 ingenuity and creativity and new market uses and white space  
2315 that some of these startups wouldn't be able to afford  
2316 otherwise, I don't agree to that amount but that seems to me

2317 money that is invested for the future. But just to throw  
2318 another \$2 billion over CBO's estimate doesn't make a lot of  
2319 sense to me. Yield back.

2320 Mr. {Walden.} Would the gentlewoman yield?

2321 Ms. {Eshoo.} Gentlewoman.

2322 Mr. {Waxman.} She has the time.

2323 Mr. {Walden.} Gentlewoman yield. That is what I said.

2324 I would just say again, this is a cap on the amount.

2325 This isn't what gets spent. Could counsel direct us to the  
2326 specific language about reasonable repacking costs?

2327 Mr. {Waxman.} Well, before you do that, will the  
2328 gentlelady yield to me?

2329 Whenever we have an authorization and we say a certain  
2330 amount, that is the cap and the appropriators come in and  
2331 appropriate the actual amount. You put a limit on it. But  
2332 the Republican efforts have been to say that the  
2333 authorization shouldn't be any higher than the appropriation.  
2334 Now we have caps up there, and I find more often than not, I  
2335 don't want to sound like a Republican but they make this  
2336 point over and over again, and they are right. Whenever you  
2337 put a cap, that usually becomes the floor as well.

2338 Mr. {Walden.} The gentlelady's time is expired.

2339 I recognize the gentleman from Illinois.

2340 Mr. {Kinzinger.} Thank you, Mr. Chairman, and with my

2341 time I will yield to the chairman.

2342 Mr. {Walden.} I appreciate that.

2343 I would like to go to counsel on this subject of the  
2344 cap. That does not require expenditure, correct?

2345 {Counsel.} Sir, the expenditures are handled elsewhere  
2346 in the bill, and are captioned to be the reasonable  
2347 expenditures for the relocation costs of those folks that do  
2348 not choose to participate as relinquishers of spectrum  
2349 rights.

2350 Mr. {Walden.} The language in the bill also sets up  
2351 reasonable standards, right? This isn't a blank check to  
2352 broadcasters?

2353 {Counsel.} That is correct. The standard here is  
2354 reasonably incurred relocation costs, which is very similar  
2355 to what was done with the DTV transition in 2005.

2356 Mr. {Walden.} And so there is a cap. There is a  
2357 reasonable amount put under that cap. This is not  
2358 referenced--this does not go back to the appropriators,  
2359 correct?

2360 {Counsel.} No, it does not.

2361 Mr. {Walden.} So it doesn't have anything to do with  
2362 the appropriators, which I thought I understood Mr. Waxman to  
2363 say when you authorize, then the appropriators weigh in and  
2364 do all this. That is not how this works, correct?

2365           {Counsel.} No, sir. It is structured with a billion  
2366 dollars of borrowing authority up front in order to begin the  
2367 process of relocating broadcasters at the end of the auction  
2368 but before receipts have come in, and then \$3 billion from  
2369 receipts to meet the reasonable relocation costs.

2370           Mr. {Walden.} And the reason we had to do this is  
2371 because had we not, all the proceeds from the auction would  
2372 have been tied up. That would have delayed the buildout of  
2373 broadband had we not created this system?

2374           {Counsel.} Correct. No funds from the broadcast  
2375 television auction would have been available for 13 years.

2376           Mr. {Walden.} For 13 years?

2377           {Counsel.} As long as 13 years.

2378           Mr. {Walden.} As long as 13 years.

2379           {Counsel.} Yes.

2380           Ms. {Eshoo.} Mr. Chairman, would you just yield to me?

2381           Mr. {Walden.} Certainly.

2382           Ms. {Eshoo.} Mr. Chairman, the reason I raise this is  
2383 obvious. It is a lot of money. And we hadn't discussed it  
2384 before, and I didn't know the background on where the number  
2385 came from, and I appreciate the discussion but I also, if I  
2386 might, you know, when we talked about costs and benefits when  
2387 it comes to unlicensed, what price tag do we place on what  
2388 innovation and entrepreneurs will produce for our national

2389 economy in one innovation space that they make use of and let  
2390 us keep in mind that they are the public airwaves.

2391 Mr. {Walden.} Reclaiming my time.

2392 Ms. {Eshoo.} They do not belong to private entities.

2393 Mr. {Walden.} Reclaiming my time. We have also asked  
2394 the broadcasters and DTV to move over and get off analog and  
2395 give up the analog spectrum in exchange for the digital  
2396 spectrum. We are now coming back a couple of years later and  
2397 saying oh, by the way, we are coming back and changing the  
2398 rules again. Now we are going to voluntarily ask you,  
2399 voluntarily, to participate to free up more spectrum to meet  
2400 this demand of wireless broadband, and in exchange for that,  
2401 we are willing to help cover the costs of relocation from the  
2402 proceeds of the auction, which I think is a reasonable and  
2403 fair balance and an inducement, by the way, to get them to  
2404 participate.

2405 Mr. {Waxman.} Will the gentleman yield?

2406 Mr. {Walden.} Not yet. I will be happy to in a moment.

2407 And so that is part of, I think, the balance that has  
2408 been struck here, to encourage broadcasters to participate to  
2409 free up this spectrum but not to force them to, and to have a  
2410 fair and equitable way. As I say, this is a capped fund. It  
2411 is not a blank check. There are reasonable standards here in  
2412 the statute as we propose it.

2413           And when it comes to the issue of unlicensed, remember  
2414 what you are doing here is actually taking taxpayer funds to  
2415 clear this spectrum to help pay for the move and then under  
2416 your proposal allow the FCC to cordon however much--I  
2417 believe--I don't think--is there a limit on how much the FCC  
2418 can cordon off for unlicensed?

2419           Ms. {Eshoo.} There is.

2420           Mr. {Walden.} Well, whatever that limit is then, we  
2421 would have paid to clear that and then turn it over to both  
2422 America's smallest and largest innovative companies to use  
2423 with no cost. Now, that will generate jobs. I get all that.  
2424 But I think there is a higher use here for this valuable  
2425 spectrum in the licensed world.

2426           Now, that is not to say there won't be unlicensed in  
2427 these bands that still could be available as a secondary use,  
2428 which by the way I believe a lot of the things that have been  
2429 talked about here from baby monitors to Wi-Fi are not going  
2430 to go away. They are in these higher spectrums, are they  
2431 not, counsel, in terms of the spectrum that are used for  
2432 these various, from baby monitors to Wi-Fi?

2433           {Counsel.} Our bill does not change the amount of  
2434 unlicensed spectrum currently in existence.

2435           Mr. {Walden.} And indeed, under the legislation that  
2436 the Republicans are putting forth here, there would probably

2437 be more unlicensed made available. Is that not correct?

2438 {Counsel.} The Republican discussion draft explicitly  
2439 has the FCC begin a proceeding to create unlicensed spectrum  
2440 in the 5 gigahertz band and would retain the FCC's existing  
2441 authority for secondary and white space use of spectrum.

2442 Mr. {Walden.} And is there any--well, I won't ask you  
2443 that. That is more a policy question.

2444 With that, I--

2445 Ms. {Eshoo.} Mr. Chairman, would you just yield a  
2446 couple of seconds to me?

2447 Mr. {Walden.} I have got 16 of them and I will yield  
2448 them to you.

2449 Ms. {Eshoo.} Okay. And Mr. Waxman wanted a couple of  
2450 seconds as well.

2451 I don't question the fairness that needs to be  
2452 appropriated--excuse the word but I mean it in the best sense  
2453 of the world--to broadcasters, and you just outlined where we  
2454 have been and what we are doing, and that is contained and  
2455 recognized and honored in both of our bills. So that is not  
2456 the question. I think that if I had put \$3 billion in my  
2457 base bill that you would be asking about it as well. So it  
2458 is a very honest, fair question, and--

2459 Mr. {Walden.} Reclaiming my time. Do you have--

2460 Ms. {Eshoo.} We had a billion because of CBO. So I

2461 just want to make sure that people understand my sincerity in  
2462 raising the question.

