

ALERT

Higher-Frequency Communications: NTIA and FCC Sign New MOU on Spectrum Coordination

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On August 2, 2022, the National Telecommunications and Information Administration (NTIA) and the Federal Communications Commission (FCC) signed a new Memorandum of Understanding (MOU) on radiofrequency spectrum coordination. The new MOU has been anticipated since the announcement of the Spectrum Coordination Initiative between the two agencies in February of this year. Established under the leadership of FCC Chairwoman Jessica Rosenworcel and NTIA Administrator and Assistant Secretary of Commerce for Communications and Information Alan Davidson, the Spectrum Coordination Initiative is intended to “strengthen the processes for decision making and information sharing and to work cooperatively to resolve spectrum policy issues.” With respect to the MOU in particular, the objective was to “update the nearly twenty-year-old Memorandum of Understanding between the agencies to address gaps in government coordination and to better reflect today’s spectrum opportunities and challenges.”

Consistent with this objective, the new MOU includes a number of new and expanded commitments regarding the agencies’ process for coordinating on spectrum management that did not exist under the preexisting MOU. As NTIA explains in its press release, these new commitments include:

- **Formalized High-Level Planning.** For the first time, the FCC Chair and Assistant Secretary will hold formal meetings to conduct joint spectrum planning at least quarterly.

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- **A Longer-Term Spectrum Outlook.** FCC and NTIA staff will meet at least monthly to exchange information. Where possible, the agencies will share their planned spectrum activities for the next 12 months.
- **Greater Coordination.** The agencies have committed to coordinating more of their spectrum activities than was required under the prior MOU, including when the agencies are considering taking actions that would create new spectrum adjacencies. The updated MOU also extends the amount of time for coordination.
- **Improved Transparency and Data Sharing.** Both agencies will endeavor to share information, concerns, or views as early in the spectrum planning process as possible, supported by technical data and analysis that is based on sound engineering principles. For NTIA, this includes sharing information, concerns, or views of other federal agencies as well.
- **Clearer Dispute Resolution.** FCC and NTIA will work together to develop and implement a process for escalating any disputes for consideration by agency leadership.

In addition, the MOU provides that the FCC and NTIA will revisit the agreement every four years to ensure that it is meeting the agencies' coordination needs and "adequately reflect[s] changing technological, procedural, and policy circumstances."

As we have previously explained, the Spectrum Coordination Initiative and the new MOU come on the heels of recent high-profile incidents that have demonstrated friction among federal agencies regarding spectrum use and management. In November 2021, for example, the Federal Aviation Administration (FAA) and the aerospace industry raised concerns over the potential for 5G communications facilities using C-band spectrum to cause harmful interference to radio altimeters used by aircraft, delaying 5G deployments. Similarly, in 2020, the Department of Defense criticized an FCC decision to approve a plan by Ligado to launch a terrestrial broadband service, stating the service would interfere with GPS systems. And in 2019, the U.S. delegation's preparation for the International Telecommunication Union's World Radiocommunication Conferences in 2019 (WRC-19) was hampered by "highly contentious" disputes among the FCC, NTIA, National Oceanic and Atmospheric Administration (NOAA) and National Aeronautics and Space Administration (NASA) regarding the potential for interference to weather forecasting from 5G operations in the 24 GHz band.

Because NTIA and the FCC share responsibilities related to managing the Nation's spectrum resources, cooperation between the two agencies is critical to resolving of these types of disputes when they occur—and to doing so at the appropriate stage in the spectrum allocation or management process.

For more information about spectrum management and coordination between FCC and NTIA, as well as other important issues facing NTIA including Internet for All, international telecommunications policy, and privacy, listen to last month's Wiley Connect podcast with Administrator Davidson.

Stephanie Rigizadeh, a Wiley 2022 Summer Associate, contributed to this alert.