

license, and have been an Amateur Radio operator since 1961.

Challenge to the Authority of the Federal Communications Commission

Years ago the Congress of the United States created the Federal Communications Commission within the context of the Communications Act of 1934. Despite many revisions of the Act itself, the provisions of 47USC151, which created the FCC, have remained essentially the same as originally written:

“For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communications, and for the purpose of securing a more effective execution of this policy by centralizing authority.....there is created a commission to be known as the Federal Communications Commission.....and which shall execute and enforce the provisions of this chapter.” (47USC151)

The authority of the FCC has been challenged many times since its creation by other governmental entities, yet each time the Courts have found that the FCC has clearly the sole responsibility for the regulation of telecommunications.

The Presidential Memo of June 5, 2003, in and of itself directs the Department of Commerce, to act outside the intent and spirit of the Communications Act of 1934, to undertake activities to review the use and assignment of the radio frequency spectrum. The only mention of the FCC in the entire three page presidential memorandum is a simple invitation: “The FCC is also encouraged to participate in these activities and to provide input to the National Telecommunications and Information Administration at the Department of Commerce on these issues.” (Presidential Memo of 5 June 2003, Section 4, paragraph 1.)

The President openly criticized the present system for changes in spectrum use, referring to it as “a process that is often slow and inflexible, and can discourage the introduction of new

technology.” (Presidential Memo of 5 June, 2003, Fact Sheet on Spectrum Management, paragraph 2)

The reasons for extensive review of proposals for new technology are many, including, but not limited to the potential to interfere with existing licensed telecommunications services. Recently developed technologies that proposed to employ low power, wideband radio pulses, such as Ultra-Wideband Radar (UWB) and Broadband Over Powerline (BPL) have been, in my opinion, overwhelmed by dreams of pie-in-the-sky profits. Developed, hyper-marketed, and implemented without sufficient consideration to the potential interference effects to other services. According to the intent of the presidential memo and this Docket, inventors of new technologies should be allowed to assume that existing licensed, justified users of the spectrum should just ‘move aside or go away’ to make room for profit-motivated schemes at the expense of, perhaps, licensed public safety, military, homeland security, broadcast, transportation and other existing users.

Were it not for the regulations promulgated by the FCC under the Communications Act of 1934, there would simply have been chaos throughout the spectrum for decades. Frequency assignments require not just a simple process, but involve an often-complex determination of potential interference to adjacent users or to distant users assigned the same frequency or band of frequencies. The NTIA itself, in its comments to FCC ET Docket 02-98, filed August 21, 2002, objected to the assignment of a band of frequencies near 5MHz to the Amateur Radio Service: “...the current proposal does not adequately provide for protection from harmful interference to these critical government operations primary in the band.” Creators of new technologies must understand that applications need to conform to validly promulgated and established engineering and regulatory standards. And, not that such standards can be ignored or bypassed for the sake of potential profit, as apparently intended by the context of the presidential memorandum and from remarks from his subordinate ‘cheerleaders’ for change.

The FCC is a semi-autonomous agency with 70 years of experience in dealing with every form of electromagnetic and cable-borne telecommunications. It is simply ludicrous not to have the FCC conduct or be in responsible charge of the spectrum review and lead task force committees formed to examine more specific topics. If, in fact, delays to requests for spectrum assignments and allocations is truly an issue, then what better way to address the root cause(s) for the delays than to take them up with the very agency allegedly responsible for the process delays: The FCC.

Most of the services provided by the FCC to the private sector are at very modest cost. To simply propose a replacement organization to replace what has functioned fairly and largely without partisan influence would be a dangerous precedent. Large private sector telecommunication interests have both government relations and legal staffs to represent their interests, that are not necessarily in the best public interest, but certainly always in the interest of maximizing profits from new deployments. The structure of the FCC organization, and especially in its well-developed policy, practice and procedure, offers a fair and equitable means to review, comment, and object, if necessary, to decisions made by the FCC on frequency and service assignments. Nothing similar exists within the NTIA or the Department of Commerce, that would permit public review of or objection to NTIA decisions, and if necessary, an appeal to the United States Court of Appeal as permitted in FCC regulations.

For example, on February 17, 2004, The NTIA received a Motion for an Extension of Time for comments to be received on this Docket. Instead of accepting the Motion for consideration and requesting public comments prior to ruling on the Motion, as has been standard policy at the FCC, the NTIA simply notified the author on February 18, that the Motion was denied. There is no process for appeal of this decision.

Conduct of Spectrum Study Should Be Limited to Federal Frequency Assignments

The NTIA coordinates frequency assignments of Federal agencies. A necessary function, since the Federal government needs for its various agencies are many faceted. A government and private sector study would require that users be identified and locations noted; whether channelized or assigned to a band of frequencies; the mode or type of communication, often referred to as modulation type and bandwidth; whether a discreet channel or spread-spectrum; and perhaps transmitter power levels and antenna gain and directivity. In order for such a study to be fairly conducted, to discern and prioritize uses and current assignments, it must be an open, public process so that all parties can defend, if needed, present frequency assignments.

While such information must be compiled for a complete study, it carries with it undesirable consequences, for at least several federal departments and agencies which do not wish to have such information made public in the interest of national or homeland security. Certainly, many frequencies and data that would be needed in a complete study have been classified or otherwise restricted from public dissemination. Even frequencies used by the Military Affiliate Radio System for communication with civilian radio stations are designated For Official Use Only, and not to be made public.

A spectrum study of just federal assignments could be accomplished without unnecessary compromise of sensitive information as it could itself be classified or otherwise restricted, as needed to protect sensitive information.

Summary

On the surface, the Presidential Memorandum of June 5, 2003 appears to claim the existence of a spectrum “log-jam.” In fact, no such impairment exists, thanks to the diligent work of the Federal Communications Commission. What appears clear, though, is the desire on the part of mostly

large and well-funded telecommunication interests to take away spectrum from other users to their benefit. And, their success in convincing our current president that he must abandon what has been working well for 70 years, the Communications Act of 1934. (47USC Chapter 5 et. seq.)

It is my sincerest desire that elements of my comments will be considered and incorporated into the planning process for an NTIA-led, federal-only spectrum study. However, if the Department of Commerce and NTIA continue to proceed as directed in the Presidential Memo of June 5, 2003, and conduct a review of private sector spectrum use as well, they will do so knowingly in violation of the Communications Act of 1934.

Respectfully Submitted,

(electronically)

W. Lee McVey, P.E.

Senior Member, IEEE
Amateur Radio License W6EM
General Radio Operator License PG 12-19879

1301 86th Court, NW
Bradenton, FL. 34209-9309
February 20, 2004

Cc: The Honorable Michael Powell, Chairman, FCC