

**KEY COMMUNICATIONS LEGISLATION IN
THE 110TH CONGRESS**

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Key Communications Legislation In the 110th Congress

I. Introduction:

Congress did not make sweeping changes to communications policy in the 110th Congress. It did, however, pass or vote out of committee several important targeted communications bills. Additionally, the Senate Committee on Commerce, Science and Transportation (Senate Commerce Committee), the House Committee on Energy and Commerce (House Energy and Commerce Committee), and, in an interesting development, the House Committee on Oversight and Government Reform, exhibited periods of aggressive oversight of the Federal Communications Commission (FCC) and the National Telecommunications and Information Administration (NTIA). Furthermore, individual Members of Congress introduced and fought for bills on a wide array of key communications topics.

The following article provides details on a selection of these communications-oriented legislative developments, grouping them into three categories: (1) media developments; (2) telecommunications developments; and (3) wireless developments. Convergence makes this division imperfect. We therefore provide sub-topics identifying particular subject matters within each broader category. This article does not purport to provide a comprehensive list of recent communications legislation, nor does it cover all aspects of each piece of legislation discussed. Rather, we have provided an overview of the key bills and the key provisions of those bills. Bills discussed in this paper that do not pass Congress by the end of this Session will, of course, not become law unless they are reintroduced and enacted by Congress in the future.

II. Media:

A. Digital TV Transition

The digital television transition was one of Congress's primary concerns in 2007 and 2008. As the transition deadline approached, both chambers held hearings, pressed the FCC and NTIA, and sought to address potential transition roadblocks. For example, on July 30, 2008, President Bush signed into law the "DTV Transition Assistance Act." The Act, originally introduced by Senator Olympia Snowe, requires the Assistant Secretary for Communications and Information of the Department of Commerce to "make a determination" with respect to whether the full \$10,000,000 allocated under the Digital Television Transition and Public Safety Act will be needed to compensate eligible low-power television stations for the cost of a digital-to-analog converter.¹ If the Assistant Secretary determines that the full amount will not be needed, "the Assistant Secretary may use the remaining amount for consumer education and technical assistance regarding the digital television transition and the availability of the digital-to-analog converter box program."² The Act also expands the period of time during which the Assistant Secretary is required to reimburse licensees of eligible low-power television stations for the purchase of equipment to upgrade low-power television stations from analog to digital in eligible rural communities from fiscal year 2009 to fiscal years 2009 through 2012 and moves the date on which such reimbursements may first be issued from October 1, 2010 to February 18, 2009.³

In another important development, the Senate passed Senator Kay Bailey Hutchison's S. 2507, the "DTV Border Fix Act of 2008," on August 1, 2008. S. 2507 would allow any television station located within 50 miles of the U.S.

border with Mexico “that has been granted a full-power television broadcast license that authorizes analog television service” to renew its license and operate its television service through February 17, 2013.⁴ However, the renewal must not (1) prevent the auction of recovered spectrum; (2) prevent the use of recovered spectrum for any public safety service; (3) encumber or interfere with any channel reserved for public safety use; or (4) prevent the FCC from considering or granting a request for waiver submitted for public safety service prior to the date of enactment of the Act.⁵ S. 2507 would also prohibit the FCC from extending or renewing a full-power television broadcast license that authorizes analog television service on or after February 17, 2013.⁶ After passage in the Senate, S. 2507 was referred to the House Committee on Energy and Commerce on September 8, 2008.

B. Media Concentration

In another important media development, the Senate reacted to the FCC’s controversial December 2007 relaxation of media concentration rules. On May 15, 2008, the Senate, by joint resolution, disapproved the FCC’s new rules through S.J. Res 28, introduced by Senator Byron Dorgan.⁷ The most contentious aspect of the FCC rule would allow additional newspaper/broadcast cross-ownership.⁸ An identical resolution was introduced by Representative Jay Inslee in the House and referred to the House Subcommittee on Telecommunications and the Internet on March 13, 2008.⁹ No further action has been taken on H.J. Res. 79.

