Client Alert: Congress Passes the RAY BAUM’S Act of 2018, and Other Telecom Provisions as Part of Omnibus Spending Bill

The U.S. Congress passed the Consolidated Appropriations Act, 2018 (H.R.1625), which includes an amended version of the Repack Airwaves Yielding Better Access for Users of Modern Services (RAY BAUM’S) Act of 2018 (H.R.4986), the Clarifying Lawful Overseas Use of Data (CLOUD) Act (H.R.4943; S.2383), $600 million for a rural broadband pilot program managed by the U.S. Department of Agriculture, Rural Utilities Services (RUS), funding for the Federal Communications Commission (FCC), and funding for the National Telecommunications and Information Administration (NTIA), with $7.5 million specified to update the national broadband map. President Trump is expected to sign the bill later today.

Amendments to RAY BAUM’S Act

The final version of RAY BAUM’S Act, as passed in the Omnibus spending bill, differs slightly from the House version of the bill (summarized here). First, the bill incorporates two new provisions, Sections 606 and 608, that require the Administrator of General Services to (i) develop a common application form and master contract to streamline applications for federal easements, rights-of-way, and leases, and (ii) collect information from each agency on the ability of Federal property to support communications facility installations and make such information available by database.

Second, RAY BAUM’S Act includes new provisions intended to encourage repurposing of Federal spectrum for commercial use. Specifically, Section 612 extends the spectrum auction start date from 5 to 8 years after the transfer of pre-auction costs from the Spectrum Relocation Fund, and Section 613 authorizes the Director of Office of Management and Budget (OMB) to immediately transfer funds to eligible Federal agencies once frequencies have been reallocated by competitive bidding.

Third, Section VI of the House bill containing provisions from the Viewer Protection Act (H.R.3347) to authorize additional repack funding have been relocated to a Division E, Title V of the Omnibus bill. The Omnibus bill allocates $1 billion to the existing TV Broadcaster Relocation Fund ($600 million in fiscal year 2018 and $400 million in fiscal year 2019) to be used to reimburse relocation costs of eligible broadcasters and multichannel video programming distributors (MVPDs), television translator stations and low-power television stations, and FM broadcast radio stations. The bill also authorizes the FCC to use up to $50 million from the TV Broadcast Relocation Fund for purposes of consumer education.

Finally, it eliminates a provision to require the FCC to submit to Congress copies of budget estimates, legislative recommendations, testimony, and comments on legislation provided to the President or OMB, as well as any semiannual reports.
CLOUD Act

Division V of the Omnibus bill incorporates the CLOUD Act, which establishes a new legal framework for U.S. authorities to access data stored abroad. This framework promotes the use of bilateral agreements to resolve potentially conflicting legal obligations. A more detailed analysis of the CLOUD Act is available here.

RUS Broadband Program

Division A, Title VII of the Omnibus bill provides $600 million for a new broadband loan and grant pilot program under the Rural Electrification Act of 1936 (7 U.S.C. § 901) intended to improve service to rural households lacking access to broadband services with speeds of 10/1 Mbps or faster. The program will be managed by the U.S. Department of Agriculture, Rural Utilities Services.

NTIA and National Broadband Map Funding

Division B, Title I of the Omnibus bill provides $39.5 million in NTIA funding, $7.5 million of which must be used to update the national broadband availability map in coordination with the FCC and States.

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DIVISION A—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2018

TITLE VII—GENERAL PROVISIONS

Distance Learning, Telemedicine, and Broadband Program

The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act allocates $600 million for a “Distance Learning, Telemedicine, and Broadband Program,” which will be managed by the Rural Utilities Services. (Sec. 779).

At least 90% of households served by a project receiving funding under the Distance Learning, Telemedicine, and Broadband Program must be in a rural area lacking access to broadband speeds of 10/1 Mbps or faster. (Sec. 779). Additionally, no more than 4% of funds may be used for administrative costs and no more than 3% may be used for technical assistance and pre-developing planning. (Id.).

DIVISION B—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS ACT, 2018

TITLE I—DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

The Commerce, Justice, Science, and Related Agencies Appropriations Act provides $39.5 million in funding for NTIA through September 30, 2019. $7.5 million of such funds must be
used to update the national broadband availability map in coordination with the FCC and States.

DIVISION E—FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2018

TITLE V—INDEPENDENT AGENCIES

Federal Communications Commission

The Omnibus bill authorizes the FCC to collect $322,035,000 in funding for fiscal year 2018.

