

ALERT

U.S. House Passes the RAY BAUM'S Act of 2018

March 7, 2018

On March 6, 2018, the U.S. House of Representatives voted unanimously to approve the Repack Airwaves Yielding Better Access for Users of Modern Services (RAY BAUM'S) Act of 2018 (H.R.4986), which was named in honor of former Energy and Commerce Committee Staff Director Ray Baum.

The bill, among other things, would (i) reauthorize the Federal Communications Commission for the first time in 28 years; (ii) enact provisions from the Senate-approved Making Opportunities for Broadband Infrastructure and Limiting Excessive and Needless Obstacles to Wireless (MOBILE NOW) Act (S.19); (iii) authorize additional funding for the broadcast incentive auction repack and establish a new fund for relocation of television translator stations, low-power television stations, and FM broadcast radio stations; and (iv) enable the FCC to deposit spectrum auction bidder upfront payments with the U.S. Treasury.

Two infrastructure deployment provisions contained in the MOBILE NOW Act and approved by House Energy and Commerce Committee – one involving the deployment of communications facilities on Federal property and another regarding the creation of a national broadband facilities database for federal assets – were removed from the bill, but are expected to be revised and included again before the bill passes Congress and is sent to the President for signature.

The RAY BAUM'S Act is a carefully negotiated legislative package that embodies a strong bipartisan, bicameral consensus. The Senate is expected to approve the bill later this month as part of the Omnibus spending bill.

Practice Areas

Telecom, Media & Technology

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TITLE I—FCC REAUTHORIZATION

Reauthorization

RAY BAUM'S Act would reauthorize 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 would be transferred to the general U.S. Treasury fund for purposes of debt reduction. (Sec. 101(d)).

The bill would also repeal 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 would amend 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 would require the Commission to establish a schedule of application fees to recover the cost of application processing, which the agency would review every even-numbered year. Government entities, certain nonprofits, and noncommercial radio and television stations would be exempt from application fees. (Sec. 102(a)).

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

Amendments or adjustments made to the application or regulatory fees in accordance with this Act would not be subject to judicial review. (Sec. 102(c)). The Commission would be required to provide notice to Congress of any change in application or regulatory fees. (*Id.*)

The Act would require the FCC to prescribe additional penalties (25% of the unpaid balance) for late payments, as well as charge interest. (*Id.*)

The Commission would be 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 would not be required, unless the licensee's response presents a substantial and material question of fact. Revocation orders would not become final until the licensee has exhausted its right to judicial review. (*Id.*)

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

The bill would direct 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 would remain in effect pending completion of the proceeding. (Sec. 102(d)).

Effective Date

If passed, Title I of RAY BAUM'S Act would take effect on October 1, 2018. (Sec. 103).

TITLE II—APPLICATION OF ANTIDEFICIENCY ACT

RAY BAUM'S Act would replace "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 would direct 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 would be 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 would amend 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 would direct 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 would be required to include an assessment of:

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

- the Commission's two-year agenda for addressing such barriers; and
- actions the Commission has taken in pursuit of its agenda. ()

RAY BAUM'S Act would repeal the ORBIT Act Report and Satellite Competition Report, as well as consolidate the International Broadband Data Report, Status of Competition in the Market for the Delivery of Video Programming Report, Report on Cable Industry Practices, Triennial Report Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Other Small Businesses, State of Competitive Market Conditions with Respect to Commercial Mobile Radio Services Report, the previously eliminated Annual Report, and additional outdated reports, within the newly established Report on the State of the Communications Marketplace. (Sec. 402).

TITLE V—ADDITIONAL PROVISIONS

Independent Inspector General for FCC

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

Authority of Chief Information Officer

RAY BAUM'S Act would direct 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, would be 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 would expand and clarify 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 would direct the Federal Communications Commission to prescribe regulations implementing this subsection within 18 months after enactment of this Act. Congressional amendments to this subsection would take effect 6 months from the date the FCC prescribes implementing regulations. (*Id.*).

