

*Administration of Joseph R. Biden, Jr., 2023*

**Memorandum on Modernizing United States Spectrum Policy and Establishing a National Spectrum Strategy**

*November 13, 2023*

*Memorandum for the Heads of Executive Departments and Agencies*

*Subject:* Modernizing United States Spectrum Policy and Establishing a National Spectrum Strategy

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to meet the growing requirements of United States radio frequency spectrum users, it is hereby ordered as follows:

*Section 1. Policy.* Radio frequency spectrum is among our Nation's most important national resources. The United States has long advanced our global technological leadership by striking an appropriate balance between promoting private-sector innovation and furthering the missions of executive departments and agencies (agencies). In recent years, however, rising demand for always-connected devices and other factors, such as the development of cooperative and automated vehicles, the commercialization of space, and the growing complexity and increased requirements of Federal missions, have all led to increased competition for scarce spectrum resources. Managing these diverse, and at times competing, spectrum demands requires careful planning and coordination. Agencies and private-sector users must address these challenges by working together in the best interests of the American people.

This memorandum directs my Administration to build on prior innovation by promoting efficient and effective spectrum use by both agencies and non-Federal users. My Administration's goal is to accelerate United States leadership in wireless communications and other spectrum-based technologies and to unlock innovations that benefit the American people, while ensuring necessary access to spectrum for agencies and private-sector users, such as for scientific, public safety, critical infrastructure, and national security uses, now and into the future.

The policy of my Administration is to ensure that spectrum management, usage, and allocation decisions are coordinated, consistent, and reflect the needs and diverse missions of agencies and non-Federal users. This memorandum reaffirms the policies and authorities stated in Executive Order 12046 of March 27, 1978 (Relating to the Transfer of Telecommunications Functions), regarding the duties and powers of the Department of Commerce, and recognizes the role of the National Telecommunications and Information Administration (NTIA) within the Department of Commerce, as laid out in its organic statute, as "the executive branch agency principally responsible for advising the President on telecommunications and information policies" (47 U.S.C. 901(b)(6)). This policy recognizes the discrete mission needs and associated statutory oversight that agencies must fulfill as they develop and implement operating requirements that rely on spectrum.

The Congress has charged NTIA and the Federal Communications Commission (FCC) with jointly managing the Nation's radio spectrum resources. The NTIA and FCC perform their functions consistent with the August 1, 2022, Memorandum of Understanding (MOU) between the two agencies; the Presidential Memorandum of January 27, 2021 (Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking); the November 23, 2022, MOU among NTIA, FCC, and the Department of the Interior; and Executive Order 13175 of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments), honoring the Federal trust relationship with Tribal Nations.

Accordingly, I direct the following actions to modernize the usage of spectrum in the United States:

*Sec. 2. Coordination.* To ensure that the United States manages its spectrum resources in a manner that benefits all Americans, the executive branch must work cooperatively to arrive at consensus positions reflecting my Administration's spectrum policy goals.

There is hereby established the Interagency Spectrum Advisory Council (Council) to serve as the principal interagency forum for heads of agencies to advise NTIA on spectrum policy matters and to ensure that all decisions made by NTIA take into consideration the diverse missions of the Federal Government. Within 90 days of the date of this memorandum, NTIA shall publish a charter for the Council. The Council shall be led by the Assistant Secretary of Commerce for Communications and Information and shall be composed of Assistant Secretary-level representatives or their designees with spectrum management oversight from agencies holding Federal spectrum assignments or otherwise having spectrum-related statutory authorities within their respective agencies. The Executive Office of the President shall participate in the work of the Council, and NTIA shall request that FCC participate in the work of the Council.

The NTIA's Interdepartment Radio Advisory Committee (IRAC) shall continue to advise NTIA with respect to NTIA's statutory role to develop and execute policies, programs, procedures, and technical criteria pertaining to the allocation, management, and Federal use of the electromagnetic spectrum.

