

ONE HUNDRED SIXTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

October 9, 2020

Mr. Adam Candeub  
Acting Assistant Secretary of Commerce for Communications and Information  
National Telecommunications and Information Administration  
1401 Constitution Avenue NW  
Washington, DC 20230

Dear Mr. Candeub:

We write seeking additional information regarding the National Telecommunications and Information Administration's ("NTIA") role concerning the Department of Defense's ("DoD") September 18, 2020, Request for Information ("RFI").<sup>1</sup> This RFI raises many questions that implicate the disposition and management of the electromagnetic spectrum ("spectrum") presently allocated to DoD. As you know, spectrum is a critical component to continued U.S. leadership in wireless technology and necessary to the growth of our economy.

The NTIA Organization Act tasks the NTIA with managing federal spectrum uses.<sup>2</sup> We are concerned, however, that DoD's recent activities ignore the NTIA's statutory role and undermine the NTIA's ability to effectively represent the interests of other federal agencies and further national spectrum policy. To date, the Trump Administration's spectrum management practices have been incoherent and erratic, which puts the nation's 5G future at risk. Without proper guidance and leadership from the NTIA, spectrum-dependent federal agencies have tried to take matters of spectrum management into their own hands.<sup>3</sup> Without firm leadership at the

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<sup>1</sup> Department of Defense, Request for Information (Sept. 18, 2020).

<sup>2</sup> National Telecommunications and Information Administration Organization Act, PL 102-538, Oct. 27, 1992, as amended by PL 115-141, Mar. 23, 2018 (codified at 47 USC § 901 et seq.); *see also* National Telecommunications and Information Administration, *Spectrum Management*, [www.ntia.doc.gov/category/spectrum-management](http://www.ntia.doc.gov/category/spectrum-management) (last visited Jan. 1, 2020). *See also*, 47 USC §§ 305, 902.

<sup>3</sup> Letter from Assistant Secretary Jim Blew, U.S. Department of Education, to Secretary Marlene H. Dortch, Federal Communications Commission, *re: Transforming the 2.5 GHz Band*, *WT Docket No. 18-120* (June 7, 2019); Letter from Assistant Secretary Bruce Walker, U.S.

helm of the NTIA, agency interactions on spectrum have been chaotic, and the successful implementation of a forward looking spectrum policy for the benefit of all Americans has been stymied – despite overwhelming bipartisan support.

We recognize that during this Administration, well-coordinated federal spectrum management processes have broken down.<sup>4</sup> Rather than relying on the NTIA as the President’s designated federal spectrum manager, many of the federal agencies with spectrum allocations have sought to usurp NTIA’s management authority by engaging directly in various Federal Communications Commission (“FCC”) dockets affecting spectrum uses, or, in the case of DoD, attempted to use legislative means to circumvent the NTIA’s authority.<sup>5</sup> On several occasions, these agencies have presented policy positions at odds with NTIA or the FCC. Inefficient management and chaotic processes have ensued, culminating in policy stalemates in several spectrum bands that had been previously identified for shared use.<sup>6</sup> That’s why, earlier this year, on a bipartisan basis, we requested a Government Accountability Office examination of the NTIA’s spectrum management process.<sup>7</sup>

It appears now, through this RFI, that DoD is attempting to usurp the NTIA’s authority once again. The RFI seeks comment on various issues, including how DoD can “own and operate 5G networks for its domestic operations.”<sup>8</sup> The RFI also asks whether DoD should

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Department of Energy, to Chairman Ajit Pai, Federal Communications Commission, *re: 6GHz spectrum band* (Sept. 3, 2019); Letter from Acting Secretary, Department of Defense, to Chairman Ajit Pai, Federal Communications Commission (June 7, 2019); and Letter from Secretary Mark Esper, U.S. Department of Defense, to Chairman Ajit Pai, Federal Communications Commission *re: GPS signal concerns* (Nov. 18, 2019).

<sup>4</sup> Monica Allevan, *NTIA’s Redl Resigns As Top Telecom Adviser*, “Democratic Commissioner Jessica Rosenworcel said she cannot recall a time when two different arms of an administration have gotten into the type of public disagreements that have occurred recently, such with the 24 GHz auction and the 37 GHz band.” ([www.fiercewireless.com/wireless/ntia-s-redl-resigns-as-top-telecom-advisor](http://www.fiercewireless.com/wireless/ntia-s-redl-resigns-as-top-telecom-advisor)).

<sup>5</sup> Letter from Frank Pallone, Jr., Chairman, House of Representatives Energy and Commerce Committee, and Greg Walden, Ranking Member, House of Representatives Energy and Commerce Committee, to Adam Smith, Chairman House Armed Services Committee, Mac Thornberry, Ranking Member House Armed Services Committee, Jim Inhofe, Chairman Senate Armed Services Committee, and Jack Reed, Ranking Member, Senate Armed Services Committee *re: requesting that a provision addressing spectrum management be removed from the NDAA*. (Sept. 10, 2019)

<sup>6</sup> Letter from Rep. Frank Pallone, Jr., Chairman, and Greg Walden, Ranking Member, House Committee on Energy and Commerce, to Gene L. Dodaro, Comptroller General of the United States (Jan. 24, 2020).