C. Indecency

Congress continued to press the FCC and industry on indecency in 2007 and 2008 as well. On July 12, 2007, Senator John D. Rockefeller introduced S. 1780, the “Protecting Children from Indecent Programming Act,” cosponsored by a bipartisan group of 13 senators. The Act

would require the FCC to “maintain a policy that a single word or image may constitute indecent programming.”¹⁰ The bill was reported without amendment by the Senate Commerce Committee and placed on the Senate Legislative Calendar on December 5, 2007. No further action has been taken on S. 1780. The House counterpart is H.R. 3559, which was introduced by Representative Chip Pickering and referred to the House Subcommittee on Telecommunications and the Internet on September 18, 2007. No further action has been taken on H.R. 3559.

III. Telecommunications:

A. Broadband Deployment

In 2007 and 2008 Congress’s attention to broadband issues, including those related to network neutrality and network management, was surpassed only by its focus on the digital television transition. This attention led Congress to consider ways to improve the data that underlie the network management issues. For example, on November 13, 2007, the House passed Representative Edward Markey’s H.R. 3919, the “Broadband Census of America Act of 2007.” The bill would require the FCC to conduct an annual assessment and publish a report on the “nature and deployment of, and subscription to, broadband service capability” in the U.S.¹¹ The bill would make the FCC responsible for collecting information about the types of technology used to provide broadband service and the number of subscribers by zip code.¹² The annual assessment and report must include information comparing the extent of broadband service capability in a total of 75 communities in at least 25 countries abroad.¹³ H.R. 3919 would also require NTIA to “develop and maintain a broadband inventory map of the United States that identifies and depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider” in each State.¹⁴

H.R. 3919 would also permit NTIA to make grants to “assist in providing the NTIA with information to facilitate the development of the broadband inventory map.”¹⁵ The bill would also require NTIA to “establish a grant program to create and facilitate the work of local technology planning entities that represent a broad cross-section of their community” in order to, among other things, assess and improve the use of and encourage the deployment of broadband service capability in unserved and underserved areas.¹⁶ Finally, H.R. 3919 would require the FCC to “conduct and make public periodic surveys of consumers” to determine the type of technology used to provide broadband service capability, how much consumers pay for the service, the actual data transmission speeds, the types of applications and services consumers most frequently use, the reasons why consumers decline to use broadband service, and any other sources of broadband service capability that consumers regularly use.¹⁷ H.R. 3919 was referred to the Senate Committee on Commerce, Science and Transportation on November 14, 2007. No further action has been taken by the Senate.

In another effort to improve broadband decision making, Senator Daniel Inouye introduced S. 1492, the “Broadband Data Improvement Act,” on May 24, 2007. S. 1492 would require the FCC to issue an order that (1) revises existing broadband definitions; (2) identifies broadband services in which consumers have an information transfer rate capable of reliably transmitting full-motion, high definition video; and (3) revises the FCC’s Form 477 reporting requirements to enable it to identify actual numbers of broadband connections.¹⁸ The bill would also require the Comptroller General to “conduct a study to consider and evaluate additional broadband metrics or standards that may be used by industry and the Federal Government to provide users with more accurate information about the cost and capability of their broadband connection, and to better

compare the deployment and penetration of broadband in the United States with other countries.”¹⁹ In addition, the Small Business Administration Office of Advocacy would have to “conduct a study evaluating the impact of broadband speed and price on small businesses.”²⁰ S. 1492 would also require the Secretary of Commerce to award grants on a competitive basis “for the development and implementation of statewide initiatives to identify and track the availability and adoption of broadband services” within each State.²¹ The Commerce Committee approved S. 1492 on July 19, 2007, and hearings were held on September 16, 2008.

B. Network Neutrality

Network neutrality and network management continued to be major issues both in Congress and at the FCC in 2007 and 2008. For example, on January 9, 2007, Senator Byron Dorgan introduced the “Internet Freedom Preservation Act,” S. 215, which would prohibit broadband service providers from blocking, interfering with, discriminating against, impairing, or degrading the ability of any person to use a broadband service, and from preventing or obstructing a user from attaching or using any device to the service provider’s network, as long as the device does not physically damage or substantially degrade the use of the network by other subscribers.²² Broadband service providers would also have to “provide and make available to each user information about the user’s access to the Internet, and the speed, nature, and limitations of the broadband service,” and “enable any content, application, or service made available via the Internet to be offered, provided, or posted” on a reasonable and nondiscriminatory basis.²³ Under the bill, broadband service providers may not “require a subscriber, as a condition on the purchase of any broadband service . . . , to purchase any cable service, telecommunications service, or IP-enabled voice service.”²⁴ In addition, the bill provides that the FCC must submit an annual report to Congress on

the delivery of content, applications, and services over broadband networks.²⁵ S. 215 has ten cosponsors. The Commerce Committee has not considered the bill in executive session.