RAY BAUM'S Act would direct the FCC, in consultation with the 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 would be required to periodically update the consumer education materials and make them available to the public through the FCC's website. (*Id.*).

The bill would direct 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 would direct 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 would be required to 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 would be 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 would direct 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 would be 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 would direct 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 would 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 would direct 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 would direct 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 would be required to 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 would be 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 would permit a FCC Commissioner to continue serving after the expiration of the fixed term of office until a successor is appointed, confirmed, and 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).

Submission of Copy of Certain Documents to Congress

RAY BAUM'S Act would require the Commission to submit to Congress copies of (i) any budget estimates and requests provided to the President or Office of Management and Budget ("OMB"); (ii) any legislative recommendations, testimony, and comments on legislation provided to the President or OMB; and (iii) any semiannual reports. (Sec. 510).

Joint Board Recommendation

RAY BAUM'S Act would prohibit 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. 511).

Disclaimer for Press Releases Regarding Notices of Apparent Liability

RAY BAUM'S Act would require 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. 512).

Reports Related to Spectrum Auctions

RAY BAUM'S Act would direct 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. 513(a)).

The bill would further require 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. 513(b)).

TITLE VI—VIEWER PROTECTION

Broadcast Repack Funds

RAY BAUM'S Act would require the Federal Communications Commission to reimburse broadcasters for reasonably incurred relocation costs associated with the broadcast incentive auction. (Sec. 601(a)).

The Act would establish a "Broadcast Repack Fund" within the U.S. Department of Treasury for purposes of reimbursing eligible stations. (*Id.*)

After April 13, 2020, the FCC would be able to continue drawing from the Broadcast Repack Fund upon certification that existing funds are insufficient to meet reasonably incurred costs. (Sec. 601(b)). Any unused funds would be rescinded and deposited into the general Treasury fund for deficit reduction purposes. (Sec. 601(c)).

Payment of Relocation Costs of Translator and Low Power Television Stations

RAY BAUM'S Act would require the Commission 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. 602(a)).

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

The Act would establish a "Translator and Low Power Station Relocation Fund" within the U.S. Department of Treasury for purposes of reimbursing eligible stations. (Sec. 602(b)).

After April 13, 2020, the FCC would be able to continue drawing from the Translator and Low Power Station 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. Any unused funds would be rescinded and deposited into the general Treasury fund for deficit reduction purposes. (*Id.*)

Payment of Relocation Costs of FM Broadcast Stations

RAY BAUM's Act would require the FCC to reimburse costs reasonably incurred by a FM broadcast station for relocation associated with the broadcast incentive auction. (Sec. 603(a)). The agency would be prohibited from reimbursing lost revenues or making duplicative payments. (*Id.*)

The Act would establish a "FM Broadcast Station Relocation Fund" within the U.S. Department of Treasury for purposes of reimbursing eligible stations. (Sec. 603(b)).

After April 13, 2020, the Commission would be able to continue drawing from the FM Broadcast Station Relocation Fund upon certification that such payments are necessary to reimburse reasonably incurred costs to relocate or otherwise modify FM broadcast facilities. Any unused funds would be rescinded and deposited into the general Treasury fund for deficit reduction purposes. (*Id.*).

Consumer Education Payment

RAY BAUM'S Act would establish a "Broadcast Station Relocation Consumer Education Fund" within the U.S. Department of Treasury, which the Commission may use to educate consumers regarding the reorganization of broadcast television spectrum. (Sec. 604(a)-(b)).

TITLE VII—MOBILE NOW

Identifying 255 Megahertz

RAY BAUM'S Act would direct the Secretary of Commerce, through NTIA and 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. 703(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 would not be counted towards the 255 megahertz requirement: 1695-1710 MHz, 1755-1780 MHz, 2155-2180 MHz, 3550-3700 MHz, and spectrum the FCC has determined had more than de minimum mobile or fixed wireless broadband operations prior to enactment of this Act. However, spectrum made available on and after February 11, 2016, satisfying the Act's requirements may be counted. (*Id.*).

