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Introduction

The National Telecommunications and Information Administration (NTIA), a small federal agency that languished in obscurity for most of its eighteen years, soon may be abolished by Congress. Established by executive order in 1978(1) and by statute in 1993,(2) NTIA's only broad notoriety came in the first half of the Clinton administration, when its name became associated with the ubiquitously discussed National Information Infrastructure (NII). Ironically, NTIA's possible demise is based, at least in part, on its NII-related grants program and the powerful role of an interagency task force.

What is NTIA? For most, "federal telecommunications agency," quite naturally, means the Federal Communications Commission (FCC or Commission). But the Commission regulates only nonfederal—that is, private-sector and, in some circumstances, state and local government—entities; as an independent regulatory agency, the FCC does not directly answer to the President.

So who looks after telecommunications for federal users? Who helps the President develop domestic and international telecommunications policy positions? Who manages federal use of the radio frequency spectrum? These essential responsibilities currently are left to NTIA's 250-person staff within the U.S. Department of Commerce.

NTIA currently has three essential functions: (1) to manage federal use of the radio frequency spectrum, (2) to serve as the President's principal telecommunications policy advisor spokesman, and (3) to administer several grants programs related to telecommunications. Unlike the FCC, NTIA lacks direct regulatory authority over private-sector (including state and local government) telecommunications interests. NTIA actions, however, frequently affect such interests. Through recent internal changes and legislation, NTIA resources have become more readily accessible to private-sector entities.

About two-thirds of NTIA's budget appears to be discretionary. Through a combination of privatization and outright cuts, a 50 percent reduction might be made without affecting the agency's essential functions. Whatever the final disposition of NTIA and the Commerce Department, however, NTIA's other functions—which require only a quarter of its current budget—are, indeed, essential to the President and are best left to congressional oversight.

Because NTIA's actions directly affect nonfederal interests, it seems imperative that the decision-making processes of NTIA or its successor remain as open as possible. As detailed herein, accommodation of private-sector participation in NTIA's work has improved dramatically in the past few years. This advance should not be lost in any reorganization.

This Article is divided into three parts. Believing that the past is instructive for current decisions about the future, we briefly describe in Part I the history of NTIA and its predecessors and outline NTIA's present organization and duties. In Part II, we describe the various means of private-sector participation in NTIA activities. Finally, in Part III, we report the various proposals to abolish NTIA. We also suggest ways to reorganize its essential functions and to initiate methodical reallocation of spectrum from federal use to nonfederal applications and auctions.

I. The History and Current Organization and Duties of NTIA

A. Historical Background

The need for radio spectrum regulation first was recognized during the rapid growth of broadcasting following World War I. At the time, the Departments of Commerce and War regulated telecommunications but only in a limited fashion. In 1922, Secretary of Commerce Herbert Hoover invited government representatives to meet to

inquire into the critical situation that has arisen through the astonishing development of the wireless telephone, to advise the Department of Commerce as to the application of its present powers of regulation and develop the situation generally with a view to some recommendation to Congress, if it be necessary, to extend the present powers of regulation.(3)

Based largely on recommendations from Hoover's meetings, Congress in 1927 passed the Radio Act,(4) which established the Federal Radio Commission to license radio stations not operated by the federal government. Seven years later, Congress enacted today's centerpiece of telecommunications regulation, the Communications Act of 1934.(5) This law established the FCC and gave it broad regulatory authority over nonfederal government telecommunications, but specifically empowered the President to regulate use of telecommunications by the federal government.(6)

Today, the Communications Act of 1934, as amended, provides in Section 305 that radio stations belonging to and operated by the United States are not subject to the licensing jurisdiction of the FCC, and that these stations must operate according to assignments made by the President.(7) Section 305 also empowers the President to authorize foreign governments to operate radio stations at their embassies or legations, for transmissions to points outside the United States.(8)

Since 1934, the President's Section 305 authority has been delegated to several different executive branch agencies. In 1951, these responsibilities were performed by the Telecommunications Advisor to the President.(9) President Eisenhower transferred the duties and functions to the Director of Defense Mobilization in 1953,(10) and then to the Director of the Office of Defense Mobilization in 1957.(11) In 1962, President Kennedy transferred the Section 305 authority to the Director of Telecommunications Management.(12)

1. The Office of Telecommunications Policy

In Reorganization Plan No. 1 of 1970,(13) President Nixon proposed to transfer various telecommunications duties and functions of the President to a new Office of Telecommunications Policy (OTP). Congress approved the plan, which took effect on April 20, 1970.(14) Later that year, OTP's specific duties and functions were set forth in Executive Order 11,556.(15) Therein, the President designated OTP his principal telecommunications advisor,(16) and authorized it to

[d]evelop plans, policies, and programs with respect to telecommunications that will promote the public interest, support national security, sustain and contribute to the full development of the economy and world trade, strengthen the position and serve the best interests of the United States in negotiations with foreign nations, and promote effective and innovative use of telecommunications technology, resources, and services.(17)