More recently, on February 12, 2008, Representative Markey, Chairman of the House Telecom Subcommittee, introduced H.R. 5353, the “Internet Freedom Preservation Act of 2008.” H.R. 5353 would require the FCC to assess, among other things, whether broadband network providers “refrain from blocking, thwarting, or unreasonably interfering with the ability of consumers” to use the Internet, applications and services, and devices in a lawful manner; whether providers add charges for quality of service; whether providers offer consumer protection tools and services; and the practices by which providers manage or prioritize network traffic.²⁶ The bill would also require the FCC to conduct at least eight public broadband summits.²⁷ H.R. 5353 was referred to Chairman Markey’s Subcommittee, and hearings were held on May 6, 2008. No further action has been taken.

C. Calling Card Fraud

Both chambers also considered the problem of calling card fraud this Session. Representative Eliot Engel introduced H.R. 3402, the “Calling Card Consumer Protection Act,” on August 3, 2007. H.R. 3402 mandates that the FCC prescribe regulations that require prepaid telephone calling service providers and calling card distributors to make certain disclosures, including (1) the total value in dollars or the number of calling minutes available of the calling card or service at the time of purchase; and (2) all terms and conditions pertaining to the use of the card or service, including all fees, limitations on the use of minutes available, and applicable policies relating to refunds and expiration.²⁸ The required disclosures must be

in a “clear and conspicuous location” and in “plain English language.”²⁹ H.R. 3402 would also make it unlawful for prepaid telephone calling service providers and calling card distributors to assess any undisclosed fees or charges; to provide fewer minutes than advertised; to issue a calling card that expires less than a year after the first use of the card or service; and to assess any fee or charge for any unconnected call.³⁰ H.R. 3402 would provide for enforcement by the FTC and authorize state Attorneys General to bring civil actions on behalf of state residents to enjoin unlawful practices under the Act and obtain damages or restitution.³¹ The Subcommittee on Commerce, Trade and Consumer Protection approved H.R. 3402 on September 16, 2008 and sent the measure to the full Committee.

In the Senate, Senator Bill Nelson introduced S. 2998, the “Prepaid Calling Card Consumer Protection Act of 2008,” on May 8, 2008. The Senate bill includes the major provisions of H.R. 3402,³² but would also require prepaid telephone calling service providers and calling card distributors to disclose their rates for all international destinations served³³ and prohibit them from charging a higher rate per minute than advertised.³⁴ S. 2998 was referred to the Senate Commerce Committee, which held a hearing on the measure on September 10, 2008.

D. Universal Service Fund

After a period of focusing on the Schools and Libraries portion of the universal service system, Congress has recently turned additional attention to the financial stability of the overall fund, the treatment of broadband, and the details of the high cost fund. Both the Senate and the House held oversight hearings on universal service topics, and a number of individual Members introduced reform legislation. For example, Senator Ted Stevens introduced S. 101, the “Universal Service for Americans Act,” on January

4, 2007. S. 101 would require all communications service providers, not just telecommunications service providers, to contribute to the Universal Service Fund, unless: (1) the provider's services are de minimis; (2) the service is provided pursuant to the FCC's Lifeline Assistance Program; (3) the service is provided only to in-vehicle emergency communications customers; or (4) the service is provided by a not-for-profit provider.³⁵ S. 101 would also permit the FCC to "assess the interstate, intrastate, and international portions of communications service for the purpose of universal service contributions."³⁶ Service providers would be able to bill the customer for the amount the provider is required to contribute for that customer.³⁷ States may also require service providers to contribute to universal service, regardless of whether the service contains an interstate component.³⁸ The bill would also establish a new separate program called the "Broadband for Unserved Areas Program." The purpose of the program is to "provide financial assistance for the deployment of broadband equipment and infrastructure necessary for the deployment of broadband service (including installation costs) to unserved areas" throughout the U.S.³⁹ Satellite, terrestrial wireless, and wireline broadband service providers are eligible for support from the program.⁴⁰ No further action has been taken on S. 101. Senator Stevens also recently introduced S. 3491, the "Telehealth for America" bill. The text of S. 3491 was not available at the time this article went to press.

