

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
FEDERAL COMMUNICATIONS COMMISSION
AND THE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION**

This Memorandum of Understanding (MOU) relates to increased coordination between Federal spectrum management agencies to promote the efficient and effective use of the radio spectrum in the public interest.

Rationale:

- It is important to expand this MOU to a common good goal which ensures not just efficient, but also effective use of the radio spectrum resource.

I. Parties

This MOU constitutes an agreement between the Federal Communications Commission (FCC) and the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce.

II. Authorities

The NTIA Act requires that the Assistant Secretary for Communications and Information and the Chairman of the FCC shall meet, at least biannually, to conduct joint spectrum planning with respect to certain issues.¹ The MOU establishes a framework for compliance with this statutory requirement. FCC authority to enter the MOU arises from the provision of the Communications Act empowering the Commission to perform any and all acts necessary to execute its functions,² as well as provisions establishing the FCC's authority to regulate non-Federal Government use of spectrum.³ NTIA authority to enter the MOU arises from the provision of the NTIA Act empowering the Administration to develop, in cooperation with the FCC, plans for improved management of all electromagnetic spectrum resources,⁴ as well as provisions of the NTIA Act and the Communications Act establishing NTIA's authority to regulate Federal Government use of spectrum.⁵

¹ 47 U.S.C. § 922 ("The Assistant Secretary and the Chairman of the Commission shall meet, at least biannually, to conduct joint spectrum planning . . .").

² 47 U.S.C. § 154(i) ("The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.").

³ See 47 U.S.C. § 151 (creating the FCC for the purpose of regulating interstate and foreign commerce by wire and radio); 47 U.S.C. § 301 (stating the Act's purpose of maintaining Federal Government control of the radio spectrum and requiring that no person transmit radio signals except pursuant to a license granted under the Act).

⁴ 47 U.S.C. § 902(b)(2)(L)(i) (authorizing NTIA to "develop[] , in cooperation with the Commission, a comprehensive long-range plan for improved management of all electromagnetic spectrum resources.").

⁵ See 47 U.S.C. § 901(c) (directing NTIA to advance policies that "foster[] full and efficient use of telecommunications resources, including effective use of the radio spectrum by the Federal Government, in a

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III. Purpose

The FCC and the NTIA are charged with managing the nation’s radio spectrum resources in the public interest. Both agencies are committed to performing their respective responsibilities in a cooperative, diligent, and professional manner to ensure that the spectrum is used for its highest and best purpose whether by the private sector, state and local government, or Federal agencies. The FCC and NTIA are required to work together to ensure that spectrum policy decisions promote as efficient and effective use of the spectrum as possible to help meet our economic, national security, science, safety, and other Federal mission goals now and in the future. This MOU is intended to formalize this cooperative relationship in a manner that improves the spectrum management policies, practices and capabilities of the United States domestically and internationally. The purpose of this MOU is for the FCC and NTIA to coordinate and collaborate productively to achieve the spectrum management goals of the nation.

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Rationale:

- Expand the purposes to ensure that more than national security and economic goals are met.
- It is important that the MOU does not just continue the status quo in FCC/NTIA coordination but actually improves spectrum management to the benefit of the United States domestically and internationally.

IV. Agreement of the Parties

Subject to the availability of funds and consistent with law and regulation, the Parties agree that:

- (1) The Chairman of the FCC and the Assistant Secretary for Communications and Information meet at least two times per calendar year to conduct joint spectrum planning with respect to:
 - (a) the extent to which licenses for spectrum use can be issued pursuant to section 309(j) of the Communications Act of 1934;
 - (b) the future spectrum requirements for public and private uses, including Federal, State and local government agencies;
 - (c) Short, medium, and long-term spectrum planning, including possible sharing scenarios;
 - (d) the actions necessary to promote the efficient and effective use of the spectrum, including spectrum sharing and protection of uses from

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manner which encourages the most beneficial uses thereof in the public interest.”); 47 U.S.C. § 305 (providing that radio stations belonging to and operated by the United States shall use frequencies assigned to each or to each class by the President).

harmful interference.

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(e) international issues including those pertaining to upcoming ITU World Radiocommunication Conferences; and

(f) standards efforts as these pertain to spectrum planning including the implementation of technologies that enhance spectrum utilization and efficiencies.

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Rationale:

- There are some topic areas that are covered by the MOU implicitly but should be expanded to include international, WRC and standards efforts.
- Spectrum sharing has become increasingly important since the original MOU was drafted; this topic should be explicitly included.