2463 Mr. {Waxman.} Mr. Chairman.

2464 Mr. {Walden.} All of our time has expired, so does the  
2465 gentleman seek recognition?

2466 Mr. {Waxman.} I do.

2467 Mr. {Walden.} The gentleman is recognized for 5 minutes  
2468 on the underlying bill?

2469 Mr. {Waxman.} Yes, on the subject before us today. I  
2470 won't ask about unregulated farm dust.

2471 Counsel, the money that would go to help the  
2472 broadcasters with a maximum of \$3 billion, where does that  
2473 money come from?

2474 {Counsel.} The first \$3 billion in receipts from the  
2475 auction of television and spectrum.

2476 Mr. {Waxman.} And if the auction funds are being used  
2477 for that purpose, it is not being used for deficit reduction,  
2478 right? These are otherwise taxpayers' dollars.

2479 {Counsel.} The way the funding is set up under the  
2480 public safety trust fund, the first \$3 billion from the  
2481 television auction goes to the relocation fund and all funds  
2482 after that go into the trust fund, which has set up a system  
2483 of priorities for repayment.

2484 Mr. {Waxman.} Okay. Well, if the FCC--as I understand

2485 the purpose of a \$3 billion amount is to be sure the FCC has  
2486 enough flexibility to meet the costs that may be more than  
2487 CBO estimates, and CBO estimated a billion, and some people  
2488 said maybe it is \$2 billion. So to give them enough  
2489 flexibility, we are going to provide \$3 billion.

2490 Now, I guess in my mind--I am not asking counsel this  
2491 question. In my mind, I don't see the difference between  
2492 giving the FCC the ability to deal with that problem from  
2493 giving the FCC the ability to deal with the white space  
2494 issue. The argument was that the money that would go to whit  
2495 spaces would be money that won't be returned to maybe the  
2496 taxpayers but maybe to the auction fund. And so I just want  
2497 to draw that point out very clearly. On the one hand, we are  
2498 keeping the FCC from having discretion where they think it is  
2499 appropriate under the circumstances where they think is  
2500 appropriate with, as Ms. Eshoo pointed out, a cap, and yet  
2501 under the circumstance to help the broadcasters out, we are  
2502 going to throw an extra couple billion dollars over what CBO  
2503 estimates.

2504 So that is that I would have said if the chairman had  
2505 time to yield to me but I wanted to make that point. I yield  
2506 to Ms. Eshoo.

2507 Ms. {Eshoo.} I can't help but observe the following.  
2508 There is some political cross-dressing in this. The

2509 Democrats have in their base bill, our base bill, something  
2510 that represents innovation. You do a cost-benefit analysis,  
2511 which the Republicans have constantly spoken about, job  
2512 creation, which we are all for and certainly you want to  
2513 promote are you are in the majority. These are all important  
2514 principles that are a part of the debate on unlicensed  
2515 spectrum. Now, there are some, and there is a key committee  
2516 staffer who feels very strongly that this is going to one  
2517 large company. That is not what I am here for. That is not  
2518 why I am a fan of the unlicensed spectrum. It is because the  
2519 very, very small startups will be choked off if they don't  
2520 have the right kind of access to this.

2521 Mr. {Waxman.} Will the gentlelady yield?

2522 Ms. {Eshoo.} Certainly.

2523 So we are promoting the very things that you always talk  
2524 about and you promote, so that is why I said there is some  
2525 political cross-dressing in this.

2526 Mr. {Waxman.} If I could reclaim my time, public safety  
2527 says they need \$7 billion to \$10 billion. The Republican  
2528 bill gives them only \$5 billion. Why are we shortchanging  
2529 public safety if they are going to end up needing \$7 billion  
2530 to \$10 billion but assuring that we have enough money for the  
2531 broadcasters?

2532 Now, the broadcasters are not required to allow this

2533 auction of their spectrum. They have to make a business  
2534 decision whether it makes sense for them to do it.

2535 Mr. {Walden.} Will the gentleman yield?

2536 Mr. {Waxman.} And if they are making a business  
2537 decision, they can make a business decision as to whether  
2538 they are getting enough money. I would hate to think we are  
2539 going to use that \$3 billion for any other purpose than the  
2540 relocation costs but when money is on the table, it becomes  
2541 very attractive to say well, let us sweeten the pot a little  
2542 bit if you really want me to volunteer giving up my spectrum.

2543 So I would like the FCC to have more available  
2544 authorization to protect the white spaces, the unlicensed  
2545 spaces. I would like public safety to have adequate money  
2546 and I don't see why to go over a CBO estimate of a billion  
2547 dollars.

2548 Mr. {Walden.} Will the gentleman yield?

2549 Mr. {Waxman.} Yield back my time.

2550 Mr. {Walden.} Okay. The gentleman won't yield.

2551 I recognize the gentleman from Ohio, Mr. Latta.

2552 Mr. {Latta.} Mr. Chairman, I will yield my time to you.

2553 Mr. {Walden.} I appreciate that courtesy.

2554 And here is what I would say. The first thing in order  
2555 to get any spectrum available is to make sure that  
2556 broadcasters voluntarily put it up for auction. We both

2557 agree on that. And I think we both agree that there should  
2558 be a relocation fund to pay for that. The way we structure  
2559 our bill is to make sure that there is adequate resource  
2560 there that the whole process can move forward but it is a cap  
2561 and it is governed by the Federal Communications Commission  
2562 making sure that there is a reasonable standard imposed on  
2563 broadcasters seeking repayment for the costs of their  
2564 relocation.

2565 I will ask counsel, is there any indication that the FCC  
2566 can go above that \$3 billion in our legislation? They can't  
2567 do that, right?

2568 {Counsel.} No, they can't.

2569 Mr. {Walden.} And would the reasonable standard and the  
2570 estimate from CBO that has been referenced here, so if it is  
2571 a billion as the Democrats think, then it is a billion,  
2572 right?

2573 {Counsel.} Yes, sir.

2574 Mr. {Walden.} And the \$2 billion that would remain,  
2575 what would happen to that money?

2576 {Counsel.} If the auction authority that expires in  
2577 2021 has not expired, then the money would go to the public  
2578 safety trust fund. After 2021, the public safety trust fund  
2579 is dissolved and is put into the general fund so those funds  
2580 would go to the general fund.

2581 Mr. {Walden.} But meanwhile, they would go to the  
2582 public safety trust fund?

2583 {Counsel.} And so if there are surplus funds going to  
2584 the public safety trust fund, our legislation would allocate  
2585 \$4.96 billion for public safety initial buildout of broadband  
2586 plus we have moved and given the D block which had a CBO  
2587 score I think of about \$2.7 billion plus they are in line  
2588 because CBO has a history of undervaluing the value of  
2589 spectrum as the market sets it. I think the DTV auction, the  
2590 latest estimate, they were off by about 50 percent. So the  
2591 funds that come in over the estimated amount part of which  
2592 would flow to public safety to achieve the \$6.5 billion that  
2593 they say they need.