Additionally, Senator Gordon Smith introduced S. 711, the "Universal Service for the 21st Century Act," on February 28, 2007. S. 711 would require all telecommunications carriers, not just those providing interstate telecommunications services, to contribute to the Universal Service Fund.⁴¹ S. 711 would also require the FCC to establish a permanent mechanism to support universal service.⁴² It would give the FCC exclusive jurisdiction to establish rates for inter-carrier compensation

payments and require the FCC to establish rules providing a comprehensive, unified system of inter-carrier compensation, including compensation for the origination and termination of intrastate telecommunications traffic.⁴³ S. 711 would also establish a Universal Service Fund account for “Broadband for Unserved Areas,” in order to “provide financial assistance for the deployment of broadband communications services to unserved areas throughout the United States.”⁴⁴ Support from this account would be provided only to facilities-based providers of broadband communications service, and only one facility-based provider in any unserved area may receive support. S. 711 was referred to the Commerce Committee, but no further action has been taken.

The House also considered universal service reform. Representative Rick Boucher introduced H.R. 2054, the “Universal Service Reform Act of 2007,” on April 26, 2007. H.R. 2054 would require the FCC to institute a proceeding to recommend changes to universal service regulations.⁴⁵ Universal service support contribution would be limited to the total amount that was collected from all sources for all universal service support mechanisms other than schools, libraries, rural health care, life-line, link-up, and toll limitation in the last year prior to the date of enactment.⁴⁶ Carriers that receive specific Federal universal service support may use that support only for the provision, maintenance, and upgrading of facilities and facilities-based services.⁴⁷ H.R. 2054 also provides that the use of universal service support for all rural, insular, and high cost areas should be expanded to include high-speed broadband services and “should be based on actual costs reasonably incurred in providing such facilities-based services in a service area, exclusive of the cost of acquiring spectrum.”⁴⁸ Under the bill, a communications service provider is eligible to receive universal service support only if the provider uses its own facilities to make universal services available; advertises the supported services and the availability of life-

line and link-up; demonstrates the ability to remain functional in emergency situations; satisfies consumer protection and service quality standards; and meets the basic requirements for the deployment of high-speed broadband service.⁴⁹ The bill also eliminates the FCC's limitations on universal service support and the individual caps imposed on carriers.⁵⁰ H.R. 2054 was referred to the House Subcommittee on Telecommunications and the Internet, but no further action has been taken.

Additionally, Representative Joe Barton introduced H.R. 6356, the "Universal Service Reform, Accountability, and Efficiency Act of 2008," on June 24, 2008. H.R. 6356 would require the FCC to select a universal service contribution mechanism that is based exclusively upon the provision of voice communications service, does not assess broadband transmission or Internet access services, and includes an exemption for low-income households.⁵¹ Like H.R. 2054, H.R. 6356 would cap the total amount of universal service support for all universal service support mechanisms at the total amount that was collected from all services in the previous year, and, unlike H.R. 2054, would require that contributions decline over time.⁵² Under the bill, the FCC must prohibit the receipt of universal service support for the provision of voice communications services to consumers in high cost areas where the service area has a "substantially high" percentage of households with income at or above the 95th percentile of national household income levels.⁵³ States may not assess interstate services, including interstate telecommunications services, information services, or voice communications services, in order to fund a state's universal service program.⁵⁴ The bill would also require the FCC to implement a reverse auction plan to be used to distribute universal service support for voice communications service in high cost areas, in which each auction winner gains the privileges and obligations of a provider-of-last-resort.⁵⁵

H.R. 6356 was referred to the House Commerce Committee, but no further action has been taken.