Administrative Provisions—Federal Communications Commission

The Omnibus bill prohibits the FCC from using funds to modify, amend, or otherwise change its rules or regulations to impose a single connection or primary-line restriction on universal service subsidies. (Sec. 510).

Broadcast Repack Funds

The bill provides $1 billion—$600 million for fiscal year 2018 and $400 million for fiscal year 2019—to the previously established “TV Broadcaster Relocation Fund” to reimburse broadcasters for reasonably incurred relocation costs associated with the broadcast incentive auction. (Sec. 511). In fiscal year 2018, no more than $350 million may be used to reimburse eligible broadcasters and MVPDs.

After April 13, 2020, the FCC may continue drawing from the TV Broadcaster Relocation Fund upon certification that existing funds are insufficient to meet reasonably incurred costs. (Id.). Any unused funds will be rescinded and deposited into the general Treasury fund for deficit reduction purposes. (Id.).

Payment of Relocation Costs of Translator and Low Power Television Stations

The Omnibus bill requires the Commission, with funds from the TV Broadcaster Relocation Fund, to reimburse costs reasonably incurred by translator or low-power television stations on or after January 1, 2017, for relocation or reorganization associated with the broadcast incentive auction. (Sec. 511). In fiscal year 2018, no more than $150 million may be used to reimburse eligible translator and low-power television stations.

Only stations that are eligible to file, but do not file, an application in the Commission’s Special Displacement Window are eligible for reimbursement. The agency is prohibited from reimbursing lost revenues, making duplicative payments, or reimbursing costs incurred to resolve mutually exclusive applications. (Id.).

After April 13, 2020, the FCC may continue drawing from the TV Broadcaster Relocation Fund upon certification that such payments are necessary to reimburse reasonably incurred costs to relocate or otherwise modify translator or low-power station facilities. (Id.)

Payment of Relocation Costs of FM Broadcast Stations
The Omnibus bill requires the FCC, with funds from the TV Broadcaster Relocation Fund, to reimburse costs reasonably incurred by a FM broadcast station for relocation associated with the broadcast incentive auction. (Sec. 511). In fiscal year 2018, no more than $50 million may be used to reimburse eligible FM broadcast stations. The FCC is prohibited from reimbursing lost revenues or making duplicative payments. (Id.).

After April 13, 2020, the Commission may continue drawing from the TV Broadcaster Relocation Fund upon certification that such payments are necessary to reimburse reasonably incurred costs to relocate or otherwise modify FM broadcast facilities. (Id.).

**Consumer Education Payment**

The Omnibus bill provides up to $50 million from the TV Broadcaster Relocation Fund for purposes of educating consumers regarding the reorganization of broadcast television spectrum. (Sec. 511).

## DIVISION P—RAY BAUM’S ACT OF 2018

### TITLE I—FCC REAUTHORIZATION

**Reauthorization**

RAY BAUM’S Act reauthorizes the FCC, allowing the agency to collect up to $333,118,000 for fiscal year 2019 and $339,610,000 for fiscal year 2020. (Sec. 101(a)). Funds collected in excess of this authorization will be transferred to the general U.S. Treasury fund for purposes of debt reduction. (Sec. 101(d)).

The bill also repeals Section 710 of the Telecommunications Act of 1996, which contains a duplicative authorization of appropriations. (Sec. 101(c)).

**Deposits of Spectrum Auction Down Payments to U.S. Treasury**

RAY BAUM’s Act amends Section 309(j)(i)(C) of the Communications Act of 1934 to allow the FCC to deposit upfront payments by spectrum bidders directly with the U.S. Treasury. (Sec. 101(b)).

**Application and Regulatory Fees**

The Act requires the Commission to establish a schedule of application fees to recover the cost of application processing, which the agency will review every even-numbered year. Government entities, certain nonprofits, and noncommercial radio and television stations are exempt from application fees. (Sec. 102(a)).

The Act similarly requires the Commission to establish a schedule of regulatory fees to cover the agency’s reasonably expected costs. The agency is required to annually adjust the schedule. Government entities, nonprofits, amateur radio operators, and noncommercial radio and television stations are exempt from regulatory fees. (Sec. 102(b)).

Amendments or adjustments made to the application or regulatory fees in accordance with this Act are not subject to judicial review. (Sec. 102(c)). The Commission is required to provide notice to Congress of any change in application or regulatory fees. (Id.)
The Act requires the FCC to prescribe additional penalties (25% of the unpaid balance) for late payments, as well as charge interest. (Id.)