2594 And so I think we are trying to strike a balance here  
2595 given very tight fiscal times where we are trying to grow  
2596 jobs in the private sector. We are trying to free up  
2597 broadband. My colleague from California cited, I believe it  
2598 was a Deloitte analysis on the job growth that came from  
2599 wireless broadband buildout was enormous. And that is the  
2600 primary purpose of this bill. It is not to carve out very  
2601 valuable wireless broadband spectrum and then allow the FCC  
2602 to carve out a chunk of that and give it away for free to  
2603 whoever wants to use it. That is not to say--

2604 Ms. {Eshoo.} Mr. Chairman.

2605 Mr. {Walden.} Just a moment. I will in a moment.

2606 That is not to say that there isn't value in unlicensed  
2607 and that is not to say there won't be unlicensed developed.  
2608 And in the area we are clearing that will be in the upper  
2609 bands, I think it is the 5 gig and beyond, is there not  
2610 innovation going on in those bands? I would say yes. I mean,  
2611 we have met with companies who have told us they have some  
2612 interesting ideas in the upper bands. So I think there is a  
2613 good balance here, and I think the Republicans have come a  
2614 long way on these measures and have a bill that works for  
2615 growing jobs, works from our perspective for public safety.

2616 Now, I know public safety wants more. They want D  
2617 block. They want \$10 billion. They don't want to give back  
2618 any spectrum. I have been in those meetings. I have seen  
2619 the emails. I will tell you what. I don't know anybody else  
2620 coming to Capitol Hill today that is being offered what we  
2621 are proposing to offer.

2622 Mr. {Waxman.} Will the gentleman yield?

2623 Mr. {Walden.} Not yet.

2624 I just look at it and say we are having to make tough  
2625 budget decisions all over this hill. This country is in debt  
2626 up to its eyeballs, its eyebrows and beyond, and we are  
2627 trying to carve out \$6.5 billion here, which I think is  
2628 reasonable, to build a new start, a new network, and finally

2629 make good on a recommendation from a commission, the 911  
2630 Commission, that dealt with this issue 10 years ago. The  
2631 last Congress didn't deal with this. The Congress before  
2632 that didn't deal with this. And in fact, the former chairman  
2633 of this committee though we should auction the D block when  
2634 he was chairman of the committee. Now that all changed, and  
2635 I recognize and respect when the President changes your  
2636 party, maybe others have to change.

2637 Ms. {Eshoo.} And you changed.

2638 Mr. {Walden.} And we have changed. Because you know  
2639 what? I think there is a way to get a balance. But what I  
2640 don't see coming back is any support for the change in terms  
2641 of this other issue on spectrum.

2642 Now, the spectrum giveback actually arose in part of a  
2643 discussion, Mr. Waxman, you and I had about a potential D  
2644 block and this other coming back. And so I think there is an  
2645 opportunity here to legislate in a way that creates jobs,  
2646 takes care of public safety, provides for innovation, and we  
2647 achieved that.

2648 I am sorry. I have gone beyond my time. Do other  
2649 members seek recognition? Mr. Markey.

2650 Mr. {Markey.} Thank you, Mr. Chairman. I yield to the  
2651 ranking member.

2652 Mr. {Waxman.} I thank you very much for yielding to me.

2653 Mr. Chairman, I know you are trying to get the right  
2654 balance, and we want to help you get that right balance, but  
2655 counsel, let me ask you a question. What happens if we--  
2656 under the Republican bill, it is \$5 billion for public  
2657 safety. Is that right?

2658 {Counsel.} Four point nine six billion for buildout and  
2659 \$40 million for the administration, yes.

2660 Mr. {Waxman.} Okay. Now, what if it costs more?

2661 {Counsel.} We would need to either appropriate more or  
2662 the States would have to contribute to the fund.

2663 Mr. {Waxman.} Well, public safety says they need 7 to  
2664 10. The Republican bill gives them only 5. And yet we are  
2665 not building any cushion. So for them, we have a pretty  
2666 clear ceiling, and that may be reasonable. But we want--I  
2667 just want to contrast that with the cushions we are building  
2668 on the broadcaster thing.

2669 But I appreciate, Mr. Chairman, what you are saying and  
2670 the work you are trying to do, and I know you put a lot of  
2671 effort into this legislation and we want to help you succeed.  
2672 We think this is important public policy but there are things  
2673 to talk about, and we can do them in markups, maybe we can do  
2674 them between markups, but I want to get to the point where we  
2675 are together, and I hope we can get to that point.

2676 Thank you, Mr. Markey.

2677 Mr. {Markey.} I yield back the balance of my time and I  
2678 yield to the ranking member of the subcommittee.

2679 Ms. {Eshoo.} Thank you, Mr. Markey.

2680 As I thank you, it is a very broad thank you because I  
2681 think that what you have done as the previous both chairman  
2682 and ranking member of this subcommittee is legendary. There  
2683 isn't anyone that has the mastery and the understanding of  
2684 telecommunications in our country, I think in the entire  
2685 Congress--

2686 Mr. {Markey.} Stop.

2687 Ms. {Eshoo.} I am, and he has always done it well.

2688 Mr. {Markey.} I reclaim my time.

2689 Ms. {Eshoo.} At any rate, I wanted to start out with  
2690 that since you yielded the time to me.

2691 Mr. Chairman, I think that what is obvious here is that  
2692 we have some differences that I thought and I said it in my  
2693 opening statement that had we been able to complete our work  
2694 together as we were meeting, that we would really come to a  
2695 consensus on them in governance, on some of these dollar  
2696 figures and on the unlicensed. I hope that you will tell us  
2697 that we can continue working on these before we go to full  
2698 committee markup because it is worth it. It is worth the  
2699 investment in it. We are operating off the same set of  
2700 principles in terms of what we want for outcome, and what we

2701 are pointing out is some of the--you know, where there are  
2702 differences that there is not a consistency of positions on  
2703 the majority side.

2704 Mr. {Walden.} Would the gentlelady yield?

2705 Ms. {Eshoo.} So I hope that you would--

2706 Mr. {Walden.} Would you yield?

2707 Ms. {Eshoo.} I would be glad to.

2708 Mr. {Walden.} See, here--

2709 Ms. {Eshoo.} Don't you have to ask Mr. Markey?

2710 Mr. {Markey.} Yes, I would be glad to yield.

2711 Mr. {Walden.} I guess part of it is, as I look at our  
2712 draft and the nine meetings you and personally have had, the  
2713 last of which Mr. Waxman sat in on, and unending discussions  
2714 our staffs, very professional staffs, have had. We have  
2715 tried to reach these agreements.

2716 There are some fundamental differences, though, that I  
2717 am not convinced we can overcome on the governance piece. We  
2718 tried a hybrid model. You all tried your hearts to figure  
2719 out, can you take part of what we want, part of what you want  
2720 and come up with a hybrid, and I think both drafts reflect  
2721 the fact you probably can't. So then you have to make a  
2722 choice and--

2723 Ms. {Eshoo.} Reclaiming my time. You know what? I  
2724 don't agree with you. I think that we can. I think it is

2725 worth investing that time. We went dark after October 4th  
2726 because of your belief that the Super Committee was somehow  
2727 going to write this legislation.

2728 Mr. {Walden.} If the gentlelady would yield?

2729 Ms. {Eshoo.} I didn't agree.

2730 Mr. {Walden.} Actually, the gentleman's time is  
2731 expired.

2732 I recognize the gentleman from Nebraska, Mr. Terry.

2733 Mr. {Terry.} Thank you. I move to strike the last  
2734 word. Regarding the issue of consistency, I appreciate the  
2735 consistency of their argument, which is, it should be  
2736 unlimited on both, or as I was hearing the discussion in  
2737 regards to the broadcasters, the argument is that the  
2738 broadcasters should not be reimbursed for any costs they  
2739 would incur for giving up their spectrum. I think that is  
2740 what I heard from a couple of members.