When identifying spectrum, the Secretary would be directed to 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 would require 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. 704(a)).

As part of this proceeding, the Commission would be 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. 704(b)).

3 GHz Spectrum

RAY BAUM'S Act would require 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. 705(a)). The report would be due no later than 24 months after enactment of this Act. (*Id.*).

The Act would direct 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 would be due no later than 18 months after enactment of this Act. (*Id.*).

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

- an assessment of incumbent Federal users operating in the spectrum;
- an assessment of the potential effects to Federal and non-Federal user incumbents of sharing with fixed and mobile broadband operators;
- criteria that may be necessary to ensure shared services would not harmfully interfere with incumbent Federal or non-Federal users; and
- if sharing is feasible, which frequencies are most suitable for sharing with commercial wireless services. (Sec. 705(c)).

The feasibility reports would also be subject to public notice and comment. (Sec. 705(d)).

Broadband Infrastructure Deployment

RAY BAUM'S Act would direct 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:

- the State Department of Transportation has identified a broadband utility coordinator responsible for facilitating the broadband infrastructure rights-of-way efforts within the State;
- the State has established a registration process for broadband infrastructure entities seeking access to rights-of-way;
- the State has established a process to electronically notify broadband infrastructure entities on an annual basis of the State transportation improvement program; and

- the State has coordinated initiatives with other statewide telecommunication and broadband plans and State and local transportation and land use plans. (Sec. 706(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. 706(c)).

Reallocation Incentives

RAY BAUM'S Act would require 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. 707(a)). The report would be due within 24 months of enactment of this Act, and would require notice and an opportunity for public comment. (*Id.*).

The NTIA Administrator would be required to consider whether permitting post-auction payments to Federal entities would improve access for commercial wireless broadband operators, and legislative recommendations. (Sec. 707(b)).

Bidirectional Sharing Study

RAY BAUM'S Act would require 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 would be to determine the best avenue for providing Federal users flexible access to non-Federal spectrum on a shared basis. (Sec. 708(a)).

The Commission would also be required to submit a report to Congress on the findings of the study. (*Id.*). The Act would direct 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. 708(b)).

Unlicensed Services in Guard Bands

RAY BAUM'S Act would direct the Commission, in consultation with NTIA and affected agencies, to adopt rules permitting unlicensed services where feasible in designated guard bands. (Sec. 709(a)). The FCC would be prohibited from permitting unlicensed use in any guard band that would cause harmful interference to any Federal service or licensed commercial service. (Sec. 709(b)).

Amendments to the Spectrum Pipeline Act of 2015

RAY BAUM'S Act would amend 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. 710).

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

RAY BAUM'S Act would direct the U.S. Comptroller General to evaluate the availability of broadband Internet access using unlicensed spectrum and wireless networks in low-income neighborhoods. (Sec. 711).

The Comptroller General would be 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 would be required to submit a report to Congress summarizing its findings and recommendations within 1 year of enactment of this Act. (Sec. 711(b)).

Rulemaking Related to Partitioning or Disaggregating Licenses

RAY BAUM'S Act would direct 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. 712(b)). The intent would be 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 would be required to 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 would only be able to 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 would make 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. 713(a)).

National Plan for Unlicensed Spectrum

RAY BAUM'S Act would direct 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. 714(b), (e)).

The plan would be required to (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. 714(c)).

NTIA, in consultation in OMB, would be 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. 714(d)).

Spectrum Challenge Prize

RAY BAUM'S Act would require 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. 715(c)). The Secretary of Commerce would be 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 would be required to publish a technical paper on spectrum efficiency that provides criteria for use in the design of the prize competitions. (Sec. 715(d)).

Wireless Telecommunications Tax and Fee Collection Fairness

RAY BAUM'S Act would prohibit 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. 716(c)). The law would provide a private right of action for any person harmed by violation of this law. (Sec. 716(d)).