*Sec. 3. National Spectrum Strategy.* By December 31, 2023, the Secretary of Commerce, acting through NTIA, shall develop a National Spectrum Strategy (Strategy), and the Secretary shall submit it to the President, through the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, and the Director of the Office of Science and Technology Policy. The NTIA shall seek to collaborate with FCC and coordinate with the Council in the development of the Strategy, which shall include, at a minimum:

(a) a roadmap to make spectrum resources available to continue United States leadership in advanced wireless technologies and services, which shall provide a "pipeline" of spectrum bands to support commercial innovation and agencies' needs now and into the future by identifying at least 1500 megahertz for in-depth study to determine suitability for repurposing, which may include spectrum bands currently allocated for Federal operations, non-Federal operations, or shared Federal and non-Federal operations;

(b) data-driven processes for long-term spectrum planning that increase transparency into current and future Federal and non-Federal spectrum use; anticipate and enable technological advances in order to facilitate spectrum access; and fully account for essential Federal missions, including national defense and homeland security, safeguarding the national airspace, securing the Nation's critical infrastructure, climate monitoring and forecasting, and other scientific endeavors;

(c) plans to optimize United States spectrum management and use by considering different types of spectrum governance models, including exclusive licensing, unlicensed use, shared use, and combinations of these approaches;

(d) plans for investing in and promoting the development of emerging technological advancements in spectrum management, including spectrum sharing and improving understanding of electromagnetic spectrum science; and

(e) recommendations for developing an enduring, scalable mechanism for managing shared spectrum access for the Federal Government, with the goal of increasing the efficiency of spectrum use.

*Sec. 4. Implementation Plan.* Within 120 days of the submission of the Strategy, the Secretary of Commerce, acting through NTIA, in coordination with the Council, and after seeking to collaborate with FCC, shall publish an Implementation Plan for the Strategy. The Implementation Plan shall include a schedule for detailed studies of the pipeline bands identified in the Strategy to be completed within 2 years of the submission of the Strategy or, in the case of proposals by agencies to conduct studies under the Spectrum Pipeline Act of 2015 (Public Law 114–74), within 2 years of the date of receipt of funding.

*Sec. 5. Responsibilities of the Department of Commerce and NTIA.* The Secretary of Commerce, acting through NTIA, has "[t]he responsibility to promote the best possible and most efficient use of electromagnetic spectrum resources across the Federal Government, subject to and consistent with the needs and missions of Federal agencies." (47 U.S.C. 902(b)(2)(U)). In order to properly fulfill this responsibility, NTIA, consistent with its "authority . . . as the executive branch agency principally responsible for advising the President on telecommunications and information policies," shall, in coordination with the Council and the IRAC as appropriate, ensure that the views of the executive branch on spectrum matters are properly developed, documented, and, if necessary, presented to FCC and, in appropriate circumstances, in coordination with the Director of the Office of Management and Budget, to the Congress, as required by statute (47 U.S.C. 901(b)(6), 902(b)(2)(J)). This duty shall extend to all Federal spectrum matters, both where agencies hold NTIA-issued frequency assignments and where non-Federal spectrum use may have a substantial impact on agency missions.

(a) In undertaking these duties, NTIA shall:

- (i) adhere to the terms of the August 1, 2022, MOU between NTIA and FCC and any successor arrangement, so long as the arrangement remains in effect;
- (ii) solicit views of stakeholder agencies in a timely fashion and provide sufficient time and procedures for such agencies to present their views and supporting technical information to NTIA;
- (iii) provide agencies with timely written feedback articulating why and how agency views will be incorporated into the position that NTIA communicates to FCC;
- (iv) facilitate the presentation by agencies of classified or otherwise sensitive views to FCC;
- (v) develop the position of the executive branch on spectrum-related issues, including any supporting technical and operational information to facilitate FCC decision-making, and provide that position to FCC; and
- (vi) endeavor to provide such views and information within FCC's applicable timelines and request additional time when needed.

(b) In matters where NTIA and an agency or agencies cannot reach a consensus on the views to be presented to FCC, NTIA shall:

- (i) notify FCC of the lack of consensus and anticipated next steps and timing to resolve it;
- (ii) request the joint assistance of the Secretary of Commerce and the head of any agency objecting to NTIA's proposed submission to FCC to find a mutually agreeable resolution; and
- (iii) keep FCC informed, as appropriate, regarding anticipated next steps and timing of resolution.

(c) If a resolution is not reached, NTIA shall within 90 days submit, or the disputing agency or agencies may submit, the disagreement to the Assistant to the President for National Security Affairs and the Assistant to the President for Economic Policy, who shall, in consultation with the Director of the Office of Science and Technology Policy and the National Space Council, resolve the dispute through the interagency process described in National Security Memorandum 2 of February 4, 2021 (Renewing the National Security Council System), or the process described in any successor Presidential directive. The NTIA shall advise FCC on the executive branch position following adjudication and decision.

