

**Testimony of Anna M. Gomez
Partner, Wiley Rein LLP**

**Before the
U.S. House of Representatives
Committee on Energy & Commerce
Subcommittee on Communications and Technology
Strengthening Our Communications Networks:
Legislation to Connect and Protect
May 24, 2022**

Chairman Doyle, Ranking Member Latta, distinguished Members of the Subcommittee, thank you for the opportunity to appear before you to share my thoughts on legislation pending before this Subcommittee relating to spectrum management.

From January 2009 through March 2013, I had the honor of serving as the National Telecommunications and Information Administration's (NTIA's) Deputy Administrator. Prior to that, I am proud to have served our nation alongside the many committed professionals at the Federal Communications Commission (FCC), where I worked as an attorney for 12 years in a variety of capacities. My background from working at the country's two leading agencies for spectrum management, as well as my experience in the private sector, give me a unique and well-rounded view of spectrum management challenges at both agencies.¹

NTIA and the FCC share responsibility of managing our Nation's airwaves. The task can be daunting given the diverse array of stakeholders and interests, as well as our continued need to identify additional spectrum for both Federal and non-Federal new and innovative uses. It is therefore important to bolster and respect the agencies' shared responsibilities, and to recognize that NTIA is the Federal spectrum manager speaking on behalf of the Administration on

¹ My testimony today reflects my own views and not necessarily those of my clients.

telecommunications policies, and that the FCC is the final arbiter (pursuant to judicial review) of non-Federal spectrum policies.

I therefore want first to commend and thank the Committee for its bipartisan attention and commitment to exploring ways to strengthen spectrum management in the United States. The Simplifying Management, Reallocation, and Transfer of Spectrum Act (“SMART Act”) is the latest installment in a long line of amendments made to the NTIA Organization Act that provide NTIA with the tools and flexibility necessary to fulfill its mission as the manager of the Federal government’s use of spectrum. The bill facilitates the incorporation of a standardized framework for facilitating the sharing of spectrum between non-Federal and Federal users, including requirements for the sharing regime to permit non-Federal secondary uses of the spectrum when there is no primary use by Federal entities as well as mechanisms to address harmful interference. It makes the sharing regime more transparent by requiring an incumbent Federal entity sharing a spectrum band to input information regarding the frequency, time, and location of their use of the band, while providing for proper protection of classified information. I want to applaud Congressman Guthrie for introducing this thoughtful legislation.

NTIA’s missions are critical and complex, and Congress has vested the responsibilities of overseeing advising the President on telecommunications and information policies, including public safety communications, grant programs for broadband, public safety, and Next Generation 911, and ensuring the free flow of data across borders, to name but a few. The tools Congress has provided ultimately allow NTIA to draw on its experience to ensure that the United States continues being a leader in developing and deploying new and innovative services, which spurs economic growth, investment, and job creation, while ensuring that the Federal agencies have the spectrum resources they need to meet their missions.

The Institute for Telecommunication Sciences Codification Act (“ITS Codification Act”) is another important step in ensuring that NTIA has the tools necessary to effectively manage the country’s spectrum. The Institute for Telecommunications Services (ITS) is an integral and long-established arm of NTIA’s spectrum management efforts. It provides valuable research and analysis to inform NTIA’s Office of Spectrum Management as it works to identify additional spectrum efficiencies and potential opportunities to increase spectrum access for all users. Furthermore, its research and expertise are fundamental in making spectrum available for commercial use as well as for identifying spectrum sharing opportunities among both Federal and commercial entities. By providing the statutory authority for ITS, the Act will further support spectrum management initiatives by the FCC and NTIA.