Importantly, on June 9, 2008, Representative Henry Waxman, Chairman of the House Committee on Oversight and Government Reform, sent a letter to the FCC requesting information about Universal Service Fund disbursements to telecommunications providers under the high-cost support program. Specifically, Representative Waxman requested a list of the top ten recipients of high-cost support for calendar years 2006 and 2007; a list of the projected top ten recipients of high-cost support for calendar year 2008; and a list of the ten largest per-line subsidies by location for calendar years 2006 and 2007 and the corporate entities receiving such subsidies.⁵⁶ Then, on July 28, 2008, Representative Waxman sent letters to 24 companies, including AT&T, Qwest, Sprint Nextel, and Verizon, requesting information about the USF High Cost Program subsidies each company receives and what the company does with those funds.⁵⁷ In particular, Representative Waxman asked the companies to answer questions and produce documents relating to the total amount of High Cost Program funding they have received, the fees and surcharges they collect from their customers, and the percentage of overall company revenues that High Cost Program support represented in 2006, 2007, and 2008.⁵⁸ These actions suggest a close scrutiny of the High Cost Fund in the next Congress.

E. VoIP E911

On July 23, 2008, President Bush signed into law the “New and Emerging Technologies 911 Improvement Act of 2008.” The Act, which was originally introduced by Representative Bart Gordon, requires each IP-enabled voice service provider to provide 911 service and enhanced 911 service to its subscribers.⁵⁹ The Act also provides IP-enabled voice service providers seeking capabilities to provide 911 service from an entity with ownership or control

over such capabilities a right of access to such capabilities, including interconnection.⁶⁰ States and tribes may impose and collect a fee or charge applicable to commercial mobile services or IP-enabled voice services for the support or implementation of 911 or enhanced 911 services, as long as the fee or charge is used only in support of such services.⁶¹ The Act also requires the E-911 Implementation Coordination Office to develop and report to Congress on a national plan for migrating to a national IP-enabled emergency network capable of receiving and responding to all citizen-activated emergency communications.⁶²

F. FISA Amendments

On July 10, 2008, President Bush signed into law the “Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008.” The Act, originally introduced by Representative Silvestre Reyes, authorizes the Attorney General and the Director of National Intelligence to direct electronic communication service providers to “immediately provide the Government with all information, facilities, or assistance necessary” to accomplish the acquisition of foreign intelligence information from persons reasonably believed to be located outside of the United States “in a manner that will protect the secrecy of the acquisition and produce a minimum of interference” with the services of the target of the acquisition.⁶³ The FCC must compensate providers for providing such information, facilities, or assistance.⁶⁴ Providers may file petitions to modify or set aside directives in the FISA court.⁶⁵ Most importantly, the Act also amends FISA to give electronic communication service providers protection from civil actions filed against them because of their assistance.⁶⁶ Any civil action against such a provider, whether brought in federal or state court, must be dismissed if the Attorney General certifies that (1) the assistance was provided pursuant to a court order or written certification under FISA; (2) the assistance was

provided in connection with intelligence activity that was authorized by the President between September 11, 2001 and January 17, 2007 and designed to detect or prevent terrorist attacks, and the subject of a written request or directive from the Attorney General or the head of an element of the intelligence community; or (3) that the provider did not provide the alleged assistance.⁶⁷ The Act also prohibits states from conducting investigations into a provider's assistance, requiring providers to disclose information about the assistance, imposing any sanction for the assistance, and commencing a civil action to force the provider to disclose information about the assistance.⁶⁸

G. Do-Not-Call

The Federal Trade Commission created the federal do-not-call registry in 2003. Congress acted this year to ensure its continued effectiveness. On February 15, 2008, President Bush signed into law the "Do-Not-Call Improvement Act of 2007." The Act, originally introduced by Representative Mike Doyle in the House and Senator Byron Dorgan in the Senate, prohibits the removal of telephone numbers from the national do-not-call registry unless the telephone number is invalid, has been disconnected, or has been reassigned.⁶⁹ The FTC must periodically check telephone numbers on the registry and remove numbers that have been disconnected or reassigned.⁷⁰ The FTC may remove invalid telephone numbers at any time.⁷¹