The Commission is authorized to dismiss any application or other filing for failure to pay application or regulatory fees, and the agency may revoke any authorization held by a licensee that has not paid regulatory fees upon written notice and an opportunity to pay the outstanding balance or otherwise respond. A hearing is not required, unless the licensee’s response presents a substantial and material question of fact. Revocation orders are not final until the licensee has exhausted its right to judicial review. (Id.).

For good cause shown, the FCC may waive, reduce, or defer application or regulatory fee payments. The bill further allows the agency to accept advanced payments, as well as payments made in installments, not to exceed the license term. (Id.)

The bill directs the Commission to complete a rulemaking proceeding by October 1, 2019, to amend the schedule or regulatory fees. (Sec. 102(e)). Current regulatory fee amounts remain in effect pending completion of the proceeding. (Sec. 102(d)).

Effective Date

Title I of RAY BAUM’S Act will take effect on October 1, 2018. (Sec. 103).

TITLE II—APPLICATION OF ANTIDEFICIENCY ACT

RAY BAUM’S Act replaces “December 31, 2018” with “December 31, 2019” throughout Section 302 of the Antideficiency Act (Public Law 108-494) to extend the application of certain provisions from U.S. Code Title 31 to the Universal Service Fund. (Sec. 201).

TITLE III—SECURING ACCESS TO NETWORKS IN DISASTERS

RAY BAUM’S Act directs the FCC to conduct a study on network resiliency within 36 months of the bill’s enactment and submit the results of the study to Congress. (Sec. 301). Specifically, the agency is required to study the public safety benefits, technical feasibility, and cost of making telecommunications service provider-owned WiFi access points and other unlicensed technologies available to the public for direct access to 9-1-1 services during times of emergency when mobile service is unavailable. (Id.)

The bill amends the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 100-707) to include wireless and mobile telephone service, Internet access service, radio and television broadcasting, cable service, and direct broadcast satellite service. (Sec. 302).

TITLE IV—FCC CONSOLIDATED REPORTING

RAY BAUM’S Act directs the FCC, in the fourth quarter of each even-numbered year, to submit a report to Congress on the State of the Communications Marketplace. (Sec. 401). The report must include an assessment of:

(i) the state of competition in the communications marketplace, including commercial, facilities-based, and emerging services competition in commercial mobile service,
multichannel video programming distributor, broadcast, satellite, and Internet service provider markets;

(ii) the state of deployment of communications capabilities, including advanced telecommunications capability, and provide a list of areas without advanced telecommunications capability;

(iii) whether existing laws, regulations, regulatory practices, or marketplace practices pose a barrier to competitive entry into or expansion of communications services in the marketplace, including barriers to small businesses;

(iv) the Commission’s two-year agenda for addressing such barriers; and

(v) actions the Commission has taken in pursuit of its agenda. (Id.)


TITLE V—ADDITIONAL PROVISIONS

Independent Inspector General for FCC

RAY BAUM’S Act establishes an independent inspector general (IG) for the Federal Communications Commission. (Sec. 501(a)). The existing IG will continue to serve until the President appoints a new, independent IG. (Sec. 501(b)).

Authority of Chief Information Officer

RAY BAUM’S Act directs the Commission to provide the agency’s Chief Information Officer (CIO) with a significant role in the decision-making process for annual and multi-year planning, programming, budgeting, execution decisions, reporting requirements, and reports related to information technology, as well as general oversight and hiring authority with respect to information technology responsibilities. (Sec. 502(a)).

The CIO, in consultation with the Chief Financial Officer, is required to specify and approve the allocation of funds for information technology consistent with federal law, guidelines, and recommendations. (Sec. 502(b)).

Spoofing Prevention

RAY BAUM’S Act expands and clarifies the prohibition on misleading or inaccurate caller identification (caller ID) information to include communications from outside the United States and both text messages and voice services. (Sec. 503(a)).
It directs the Federal Communications Commission to prescribe regulations implementing this subsection within 18 months after enactment of this Act. Congressional amendments to this subsection take effect 6 months from the date the FCC prescribes implementing regulations. (Id.).

RAY BAUM’S Act directs the FCC, in consultation with the Federal Trade Commission (FTC), to develop consumer education materials on how to avoid scams that rely upon misleading or inaccurate caller ID within 1 year after enactment of this Act. (Sec. 503(b)). The Commission is required to periodically update the consumer education materials and make them available to the public through the FCC’s website. (Id.).

