

## S.4

### Improving America's Security by Implementing Unfinished Recommendations of the 9/11 Commission Act of 2007 (Reported in Senate)

#### TITLE III--COMMUNICATIONS OPERABILITY AND INTEROPERABILITY

##### SEC. 301. DEDICATED FUNDING TO ACHIEVE EMERGENCY COMMUNICATIONS OPERABILITY AND INTEROPERABLE COMMUNICATIONS.

- (a) Emergency Communications Operability and Interoperable Communications-
- (1) IN GENERAL- Title XVIII of the Homeland Security Act of 2002 (6 U.S.C. 571 et seq.) (relating to emergency communications) is amended by adding at the end the following:

##### `SEC. 1809. EMERGENCY COMMUNICATIONS OPERABILITY AND INTEROPERABLE COMMUNICATIONS GRANTS.

- `(a) Definitions- In this section:
- `(1) ADMINISTRATOR- The term `Administrator' means the Administrator of the Federal Emergency Management Agency.
- (2) EMERGENCY COMMUNICATIONS OPERABILITY- The term `emergency communications operability' means the ability to provide and maintain, throughout an emergency response operation, a continuous flow of information among emergency response providers, agencies, and government officers from multiple disciplines and jurisdictions and at all levels of government, in the event of a natural disaster, act of terrorism, or other man-made disaster, including where there has been significant damage to, or destruction of, critical infrastructure, including substantial loss of ordinary telecommunications infrastructure and sustained loss of electricity.
- (b) In General- The Administrator shall make grants to States for initiatives necessary to achieve, maintain, or enhance Statewide, regional, national and, as appropriate, international emergency communications operability and interoperable communications.
- (c) Statewide Interoperable Communications Plans-
- (1) SUBMISSION OF PLANS- The Administrator shall require any State applying for a grant under this section to submit a Statewide Interoperable Communications Plan as described under section 7303(f) of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 194(f)).
- (2) COORDINATION AND CONSULTATION- The Statewide plan submitted under paragraph (1) shall be developed--
- (A) in coordination with local and tribal governments, emergency response providers, and other relevant State officers; and
- (B) in consultation with and subject to appropriate comment by the applicable Regional Emergency Communications Coordination Working Group as described under section 1805.
- (3) APPROVAL- The Administrator may not award a grant to a State unless the Administrator, in consultation with the Director for Emergency Communications, has approved the applicable Statewide plan.
- (4) REVISIONS- A State may revise the applicable Statewide plan approved by the Administrator under this subsection, subject to approval of the revision by the Administrator.

- (d) Consistency- The Administrator shall ensure that each grant is used to supplement and support, in a consistent and coordinated manner, any applicable State, regional, or urban area homeland security plan.
- (e) Use of Grant Funds- Grants awarded under subsection (b) may be used for initiatives to achieve, maintain, or enhance emergency communications operability and interoperable communications, including--
  - (1) Statewide or regional communications planning, including governance related activities;
  - (2) system design and engineering;
  - (3) system procurement and installation;
  - (4) exercises;
  - (5) modeling and simulation exercises for operational command and control functions;
  - (6) technical assistance;
  - (7) training; and
  - (8) other appropriate activities determined by the Administrator to be integral to achieve, maintain, or enhance emergency communications operability and interoperable communications.
- (f) Application-
  - (1) IN GENERAL- A State desiring a grant under this section shall submit an application at such time, in such manner, and accompanied by such information as the Administrator may reasonably require.
  - (2) MINIMUM CONTENTS- At a minimum, each application submitted under paragraph (1) shall--
    - (A) identify the critical aspects of the communications life cycle, including planning, system design and engineering, procurement and installation, and training for which funding is requested;
    - (B) describe how--
      - (i) the proposed use of funds--
        - (I) would be consistent with and address the goals in any applicable State, regional, or urban homeland security plan; and
        - (II) unless the Administrator determines otherwise, are--
          - (aa) consistent with the National Emergency Communications Plan under section 1802; and
          - (bb) compatible with the national infrastructure and national voluntary consensus standards;
      - (ii) the applicant intends to spend funds under the grant, to administer such funds, and to allocate such funds among participating local and tribal governments and emergency response providers;
      - (iii) the State plans to allocate the grant funds on the basis of risk and effectiveness to regions, local and tribal governments to promote meaningful investments for achieving, maintaining, or enhancing emergency communications operability and interoperable communications;
      - (iv) the State intends to address the emergency communications operability and interoperable communications needs at the city, county, regional, State, and interstate level; and
      - (v) the State plans to emphasize regional planning and cooperation, both within the jurisdictional borders of that State and with neighboring States;