(2) In addition to the meetings of the principals, the staffs of the FCC and NTIA shall meet regularly to exchange information of mutual interest concerning the above-referenced issues as well to address non-routine matters. This should include the FCC Chief of the Office of Engineering and Technology and the Associate Administrator of NTIA's Office of Spectrum Management (or their successors) and other relevant representatives, as appropriate.

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Rationale:

Clarify the participants of the meetings and the focus.

(3) The Chief of the FCC's Office of Engineering and Technology and the Associate Administrator of NTIA's Office of Spectrum Management (or their successors) (and other relevant representatives as appropriate) shall meet at least 45 days before the principals meeting to agree on an agenda.

Rationale:

- This is being added to ensure agendas for the Principals' Meetings are set sufficiently in advance to allow for adequate preparation and to allow for meaningful discussions that result in progress on issues of mutual concern.

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(4) Notice:

The FCC will cooperate with the NTIA and endeavor to give notice of all proposed actions that could potentially cause interference to government operations.

(a) Where possible, such notice will be given in time for the NTIA to comment prior to final action and a minimum of 30 business days prior to final action for non-routine matters and 15 business days for routine matters (such new non-federal systems, or service rules making significant changes to how existing non-federal systems operate). Final action by the FCC, however, does not require approval of the NTIA.

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(b) The NTIA will cooperate with the FCC and endeavor to give notice of all proposed actions that could potentially cause interference to non-government operations. Where possible, such notice will be given in time for the FCC to comment prior to final action and a minimum of 30 business days prior to final action for non-routine matters and 15 business days for routine matters. Final action by the NTIA, however, does not require approval of the FCC.

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Guidance:

To provide some guidance on routine and non-routine matters, we would note that we consider routine matters to be activities taken on a day-to-day basis such as routine licensing and similar matters that does not involve changes to the allocations table or resolution of adjacent band interference issues, including requests for waivers.

Non-routine matters are those activities not typically taken on a day-to-day basis and would include, for example, actions that are not based on existing precedent, require changes to the allocation table or that have adjacent band/out-of-band implications, including for licensing.

(5) For both subsections 4(a) and (b), a different review period may be agreed to by NTIA's Associate Administrator for Spectrum Management and the FCC's Chief of the Office of Engineering and Technology.

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(6) The FCC and the NTIA will make all possible efforts to resolve technical, procedural, and policy differences by consensus on a timely basis whenever possible.

Comment:

Where agreement of the agencies is necessary or desirable, resolution of issues in a timely matter is growing more important due to growth in wireless use cases and in the use of spectrum. In these instances, the Working Group believes a joint path for escalation may be helpful. The FCC and NTIA should consider this issue as part of the reform of this MOU. However, the Working Group notes that for such a change to be binding, legislative changes may be needed that are outside the scope of this Working Group's mandate.

- (7) The FCC and the NTIA will each maintain their current lists of their authorized frequency assignments and will exchange such information as appropriate to coordinate spectrum use.

Rationale:

- Minor change to clarify agency responsibilities. Non-substantive.

- (8) The FCC and NTIA will form a staff standing working group (outside of regular meetings between staff and principals meetings) to discuss spectrum initiatives and spectrum planning by both agencies, including practices to promote increased trust and efficiency in processes. This includes developing a common set of metrics and best practices to assess and to predict potential harmful interference, as well as on-going work at the ITS and the FCC labs with regard to propagation modeling. The recommendations of this working group should be considered by the principals during relevant meetings.

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- (9) The FCC and NTIA will hold a joint public workshop annually to discuss spectrum research and coordination activities, and review and explore spectrum-sharing and management techniques and approaches, including the process for remediation of harmful interference situations.

Rationale:

- The Committee believes a public workshop may be one way to further the goals of the MOU – by informing both agencies and a cross section of spectrum stakeholders of critical focus areas.
- Consistent multi-stakeholder dialogues facilitated jointly by the FCC and NTIA help drive transparency and trust among the relevant government, industry, and academic stakeholders (as demonstrated by the success of ISART and similar programs). This type of multi-stakeholder engagement can also promote scholarship, innovation and investment in priority areas.
- The spectrum research and coordination topic described is intended to be broad—focused on areas that CSMAC has previously examined—where the shared spectrum responsibilities of the agencies present increasing challenges as spectrum congestion increases. These issues include spectrum sharing and management techniques as well as interference prevention, detection, resolution and mediation.

V. Effective Date and Modification/Termination

This MOU will become effective when signed by both parties. The MOU will be reviewed by the principals at least every three years on or about the anniversary date of signature.

The MOU may be modified upon mutual agreement of the parties and may be terminated by either party after 60 days prior written notice.

Rationale:

- It is important to have regular review of MOU to update, as required, but not review too frequently as to undermine its effectiveness.

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