The bill directs the U.S. Government Accountability Office, within 18 months of enactment of this Act, to prepare a report to Congress on combating the fraudulent provision of misleading or inaccurate caller ID information that includes a study of actions taken by the FCC and FTC to address this issue. (Sec. 503(c)).

**Report on Promoting Broadband Internet Access Service for Veterans**

RAY BAUM’S Act directs the Commission to submit a report to Congress on promoting broadband Internet access service (BIAS) for veterans within 1 year of the bill’s enactment. The report must focus on low-income veterans and veterans living in rural areas, and provide findings and recommendations for Congress on the state of veterans’ access to BIAS and ways to promote such access. (Sec. 504(b)).

In preparing the report, the Commission is required to provide the public with notice and an opportunity to comment. (Sec. 504(c)).

**Methodology for Collection of Mobile Service Coverage Data**

RAY BAUM’S Act directs the FCC, within 180 days after conclusion of the Mobility Fund Phase II Auction, to adopt regulations establishing a methodology for the collection of mobile service coverage data for purposes of the Universal Service Program. (Sec. 505(b)).

The methodology is required to contain standard definitions for different available technologies (e.g., 2G, 3G, 4G, and LTE), improve consistency of data collection and reliability of coverage data, and increase of efficiency of data collection. (Sec 505(c)).

**Accuracy of Dispatchable Location for 9-1-1 Calls**

RAY BAUM’S Act directs the Commission, within 18 months of enactment of this Act, to complete a proceeding to consider adoption of rules to ensure that the dispatchable location is conveyed with all 9-1-1 calls, irrespective of the employed technology. This must include the dispatchable location of 9-1-1 calls placed from multi-line telephone systems. (Sec. 506(a)).

**NTIA Study on Interagency Process Following Cybersecurity Incidents**

RAY BAUM’S Act directs the NTIA Administrator to study how NTIA can best coordinate the interagency process following cybersecurity incidents and submit a report to Congress with the agency’s findings within 18 months of enactment of this Act. (Sec. 507(a)-(b)).
Tribal Digital Access

RAY BAUM’S Act directs the FCC to submit a report to Congress evaluating broadband coverage in Indian country and on land held by a Native Corporation within 1 year of enactment of this Act. The report must include an assessment of areas that have adequate broadband coverage, as well as unserved areas. (Sec. 508(a)).

Within 30 months of enactment of this Act, the Commission is required to complete a proceeding to address the unserved areas identified in this report. (Sec. 508(b)).

Terms of Office and Vacancies

RAY BAUM’S Act permits a FCC Commissioner to continue serving after the expiration of the fixed term of office until a successor is appointed, confirmed, and has taken the oath of office. However, Commissioners may not continue to serve after the expiration of the session of Congress that begins after the expiration of the Commissioner’s fixed term. (Sec. 509).

Joint Board Recommendation

RAY BAUM’S Act prohibits the FCC from amending its universal service support payment rules to implement the February 27, 2004, recommendations of the Federal-State Joint Board on Universal Service regarding single connection or primary line restrictions. (Sec. 510).

Disclaimer for Press Releases Regarding Notices of Apparent Liability

RAY BAUM’S Act requires the Federal Communications Commission to include a disclaimer in any press release regarding the issuance of a notice of apparent liability (NAL) clarifying that (i) the issuance of a NAL should be treated only as allegations, and (ii) the proposed forfeiture penalty represents the maximum penalty that the agency may impose for violations alleged in the NAL. (Sec. 511).

Reports Related to Spectrum Auctions

RAY BAUM’S Act directs the FCC, by September 30, 2018, and annually thereafter, to identify all spectrum auctions that the agency expects to initiate during the upcoming 12-month period, including the expected frequency bands. (Sec. 512(a)).

The bill further requires the Commission to provide a report to Congress detailing the justification of the use of any auction proceeds retained by the agency for the costs of developing and implementing the auction by April 1, 2019, and annually thereafter. (Sec. 512(b)).

TITLE VI—MOBILE NOW

Identifying 255 Megahertz

RAY BAUM’S Act directs the Secretary of Commerce, through NTIA and in coordination with the FCC, to identify at least 255 megahertz of Federal and non-Federal spectrum for mobile and fixed wireless broadband use by December 31, 2022. (Sec. 603(a)).
Of the 255 megahertz of identified spectrum, (i) at least 100 megahertz must be below the 8000 MHz frequency for unlicensed use; (ii) at least 100 megahertz must be below the 6000 MHz frequency for exclusive, licensed commercial mobile use; and (iii) at least 55 megahertz must be below the 8000 MHz frequency range for either licensed or unlicensed use, or a combination thereof. (Id.).