- (C) be consistent with the Statewide Interoperable Communications Plan required under section 7303(f) of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 194(f)); and
- (D) include a capital budget and timeline showing how the State intends to allocate and expend the grant funds.
- (g) Award of Grants-
- (1) CONSIDERATIONS- In approving applications and awarding grants under this section, the Administrator shall consider--
  - (A) the nature of the threat to the State from a natural disaster, act of terrorism, or other man-made disaster;
  - (B) the location, risk, or vulnerability of critical infrastructure and key national assets, including the consequences from damage to critical infrastructure in nearby jurisdictions as a result of natural disasters, acts of terrorism, or other man-made disasters;
  - (C) the size of the population of the State, including appropriate consideration of military, tourist, and commuter populations;
  - (D) the population density of the State;
  - (E) the extent to which grants will be utilized to implement emergency communications operability and interoperable communications solutions--
    - (i) consistent with the National Emergency Communications Plan under section 1802 and compatible with the national infrastructure and national voluntary consensus standards; and
    - (ii) more efficient and cost effective than current approaches;
  - (F) the extent to which a grant would expedite the achievement, maintenance, or enhancement of emergency communications operability and interoperable communications in the State with Federal, State, local, and tribal governments;
  - (G) the extent to which a State, given its financial capability, demonstrates its commitment to achieve, maintain, or enhance emergency communications operability and interoperable communications by supplementing Federal funds with non-Federal funds;
  - (H) whether the State is on or near an international border;
  - (I) whether the State encompasses an economically significant border crossing;
  - (J) whether the State has a coastline bordering an ocean, a major waterway used for interstate commerce, or international waters;
  - (K) the extent to which geographic barriers pose unusual obstacles to achieving, maintaining, or enhancing emergency communications operability or interoperable communications;
  - (L) the threats, vulnerabilities, and consequences faced by the State related to at-risk sites or activities in nearby jurisdictions, including the need to respond to natural disasters, acts of terrorism, and other man-made disasters arising in those jurisdictions;
  - (M) the need to achieve, maintain, or enhance nationwide emergency communications operability and interoperable communications, consistent with the National Emergency Communications Plan under section 1802;
  - (N) whether the activity for which a grant is requested is being funded under another Federal or State emergency communications grant program; and
  - (O) such other factors as are specified by the Administrator in writing.

