

[Identical letters were sent to Representatives Hastert, DeLay, Pelosi, Young, Obey, Wolf, Serrano, Barton, Dingell, Upton, Markey, and Senators Frist, Daschle, Stevens, Byrd, Gregg, Hollings, McCain, Burns.]

The Honorable Richard B. Cheney
President of the Senate
276 Dwight D. Eisenhower Executive Building
Washington, DC 20501

Dear Mr. President:

The legislative history of the Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, 118 Stat. 3 (2004), called for the National Telecommunications and Information Administration (NTIA) to report on “further actions needed in the allocation of spectrum to the civilian sector for the effective deployment of third generation (3G) wireless devices in the United States.”¹ I am writing you today to provide you with NTIA’s assessment of the major actions that must be completed to achieve this objective.

The study, identification and allocation of spectrum for 3G services have required close coordination and cooperation between NTIA, the Federal Communications Commission (FCC), the Department of Defense, and other Federal agencies. Significant progress has been made. In July 2002, NTIA released an assessment (“Viability Assessment”) which identified 90 MHz of spectrum that could be allocated for 3G services to meet the increasing demand for new commercial services without disrupting communications systems critical to national security.² On November 7, 2002, the FCC reallocated this 90 MHz of spectrum to fixed and mobile services, making it available for advanced wireless services.³ On November 25, 2003, the FCC adopted service rules for this spectrum, including provisions pertaining to application procedures, licensing, technical operations, and competitive bidding.⁴

¹ H.R. Conf. Rep. No. 108-401, at 577 (2004) (incorporating by reference the 3G reporting request to NTIA contained in H.R. Rep. No. 108-221, at 78 (2003)).

² *An Assessment of the Viability of Accommodating Advanced Mobile Wireless (3G) Systems in the 1710-1770 MHz and 2110-2170 MHz Bands*, NTIA, U.S. Department of Commerce (2002) (available at <http://www.ntia.doc.gov/ntiahome/threeg/va7222002/3Gva072202web.htm>). According to the Viability Assessment, the 90 MHz would come from the 1710-1755 MHz band, a government band largely used for fixed microwave service, and a matching 45 MHz from the 2110-2170 MHz band, a non-government band used by the multipoint distribution service.

³ *See Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, ET Docket 00-258, Second Report and Order, 17 F.C.C. Rcd. 23193 (2003). Specifically, the FCC allocated 90 MHz in the 1710-1755 MHz and 2110-2155 MHz bands for 3G systems.

⁴ *See Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket 02-353, Report and Order, 18 F.C.C. Rcd. 25162 (2003).

There remain, however, three major actions that should be taken to complete to make the deployment of 3G services optimally possible: (1) enactment of the President's proposal to create a spectrum relocation fund; (2) completion of the FCC's rules to identify spectrum for some Federal operations that must relocate; and (3) an auction scheduled by the FCC.

First, as noted in the Viability Assessment, funding must be available for government systems to modify or relocate their systems to make this spectrum available. NTIA has issued rules requiring the private sector licensees that obtain 3G licenses at auction to negotiate with Federal agencies to reimburse the agencies for the cost of relocation.⁵ The Administration strongly supports legislation that would change the reimbursement process by creating a relocation fund using auction proceeds.⁶ H.R. 1320, as passed by the House, would greatly streamline the reimbursement process, and thus, speed relocation of Federal agencies and private sector access to the spectrum. NTIA urges Congressional enactment of this legislation this year.

Second, the FCC and NTIA must complete the necessary identification of frequencies in other bands to which Federal government systems can relocate. NTIA has identified frequencies in the 7 and 8 GHz bands for Federal government microwave systems to move. The FCC has also initiated a proceeding to make spectrum available in other bands for certain other Federal systems.⁷ The comment period for this rulemaking ended on December 1, 2003. It is anticipated that the FCC will issue final rules shortly.

Finally, the FCC must schedule an auction to license this spectrum by competitive bidding. NTIA, however, would not support such an action until identification of alternative frequencies for the affected Federal systems has been completed.

If you have any questions, please feel free to contact me or James Wasilewski, Acting Director of Congressional Affairs at (202) 482-1551.

⁵ See 47 CFR Part 301. NTIA promulgated these rules to implement the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. No. 105-261, 112 Stat. 1920 (1998), which authorized Federal agencies to accept compensation payments when they relocate or modify their frequency use to accommodate non-Federal users of the spectrum and required private sector licensees to reimburse such Federal agencies. See *Mandatory Reimbursement Rules for Frequency Band or Geographic Relocation of Federal Spectrum-Dependent Systems*, NTIA, U.S. Department of Commerce, 67 Fed. Reg. 41182 (2002). Under these rules, Federal agencies required to relocate or modify radiocommunications systems in the 1710-1755 MHz band are entitled to reimbursement from the private sector. 47 C.F.R. § 301.10(a)(1).

⁶ See "Commerce Department Asks Congress to Create Spectrum Relocation Fund for Federal Agencies Whose Spectrum is Reallocated to Commercial Use," NTIA Press Release (July 23, 2002) (available at <http://www.ntia.doc.gov/ntiahome/press/2002/relocationfund7242002.htm>).

⁷ See *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 Ghz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, ET Docket No. 00-258, Fourth Notice of Proposed Rulemaking, 18 F.C.C. Rcd. 13235 (2003).

Sincerely,

Michael D. Gallagher
Acting Assistant Secretary for
Communications and Information