Spectrum identified in the following frequency bands may not be counted towards the 255 megahertz requirement: 1695-1710 MHz, 1755-1780 MHz, 2155-2180 MHz, 3550-3700 MHz, and spectrum the FCC determined prior to enactment of this Act has more than the minimum mobile or fixed wireless broadband operations. However, spectrum made available on and after February 11, 2016, satisfying the Act’s requirements may be counted. (Id.).

When identifying spectrum, the Secretary must consider the need to preserve critical existing and planned Federal capabilities; the effect on existing State, local, and tribal Government capabilities; international implications; the need for appropriate enforcement mechanisms; and the importance of deployment of wireless broadband services in rural areas of the United States. (Id.).

Millimeter Wave Spectrum

RAY BAUM’S Act requires the Federal Communications Commission to issue a notice of proposed rulemaking, within 2 years after enactment of this Act, to consider service rules for mobile or fixed terrestrial wireless operations in the 42-42.5 GHz band. (Sec. 604(a)).

As part of this proceeding, the Commission is directed to consider the best use of this spectrum, including whether to allocate the spectrum for licensed or unlicensed use or a combination thereof; whether to permit additional licensed operations on a shared basis; and technical characters that may be employed to facilitate coexistence of mobile and fixed terrestrial wireless services. (Sec. 604(b)).

3 GHz Spectrum

RAY BAUM’S Act requires the Secretary of Commerce, through NTIA and in consultation with the FCC and affected Federal agencies, to submit a report to Congress on the feasibility of allowing commercial wireless services (licensed or unlicensed) to use or share spectrum in the 3100-3550 MHz band. (Sec. 605(a)). The report is due no later than 24 months after enactment of this Act. (Id.).

The Act directs the Federal Communications Commission, in consultation with the Secretary of Commerce via NTIA and each affected Federal agency, to submit a report to Congress on the feasibility of allowing commercial wireless services (licensed or unlicensed) to use or share use of spectrum in the 3700-4200 MHz band. The report is due no later than 18 months after enactment of this Act. (Id.).

Both feasibility reports will be required to provide the following information:

(i) an assessment of incumbent Federal users operating in the spectrum;

(ii) an assessment of the potential effects to Federal and non-Federal user incumbents of sharing with fixed and mobile broadband operators;

(iii) criteria that may be necessary to ensure shared services would not harmfully interfere with incumbent Federal or non-Federal users; and
(iv) if sharing is feasible, which frequencies are most suitable for sharing with commercial wireless services. (Sec. 605(c)).

The feasibility reports will also be subject to public notice and comment. (Sec. 605(d)).

Communications Facilities Deployment on Federal Property

RAY BAUM’S Act streamlines applications for federal easements, rights-of-way, and leases by requiring the Administrator of General Services to develop a common application form and one or more master contracts to be used by all executive agencies and applicants, unless the executive agency employs a substantially similar application or contract. (Sec. 606(a)).

The bill requires executive agencies to provide applicants a point of contact within the agency, and act on applications within 270 days of receipt. If an agency denies an application, it must notify the applicant in writing and include an explanation for denial. (Id.).

RAY BAUM’S Act requires NTIA, in coordination with the Departments of Interior, Agriculture, Defense, Transportation, OMB, and the General Services Administration, to develop recommendations to streamline the process for consideration of broadband facility applications within 2 years of enactment of this Act. (Sec. 706(c)). Recommendations must include (i) procedures for tracking applications; (ii) methods to reduce application processing times; (iii) policies to expedite easement, license, or other authorization renewals; and (iv) policies to prioritize or streamline a permit for construction in a previously-disturbed right-of-way. (Id.).

Within 2 years of developing these recommendations, NTIA is required to submit a report to Congress describing steps taken to implement the regulations and opportunities to improve the process, including suggestions for further reducing application processing times. (Id.).