*Sec. 6. Post-FCC Action Procedures.* Since agencies are directed to participate fully and actively in NTIA's development of positions on spectrum matters, disputes following FCC action should be rare. When FCC has acted to make spectrum available for non-Federal use and an agency believes that, for a reason unforeseen before FCC action, the new use is causing or potentially will cause harmful interference to existing Federal operations or non-Federal operations that are regulated by an agency, the following procedures shall be adhered to:

(a) The complainant agency, no later than 45 days after learning of the unforeseen risk of harmful interference, shall formally request that NTIA address the matter with FCC for an appropriate remedy, and in that request shall:

- (i) clearly indicate the manner in which the public interest will be implicated or harmed or an agency's mission will be adversely affected;
- (ii) present evidence to NTIA that such new use is causing or potentially will cause harmful interference or potential harm to the public interest, including any technical or scientific data that supports that position; and
- (iii) explain why the complainant agency cannot take steps to ensure mission continuity that are consistent with FCC's decision.

(b) If NTIA believes that the complainant agency has produced sufficient evidence that the new use will risk harmful interference that cannot be reasonably mitigated without FCC action, it shall, within 60 days of the complainant agency's request, address FCC under established processes for seeking appropriate relief. If NTIA does not believe that there is sufficient evidence to seek relief from FCC, the complainant agency may invoke the process set forth in sections 5(b) and 5(c) of this memorandum.

(c) Before any significant regulatory action directly related to the spectrum subject to license is taken by the complainant agency pursuant to its statutory authorities, the regulatory action shall be submitted to the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget, as required by sections 3(f) and 6(a)(3) of Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review).

*Sec. 7. Other Responsibilities of Agencies.* Consistent with NTIA's statutory authorities and to ensure the coordination and consistency called for in this memorandum:

(a) Agencies shall expeditiously, and no later than 45 days subsequent to any NTIA request outside of the time frames set by section IV(3) of the August 1, 2022, MOU between NTIA and FCC, respond to and, to the extent possible, share with NTIA any technical and operational information needed to facilitate spectrum coordination and policy development.

(b) Agencies shall furnish NTIA "with such information, support, and assistance, not inconsistent with law, as it may require in the performance of its functions," (47 U.S.C. 904(c)(2)), including coordinating with NTIA on:

- (i) all relevant information to be considered for filing with FCC; and

(ii) any significant regulatory actions to be taken by the agency pursuant to its statutory authorities directly relating to spectrum issues, prior to its submission to OIRA as required by Executive Order 12866.

(c) Agencies shall collaborate with NTIA to facilitate long-term spectrum planning, including by sharing information about their current spectrum use and long-term spectrum needs as requested by NTIA.

(d) Agencies shall coordinate with NTIA prior to carrying out any electromagnetic compatibility study or testing plan that the agency seeks to be considered in formulating the views of the executive branch regarding spectrum regulatory matters. Coordination with NTIA will ensure the use of consistent methods across the executive branch, promoting reliable findings as well as evidence-based decision-making. Nothing herein is intended to prevent agencies from conducting spectrum-related studies for internal purposes unrelated to formulating executive branch views on spectrum regulatory matters. Agencies are strongly encouraged to conduct spectrum-related testing and research in cooperation with NTIA's Institute for Telecommunication Sciences.

(e) Agencies shall favor the development and procurement of systems that enable coexistence with other spectrum users. Accordingly, agencies shall ensure that their acquisition processes properly consider spectrum coexistence and access prior to milestone investment decisions. The NTIA shall, in turn, improve its criteria and processes for certification regarding spectrum availability to facilitate spectrum access.

*Sec. 8. Spectrum Management Principles and Methods.* By May 14, 2025, the Secretary of Commerce, working in partnership with the Council, shall publish a report identifying spectrum management principles and methods that will guide the Federal Government in spectrum studies and science. The report shall identify the coordination guidelines for spectrum studies and identify processes for determining types of studies, criteria, assumptions, and timelines that will be acceptable in decision-making involving the use of Federal spectrum and the use of non-Federal spectrum by agencies.

*Sec. 9. Revocation.* The Presidential Memorandum of October 25, 2018 (Developing a Sustainable Spectrum Strategy for America's Future), is hereby revoked.

*Sec. 10. Protection of Information.* Nothing in this memorandum shall be construed to require the disclosure of classified information, law enforcement sensitive information, or other information that must be protected in the interests of national security.

*Sec. 11. General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of Commerce is authorized and directed to publish this memorandum in the *Federal Register*.

JOSEPH R. BIDEN, JR.

[Filed with the Office of the Federal Register, 8:45 a.m., November 16, 2023]

NOTE: This memorandum was published in the *Federal Register* on November 17.

*Categories:* Communications to Federal Agencies : U.S. radio frequency spectrum policy modernization efforts and National Spectrum Strategy establishment, memorandum.

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