

SPECTRUM COORDINATION ACT

MARCH 31, 2022.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PALLONE, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 2501]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2501) to require the National Telecommunications and Information Administration and the Federal Communications Commission to update the memorandum of understanding on spectrum coordination, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Spectrum Coordination Act”.

SEC. 2. UPDATE OF MEMORANDUM OF UNDERSTANDING ON SPECTRUM COORDINATION BETWEEN NTIA AND FCC.

Not later than December 31, 2022, the National Telecommunications and Information Administration and the Federal Communications Commission shall update the Memorandum of Understanding on Spectrum Coordination entered into in January 2003, to—

(1) improve upon the process for resolving frequency allocation disputes in shared or adjacent allocations between the National Telecommunications and Information Administration and the Federal Communications Commission to ensure that such disputes are definitively resolved in an efficient and timely manner;

(2) ensure that spectrum is used efficiently; and

(3) establish reasonable timelines for the exchange of information between the National Telecommunications and Information Administration and the Federal Communications Commission in order to maintain effective spectrum coordination and collaboration.

I. PURPOSE AND SUMMARY

H.R. 2501, the “Spectrum Coordination Act,” requires the National Telecommunications and Information Administration (NTIA) and the Federal Communications Commission (FCC) to update their memorandum of understanding on spectrum coordination, which they entered into in January 2003. Specifically, NTIA and the FCC must update the memorandum of understanding to: (1) improve the process for resolving frequency allocation disputes between the two agencies to ensure that disputes are definitively resolved in an efficient and timely manner; (2) ensure that spectrum is used efficiently; and (3) establish reasonable timelines for the exchange of information between the two agencies in order to maintain effective spectrum coordination and collaboration.

II. BACKGROUND AND NEED FOR LEGISLATION

Congress has tasked NTIA and the FCC with oversight and management of the United States’ spectrum resources.¹ As part of its mandate, NTIA is tasked with managing federal spectrum use by allocating, in collaboration with the FCC, spectrum for exclusive and shared federal use. Similarly, the FCC is responsible for ensuring, among other things, that spectrum is made available for non-federal wireless use and used most efficiently. Thus, Congress has designated NTIA as the non-biased arbiter of managing federal spectrum allocations, with the FCC serving as the non-biased arbiter tasked with managing non-federal spectrum allocations.

In recent years, it has been made clear that the federal spectrum management process is not working as effectively as it could,² in part because NTIA and the FCC have not updated their MOU on spectrum coordination since 2003.³ By statute, the NTIA has “[t]he responsibility to ensure that the views of the executive branch on telecommunications matters are effectively presented to the [FCC].”⁴ Rather than working through NTIA, as the central repository and manager of federal spectrum, some federal agencies with spectrum allocations have circumvented this statutory process on

¹ Communications Act of 1934, Pub. L. No. 73–416; National Telecommunications and Information Administration Organization Act, Pub. L. No. 102–538.

² *U.S. warns 5G wireless use could prompt flight diversions*, Reuters (Dec. 7, 2021) (www.reuters.com/business/aerospace-defense/us-warns-5g-wireless-use-could-prompt-flight-diversions-2021-12-07/).

³ Federal Communications Commission, *FCC and NTIA Sign New Memorandum of Understanding on Spectrum Coordination* (Jan. 31, 2003) (press release).

⁴ 47 U.S.C. § 902(b)(2)(J).

several occasions, including with respect to discussions regarding changes to the lower 3 gigahertz (GHz), the 3.7–4.2 GHz, the 2.5 GHz, and the 24 GHz bands, among others.

Inefficient management and disregard for existing spectrum processes undermine the federal government’s ability to maintain its leadership in the development of wireless technology on the global stage, including in international spectrum coordination proceedings, and more generally threatens national security and technological innovation efforts within the United States. These disputes also undermine certainty in the licensing process, which enables intensive use of both federal and non-federal spectrum. It is therefore imperative for NTIA to properly coordinate with the FCC in order to successfully oversee the nation’s federal spectrum users.

Accordingly, requiring NTIA and the FCC to revisit and revise their memorandum of understanding on spectrum coordination, as contemplated in H.R. 2501, will reaffirm the commitment of these two agencies to provide and allocate spectrum in a manner that will best serve American consumers, commercial wireless carriers, and federal agencies.

III. COMMITTEE HEARINGS

For the purposes of clause 3(c) of rule XIII of the Rules of the House of Representatives, the following hearings were used to develop or consider H.R. 2501:

The Subcommittee on Communications and Technology held a legislative hearing on October 6, 2021, entitled “Strengthening Our Communications Networks to Meet the Needs of Consumers.” The Subcommittee received testimony from the following witnesses:

- John Fogle, Council Member, City of Loveland Colorado, National League of Cities Information Technology and Communications Committee;
- Cheryl A. Leanza, Policy Advisor, United Church of Christ, Office of Communications, Inc.;
- Tim Donovan, Senior Vice President, Legislative Affairs, Competitive Carriers Association; and
- Todd Brandenburg, President and Chief Executive Officer, PocketiNet.

IV. COMMITTEE CONSIDERATION

H.R. 2501, the “Spectrum Coordination Act,” was introduced on April 14, 2021, by Representative Bilirakis (R–FL) and referred to the Committee on Energy and Commerce. Subsequently, on April 15, 2021, the bill was referred to the Subcommittee on Communications and Technology.

On November 3, 2021, the Subcommittee on Communications and Technology met in open markup session, pursuant to notice, to consider H.R. 2501 and one other bill. During consideration of the bill, an amendment in the nature of a substitute (AINS) offered by Subcommittee Chairman Doyle (D–PA) was agreed to by a voice vote. Upon conclusion of consideration of the bill, the Subcommittee on Communications and Technology agreed to report the bill favorably to the full Committee, amended, by a voice vote.

On November 17, 2021, the full Committee met in open markup session, pursuant to notice, to consider H.R. 2501 and 11 other bills. No amendments were offered during consideration of the bill.

Upon conclusion of consideration of the bill, the full Committee agreed to a motion on final passage offered by Representative Pallone (D–NJ), Chairman of the Committee, to order H.R. 2501 reported favorably to the House, as amended, by a voice vote.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. The Committee advises that there were no record votes taken on H.R. 2501, including a motion by Mr. Pallone ordering H.R. 2501 favorably reported to the House, as amended.

VI. OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee are reflected in the descriptive portion of the report.

VII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

VIII. FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

IX. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to require NTIA and the FCC to update their memorandum of understanding on spectrum coordination.

X. DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 2501 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

XI. COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congress-

sional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

XII. EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 2501 contains no earmarks, limited tax benefits, or limited tariff benefits.

XIII. ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

XIV. APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

XV. SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 designates that the short title may be cited as the “Spectrum Coordination Act.”

Sec. 2. Update of memorandum of understanding on spectrum coordination between NTIA and FCC

Section 2 requires NTIA and the FCC to update their memorandum of understanding on spectrum coordination that they entered into on January 31, 2003, by no later than December 31, 2022. This section further provides that NTIA and the FCC must update the memorandum of understanding to: (1) improve the process for resolving Frequency allocation disputes between the two agencies to ensure that disputes are definitively resolved in an efficient and timely manner; (2) ensure that spectrum is used efficiently; and (3) establish reasonable timelines for the exchange of information between the two agencies in order to maintain effective spectrum coordination and collaboration.

XVI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

There are no changes to existing law made by H.R. 2501, as reported.