2741 So the logic is, if you don't support a voluntary system  
2742 that would make it revenue neutral or neutral to a  
2743 broadcaster who gives up spectrum, then the substitute of  
2744 that is that if we need that spectrum, you take it, and so I  
2745 would for consistency of argument expect an amendment from  
2746 the Democratic side to strike the voluntary auction or  
2747 voluntary giving up of spectrum provisions and just mandate  
2748 the FCC take it back with no cost. I think that would be

2749 consistent with the rhetoric that we heard here. So I would  
2750 expect that to be on the table here somewhat soon.

2751         The other part of the discussion with the value to  
2752 public safety is kind of that old one that we always had with  
2753 education. Whatever we put up, they will put more up and  
2754 then we are never quite there. We are never as good as they  
2755 are. They support public safety. They support education  
2756 more because there is more on the table. But it is  
2757 interesting to me that one of the issues not put in value to  
2758 public safety is that they are being given D block, an area  
2759 where the vast majority of us--and I was one of those that  
2760 was hell no on D block but have changed my position to allow  
2761 that because we are moving the ball forward and it does help  
2762 public safety. So why don't we add in the \$3 billion of  
2763 value to D block that we aren't going to get by auctioning  
2764 that.

2765         So that brings it up to, you know, 5 in essence, and by  
2766 the way, that was Biden's number when they were working on  
2767 debt limit issues. So we add in \$3 billion and that is 8.  
2768 Expecting auction to bring in more than expected, they get a  
2769 percentage, another 1.5 on top of that. So it far exceeds  
2770 even what the broadband plan or really hits what the  
2771 broadband plan had set out.

2772         And so I just want to know if the other side is going to

2773 strike or object to the broadcasters voluntarily giving up  
2774 and they would be made whole in that effort.

2775 Ms. {Eshoo.} Will the gentleman yield?

2776 Mr. {Terry.} Sure. Are you going to have an amendment?

2777 It is a yes or no question, and I will yield to you. Are you

2778 going to produce an amendment to back up the rhetoric that

2779 you will go to mandated taking of spectrum from broadcasters?

2780 Mr. {Markey.} No.

2781 Ms. {Eshoo.} No.

2782 Mr. {Terry.} Okay. I yield back.

2783 Mr. {Walden.} The gentleman--

2784 Ms. {Eshoo.} Did he yield?

2785 Mr. {Walden.} Yes, he has yielded back his time.

2786 Ms. {Eshoo.} You won't yield?

2787 Mr. {Terry.} I will yield. You answered the question,

2788 and I thought that--

2789 Ms. {Eshoo.} Will you yield?

2790 Mr. {Walden.} He yields the time to you.

2791 Ms. {Eshoo.} Thank you. I appreciate it.

2792 Mr. Terry, all the members of the committee, everyone  
2793 that is in the hearing room, I have supported from the get-go  
2794 as have the Democrats the voluntary auction, and we have  
2795 every step of the way respected what the broadcasters have  
2796 brought to the table to all of us. There is funding in the

2797 bill to help with the transition costs. At no time did we  
2798 ever object to it, and I think that the bill is--one of the  
2799 basic tenets of the bill relative to voluntary auction is  
2800 very important because of the broadcasters didn't agree on  
2801 that, then we wouldn't be able to move on to reallocate  
2802 spectrum anywhere. So voluntary has been honored, and it has  
2803 from the very beginning. So I don't think that there is--

2804 Mr. {Terry.} I will reclaim my last 5 seconds.

2805 Ms. {Eshoo.} I appreciate your giving me time to make  
2806 that statement.

2807 Mr. {Terry.} Thank you. Well, and perhaps I was  
2808 confused when you were talking when there was discussion  
2809 about this spectrum being publicly owned and perhaps we  
2810 should--it is, and so the assumption is there and additional  
2811 arguments that have been made would lead me to conclude that  
2812 the FCC should just take it back.

2813 So I yield back.

2814 Mr. {Walden.} The chair recognizes the gentlewoman from  
2815 Tennessee, Ms. Blackburn. For what purpose do you seek  
2816 recognition.

2817 Mrs. {Blackburn.} Thank you, Mr. Chairman. I have an  
2818 amendment at the desk.

2819 Mr. {Walden.} The gentlelady has an amendment at the  
2820 desk. The clerk will report the title of the amendment.

2821           The {Clerk.} Amendment to discussion draft offered by

2822 Mrs. Blackburn of Tennessee.

2823           [The amendment follows:]

2824 \*\*\*\*\* INSERT 9 \*\*\*\*\*

|  
2825           Mr. {Walden.} The gentlelady is recognized for 5  
2826 minutes for purposes of debate on her amendment.

2827           Mrs. {Blackburn.} Thank you, Mr. Chairman. This is a  
2828 fairly simple amendment. What it would do is to prohibit the  
2829 FCC from using the licensing process for placing net  
2830 neutrality or wholesaling conditions on the auction, and it  
2831 is something that I think it is necessary. We know that the  
2832 FCC used its licensing authority to impose open access  
2833 obligations in the 700 megahertz band C block and public  
2834 safety access obligations on the D block, and the open access  
2835 obligations resulted in fewer and lower bids for the C block,  
2836 which deprived the Treasury of billions of dollars in that  
2837 auction, and because of this, I think that as we look at this  
2838 spectrum auction, what we need to do is to make certain that  
2839 we prohibit that from taking place again.

2840           And we want to move forward with this, do it in a  
2841 proactive manner, and with that, in the sake of interest, I  
2842 will yield back.

2843           Mr. {Walden.} Would the gentlelady yield? I would like  
2844 to ask counsel, does the gentlelady's amendment affect any  
2845 underlying authority the FCC already has in this matter?  
2846 Rulemaking authority.

2847           {Counsel.} The rulemaking authority?

2848 Mr. {Walden.} Yes.

2849 {Counsel.} It would affect their rulemaking authority  
2850 with respect to setting service rules that are specific to a  
2851 particular license class.

2852 Mr. {Walden.} But would it affect them on net  
2853 neutrality broadly?

2854 {Counsel.} Broadly?

2855 Mr. {Walden.} Yes.

2856 {Counsel.} No. General rulemaking authority would  
2857 remain intact.

2858 Mr. {Walden.} That was my question. I didn't phrase it  
2859 correctly. But general rulemaking authority would remain in  
2860 effect. Doesn't this in effect--I will say it. My  
2861 understanding of this amendment is in effect if the FCC has  
2862 the authority in this area, they can exercise it. If they  
2863 don't, they don't. They just can't use the issuance of these  
2864 licenses as a means to implement net neutrality when they may  
2865 or may not, and the court is going to decide, have underlying  
2866 authority in this area. I will ask the maker of the  
2867 amendment. Is that correct?

2868 Mrs. {Blackburn.} Yes, that is correct. That is my  
2869 understanding.

2870 Mr. {Walden.} So this isn't--this is license specific  
2871 in its impact then?

2872 Mrs. {Blackburn.} That is the intent.

2873 Mr. {Walden.} Okay. I yield back.

2874 Mrs. {Blackburn.} I will yield back my time.

2875 Mr. {Walden.} The gentlelady yields back.

2876 I recognize the gentlewoman from California, Ms. Eshoo.

2877 Ms. {Eshoo.} Thank you, Mr. Chairman. I move to strike  
2878 the last word.

2879 I oppose this amendment--no surprise--been at it for a  
2880 long time. I think this amendment prohibits the FCC from  
2881 applying conditions that require licensees to apply  
2882 reasonable network management, transparency and non-  
2883 discrimination principles in the administration of their  
2884 networks, and I think that that is an important  
2885 responsibility.

2886 The amendment in my view would undermine the FCC's  
2887 recent open Internet order and harm the commission's ability  
2888 to impose conditions that promote the public interest, and  
2889 you know, those are two magnificent words to me, the public  
2890 interest, and believe it or not, you have to battle for it.  
2891 It is not recognized as something that is a given, and so in  
2892 the battle for it, we seek to protect it, at least I do.