<sup>7</sup> *Id.*

<sup>8</sup> Department of Defense, Request for Information (Sept. 18, 2020).

“consider spectrum leasing as an alternative to reallocation.”<sup>9</sup> Such statements reflect a lack of understanding with regards to spectrum management. No government agency owns spectrum. Users are allocated spectrum based on need, and if there is a higher use, spectrum can and should be reallocated.

We believe that our global technological leadership and the success of our economy depends, in part, on finding new and innovative ways for different users and systems to share spectrum. To ensure that this government can always be working towards this goal, the Communications Act, provides the FCC the authority to allocate and assign spectrum for non-federal, State and local, and Tribal use.<sup>10</sup> Beyond that, it is the President’s responsibility - through NTIA - to assign spectrum to Federal entities. In our view, DoD clearly does not have the authority to end auction-focused spectrum policies for the nation, let alone act unilaterally towards that goal.

The law is clear on this. The NTIA may not permit any party to use spectrum allocated for federal use for a non-federal purpose unless the FCC has authorized such use.<sup>11</sup> And while the law permits the NTIA to allow non-federal licensees to use federal spectrum in certain special circumstances, the FCC is still required to make all “allocation and licensing decisions.”<sup>12</sup> In instances in which there may be mutually exclusive applications for spectrum licenses, the FCC is required by law to conduct a spectrum auction.<sup>13</sup> There would undoubtedly be mutually exclusive applications for the prime, mid-band spectrum at issue in the RFI.

Apart from our substantive policy concerns regarding DOD’s recent action, we are also concerned about the underlying motivation for this RFI. We have heard reports that the suddenness of this request and the short turnaround timeframe have been prompted directly by senior White House Officials. We have also heard reports that the White House has instructed DoD to proceed immediately to a Request for Proposal (“RFP”) in order to move forward toward a national 5G network. According to press accounts, several political operatives or lobbyists with close ties to President Trump or his staff, including Karl Rove, Peter Thiel, Newt Gingrich, and Brad Parscale—are pushing for the seismic shift in spectrum policy contemplated by the

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<sup>9</sup> *Id.*

<sup>10</sup> 47 USC §§ 303, 305.

<sup>11</sup> 47 USC § 903(e)(1)(A) (“no person or entity (other than an agency or instrumentality of the United States) shall be permitted, after 1 year after August 10, 1993, to operate a radio station utilizing a frequency that is authorized for the use of government stations pursuant to section 902(b)(2)(A) of this title for any non-government application unless such person or entity has submitted to the NTIA proof, in a form prescribed by [the NTIA Manual of Regulations and Procedures for Federal Radio Frequency Management], that such person or entity has obtained a license from the [FCC]”).

<sup>12</sup> 47 USC §§ 927(a) & (b).

<sup>13</sup> 47 USC § 309(j).

RFI.<sup>14</sup> These reports also suggest these Republican operatives are working for the benefit of a specific company, Rivada, Inc., which has long championed a national network that Rivada would construct and operate using its sharing technology.<sup>15</sup>

As the Committee with jurisdiction over spectrum policy, the NTIA, and the FCC, we have significant concerns about these developments. Accordingly, we request detailed responses to the following questions below by October 16, 2020:

1. Did anyone from DoD reach out to you or anyone at the NTIA before releasing the RFI? If so, please list every instance, the parties involved, and what was discussed;
2. Do you or any staff at the NTIA have knowledge of an RFP related to the 3100-3550 MHz Band already being drafted by DoD? Have you or anyone at the NTIA been contacted by anyone at DoD regarding a potential RFP? If so, please list every instance, the parties involved, and what was discussed;
3. At a recent FCC Oversight Hearing held by the Committee's Communications and Technology Subcommittee, all five FCC Commissioners stated that they do not support the idea of a "nationalized 5G network." Do you, in your capacity as principal advisor on telecommunications and information policy issues, agree with this position?
4. Has anyone from the White House or the Executive Office of the President contacted you or anyone at the NTIA about the RFI? If so, please list every instance, the parties involved, and what was discussed;
5. Has anyone from Rivada, Inc., or representatives of the company ever contacted you or anyone at the NTIA? If so, please list every instance, the parties involved, and what was discussed;
6. Has anyone from the Trump campaign, including but not limited to Brad Parscale, ever contacted you or anyone at the NTIA? If so, please list every instance, the parties involved, and what was discussed;

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<sup>14</sup> Mike Dano, *What the Trump?! President Calls for a National 5G Network*, Light Reading (Aug. 25, 2020).

<sup>15</sup> Sue Halpern, *A Pitch for a Nationwide 5G Network Tailor-Made for Trump's 2020 Campaign*, *The New Yorker* (May 24, 2019).

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7. Have Karl Rove, Peter Thiel, or Newt Gingrich ever contacted you or anyone at the NTIA? If so, please list every instance, the parties involved, and what was discussed;

Thank you for your prompt attention to this important matter. If you have additional questions, please contact A.J. Brown of the Majority Committee Staff at (202) 225-2927.

Sincerely,



Frank Pallone, Jr.  
Chairman



Mike Doyle  
Chairman  
Subcommittee on Communications  
and Technology