- (2) REVIEW PANEL-
  - (A) IN GENERAL- The Secretary shall establish a review panel under section 871(a) to assist in reviewing grant applications under this section.
  - (B) RECOMMENDATIONS- The review panel established under subparagraph (A) shall make recommendations to the Administrator regarding applications for grants under this section.
  - (C) MEMBERSHIP- The review panel established under subparagraph (A) shall include--
    - (i) individuals with technical expertise in emergency communications operability and interoperable communications;
    - (ii) emergency response providers; and
    - (iii) other relevant State and local officers.
- (3) MINIMUM GRANT AMOUNTS- The Administrator shall ensure that for each fiscal year--
  - (A) no State receives less than an amount equal to 0.75 percent of the total funds appropriated for grants under this section; and
  - (B) American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands each receive no less than 0.25 percent of the amounts appropriated for grants under this section.
- (4) AVAILABILITY OF FUNDS- Any grant funds awarded that may be used to support emergency communications operability or interoperable communications shall, as the Administrator may determine, remain available for up to 3 years, consistent with section 7303(e) of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 194(e)).
- (h) State Responsibilities-
  - (1) PASS-THROUGH OF FUNDS TO LOCAL AND TRIBAL GOVERNMENTS- The Administrator shall determine a date by which a State that receives a grant shall obligate or otherwise make available to local and tribal governments and emergency response providers--
    - (A) not less than 80 percent of the funds of the amount of the grant;
    - (B) resources purchased with the grant funds having a value equal to not less than 80 percent of the total amount of the grant; or
    - (C) grant funds combined with resources purchased with the grant funds having a value equal to not less than 80 percent of the total amount of the grant.
  - (2) CERTIFICATIONS REGARDING DISTRIBUTION OF GRANT FUNDS TO LOCAL AND TRIBAL GOVERNMENTS- Any State that receives a grant shall certify to the Administrator, by not later than 30 days after the date described under paragraph (1) with respect to the grant, that the State has made available for expenditure by local or tribal governments and emergency response providers the required amount of grant funds under paragraph (1).
- (3) REPORT ON GRANT SPENDING-
  - (A) IN GENERAL- Any State that receives a grant shall submit a spending report to the Administrator at such time, in such manner, and accompanied by such information as the Administrator may reasonably require.
  - (B) MINIMUM CONTENTS- At a minimum, each report under this paragraph shall include--

- (i) the amount, ultimate recipients, and dates of receipt of all funds received under the grant;
- (ii) the amount and the dates of disbursements of all such funds expended in compliance with paragraph (1) or under mutual aid agreements or other intrastate and interstate sharing arrangements, as applicable;
- (iii) how the funds were used by each ultimate recipient or beneficiary;
- (iv) the extent to which emergency communications operability and interoperable communications identified in the applicable Statewide plan and application have been achieved, maintained, or enhanced as the result of the expenditure of grant funds; and
- (v) the extent to which emergency communications operability and interoperable communications identified in the applicable Statewide plan and application remain unmet.
- (C) PUBLIC AVAILABILITY ON WEBSITE- The Administrator shall make each report submitted under subparagraph (A) publicly available on the website of the Federal Emergency Management Agency. The Administrator may redact such information from the reports as the Administrator determines necessary to protect national security.
- (4) PENALTIES FOR REPORTING DELAY- If a State fails to provide the information required by the Administrator under paragraph (3), the Administrator may--
  - (A) reduce grant payments to the State from the portion of grant funds that are not required to be passed through under paragraph (1);
  - (B) terminate payment of funds under the grant to the State, and transfer the appropriate portion of those funds directly to local and tribal governments and emergency response providers that were intended to receive funding under that grant; or
  - (C) impose additional restrictions or burdens on the use of funds by the State under the grant, which may include-
    - (i) prohibiting use of such funds to pay the grant-related expenses of the State; or
    - (ii) requiring the State to distribute to local and tribal government and emergency response providers all or a portion of grant funds that are not required to be passed through under paragraph (1).
- (i) Prohibited Uses- Grants awarded under this section may not be used for recreational or social purposes.
- (j) Authorization of Appropriations- There are authorized to be appropriated for grants under this section--
  - (1) \$400,000,000 for fiscal year 2008;
  - (2) \$500,000,000 for fiscal year 2009;
  - (3) \$600,000,000 for fiscal year 2010;
  - (4) \$800,000,000 for fiscal year 2011;
  - (5) \$1,000,000,000 for fiscal year 2012; and
  - (6) such sums as necessary for each fiscal year thereafter.'
- (2) TECHNICAL AND CONFORMING AMENDMENT- The table of contents under section 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101) is amended by inserting after the item relating to section 1808 the following:
  - `Sec. 1809. Emergency communications operability and interoperable communications grants.'

