# CONGRESSIONAL BUDGET OFFICE
# COST ESTIMATE

April 29, 2016

## S. 2555
## Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act

*As ordered reported by the Senate Committee on Commerce, Science, and Transportation on March 3, 2016*

## SUMMARY

S. 2555 would authorize federal agencies to implement various programs and measures related to management of the electromagnetic spectrum. It would direct federal agencies to prepare reports, develop information for firms that provide telecommunications services, award prizes for advanced technologies, and ensure that certain radio frequencies are made available for commercial uses. The bill also would establish terms and conditions under which state and local governments may assess taxes or fees on certain telecommunication services.

CBO estimates that implementing the bill would cost $85 million over the 2017-2021 period, subject to appropriation of the necessary amounts, mainly to develop new data systems and carry out spectrum management activities. CBO also estimates that enacting S. 2555 would increase net direct spending by $135 million over the 2017-2026 period, primarily as a result of provisions that would accelerate spending related to making federal spectrum available for commercial use. Because enacting the bill would affect direct spending, pay-as-you-go procedures apply. Enacting S. 2555 would not affect revenues.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits by more than $5 billion in any of the four consecutive 10-year periods beginning in 2027.

S. 2555 would impose intergovernmental mandates as defined in the Unfunded Mandate Reform Act (UMRA) by preempting state and local tax laws related to wireless telecommunication services and by preempting the jurisdiction of state and local courts in some cases. CBO estimates that the costs of the mandates, mostly in the form of foregone revenue to state and local governments, would not exceed the threshold established in UMRA ($77 million in 2016, adjusted annually for inflation).

If the Federal Communications Commission (FCC) increases annual fee collections to offset the costs of implementing the bill, doing so would increase the cost of an existing private-sector mandate on some commercial entities regulated by the agency. Based on information from the FCC, CBO estimates that the incremental cost of the mandate would be small, and fall well below the annual threshold established in UMRA for private-sector mandates ($154 million in 2016, adjusted annually for inflation).

## ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary effect of S. 2555 is shown in the following table. The costs of this legislation fall within several budget functions, including 370 (commerce and housing credit) and 800 (general government).

| | By Fiscal Year, in Millions of Dollars | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2017-2021 | 2017-2026 |
| **INCREASE IN SPENDING SUBJECT TO APPROPRIATION** | | | | | | | | | | | | |
| Estimated Authorization Level | 5 | 27 | 25 | 25 | 24 | 3 | 3 | 3 | 4 | 4 | 106 | 123 |
| Estimated Outlays | 4 | 11 | 20 | 25 | 25 | 18 | 9 | 3 | 4 | 4 | 85 | 123 |
| **INCREASE OR DECREASE (-) IN DIRECT SPENDING** | | | | | | | | | | | | |
| Estimated Budget Authority | 9 | 11 | 10 | 9 | 9 | 6 | 1 | -3 | 52 | 31 | 48 | 135 |
| Estimated Outlays | 9 | 11 | 10 | 9 | 9 | 6 | 1 | -3 | 52 | 31 | 48 | 135 |

## BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted near the start of fiscal year 2017 and that the estimated amounts will be appropriated each year. Outlay estimates are based on historical spending patterns for affected programs.

### Spending Subject to Appropriation

CBO estimates that implementing S. 2555 would cost $85 million over the 2017-2021 period, assuming appropriation of the necessary amounts. That estimate is net of fees that would be collected by the FCC to offset the agency's administrative costs under the bill.

**Database of Federal Property for Telecommunications Uses.** Under S. 2555, the Office of Science and Technology Policy (OSTP) would be required to establish a single database of information about federal real property that could be used as sites for telecommunications equipment owned and operated by nonfederal entities. Subject to certain restrictions, the database would be available to firms that construct or operate such facilities as well as to firms that provide communication services. The bill also would direct OSTP to include any data provided voluntarily by state or local governments related to the availability of real property under their purview that could be used as sites for such equipment.

The federal government currently maintains extensive information on its real property holdings—which include nearly 39 million acres of land and more than 275,000 buildings—but those databases do not indicate whether those properties would be appropriate sites for telecommunications equipment. CBO anticipates that more than 20 federal agencies would need to review the suitability of their property holdings for this purpose, which may involve assessing environmental and historic features as well as considering national security and public safety.

The cost to prepare such an inventory would vary significantly depending on the level of detail included. Based on information from agencies and the cost of creating other federal databases, CBO estimates that preparing this data would cost large federal agencies, on average, about $4 million. In addition, CBO estimates that creating and maintaining the database would cost about $3 million annually. Thus, CBO estimates that the cost of implementing this effort would total $71 million over the 2017-2021 period, assuming appropriation of the necessary amounts. Those costs could be higher if OSTP would need to integrate information from state and local governments; alternatively, costs could be lower if agencies do less analysis of the suitability of specific properties for private communications equipment.