2893 So I oppose the amendment because I am concerned that it  
2894 will severely limit, and that is really the intent, to limit  
2895 the FCC's authority to impose reasonable and pro-consumer

2896 conditions on spectrum auction licensees.

2897           Specifically, the amendment prohibits the FCC from  
2898 applying the principles adopted in the commission's open  
2899 Internet order, which I stated a few months ago, for wireline  
2900 providers. It would also allow licensees to engage in a  
2901 panoply of anti-consumer practices. How is that one? Anyone  
2902 for that? I mean, I don't think that is defensible.

2903           Notably, the amendment would allow carriers to manage  
2904 their network in a discriminatory fashion to favor certain  
2905 content or applications, all without the need to disclose to  
2906 their consumers these practices. So whenever this issue  
2907 comes up, I am there with the fly swatter because I think  
2908 that it is important to stand for the public interest. I  
2909 think it is important to be opposed to discriminatory  
2910 practices and anti-consumer practices.

2911           So I don't know if there is anyone that would like to  
2912 use any of the time that I have remaining. I would be happy  
2913 to yield. Mr. Markey, you are fine? Okay.

2914           With that, I will yield back. I oppose the amendment.

2915           Mr. {Walden.} The gentlelady yields back the balance of  
2916 her time.

2917           Are there others seeking recognition on the amendment?

2918           Mr. {Terry.} Move to strike the last word.

2919           Mr. {Walden.} Mr. Terry is recognized for 5 minutes.

2920 Mr. {Terry.} I have some thoughts here, and I respect  
2921 our friend from California's passion to protect the  
2922 consumers. I would share wholeheartedly in that. Some of  
2923 that is a little bit art in the sense that perhaps some of  
2924 what we feel is allowed under that would be price controls or  
2925 pricing from government, which, you know, paying more as you  
2926 are using more width or broadband does not seem anti-consumer  
2927 to some of us. So there is a little bit of this that we  
2928 would think is more art and left up to interpretation. It is  
2929 not so clear that it is all anti-consumer in here.

2930 If I could ask you, if the FCC has authority by courts,  
2931 could it stop the general rulemaking? I am sorry, of the  
2932 concerns from Ms. Eshoo.

2933 {Counsel.} Is your concern the impact on the FCC's net  
2934 neutrality rule of this amendment?

2935 Mr. {Terry.} Yes.

2936 {Counsel.} The FCC's net neutrality rule relies on a  
2937 number of bases including the FCC's licensing authority to  
2938 the extent that they rely on their licensing authority. This  
2939 amount would preclude that. It would not, however, preclude  
2940 any other bases of authority the FCC relies on in the act in  
2941 their order.

2942 Mr. {Terry.} So they could address the gentlelady from  
2943 California's concerns?

2944           {Counsel.} Yes. To the extent that they have the  
2945 underlying authority for general rulemaking this would not  
2946 alter that general rulemaking.

2947           Mr. {Terry.} I appreciate that.

2948           Ms. Blackburn, do you need any additional time? I can  
2949 yield.

2950           Mrs. {Blackburn.} I appreciate the gentleman yielding  
2951 to me.

2952           I think that in response to the gentleman's question and  
2953 to the counsel's remark, I think it is just important for us  
2954 to realize that the FCC should not be able to impose regulatory  
2955 mandates unless the Communications Act explicitly gives the  
2956 FCC the authority to do so, and what we are doing with this  
2957 amendment is just making sure that this licensing process is  
2958 not used as a back-door means of imposing some of those  
2959 regulations, and with that, I yield back to the gentleman  
2960 from Nebraska and thank him for the time.

2961           Mr. {Terry.} Any other? No? Yield back.

2962           Mr. {Walden.} Do any other members seek recognition on  
2963 this issue? The gentleman from Massachusetts, Mr. Markey, is  
2964 recognized for 5 minutes on the amendment.

2965           Mr. {Markey.} Thank you, Mr. Chairman, very much.

2966           I think a little bit of telecommunications history would  
2967 be appropriate at this juncture. First, just let me explain

2968 that AT&T and all these huge broadband behemoths, they had  
2969 nothing to do with this invention of the Internet. In fact,  
2970 the federal government in 1966 offered a contract to AT&T to  
2971 build a packet switch network across the country, and they  
2972 said no, we don't want that contract, we already have a  
2973 monopoly in land lines. And so they gave the contract to a  
2974 little company up in Boston, Operanic and Newman, who then  
2975 hired all the people who designed the Internet as we know it  
2976 today. That was how it happened. AT&T, the big companies,  
2977 they wanted nothing to do with it.

2978         Then back in the 1960s and the 1970s, the big behemoths,  
2979 they said once again, oh, you can't allow small companies to  
2980 have their own phones that would plug into a switch in a  
2981 home. If you didn't have a black rotary dial phone  
2982 controlled by a monopoly charging \$3 per month every month--  
2983 for the life your grandmother, that could have been 40 years  
2984 of 3 bucks a month--then that is pretty good business if you  
2985 can get it. That is like 1,500 bucks to rent a black rotary  
2986 dial phone. But if you ever had a phone made by another  
2987 company, it could bring down the whole phone system of any  
2988 large city in the United States.

2989         So what does the government have to do? The government  
2990 has to get in. Yeah, the Bell Labs are great. They invent  
2991 stuff but they don't deploy it. Why would you deploy

2992 something if you already had a monopoly, if you already were  
2993 in a duopoly? You are already sharing all the profits.

2994         And so what did we do? Okay. Well, we first began by  
2995 breaking up AT&T and saying, hey, how about a company like  
2996 MCI or Sprint or hundreds of other smaller long-distance  
2997 companies, what if they got in? And what happened? Boom,  
2998 the price dropped like a rock in long distance. No longer  
2999 that you have to yell, hey, it is long distance, Grandma's on  
3000 the phone, run, because it was 2 bucks a minute. You don't  
3001 have to do that anymore. You can just walk outside this room  
3002 and call grandma in California, which hopefully about 50 of  
3003 you have done so far today. That is because we had to reduce  
3004 monopoly power so that devices, these services became more  
3005 accessible to ordinary people.

3006         And then what did we have to do out of this committee in  
3007 1996. Not one home in America had broadband. Hear that  
3008 again. Not one home in America had broadband in 1996. And  
3009 the technology had been invented in the Bell Labs 15 years  
3010 before that. Why deploy it? We have got a monopoly. We are  
3011 not deploying it. We don't feel any paranoia. We don't have  
3012 to move. We are the big behemoths. And so we passed out of  
3013 this committee the bill which created Adam Smith smiling in  
3014 his grave, finally looking at a marketplace that had  
3015 competition. And you come back 15 years later and what do

3016 you have? You have Facebook and twitter. You have Hulu and  
3017 Amazon and a whole vocabulary that was created in just the  
3018 years since we passed that bill out of this committee, and  
3019 now what does the majority say? The majority says oh, my  
3020 goodness, that is putting too much pressure on the big  
3021 behemoths. We have got to give them total authority now to  
3022 decide which applications, which devices, how much any of  
3023 these companies might be able to move into this marketplace.  
3024 Oh, that is great.

