

**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 use of the radio spectrum in the public interest.

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); 47 U.S.C. § 302 (empowering the Commission to regulate the interference potential of radio transmitters); 47 U.S.C. § 303 (empowering the Commission to adopt such regulations as it deems necessary to prevent interference between radio stations and to encourage more effective use of radio spectrum in the public interest); 47 U.S.C. § 309(j)(10) (conditioning the Commission's initial auction authority on prior coordination with NTIA).

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 manner which encourages the most beneficial uses thereof in the public interest.”); 47 U.S.C. § 305 (providing that

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 efficient use of the spectrum consistent with both the economic interests and national security of the nation. This MOU is intended to formalize this cooperative relationship in a manner that reflects the spectrum management policies and practices of the agencies.

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 State and local government public safety agencies;
 - (c) the spectrum allocation actions necessary to accommodate those uses; and
 - (d) the actions necessary to promote the efficient use of the spectrum, including spectrum management techniques to promote increased shared use of the spectrum that does not cause harmful interference, as a means of increasing commercial access.
- (2) The staffs of the FCC and the NTIA will meet regularly to exchange information of mutual interest concerning the above-referenced issues.
- (3) The FCC will cooperate with the NTIA and endeavor to give notice of all proposed actions that could potentially cause interference to government operations. Where possible, such notice will be given in time for the NTIA to comment prior to final action and a minimum of 15 business days prior to final action. 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. Final action by the FCC, however, does not require approval of the NTIA.

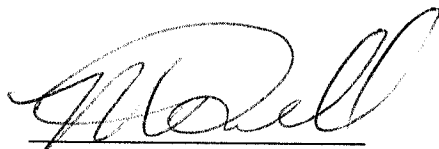
radio stations belonging to and operated by the United States shall use frequencies assigned to each or to each class by the President).

- (4) 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 15 business days prior to final action. 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. Final action by the NTIA, however, does not require approval of the FCC.
- (5) The FCC and the NTIA will resolve technical, procedural, and policy differences by consensus whenever possible.
- (6) The FCC and the NTIA will maintain current lists of their authorized frequency assignments and will exchange such information as appropriate to coordinate spectrum use.

V. Effective Date and Modification/Termination

This MOU will become effective when signed by both parties. The MOU may be modified upon mutual agreement of the parties and may be terminated by either party after 60 days prior written notice.

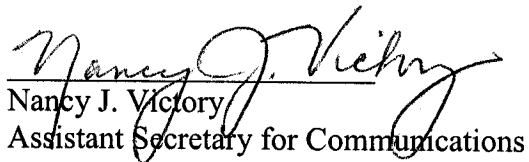
FOR THE FEDERAL
COMMUNICATIONS
COMMISSION⁶:



Michael K. Powell
Chairman
Federal Communications Commission

Date: 1/31/03

FOR THE NATIONAL
TELECOMMUNICATIONS AND
INFORMATION ADMINISTRATION:



Nancy J. Victory
Assistant Secretary for Communications
and Information
U.S. Department of Commerce

Date: 1/31/03

⁶ The Chairman is assigned responsibility as Chief Executive Officer under Section 5 of the Communications Act of 1934, as amended (47 U.S.C. § 155) and represents the Commission in all matters requiring conferences or communications with other government officers, departments or agencies, and generally to coordinate and organize the work of the Commission in such manner as to promote prompt and efficient disposition of all matters within the jurisdiction of the Commission.