IV. Wireless

A. Consumer Protection

While the digital television transition and broadband were the leading communications legislative concerns of 2007 and 2008, Congress engaged in vigorous oversight of

the FCC's large 700 MHz auction and, more specifically, the controversial D Block auction. It also considered a number of important wireless issues in specific bills. For example, Senator Amy Klobuchar introduced S. 2033, the "Cell Phone Consumer Empowerment Act of 2007," on September 7, 2007. S. 2033 would also require that wireless service providers disclose, in a "plain and conspicuous manner" in the terms of a plan or contract for wireless telephone service, the length of the contract, any early termination fees, the calling-from area, the monthly base charge, per-minute charges, the minutes included in the plan, and applicable taxes and surcharges.⁷² In addition, each bill must be clearly organized and clearly describe in plain language the products and services for which charges are imposed.⁷³ Taxes and fees must be set forth separately in the bill, and roaming charges must be itemized.⁷⁴ Wireless telephone service providers must also make available a map showing their wireless telephone service area in each state at the county level.⁷⁵ The FCC must monitor the quality of wireless telephone service provided in the U.S. by requiring semiannual reports of wireless service providers on dropped calls and known coverage gaps or dead zones.⁷⁶ S. 2033 would also require that early termination fees be prorated over the term of a wireless subscriber's contract, "in a manner that reasonably links the fee to recovery of the cost of the device or other legitimate business expenses."⁷⁷ Wireless service providers must provide "point-of-sale notice" to subscribers of the extension of their contracts.⁷⁸ A provider cannot impose a penalty if the subscriber cancels the extension for any reason within 30 days of receiving the notice.⁷⁹ In addition, providers must notify subscribers of any change in rates, terms, or conditions of service at least 30 days before the change is to take effect, and subscribers may terminate their service without penalty if the change is material and adverse.⁸⁰ A subscriber may cancel his or her contract without penalty for any reason within 30 days after the date on which the contract was executed.⁸¹ S. 2033

requires the FCC to submit to Congress a report analyzing the practice of handset locking and its effects on competition and consumer behavior.⁸² Finally, S. 2033 preempts inconsistent state laws.⁸³ S. 2033 was referred to the Commerce Committee on October 17, 2007, hearings were held, but no further action has been taken.

Additionally, on February 15, 2008, Representative Markey distributed a staff discussion draft of the “Wireless Consumer Protection and Community Broadband Empowerment Act of 2008.” The bill would require commercial mobile service providers to describe the terms and charges associated with any wireless service plan in a clear, plain, and conspicuous manner.⁸⁴ In particular, providers would have to describe the duration of the plan, the number of minutes of service per month and the method by which such minutes will be calculated and assessed, any early termination or service initiation fees or charges, monthly charges, per-minute charges, roaming charges, charges for additional minutes, long distance and international charges, and all taxes or fees.⁸⁵ Providers would have to disclose the required information before a customer enters into a new plan, modifies an existing plan, or renews an existing plan.⁸⁶ The bill would also require each provider to offer a wireless service plan for which there is no early termination fee and requires plans that have early termination fees to prorate the fee over the duration of the consumer’s wireless plan.⁸⁷ Like S. 2033, Representative Markey’s bill would require providers to make available service maps depicting the provider’s outdoor service coverage area and any known coverage gaps.⁸⁸ In addition, the bill would prohibit providers from listing charges other than charges for telecommunications service, nonpayment, or early termination, taxes, and charges expressly authorized by law on customers’ bills.⁸⁹ Customer bills would have to be clearly organized and describe the charges in plain language, and roaming and off-network charges must be itemized.⁹⁰

Service plan extensions would not be valid unless providers give their subscribers point-of-sale notice of the extension, the customer expressly consents to the extension, and the customer is given the right to cancel the extension within 30 days.⁹¹ In addition, providers must give subscribers written notice of any change in the terms or charges of the subscriber's plan at least 30 days before the change is to take effect, and the subscriber may terminate the plan without penalty if the change is material and adverse.⁹² A subscriber would be able to cancel his or her service plan, for any reason and without penalty, within 30 days after the date on which the plan was executed.⁹³ The bill would preempt inconsistent state laws.⁹⁴

B. White Spaces

While most of the activity regarding the “white spaces” between broadcast television stations has occurred at the FCC, bills on the subject have been introduced in each chamber. Representative Inslee introduced H.R. 1597, the “Wireless Innovation Act of 2007,” on March 20, 2007. H.R. 1597, a pro-white spaces bill, requires the FCC to complete its proceeding and issue a final order in the proceeding within 180 days of enactment.⁹⁵ The FCC order must “permit unlicensed, non-exclusive use of eligible frequencies between 54 MHz and 698 MHz” and establish technical requirements to protect incumbent licensees from harmful interference.⁹⁶ The order must also permit the operation of both fixed and personal/portable unlicensed devices no later than February 18, 2009.⁹⁷