Broadband Infrastructure Deployment

RAY BAUM’S Act directs the Secretary of Transportation to develop rules to ensure that each State that receives funds under Chapter 1, Title 23 of the U.S. Code for broadband infrastructure deployment, meets the following requirements:

(i) the State Department of Transportation has identified a broadband utility coordinator responsible for facilitating the broadband infrastructure rights-of-way efforts within the State;

(ii) the State has established a registration process for broadband infrastructure entities seeking access to rights-of-way;

(iii) the State has established a process to electronically notify broadband infrastructure entities on an annual basis of the State transportation improvement program; and

(iv) the State has coordinated initiatives with other statewide telecommunication and broadband plans and State and local transportation and land use plans. (Sec. 607(b)).
This section applies only to Federal obligations or expenditures approved on or after the date regulations developed by the Department of Transportation, pursuant to this Act, become effective. (Sec. 607(c)).

**Communications Facilities Installation**

RAY BAUM’S Act requires the Administrator of General Services to collect from the head of each executive agency and include in the database previously established by Section 21 of the Federal Assets Sale and Transfer Act of 2016 (40 U.S.C. 1303 note) information on the ability of Federal real property to support a communications facility installation. (Sec. 608(a)).

In preparation for collection of such information and its inclusion in the database, the General Services Administrator must seek public comment within 60 days of enactment of this Act. (Sec. 608(b)). The notice must seek recommendations on (i) criteria that make real property capable of supporting communications facility installations; (ii) types of information related to covered property that should be included in the database; and (iii) other information the Administrator deems necessary. (ld.).

Within 90 days after requesting notice and comment, the Administrator of General Services must notify the head of each executive agency of the manner and format for submitting such information. The head of each executive agency is required to provide the General Services Administrator all appropriate information within 90 days of such notice. (Sec. 608(c)).

The Administrator of General Services, in consultation with the FCC, NTIA, NIST, and OMB, is required to study and submit a report to Congress on incentivizing participation by State and local governments so that they may similarly submit information on government properties for inclusion in the database. The report is due within 1 year of enactment of this Act. (Sec. 608(d)).

**Reallocation Incentives**

RAY BAUM’S Act requires the NTIA Administrator, in consultation with the FCC, OMB, and affected Federal agencies, to submit a report to Congress with legislative or regulatory recommendations to incentivize Federal entities to relinquish or share spectrum to permit commercial wireless broadband operations in Federal spectrum. (Sec. 609(a)). The report is due within 24 months of enactment of this Act, and must undergo public notice and comment procedures. (ld.).

The NTIA Administrator is required to consider whether permitting post-auction payments to Federal entities would improve access for commercial wireless broadband operators, and legislative recommendations. (Sec. 609(b)).

**Bidirectional Sharing Study**

RAY BAUM’S Act requires the Federal Communications Commission, in collaboration with NTIA, to conduct a bidirectional sharing study within 18 months of enactment of this Act. The intent of the study is to determine the best avenue for providing Federal users flexible access to non-Federal spectrum on a shared basis. (Sec. 610(a)).

The Commission is also required to submit a report to Congress on the findings of the study. (ld.). The Act directs the FCC to consider the regulatory certainty that Federal and commercial users alike require
before making long-term investment decisions, and potential barriers to voluntary commercial arrangements through which non-Federal users could provide access to Federal entities. (Sec. 610(b)).

**Unlicensed Services in Guard Bands**

RAY BAUM’S Act directs the Commission, in consultation with NTIA and affected agencies, to adopt rules permitting unlicensed services where feasible in designated guard bands. (Sec. 611(a)). The FCC is prohibited from permitting unlicensed use in any guard band that would cause harmful interference to any Federal service or licensed commercial service. (Sec. 611(b)).

**Pre-Auction Funding**

RAY BAUM’S Act amends Section 118(d)(3)(B)(i)(II) of the NTIA Organization Act to extend from 5 years to 8 years, where federal spectrum is repurposed for commercial use, the time period in which pre-auction Spectrum Relocation Fund transfers may be made. (Sec. 612).

**Immediate Transfer of Funds**

RAY BAUM’S Act amends Section 118(e)(1) of the NTIA Organization Act to authorize the OMB Director to immediately transfer auction proceeds to an eligible Federal agency once the frequencies are reallocated by competitive bidding. (Sec. 613). The OMB Director may borrow funds from the U.S. Treasury to make payments to the incumbent Federal agency prior to the deposit of auction proceeds into the Spectrum Relocation Fund, if the Federal agency is incurring relocation or sharing costs. (Id.).

**Amendments to the Spectrum Pipeline Act of 2015**

RAY BAUM’S Act amends Section 1008 of the Spectrum Pipeline Act of 2015 (Public Law 114-74) to provide for notice and opportunity for public comment on reports to Congress. (Sec. 614).