**Spectrum Management.** S. 2555 would direct the National Telecommunications and Information Administration (NTIA) and the FCC to conduct various studies and regulatory proceedings related to radio frequencies that may become available in the future for new uses. For example, the bill would require NTIA to study whether certain spectrum bands currently used by federal agencies could be used by nonfederal entities; following that report, the FCC would be required to undergo a rulemaking process on the possibility of reallocating those and other frequencies for new commercial uses. In addition, both agencies would be required to assist OSTP in developing the database of federal property and to develop plans for making spectrum available on either a licensed or an unlicensed basis.[1]

Based on information from those agencies, CBO estimates that the spectrum management activities required by the bill would cost the NTIA $8 million over the 2017-2021 period. Implementing the bill also would cost the FCC $6 million over the 2017-2021 period.

1. The FCC awards most licenses to use the electromagnetic spectrum through competitive auctions. Those licenses give entities an exclusive right to use specific frequencies, subject to certain conditions. Spectrum made available on an unlicensed basis usually is available to any user, subject to restrictions aimed at preventing interference with other users.

Under current law the FCC is authorized to collect fees sufficient to offset the cost of its regulatory activities each year; therefore, CBO estimates that the spectrum management activities would have a negligible effect on net discretionary costs for the FCC, assuming appropriation actions consistent with that authority.

**Technology Prize.** S. 2555 would establish a prize competition aimed at spurring the commercialization of more efficient and cost-effective technologies for using the electromagnetic spectrum. The competition would be administered by the Secretary of Commerce in collaboration with other federal agencies. The bill would authorize the appropriation of $5 million for prize awards and such sums as may be necessary to administer the program. Based on the historical costs of administering other federal prize competitions, CBO estimates that implementing this program would cost a total $6 million, assuming the appropriation of the necessary amounts.

**Direct Spending**

CBO estimates that enacting S. 2555 would increase direct spending by $135 million over the 2017-2026 period, primarily as a result of provisions that would accelerate spending from the Spectrum Relocation Fund (SRF). Most of those costs would be offset by lower spending after 2026.

**Spectrum Relocation Fund.** Current law authorizes federal agencies to spend a portion of the proceeds from spectrum auctions, without further appropriation, to cover the costs they incur to make federal frequencies available for new commercial uses. Under current law, such spending cannot begin until after the FCC awards licenses to the winning bidders and deposits the proceeds into the SRF. S. 2555 would authorize the Office of Management and Budget to borrow funds from the Treasury immediately after an auction closes and to deposit those amounts in the SRF. Making SRF funds available immediately following the end of a spectrum auction would accelerate spending from the fund. Because major relocation efforts typically take several years to complete, CBO estimates that enacting this provision would shift some outlays that otherwise would have occurred after 2026 into the 2017-2026 period. On balance, CBO estimates that this shift in the timing of outlays would increase net direct spending by $100 million over the 2017-2026 period, primarily reflecting faster spending for costs associated with an auction that is expected to be completed in 2025.

S. 2555 also would allow agencies to spend SRF funds sooner to plan for relocation efforts. Agencies currently may spend a portion of the funds in the SRF to develop relocation plans for auctions that are expected to occur within five years; this bill would authorize that spending to occur for auctions that may be scheduled within eight years. Based on information from agencies involved in relocation efforts, CBO estimates that this change would increase net direct spending by about $15 million over the 2017-2026 period and reduce outlays by corresponding amounts after 2026.

**Fees for telecommunications leases.** Under current law fees that agencies charge to grant easements and rights-of-way for siting communications facilities on federal property may only be set to cover the agencies' direct costs related to granting such easements and rights-of-way. Furthermore, those fees may not be spent without further appropriation. S. 2555 would apply those same conditions to leases that are issued for siting private communication facilities on federal property.

The budgetary effects of applying those restrictions to leases would depend on the disposition of leasing proceeds under current law. For example, some agencies are allowed to spend the income from communications leases without further appropriation. CBO expects that reducing the amount collected in those instances would have no net effect on direct spending (because the loss of receipts would be offset by lower spending) but would increase costs needing to be covered by appropriations. By contrast, reducing fees that currently cannot be spent without further appropriation would reduce the amount of income that otherwise would have been deposited in the Treasury as offsetting receipts (which are recorded in the budget as reductions in direct spending).