- (b) Interoperable Communications Plans- Section 7303 of the Intelligence Reform and Terrorist Prevention Act of 2004 (6 U.S.C. 194) is amended--
  - (1) in subsection (f)--
  - (A) in paragraph (4), by striking `and' at the end;
  - (B) in paragraph (5), by striking the period at the end and inserting a semicolon; and
  - (C) by adding at the end the following:
    - (6) include information on the governance structure used to develop the plan, such as all agencies and organizations that participated in developing the plan and the scope and timeframe of the plan; and
    - (7) describe the method by which multi-jurisdictional, multi-disciplinary input was provided from all regions of the jurisdiction and the process for continuing to incorporate such input.'; and
  - (2) in subsection (g)(1), by striking `or video' and inserting `and video'.
- (c) National Emergency Communications Plan- Section 1802(c) of the Homeland Security Act of 2002 (6 U.S.C. 652(c)) is amended--
  - (1) in paragraph (8), by striking `and' at the end;
  - (2) in paragraph (9), by striking the period at the end and inserting a semicolon; and
  - (3) by adding at the end the following:
    - (10) set a date, including interim benchmarks, as appropriate, by which State, local, and tribal governments, Federal departments and agencies, emergency response providers, and the private sector will achieve interoperable communications as that term is defined under section 7303(g)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 194(g)(1)).'

#### SEC. 302. BORDER INTEROPERABILITY DEMONSTRATION PROJECT.

- (a) In General-
  - (1) ESTABLISHMENT- There is established in the Department an International Border Community Interoperable Communications Demonstration Project (referred to in this section as `demonstration project').
  - (2) MINIMUM NUMBER OF COMMUNITIES- The Secretary shall select no fewer than 6 communities to participate in a demonstration project.
  - (3) LOCATION OF COMMUNITIES- No fewer than 3 of the communities selected under paragraph (2) shall be located on the northern border of the United States and no fewer than 3 of the communities selected under paragraph (2) shall be located on the southern border of the United States.
- (b) Program Requirements- The demonstration projects shall--
  - (1) address the interoperable communications needs of emergency response providers and the National Guard;
  - (2) foster interoperable emergency communications systems--
    - (A) among Federal, State, local, and tribal government agencies in the United States involved in preventing or responding to a natural disaster, act of terrorism, or other man-made disaster; and
    - (B) with similar agencies in Canada or Mexico;

- (3) identify common international cross-border frequencies for communications equipment, including radio or computer messaging equipment;
- (4) foster the standardization of interoperable emergency communications equipment;
- (5) identify solutions that will facilitate interoperable communications across national borders expeditiously;
- (6) ensure that emergency response providers can communicate with each other and the public at disaster sites;
- (7) provide training and equipment to enable emergency response providers to deal with threats and contingencies in a variety of environments; and
- (8) identify and secure appropriate joint-use equipment to ensure communications access.
- (c) Distribution of Funds-
  - (1) IN GENERAL- The Secretary shall distribute funds under this section to each community participating in a demonstration project through the State, or States, in which each community is located.
  - (2) OTHER PARTICIPANTS- Not later than 60 days after receiving funds under paragraph (1), a State shall make the funds available to the local and tribal governments and emergency response providers selected by the Secretary to participate in a demonstration project.
- (d) Reporting-
  - (1) IN GENERAL- Not later than December 31, 2007, and each year thereafter in which funds are appropriated for a demonstration project, the Secretary shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a report on the demonstration projects.
  - (2) CONTENTS- Each report under this subsection shall contain the following:
    - (A) The name and location of all communities involved in the demonstration project.
    - (B) The amount of funding provided to each State for the demonstration project.
    - (C) An evaluation of the usefulness of the demonstration project towards developing an effective interoperable communications system at the borders.
    - (D) The factors that were used in determining how to distribute the funds in a risk-based manner.
    - (E) The specific risks inherent to a border community that make interoperable communications more difficult than in non-border communities.
    - (F) The optimal ways to prioritize funding for interoperable communication systems based upon risk.
  - (e) Authorization of Appropriations- There are authorized to be appropriated such sums as are necessary in each of fiscal years 2007, 2008, and 2009 to carry out this section.