3025 Let us just step back for a second and ask the question  
3026 again: who invented all of these technologies? Who made  
3027 America number one? Did I hear any one of the telephone  
3028 companies or capable companies inventing anything in the last  
3029 15 years? No, I don't think so. I think it all got invented  
3030 by hundreds and thousands of entrepreneurs across this  
3031 country that created a new economy, and by the way, branded  
3032 it made in the USA. They are saying that in Tahrir Square.  
3033 They are saying it in Tunisia. They are saying it in big  
3034 skyscrapers of China as they try to become more competitive  
3035 in this marketplace, you know, what are they doing there in  
3036 America. And here we on the committee that took all the  
3037 steps that created and unleashed all this innovation, all  
3038 these new jobs, not just here but across the planet. And we  
3039 are saying let us strip the FCC of their ability to say to

3040 the behemoths, you know, you can't take us back to that  
3041 monopolistic and duopolistic world that basically allowed for  
3042 black rotary dial phones to flourish. And let us look back  
3043 and say was it a good idea to move from black rotary dial  
3044 phones to BlackBerries, from narrowband to broadband. You  
3045 know, was that a good idea? I think we should be proud of  
3046 our past--

3047 Mr. {Terry.} Would the gentleman yield?

3048 Mr. {Markey.} --and the agency of expertise did the  
3049 job.

3050 Mr. {Walden.} The gentleman's time is expired.

3051 Mr. {Markey.} And what the Blackburn amendment does is,  
3052 it says to the FCC, you are out of the business of protecting  
3053 entrepreneurs, protecting the venture capitalists who want to  
3054 take a chance and get into these marketplace.

3055 Mr. {Terry.} Would the gentleman yield for a second  
3056 even though you don't have any time?

3057 Mr. {Markey.} I would be glad to yield.

3058 Mr. {Terry.} I appreciated your statement. I only have  
3059 one issue. It didn't rhyme.

3060 Mr. {Walden.} The gentleman's time is expired.

3061 Are there other members seeking recognition? The  
3062 gentleman from Illinois is recognized.

3063 Mr. {Markey.} Can I just say this? History doesn't

3064 repeat itself but it does tend to rhyme.

3065 Mr. {Shimkus.} Thank you, Mr. Chairman.

3066 I would just note that those who are concerned like  
3067 myself about net neutrality is the basic position that we  
3068 want a buildout of more pipes, not less, and if you give away  
3069 something free, you don't incentivize more buildout. So  
3070 trying to summarize all of Ed's 5 minutes into 15 seconds,  
3071 that is why I oppose that.

3072 Mr. {Walden.} Would the gentleman yield? Because I  
3073 think it is an important point to make. If I understand the  
3074 gentlelady's amendment correctly, it is license specific. If  
3075 the FCC has the underlying authority by statute to write  
3076 rules and regulations affecting net neutrality, this  
3077 amendment does not deny them that right to write those  
3078 regulations. So let us just put that on the record.

3079 And the second point is, I am astounded to learn today  
3080 that Al Gore is not the one who invented the Internet.

3081 I yield back.

3082 Mr. {Shimkus.} Reclaiming my time, and I would like to  
3083 yield to the author of the amendment, Ms. Blackburn.

3084 Mrs. {Blackburn.} Thank you, Mr. Shimkus.

3085 And the chairman is right. It is license specific, and  
3086 I think to Mr. Markey's point, what we want to make certain  
3087 is that we do allow these innovators to continue to work, and

3088 I would remind Mr. Markey that in paragraph 84 of the net  
3089 neutrality order, it requires these innovators to go and file  
3090 with the FCC. That is troublesome.

3091 I think it is a good amendment that I have brought  
3092 forward. I think it is worthy of the consideration of the  
3093 committee, and I think that we want to make certain is that  
3094 we do not have these net neutrality or wholesaling conditions  
3095 placed on these auctions, and I yield back to the gentleman  
3096 from Illinois.

3097 Mr. {Shimkus.} And I yield back my time.

3098 Mr. {Walden.} The gentleman yields back.

3099 Does anyone else seek--the chair recognizes the  
3100 gentleman from California, Mr. Waxman.

3101 Mr. {Waxman.} Mr. Chairman, my counsel just whispered  
3102 in my ear that the statement was not correct that this takes  
3103 away any of the ability of the FCC to act. It does. It  
3104 takes away one of the provisions in the law that allowed the  
3105 FCC as they saw it to promulgate the net neutrality rules.

3106 Look, this is a fight over net neutrality, and I  
3107 remember at the beginning of this year in this subcommittee,  
3108 which always had a history of bipartisanship, we all said to  
3109 each other, oh, we will be so happy when the net neutrality  
3110 fight is over, which was waged on the law that could stop a  
3111 regulation that is being proposed and the Congressional

3112 approval law of those regulations, and we passed it. We  
3113 fought about it. We had hearings. We fought about it. The  
3114 Republican majority prevailed. Maybe you had some Democrats.  
3115 But nevertheless, the bill passed and it is sitting in the  
3116 Senate. It is not sitting in the Senate? It was defeated in  
3117 the Senate. Okay. So you couldn't win it that way.

3118         This provision or one very similar to it was in the  
3119 original draft of the chairman's bill on this legislation for  
3120 spectrum and public safety, and we started to talk and try to  
3121 see if we can reach a compromise, and the chairman took it  
3122 out as a concession to us so that we could move forward on  
3123 the rest of the bill.

3124         Now, I oppose this on the merits, but it just seems to  
3125 me, you can add this in here if you want but it is not going  
3126 to survive. The Senate is not going to accept it. It may  
3127 bring down the whole bill. It is going to make it harder for  
3128 us to reach a compromise on a bipartisan basis on the bill  
3129 where we should reach a bipartisan consensus and we are so  
3130 anxious to agree to one.

3131         So I just think it is unwise to have this amendment in  
3132 there. It becomes a poison pill. It distracts us from  
3133 getting to the real job of dealing with public safety and the  
3134 spectrum auction, and so I would urge my colleagues to oppose  
3135 it, and I would be happy to yield to Mr. Markey.

3136 Mr. {Markey.} I thank the gentleman for yielding.

3137 The language of the amendment says that the Federal  
3138 Communications Commission may not impose any condition on the  
3139 licenses assigned through this system, and then it basically  
3140 goes on to say the FCC can't basically say to the licensee  
3141 once they get it anything about applications or services or  
3142 devices or the network. Well, that takes us back to the  
3143 black rotary dial phone and it takes us back to the other  
3144 services again, okay? And so is a limitation on the  
3145 protection of someone that has got a new gadget, got a new  
3146 application, got something that is a little bit different  
3147 than whoever it was that, you know, thought that they knew  
3148 everything about telecommunications, and that is who we are.  
3149 That is the United States of America. That is why they send  
3150 so many exchange students to our country.

3151 But do you want to know what? They don't have a culture  
3152 of ideas in China. They don't have a culture of ideas in the  
3153 Arab world. This is our edge. Our edge is that that is our  
3154 culture, and if you stifle that, if you put a wet blanket  
3155 over that, you are killing what it is that differentiates us  
3156 from the rest of the world in terms of what we bring to the  
3157 marketplace and so--

3158 Mr. {Waxman.} If I could reclaim my time?

3159 Mr. {Markey.} I would be glad to yield to you.

3160 Mr. {Waxman.} I agree with your argument. I agree  
3161 about the substance that we ought to leave the FCC rules on  
3162 net neutrality in place. There is disagreement with that, I  
3163 understand. A majority of this committee disagrees with that  
3164 position. But Chairman Walden was willing to work with us by  
3165 taking this out of his original draft and we thought that was  
3166 a good-faith gesture and we appreciated it. But if we put it  
3167 back in, it just seems to me now is not the time to move us  
3168 further apart.

3169 So I would hope the Republicans just because you have  
3170 the votes and you can do it should refrain from doing it and  
3171 not put back it back in because you are going to have to take  
3172 it out eventually. Let us get a better climate so we can  
3173 agree on a final bill.