CBO estimates that enacting this provision would primarily affect leasing fees deposited in the Federal Buildings Fund (FBF) by the General Services Administration (GSA), which may be spent only as provided in appropriation acts. According to GSA, the agency deposited $2 million and $3 million from communications leases into the FBF in 2014 and 2015, respectively. Based on information on the value of fees charged for cost recovery by other agencies for granting telecommunications rights-of-ways and easements, CBO estimates that proceeds from GSA's new and renewed leases would be at least 90 percent lower than the market-based fees for leases collected under current law. In addition, CBO anticipates that such fees would be paid once, at the time of application, whereas leasing fees are paid annually over the life of the lease, which may be in effect for up to 20 years. On balance, CBO estimates that implementing this change would reduce net offsetting receipts (which increase direct spending) by $20 million over the 2017-2026 period.

**Other provisions.** CBO estimates that other provisions in the bill would have no significant net effect on direct spending. For example, S. 2555 would direct the FCC and NTIA to make 255 megaherz of spectrum available for new commercial uses by 2020 on a licensed and unlicensed basis. CBO estimates that those requirements would have no significant net effect on projected proceeds from the FCC's auctions because CBO anticipates that the FCC would auction licenses to use similar amounts of spectrum under its existing auction authority.

## PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

**CBO Estimate of Pay-As-You-Go Effects for S. 2555, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on March 3, 2016**

| | By Fiscal Year, in Millions of Dollars | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2016-2021 | 2016-2026 |
| **NET INCREASE OR DECREASE (-) IN THE DEFICIT** | | | | | | | | | | | | | |
| Statutory Pay-As-You-Go Impact | 0 | 9 | 11 | 10 | 9 | 9 | 6 | 1 | -3 | 52 | 31 | 48 | 135 |

## INCREASE IN LONG TERM DIRECT SPENDING AND DEFICITS

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits by more than $5 billion in any of the four consecutive 10-year periods beginning in 2027.

## ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

S. 2555 would impose intergovernmental mandates as defined in UMRA by preempting state and local tax laws related to wireless telecommunication services. The language of Section 21 is circular in nature, and consequently, it is difficult to clearly determine when state or local taxing authority would be allowed and when it would be preempted. For the purposes of this estimate, CBO has assumed that the bill would prohibit state and local governments from collecting taxes on telecommunication services that are bundled with prepaid phones (or sold subsequently to reload wireless minutes) unless those taxes are levied on the retail seller of the prepaid phone or minutes. For instance, a state could not collect taxes from the company that provides minutes for a prepaid phone if those minutes are sold by a separate retailer that does not provide the minutes directly to the user; instead, they would need to collect the tax from the retailer.

Most states that levy telecommunications taxes on the sale of prepaid phones or minutes collect the taxes from retailers. CBO could identify only two states with laws that would allow taxes to be collected for prepaid wireless minutes from telecommunication providers that did not sell the phones directly. The revenues those states collect from such transactions total about $5 million annually. While such taxes would clearly be prohibited by Section 21, the language in the bill is written generally and is not explicitly limited to the taxation of telecommunication services associated with prepaid phones. Even so, CBO could identify no other likely case in which Section 21 would prohibit the collection of state taxes. Consequently, CBO estimates that the cost to state and local governments in the form of forgone revenues would fall well below the threshold established in UMRA ($77 million in 2016, adjusted annually for inflation). The bill also would preempt the authority of state and local courts to assert jurisdiction in cases that involve such taxation. That preemption also would be a mandate as defined in UMRA, but it would impose no significant costs in and of itself.

Finally, the bill would require states that receive federal highway aid to meet new requirements to facilitate the installation of broadband infrastructure. Such requirements would be conditions of assistance and thus not intergovernmental mandates as defined in UMRA.

## ESTIMATED IMPACT ON THE PRIVATE SECTOR

If the FCC increases annual fee collections to offset the costs of implementing the bill, doing so would increase the cost of an existing private-sector mandate on some commercial entities regulated by the agency. The FCC is authorized to collect fees sufficient to offset its regulatory costs each year, subject to its annual appropriation. Based on information from the FCC, CBO estimates that the incremental cost of the mandate would be small—no more than about $6 million over the 2017-2021 period—and fall well below the annual threshold established in UMRA for private-sector mandates ($154 million in 2016, adjusted annually for inflation).

## ESTIMATE PREPARED BY:

Federal Costs: Kathleen Gramp
Impact on State, Local, and Tribal Governments: Rachel Austin
Impact on the Private Sector: Logan Smith

## ESTIMATE APPROVED BY:

H. Samuel Papenfuss
Deputy Assistant Director for Budget Analysis