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Congress Should Require Better Agency Coordination on Spectrum Policy

by

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On February 3, the House Committee on Transportation and Infrastructure held a hearing about 5G operations in the C-Band. The Federal Aviation Administration (FAA) is publicly echoing claims that aviation equipment in adjacent bands could be harmed by 5G services, despite the FCC's determination in its 2020 *C-Band Order* that such interference is very unlikely. The eleventh hour FAA/FCC brouhaha and several other highly visible disputes between federal agencies in the last several years have led Congress to consider how to improve interagency coordination on spectrum matters.

Especially in light of the increasingly important role that wireless networks and devices play in so many facets of American life and our nation's economy, Congress should require the National Telecommunications and Information Administration (NTIA) and the FCC to update their Memorandum of Understanding (MOU) on spectrum coordination. The updated MOU should expressly acknowledge NTIA's role in representing all executive branch agencies as well as the FCC's role as the expert independent agency overseeing commercial spectrum usage. To be sure, there is no magic fix to prevent all future agency disputes. But legislation such as the proposed Improving Spectrum Coordination Act of 2021 ([S.1472](#)) may be able to reduce the frequency

and severity of such disagreements and help to prevent them from undermining the FCC's commercial spectrum policy decisions.

The FAA's dispute with the FCC's decision to authorize 5G wireless operations in the [C-Band](#) is just the latest public dust-up between agencies over the repurposing of spectrum for private commercial use. Additional recent examples include the Department of Transportation's disagreement with the Commission's 2020 decision to dedicate a portion of the [5.9 GHz Band](#) for unlicensed wireless use. NASA and NOAA publicly opposed the Commission's issuances of licenses for wireless services in the [24 GHz Band](#) in 2019.

There also have been instances of executive agencies effectively disregarding the interagency process for spectrum coordination and seeking to sidetrack FCC decisions. For instance, in November 2019, the Department of Defense (DoD) made [doubtful claims](#) to the press about out-of-band interference that supposedly would result from Ligado Networks' deployment of next-generation wireless services in the L-Band. After the April 2020 release of the Commission's unanimous bipartisan *L-Band Order* – which was based on several rounds of public comment and a lengthy deliberative process – DoD actively lobbied to delay its implementation or undo it.

If recent history is any guide, then it is safe to assume that there will be future instances in which federal agencies disagree on spectrum matters. To lessen the likelihood that such disagreements will thwart commercial spectrum policy decisions by the FCC, Congress should pass legislation to improve coordination among federal agencies.

The [NTIA-FCC memorandum](#) on spectrum coordination dates back to 2003. An updated MOU should emphasize the role of the Interdepartment Radio Advisory Commission ([IRAC](#)) as the exclusive venue through which executive branch agencies should voice their views and seek consensus on spectrum matters. Executive agencies should be discouraged from going outside IRAC in attempts to derail FCC decisions about private commercial uses for spectrum. Reinforcing those expectations should prompt government officials, media, and the general public to give low credence to views espoused outside of the IRAC process.

Additionally, an updated MOU should emphasize the role of NTIA in overseeing IRAC and in representing all executive agencies regarding spectrum policy decisions. Unity in the executive branch on spectrum matters is best achieved through a single agency head. Following the Senate's January 2022 confirmation of Alan Davidson as NTIA Administrator, the agency should now have the standing necessary to serve this important leadership role.

Furthermore, an updated MOU should spell out timelines, procedures, and requirements for exchange of information and for dialogue between agencies regarding proposals for repurposing spectrum for commercial use. Embodying in writing a more formalized process should promote more timely resolutions of agency disputes over spectrum matters. And a clearer process could make it harder for opponents of a particular FCC spectrum policy decision to succeed in making [unjustified claims about processes](#) being bypassed when in fact they were followed. In May 2020, for example, the Commission was criticized in a Senate floor speech on the false grounds that its *L-Band Order* was a sudden surprise that took place "in the darkness of a weekend." In fact, the Commission's order was long anticipated, a draft of the order was shared in advance

with NTIA, and the Commission complied fully with the Administrative Procedure Act in reaching a [carefully reasoned result](#) that granting Ligado's applications would further competition in the wireless marketplace, especially for enterprises.

Finally, an updated MOU should expressly acknowledge the FCC's role as the expert independent agency responsible for commercial spectrum use decisions. The Commission has on its staff engineers with considerable expertise and experience in evaluating and adjudicating disputes regarding signal interference claims. Broader awareness of the Commission's functions and authority should help to alleviate unjustified fears about potential signal interference harms resulting from the launch of next-generation services like 5G and Wi-Fi 6.

Recognition of the Commission's independence and expertise in addressing harmful out-of-band signal interference claims also ought to obviate any need for subjecting its decisions to additional layers of review. The FY2021 National Defense Authorization Act (NDAA) required DoD to contract with National Academy of Sciences to conduct an independent technical assessment of the *L-Band Order*. In other words, the NDAA authorized an independent technical analysis of the Commission's own independent technical analysis. Aside from the potential waste of taxpayer dollars, the imposition of added layers of analysis by outside institutions risks causing unnecessary delay and regulatory uncertainty.

Legislation pending in Congress could provide a vehicle for addressing the ongoing problem of agency clashes on spectrum policy. The Improving Spectrum Coordination Act of 2021 – [S.1472](#) – would require the FCC and NTIA to update their 2003 Memorandum of Understanding on spectrum coordination, including by clarifying that "Congress designated the NTIA to serve as the sole agency responsible for managing spectrum assigned to Federal agencies" and that "the NTIA represents Federal agencies in addressing technical, procedural, and policy differences regarding frequency allocation with the Commission." The bill also would require the MOU to outline the general process for how the FCC and NTIA will meet to discuss spectrum planning. Another bill, the Spectrum Coordination Act – [H.R. 2501](#), would require the MOU to be updated but provides no specific instructions about how that should be done.

It's unlikely that any legislation adopted by Congress could ever eliminate all agency spectrum disagreements. But these disputes should not be permitted to disrupt the repurposing of spectrum needed to supply economically valuable next-generation wireless broadband services. Reforming the interagency spectrum coordination process may reduce agency clashes within the executive branch and between the executive branch and the FCC. An updated, clearly delineated consultation process also could provide greater assurance to the public that the FCC's spectrum policy decisions are, in fact, the product of careful consideration, even if, at the end of the day, other agencies might have preferred a different outcome.

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Further Readings

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