3174 Mr. {Walden.} So--

3175 Mr. {Waxman.} I yield my time or yield it back or  
3176 whatever. I will yield it back.

3177 Mr. {Walden.} The gentleman yields back.

3178 Any other member seeking recognition on this amendment?  
3179 If not, the question comes before the subcommittee on  
3180 approval of the amendment. Those in favor will say aye.  
3181 Those opposed, nay. Well, the nays may have sounded louder.  
3182 There are actually more of the ayes present, so the amendment  
3183 is approved and adopted.

3184 Now, are there other amendments?

3185 Ms. {Matsui.} Mr. Chairman, I move to strike the last  
3186 word.

3187 Mr. {Walden.} The gentlelady from California is  
3188 recognized to strike the last world.

3189 Ms. {Matsui.} Well, in the hopes of reaching some sort  
3190 of bipartisan consensus, I want to bring up an issue that is  
3191 important to public safety and most of us here, I believe.

3192 I really have to talk about the Republican provision  
3193 that will require public safety to return 14 megahertz of  
3194 their existing 700 megahertz for commercial use. First of  
3195 all, this is a spectrum giveback obviously. First, it would  
3196 place public safety communications at risk. Public safety  
3197 presently depends upon the use of 700 megahertz narrowband  
3198 spectrum to satisfy their capacity needs, especially in urban  
3199 area where all public safety bands are highly congested. The  
3200 draft will drive public safety to abandon plans to deploy in  
3201 the spectrum out of fear of losing their investments, thereby  
3202 adding to their existing capacity constraints.

3203 Second, it would have an adverse effect on State and  
3204 local investments. Numerous State and local governments have  
3205 expended large sums of public money into deploying 700  
3206 megahertz narrowband networks. The draft puts these  
3207 investments at risk.

3208           Third, it is just unfair because the draft reallocates  
3209 the 10 megahertz D block to public safety but then has them  
3210 return to 14 megahertz.

3211           Finally, as far as a trigger, if there is a trigger, at  
3212 a minimum, the correct trigger should be when the LTE  
3213 broadband network can support mission-critical voice  
3214 communications. I think this is a very important issue, and  
3215 I believe it is something that we all ought to be discussing.  
3216 We have plenty of time before the markup in the full  
3217 committee.

3218           Mr. {Walden.} Would the gentlelady yield on some of  
3219 those points?

3220           Ms. {Matsui.} Certainly.

3221           Mr. {Walden.} So I would like to go to counsel to the  
3222 language in the bill because we tried to very carefully  
3223 protect public safety, and in fact, the transition wouldn't  
3224 occur until 5 years after the administrator certifies that  
3225 there is a public safety secure ability to do talk over  
3226 broadband, and I wonder if counsel could direct us to that  
3227 specific language because this is an important concern.

3228           {Counsel.} Section 102(a)(1) of the Republican  
3229 discussion draft states that on a date that is 5 year after a  
3230 certification by the administrator to the commission of the  
3231 availability of standards for public safety voice over

3232 broadband, the commission shall notwithstanding paragraph 15A  
3233 of section 309(j) of the Communications Act of 1934  
3234 reallocate the 700 megahertz public safety--

3235 Mr. {Walden.} So it is 5 years after there is a  
3236 certification that meets the needs. The second point is,  
3237 there is a fund established to pay public safety for their  
3238 cost to shift off--it is your time. I will yield back.

3239 Ms. {Matsui.} Yes, reclaiming my time. I understand  
3240 that that trigger can be imposed at any time before the 5  
3241 years. Is that correct?

3242 Mr. {Walden.} Can you direct us to the language where  
3243 that would occur?

3244 {Counsel.} The triggering event to start the 5-year  
3245 clock, ma'am, or the triggering event to return the  
3246 narrowband spectrum?

3247 Ms. {Matsui.} Okay. My understanding is that the  
3248 administrator can at any point make the decision to impose  
3249 the 5-year trigger.

3250 {Counsel.} The administrator must certify to the  
3251 Federal Communications Commission that standards exist for  
3252 public safety voice over broadband.

3253 Ms. {Matsui.} But it can be before the 5-year period,  
3254 right?

3255 {Counsel.} The 5-year period doesn't begin until the

3256 certification occurs. The 5 years runs after the  
3257 certification that standards are available.

3258 Ms. {Matsui.} Okay. Then what about the standards,  
3259 though? What is meant by the standards? It could mean  
3260 anything from what I understand. Who is to say what is meant  
3261 by public safety voice over broadband? Who is to say that  
3262 the private companies chosen as administrator and empowered  
3263 to make this determination could not simply declare that  
3264 these standards are available right away?

3265 {Counsel.} There exists an appeal process for decisions  
3266 of the administrator under the Republican draft.

3267 Ms. {Matsui.} And that means going to the federal  
3268 district court to appeal. Is that right?

3269 {Counsel.} Yes, it does.

3270 Mr. {Walden.} If the gentlelady would yield? Who  
3271 determines under the legislation what those standards are?  
3272 Where is that set?

3273 {Counsel.} It is not set. There are many standards  
3274 bodies that set standards for the telecommunications  
3275 industry.

3276 Ms. {Matsui.} So that is unclear then, is what you are  
3277 saying?

3278 {Counsel.} It is not set in the statute.

3279 Ms. {Matsui.} It is not set. So we have a trigger with

3280 standards that are unclear. Is that correct?

3281 {Counsel.} We have a trigger that is set by the  
3282 standardization of public safety broadband voice.

3283 Ms. {Matsui.} Right, that are unclear at this point.  
3284 Just say yes or no.

3285 {Counsel.} We do not delineate who sets the standard.

3286 Ms. {Matsui.} So the answer is no. So there are no  
3287 standards. It is unclear what the standards are. Is that  
3288 correct?

3289 {Counsel.} Of course it is unclear what the standards  
3290 are because there are no standards. There are many--

3291 Ms. {Matsui.} I just want to get clear. Are the  
3292 standards clear?

3293 {Counsel.} No. We are instructing them to set  
3294 standards, ma'am.

3295 Ms. {Matsui.} But they are unclear.

3296 Mr. {Walden.} Well, if the gentlelady would yield, they  
3297 haven't been set yet. So it is hard to say they are clear or  
3298 unclear if they haven't been set.

3299 Ms. {Matsui.} But we are talking about certain  
3300 standards, so you must have some idea of standards. I mean,  
3301 we are talking about--

3302 {Counsel.} I don't, ma'am. The act does not opine on  
3303 what the standard should read.

3304 Ms. {Matsui.} Well, we better work on this moving  
3305 forward.

3306 Mr. {Walden.} The gentlelady's time is expired.

3307 Anyone else seeking recognition? If not, the question  
3308 now occurs on favorably--I am sorry. Ms. Eshoo seeks  
3309 recognition.

3310 Ms. {Eshoo.} Question of the counsel. On this issue of  
3311 having to go to court, can you elaborate on that and under  
3312 what set of circumstances that process is triggered?

3313 {Counsel.} Decisions of the administrator are subject  
3314 to an appeal process. That process is detailed in section  
3315 203(d) on page 61, review of decisions of the administrator.

3316 Ms. {Eshoo.} Can you walk us through this in just  
3317 regular language how this is going to work, all right? So  
3318 there is an administrator. Public safety has the ability to  
3319 appeal the decision of the administrator and then what  
3320 happens?

3321 {Counsel.} At the risk of lapsing into legalese, those  
3322 with standing will have--

3323 Ms. {Eshoo.} I know it is hard for you.

3324 {Counsel.} I know. Are able to challenge the decisions  
3325 of the administrator under an arbitration standard at the  
3326 federal district court.

3327 Ms. {Eshoo.} And approximately, as an attorney, how

3328 long does that usually take?

3329 {Counsel.} It is a variable amount of time.

3330 Ms. {Eshoo.} Variable? Give me an estimate.

3331 {Counsel.} I don't have one.