**GAO Assessment of Unlicensed Spectrum and Wi-Fi Use in Low-Income Neighborhoods**

RAY BAUM’S Act directs the U.S. Comptroller General to evaluate the availability of broadband Internet access using unlicensed spectrum and wireless networks in low-income neighborhoods. (Sec. 615).

The Comptroller General is required consider (i) the availability of wireless Internet hot spots and access to unlicensed spectrum in low-income neighborhoods; (ii) barriers to deployment and use of wireless networks in low-income neighborhoods; (iii) recommendations for overcoming such barriers; and (iv) recommendations for encouraging home broadband adoption by households with elementary and secondary school-age children that are in low income neighborhoods. (Id.).

The Comptroller General must submit a report to Congress summarizing its findings and recommendations within 1 year of enactment of this Act. (Sec. 615(b)).

**Rulemaking Related to Partitioning or Disaggregating Licenses**

RAY BAUM’S Act directs the Federal Communications Commission, within 1 year of enactment of this Act, to initiate a rulemaking proceeding to determine whether to develop a system permitting exclusive-use licensees to partition or disaggregate the license by sale or long-term lease. (Sec. 616(b)). The intent
is to provide services consistent with the license, and make unused spectrum available to an unaffiliated, covered small carrier or an unaffiliated carrier serving a rural area. (Id.).

The Commission must consider (i) whether reducing performance requirements for sub-licensees would facilitate deployment of advanced telecommunications services; (ii) what buildout conditions would be appropriate for sub-licensees; and (iii) what incentives would encourage licenses to lease or sell spectrum. (Id.). The FCC may only offer incentives or reduce performance obligations, if it determines that doing so would likely result in increased availability of advanced telecommunications services in a rural area. (Id.)

**Unlicensed Spectrum Policy**

RAY BAUM’S Act makes it the policy of the United States to (i) maximize the benefits of spectrum resources; (ii) advance innovation and investment in wireless broadband services; and (iii) promote spectrum policy that makes spectrum available to address consumer demand for unlicensed wireless broadband operations. (Sec. 617(a)).

**National Plan for Unlicensed Spectrum**

RAY BAUM’S Act directs the FCC, within 18 months of enactment of this Act, to develop a national plan in coordination with NTIA for making additional spectrum available for unlicensed or licensed by rule operations, and submit a copy of the plan— with any recommendations for legislative change— to Congress. (Sec. 618(b), (e)).

The plan must (i) identify an approach providing consumers access to additional spectrum to meet demand for unlicensed or licensed by rule operations; (ii) recommend specific actions through which the FCC and NTIA can enable unlicensed or licensed by rule operations in additional frequencies without causing harmful interference to incumbent users, including national security communications systems; and (iii) explore additional ways (e.g., databases or dynamic spectrum access systems) to improve efficient use of spectrum, reduce burdens, and protect sensitive Government information. (Sec. 618(c)).

NTIA, in consultation with OMB, is required to provide recommendations to the FCC on how to reform the Spectrum Relocation fund to ensure sufficient funds to cover costs incurred by Federal entities and other expenditures. (Sec. 618(d)).

**Spectrum Challenge Prize**

RAY BAUM’S Act requires the Secretary of Commerce, in consultation with the NTIA Administrator, to conduct prize competitions to accelerate the deployment and commercialization of technology that improves spectrum efficiency and reduces deployment costs. (Sec. 619(c)). The Secretary of Commerce is prohibited from awarding more than $5,000,000 in the aggregate to prize competition winner(s). (Id.).

Within 180 days of when prize funding is made available, the FCC is required to publish a technical paper on spectrum efficiency that provides criteria for use in the design of the prize competitions. (Sec. 619(d)).
Wireless Telecommunications Tax and Fee Collection Fairness

RAY BAUM’S Act prohibits a State or local jurisdiction from requiring any person to collect a State or local tax, fee, or surcharge on the purchase or use of any wireless telecommunications service, unless the collection is in connection with a financial transaction. (Sec. 620(c)). The law provides a private right of action for any person harmed by violation of this law. (Sec. 620(d)).

DIVISION V—CLOUD ACT

Congressional Findings

Congress finds that (i) timely access to electronic data is essential to protect public safety; (ii) efforts by the U.S. Government to obtain such data are impeded by the inability to access data stored abroad by communications companies subject to U.S. jurisdiction; (iii) foreign governments similarly seek access to electronic data stored in the U.S.; (iv) communications providers face potentially conflicting legal obligations when foreign governments order production of electronic data where the U.S. prohibits disclosure and vice versa; and (v) international agreements may resolve these potentially conflicting legal obligations. (Sec. 102).