Senator John Kerry introduced S. 234 (also called the “Wireless Innovation Act of 2007”), two months earlier, on January 9, 2007. S. 234 includes the same provisions as the H.R. 1597, with two additions. First, S. 234 requires the FCC to conduct and complete field testing “for the purpose of evaluating the potential for actual harmful interference to

incumbent primary licensees.”⁹⁸ Additionally, the bill permits the FCC to provide a reasonable public comment period to solicit views on the published results of the field tests, but only if the comment period can be concluded in a timeframe that will not delay completion of the proceeding.⁹⁹

Senator John Sununu’s S. 337, the “White Spaces Act of 2007,” introduced on January 18, 2007, also supports unlicensed white space operation, but does not address the issue of a public comment period.¹⁰⁰ No further action has been taken on H.R. 1597, S. 234, or S. 337.

Representative Bobby Rush introduced H.R. 1320, the “Interference Protection for Existing Television Band Devices Act of 2007,” on March 5, 2007. Unlike the Senate bills, H.R. 1320 would require the FCC to permit fixed location, certified unlicensed devices to use, on non-exclusive terms, unassigned non-licensed television broadcast channels between 54 MHz and 698 MHz in rural areas only.¹⁰¹ The FCC must also protect incumbent certified low-power auxiliary devices from harmful interference by requiring certification of unlicensed devices and prohibiting certified unlicensed devices from operating on any television broadcast channel between 54 MHz and 698 MHz that is already in use by an incumbent certified low-power auxiliary device.¹⁰² This led to support of the bill by wireless microphone manufacturers. After 36 months, the FCC may consider permitting the operation of non-fixed (personal/portable) location, certified unlicensed devices to use the non-licensed television broadcast channels between 54 MHz and 698 MHz.¹⁰³ H.R. 1320 was referred to the Telecom Subcommittee, but no further action has been taken.

¹ DTV Transition Assistance Act, Pub. L. No. 110-295, § 2(a)(2), 122 Stat. 2972 (2008).

² *Id.*

³ *Id.* at § 2(b).

⁴ DTV Border Fix Act of 2008, S. 2507, 110th Cong. § 2 (as passed by Senate, Aug. 1, 2008).

⁵ *Id.*

⁶ *Id.*

⁷ S.J. Res. 28, 110th Cong. (as passed by Senate, May 15, 2008).

⁸ *See* 2006 Quadrennial Regulatory Review, Report and Order and Order on Reconsideration, No. 07-216, 23 FCC Rcd 2010 (2007).

⁹ *See* H.J. Res. 79, 110th Cong. (as introduced in House of Representatives, Mar. 13, 2008).

¹⁰ Protecting Children from Indecent Programming Act, S. 1780, 110th Cong. § 2 (as reported in Senate, Dec. 5, 2007).

¹¹ Broadband Census of America Act of 2007, H.R. 3919, 110th Cong. § 2(a)(1) (as passed by House of Representatives, Nov. 13, 2007).

¹² *Id.* at § 2(a)(3).

¹³ *Id.* at § 2(c).

¹⁴ *Id.* at § 3(a).

¹⁵ *Id.* at § 4(a).

¹⁶ *Id.* at § 5.

¹⁷ *Id.* at § 6(a).

¹⁸ Broadband Data Improvement Act, S. 1492, 110th Cong. § 3(a) (as reported in Senate, May 24, 2007).

¹⁹ *Id.* at § 4.

²⁰ *Id.* at § 5.

²¹ *Id.* at § 6(b).

²² Internet Freedom Preservation Act, S. 215, 110th Cong. § 2 (as introduced in Senate, Jan. 9, 2007).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at § 3.

²⁶ Internet Freedom Preservation Act of 2008, H.R. 5353, 110th Cong. § 4(a) (as introduced in House of Representatives, Feb. 12, 2008).

²⁷ *Id.* at § 4(b).

²⁸ Calling Card Consumer Protection Act, H.R. 3402, 110th Cong. § 4(a), (as introduced in House of Representatives, Aug. 3, 2007).

²⁹ *Id.* at § 4(b).

³⁰ *Id.* at §§ 5(a)-(e).

³¹ *Id.* at §§ 6 & 7.