3332 Ms. {Eshoo.} You don't know? All right.

3333 My observation here, Mr. Chairman, is that this isn't  
3334 clear, and I don't think it is well thought out, and I think  
3335 that we are getting into a thicket of bureaucracy/semi-  
3336 litigation, and I don't think that is the way we want to  
3337 construct this. I don't think you do, and I don't think we  
3338 do.

3339 This really requires more work, and we need to think  
3340 this out. I can't help but think that if I proposed this,  
3341 that someone on the other side of the aisle would be saying  
3342 exactly what I am saying right now. So I think this needs  
3343 some work?

3344 Mr. {Walden.} Will the gentlelady yield?

3345 Ms. {Eshoo.} I would be glad to.

3346 Mr. {Walden.} In your draft, is there an appeal  
3347 mechanism for public safety for decisions made by your  
3348 corporation? Do they have a right of appeal? I realize you  
3349 don't take back the spectrum and all but can you--is there a  
3350 way if a locality or public safety opposes--

3351 Ms. {Eshoo.} Just a second. Well, I think as the staff

3352 is pointing out, that we have two different setups. One is a  
3353 not-for-profit corporation, and the other is a private  
3354 administrator. We believe that the not-for-profit governance  
3355 model serves this issue and how to actually implement a major  
3356 part of the bill in a much better way.

3357 Mr. {Walden.} But my question was--

3358 Ms. {Eshoo.} No, you asked and so I am--

3359 Mr. {Walden.} --is there an appeal mechanism if those  
3360 involved under your corporate nonprofit model disagree with  
3361 the decisions made on their buildout of the broadband, their  
3362 program? Is there a way to appeal that?

3363 Ms. {Eshoo.} Well, we were--as you recall, we were--the  
3364 staffs were talking about this very issue, and arbitration  
3365 was something that was on the table--

3366 Mr. {Walden.} But in the bill you submitted today--

3367 Ms. {Eshoo.} No, because we never came to any kind of  
3368 an agreement on it.

3369 Mr. {Walden.} I know, but in your alternative, is there  
3370 an appeal mechanism? Ours at least has, you can appeal.

3371 Ms. {Eshoo.} No, there isn't, and it points to--taking  
3372 back my time--you know, if we had continued our discussion,  
3373 you know, perhaps we would have been able to breach this  
3374 area, but I think--I can't speak for everyone. I think that  
3375 this is unsettled and uncomfortable and not thought out very

3376 well. I don't think we want people to be litigating, going  
3377 through federal court and whatever. We have to get to the  
3378 implementation of a national interoperable network in our  
3379 country, and you want that, I want that, all the members want  
3380 that. This doesn't--for some reason, this is not the right  
3381 size. It doesn't fit.

3382         So with that, I will yield back the balance of my time,  
3383 and I would like to thank the gentlewoman from California,  
3384 Ms. Matsui, for her advocacy and her excellent questions and  
3385 points made on this issue.

3386         Mr. {Walden.} Are there other members seeking  
3387 recognition? If not, then the question before us now occurs  
3388 on favorably reporting the bill to the full committee. All  
3389 those in favor will say aye. Those opposed, no. The ayes  
3390 have it. The ayes have it, and the bill is favorably  
3391 reported.

3392         Mr. {Terry.} Request a roll call.

3393         Mr. {Walden.} A recorded vote has been requested. The  
3394 clerk will call the roll.

3395         The {Clerk.} Mr. Terry?

3396         Mr. {Terry.} Aye.

3397         The {Clerk.} Mr. Terry votes aye.

3398         Mr. Stearns?

3399         [No response.]

3400 The {Clerk.} Mr. Shimkus?  
3401 Mr. {Shimkus.} Aye.  
3402 The {Clerk.} Mr. Shimkus votes aye.  
3403 Mrs. Bono Mack?  
3404 Mrs. {Bono Mack.} Aye.  
3405 The {Clerk.} Mrs. Bono Mack votes aye.  
3406 Mr. Rogers?  
3407 [No response.]  
3408 The {Clerk.} Mrs. Blackburn?  
3409 Mrs. {Blackburn.} Aye.  
3410 The {Clerk.} Mrs. Blackburn votes aye.  
3411 Mr. Bilbray?  
3412 Mr. {Bilbray.} Aye.  
3413 The {Clerk.} Mr. Bilbray votes aye.  
3414 Mr. Bass?  
3415 Mr. {Bass.} Aye.  
3416 The {Clerk.} Mr. Bass votes aye.  
3417 Mr. Gingrey?  
3418 Dr. {Gingrey.} Aye.  
3419 The {Clerk.} Mr. Gingrey votes aye.  
3420 Mr. Scalise?  
3421 Mr. {Scalise.} Aye.  
3422 The {Clerk.} Mr. Scalise votes aye.  
3423 Mr. Latta?

3424 Mr. {Latta.} Aye.

3425 The {Clerk.} Mr. Latta votes aye.

3426 Mr. Guthrie?

3427 Mr. {Guthrie.} Aye.

3428 The {Clerk.} Mr. Guthrie votes aye.

3429 Mr. Kinzinger?

3430 Mr. {Kinzinger.} Aye.

3431 The {Clerk.} Mr. Kinzinger votes aye.

3432 Mr. Barton?

3433 Mr. {Barton.} Aye.

3434 The {Clerk.} Mr. Barton votes aye.

3435 Mr. Upton?

3436 The {Chairman.} Aye.

3437 The {Clerk.} Mr. Upton votes aye.

3438 Ms. Eshoo?

3439 Ms. {Eshoo.} No.

3440 The {Clerk.} Ms. Eshoo votes no.

3441 Mr. Markey?

3442 Mr. {Markey.} Votes no.

3443 The {Clerk.} Mr. Markey votes no.

3444 Mr. Doyle?

3445 [No response.]

3446 The {Clerk.} Ms. Matsui?

3447 Ms. {Matsui.} No.

3448 The {Clerk.} Ms. Matsui votes no.  
3449 Mr. Barrow?  
3450 Mr. {Barrow.} Votes aye.  
3451 The {Clerk.} Mr. Barrow votes aye.  
3452 Ms. Christensen?  
3453 [No response.]  
3454 The {Clerk.} Mr. Towns?  
3455 [No response.]  
3456 The {Clerk.} Mr. Pallone?  
3457 Mr. {Pallone.} No.  
3458 The {Clerk.} Mr. Pallone votes no.  
3459 Mr. Rush?  
3460 [No response.]  
3461 The {Clerk.} Ms. DeGette?  
3462 Ms. {DeGette.} No.  
3463 The {Clerk.} Ms. DeGette votes no.  
3464 Mr. Waxman?  
3465 Mr. {Waxman.} No.  
3466 The {Clerk.} Mr. Waxman votes no.  
3467 Chairman Walden?  
3468 Mr. {Walden.} Walden votes aye.  
3469 Are there other members who wish to be recorded? Mr.  
3470 Stearns?  
3471 Mr. {Stearns.} Votes aye.

3472           The {Clerk.} Mr. Stearns votes aye.

3473           Mr. {Walden.} Mr. Rogers?

3474           Mr. {Rogers.} Votes aye.

3475           The {Clerk.} Mr. Rogers votes aye.

3476           Mr. {Walden.} Are there other members seeking to be

3477 recorded? If not, the clerk will report the tally.

3478           The {Clerk.} Mr. Chairman, on that vote, there was 17

3479 ayes, six nays.

3480           Mr. {Walden.} Seventeen ayes and six nays. The bill is

3481 passed.

3482           Without objection, staff is authorized to make technical

3483 and conforming changes to the bill as approved by the

3484 committee today, and it is so ordered, and the subcommittee

3485 stands adjourned.

3486           [Whereupon, at 1:25 p.m., the Subcommittee was

3487 adjourned.]