Preservation of Records; Comity Analysis of Legal Process

The CLOUD Act permits communications providers to file, within 14 days, a Motion to Quash or Modify an order to provide electronic data where (i) the customer is not a U.S. person and does not reside in the U.S., and (ii) the required disclosure would create a material risk that the provider would violate the laws of a qualifying foreign government. (Sec. 103).

For purposes of determining whether to grant to Motion to Quash or Modify, the court shall consider the following:

(i) the interests of the United States;

(ii) the interests of the foreign government in preventing any prohibited disclosure;

(iii) the likelihood, extent, and nature of penalties to the communications provider as a result of inconsistent legal requirements;

(iv) the location and nationality of the customer whose communications are being sought;

(v) the nature and extent of the customer’s connection to the U.S. (or if legal process is sought on behalf of a foreign authority, the nature and extent of the customer’s connection to that country);

(vi) the importance to the investigation of the information requested be disclosed;

(vii) the likelihood of timely and effective access to the information through alternative means; and
Communications providers must store requested data pending the outcome of the Motion to Quash or Modify. (Id.). Communications providers may notify potentially affected foreign governments of the existence of a proceeding to obtain electronic data of a customer who is a national or resident of the foreign government. (Id.).

**Additional Amendments to Current Communications Laws**

The CLOUD Act authorizes communications providers to intercept or disclose electronic data in response to an order from a foreign government that is subject to an executive agreement certified by the Attorney General. (Sec. 104).

Communications providers and their officers, employees, and agents, are immune from civil or criminal liability for providing information, facilities, or assistance in good faith compliance with a U.S. court order or order from a foreign government that is subject to an executive agreement, in accordance with the CLOUD Act. (Id.).

**Executive Agreements on Access to Data by Foreign Governments**

For each executive agreement governing access by a foreign government to electronic data stored in the U.S., the Attorney General must provide written certification and explanation of the following considerations:

(i) the robustness of the foreign government’s domestic law, including substantive and procedural protections for privacy and civil liberties;
(ii) the foreign government has adopted appropriate procedures to minimize the acquisition, retention, and dissemination of information concerning U.S. persons subject to the agreement;
(iii) the terms of the agreement do not create any obligation that communications providers be capable of decrypting data or limitation that prevents providers from decrypting data; and
(iv) the foreign government may not intentionally target a U.S. person, target a non-U.S. person located outside the U.S. if the purpose is to obtain information concerning a U.S. person, or seek information at the request of or to provide information to the U.S. government or any third-party government;
(v) the order shall be for public safety purposes; identify a specific person, account, address, or personal device as the object the order; comply with the domestic law of that country; be based on requirements for reasonable justification; and be subject to review by a court or other independent authority;
(vi) orders for data interception shall be for a fixed, limited duration, reasonably necessary, and issued only where there is no reasonable alternative employing less intrusive means;
(vii) the foreign government shall, to the greatest extent possible, use minimization procedures as provided in Section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801) to protect non-publicly available information concerning U.S. persons;

(viii) the order shall not be used to infringe freedom of speech;

(ix) the foreign government shall promptly review information obtained by executive agreement on a secure system, and delete information that is not relevant to the public safety objective;

(x) the foreign government affords reciprocal rights of data access;

(xi) the foreign government agrees to periodic review of compliance; and

(xii) the U.S. government reserves the right to render the agreement inapplicable as to any order for which the U.S. government concludes the agreement may not properly be invoked. (Sec. 105).

The Attorney General must provide notice and a copy of the executive agreement no later than 7 days after certification of the executive agreement. (Id.). The executive agreement takes effect 180 days after the Attorney General provides notice to Congress, unless Congress enacts a joint resolution of disapproval. (Id.).

The Attorney General, with concurrence of the Secretary of State, may renew an executive agreement certification every 5 years. Upon renewal, the Attorney General must file a report to Congress describing the reasons for renewal, any substantive changes to the agreement or to the relevant laws or procedures of the foreign government since the original determination, and how the agreement has been implemented. (Id.). A revision to an executive agreement is treated as a new agreement subject to certification and the 180-day period for a joint resolution of disapproval by Congress. (Id.)

The U.S. government must, to the greatest extent possible, use minimization procedures as provided in Section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801) to protect non-publicly available information concerning U.S. persons.

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