In recent years, the NTIA and FCC coordination process has increasingly met challenges. However, the two agencies recently announced their new joint Spectrum Coordination Initiative (“Initiative”).² The Initiative, an exceptional step, seeks to improve U.S. government coordination on spectrum management. Specifically, the agencies committed to jointly develop a national spectrum strategy, reinstate high-level meetings, update the Memorandum of Understanding between the two agencies to address gaps in government coordination, develop processes for spectrum engineering compatibility analyses such as interference protection criteria, and lastly, foster proactive technical exchange and engagement with industry and other Federal agencies by participating in cross-agency advisory groups. Of these commitments, developing a national spectrum strategy is particularly essential, and any strategy should include

² *FCC, NTIA Establish Spectrum Coordination Initiative*, News Release, available at <https://www.fcc.gov/document/fcc-ntia-establish-spectrum-coordination-initiative>.

identifying additional spectrum for new and innovative services while still ensuring that Federal agencies can meet their missions.

Of course, the identification of additional Federal spectrum for new and innovative services would be of little use if the FCC does not have the authority to conduct auctions to license any spectrum made available for non-Federal use. The FCC's auction authority has been a critical tool for licensing most non-Federal spectrum in the United States since 1993. It is, however, set to expire by the end of the current fiscal year. In addition to benefiting the American public through encouraging the best and highest use of spectrum, spectrum auctions have raised over \$200 billion in Federal revenue. Congress has in turn used the revenue to significantly reduce our national debt and to pay for key national priorities such as the creation of the First Responder Network Authority, or FirstNet and for 911 grants.³ Revenue from spectrum auctions also help facilitate the repurposing of Federal to non-Federal spectrum. It provides funding to enable the agencies to work together to develop a steady spectrum pipeline, and compensates Federal agencies for the cost of relocating incumbent services, among other key spectrum management activities. Accordingly, Congress's extension of the FCC's spectrum auction authority is of paramount importance to ensure the ongoing availability of airwaves to support innovative mobile broadband services as well as the continuation of efficient spectrum management. I want to thank the bipartisan leadership of this Subcommittee for reaching the compromise to extend the FCC's auction authority. Once extended, this Subcommittee has an important role to play in overseeing the work of NTIA and the FCC over the next 18 months to

³ Federal Communications Commission, *Auctions Summary*, available at www.fcc.gov/auctionssummary (accessed May 18, 2022).

produce a national spectrum strategy that identifies additional spectrum bands for repurposing for the next decade.

I want to conclude by urging the Subcommittee to continue to look for additional ways to improve the existing spectrum management framework at the NTIA and the FCC, and to smooth any spectrum repurposing initiatives. In that regard, I refer to the March 30, 2022 letter FCC Chairwoman Jessica Rosenworcel wrote to leaders of the House and Senate Commerce Committees regarding improvements Congress can make to the existing spectrum allocation processes. One such option, as Chairwoman Rosenworcel pointed out, would be for Congress to update the Commercial Spectrum Enhancement Act (CSEA) to make it even more effective for repurposing spectrum. The CSEA was passed in 2004 and gave the FCC a mechanism to encourage incumbent Federal spectrum users to clear spectrum bands so that reallocated spectrum could be made available for commercial use. To encourage incumbent Federal spectrum users to clear spectrum bands, the CSEA established the Spectrum Relocation Fund to reimburse Federal agencies operating on certain frequencies that have been repurposed to non-Federal use.

While the CSEA is an effective tool, there is room for improvement. For example, Congress can further incentivize Federal agencies clearing spectrum by ensuring that a full range of costs, including up-front planning, technology development, and staffing to support the relocation effort, are covered by the Spectrum Relocation Fund. Congress can also sweeten the incentives by removing the limitation currently placed on agencies subject to relocation to modernize their spectrum usage. By removing the “comparable equipment” requirement, Federal spectrum users will gain the ability to modernize their outdated equipment as part of the

spectrum reallocation process, generating greater incentives to relinquish under-utilized spectrum bands.

Thank you again for allowing me to share my thoughts with you regarding my perspective on pending legislation to improve our Nation's spectrum management activities. I look forward to answering any questions you may have.