³² *See* Prepaid Calling Card Consumer Protection Act of 2008, S. 2998, 110th Cong. (as introduced in Senate, May 8, 2008).

³³ *Id.* at § 3(a).

³⁴ *Id.* at § 4(a)(2).

³⁵ Universal Service for Americans Act, S. 101, 110th Cong. § 101(a) (as introduced in Senate, Jan. 4, 2007).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at § 202.

⁴⁰ *Id.*

⁴¹ Universal Service for the 21st Century Act, S. 711, 110th Cong. § 3(a) (as introduced in Senate, Feb. 28, 2007).

⁴² *Id.* at § 3(b).

⁴³ *Id.* at § 4(a).

⁴⁴ *Id.* at § 5.

⁴⁵ Universal Service Reform Act of 2007, H.R. 2054, 110th Cong. § 3(a) (as introduced in House of Representatives, Apr. 26, 2007).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at § 4(a).

⁵⁰ *Id.* at § 5.

⁵¹ Universal Service Reform, Accountability, and Efficiency Act of 2008, H.R. 6356, 110th Cong. § 2(a) (as introduced in House of Representatives, June 24, 2008).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at § 3(a).

⁵⁶ See Letter from Henry A. Waxman, Chairman, House Committee on Oversight and Government Reform, to Kevin Martin, Chairman, Federal Communications Commission (June 9, 2008), available at <http://oversight.house.gov/documents/20080611101719.pdf>.

⁵⁷ See Press Release, House Committee on Oversight and Government Reform, Chairman Waxman Requests Information on Billions in Universal Service Fund Subsidies (July 28, 2008), available at <http://oversight.house.gov/story.asp?id=2123>.

⁵⁸ See Letter from Henry A. Waxman, Chairman, House Committee on Oversight and Government Reform, to Randall L. Stephenson, Chairman

and CEO, AT&T Inc. (July 28, 2008), available at <http://oversight.house.gov/documents/20080728115305.pdf>.

⁵⁹ New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, § 101, 122 Stat. 2620 (2008).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at § 102.

⁶³ Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008, Pub. L. No. 110-261, § 101, 122 Stat. 2436 (2008).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at § 201.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Do-Not-Call Improvement Act of 2007, Pub. L. No. 110-187, 122 Stat. 633 (2008).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Cell Phone Consumer Empowerment Act of 2007, S. 2033, 110th Cong. § 4(a) (as introduced in Senate, Sept. 7, 2007).

⁷³ *Id.* at § 5(a).

⁷⁴ *Id.* at §§ 5(b)-(c).

⁷⁵ *Id.* at § 6(a).

⁷⁶ *Id.* at § 6(b).

⁷⁷ *Id.* at § 7(a).

⁷⁸ *Id.* at § 8(a).

⁷⁹ *Id.*

⁸⁰ *Id.* at § 8(b).

⁸¹ *Id.* at § 8(c).

⁸² *Id.* at § 9(a).

⁸³ *Id.* at § 12.

⁸⁴ Wireless Consumer Protection and Community Broadband Empowerment Act of 2008, § 101 (staff discussion draft, Feb. 15, 2008).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* at § 102.

⁸⁸ *Id.* at § 103.

⁸⁹ *Id.* at § 104.

⁹⁰ *Id.*

⁹¹ *Id.* at § 106.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at § 108.

⁹⁵ Wireless Innovation Act of 2007, H.R. 1597, 110th Cong. § 2(a) (as introduced in House of Representatives, Mar. 20, 2007).

⁹⁶ *Id.* at § 2(b).

⁹⁷ *Id.*

⁹⁸ Wireless Innovation Act of 2007, S. 234, 110th Cong. § 2(b)(4) (as introduced in Senate, Jan. 9, 2007).

⁹⁹ *Id.* at § 2(b)(5).

¹⁰⁰ *See* White Spaces Act of 2007, S. 337, 110th Cong. § 2 (as introduced in Senate, Jan. 18, 2007).

¹⁰¹ Interference Protection for Existing Television Band Devices Act of 2007, H.R. 1320, 110th Cong. § 3(a) (as introduced in House of Representatives, Mar. 5, 2007).

¹⁰² *Id.* at § 3(b).

¹⁰³ *Id.* at § 3(c).