Another important OTP responsibility was to "[a]ssure that the executive branch views are effectively presented to the Congress and the FCC on telecommunications policy matters.(18) The President also delegated to OTP his authority over assignments to federal radio stations, and assigned OTP roles in developing U.S. positions for international telecommunications conferences and in carrying out the President's responsibilities to oversee the Communications Satellite Corporation (COMSAT). Section 10 of the Executive Order provided that OTP could establish interagency advisory committees, it could continue the operation of the decades-old Interdepartment Radio Advisory Committee (IRAC), and "[a]s may be permitted by law, the Director also shall establish one or more telecommunications advisory committees composed of experts in the telecommunications area outside the Government.(19)

Executive Order 11,556 also directed the Secretary of Commerce to support OTP's spectrum management responsibilities with analysis, engineering, and administrative assistance.(20) The Secretary's responsibilities were carried out by the Commerce Department's Office of Telecommunications (OT).(21)

2. Current NTIA Authority

The National Telecommunications and Information Administration was fourteen years old when the 102d Congress passed the Telecommunications Authorization Act of 1992.(22) In this Act, Congress found that

[i]t is in the national interest to codify the authority of the National Telecommunications and Information Administration, an agency in the Department of Commerce, as the executive branch agency principally responsible for advising the President on telecommunications and information policies, and for carrying out the related functions it currently performs, as reflected in Executive Order 12046.(23)

In this Act's Title I, known as the "NTIA Organization Act," Congress directed the Secretary of Commerce to assign various functions to NTIA.(24)

NTIA's roots, however, can be traced to Reorganization Plan No. 1 of 1977,(25) in which President Carter proposed to abolish OTP, establish an Assistant Secretary of Commerce for Communications and Information, and transfer most of OTP's duties and functions to the Secretary of Commerce. Congress authorized the reorganization on October 14, 1977.(26) The Plan took effect five months later when Executive Order 12,046 was issued.(27) Although NTIA was not formally established until a departmental order was issued on May 9, 1978,(28) the agency's functions were set forth in Executive Order 12,046, which transferred OTP's functions to the Department of Commerce, abolished OTP, and established an Assistant Secretary for Communications and Information.(29) Executive Order 12,046 also transferred to the Secretary the Section 305(a) authority of the Communications Act.(30)

The NTIA Organization Act requires that "the functions to be assigned by the Secretary . . . include (but are not limited to) [certain] functions transferred to the Secretary by Reorganization Plan Number 1 of 1977 and Executive Order 12046(31) The Act did not replace or obviate, however, the Commerce Department's internal orders, which are described below.

In addition to the Section 305 authority, NTIA's duties enumerated in Section 103 of the NTIA Organization Act include:

- to act "as the President's principal adviser on telecommunications policies pertaining to the Nation's economic and technological advancement and to the regulation of the telecommunications industry";(32)
- to coordinate the telecommunications activities of the executive branch "and assist in the formulation of policies and standards for those activities, including . . . considerations of interoperability, privacy, security, spectrum use, and emergency readiness";(33)
- to present executive branch views on telecommunications matters to the FCC and, in coordination with the Office of Management and Budget (OMB), to the Congress;(34)
- to develop with the FCC a long-range plan for improved management of the radio spectrum;(35) and
- to "conduct and coordinate economic and technical analyses of telecommunications policies, activities, and opportunities in support of [the other responsibilities].(36)

In addition, Executive Order 12,046 and the NTIA Organization Act restate the advisory committee provisions of Executive Order 11,556.(37) Specifically, Section 105(b) of the NTIA Organization Act provided that IRAC and private-sector advisory committees could continue.(38)

In addition to codifying the agency's preexisting functions, the NTIA Organization Act assigned new authority and responsibilities in spectrum management and other areas. The various spectrum management provisions, which are described *infra* Part II(A), direct the agency to open its work to private-sector participation.(39)

Soon after the telecommunications functions were transferred to the Department of Commerce in Executive Order 12,046, the Secretary established NTIA in Department Organization Order (DOO) 10-10.(40) This order transferred to NTIA all the functions and duties given to the Secretary of Commerce in Executive Order 12,046 and, now, in the NTIA Organization Act. In addition, DOO 10-10 transferred to NTIA the functions, personnel, funds, property, and records of the Commerce Department's Office of Telecommunications.(41)

B. The Organization and Duties of NTIA

Initially issued soon after DOO 10-10, Department Organization Order 25-7 prescribes the organization and internal functions of NTIA.⁽⁴²⁾ NTIA's present structure under this order includes the office of the administrator, three special staff offices, a research office, and five program offices. NTIA's duties and organization, however, may be grouped into three broad areas: managing federal use of the radio frequency spectrum, developing executive branch telecommunications policy, and administering the federal grants programs.

1. Managing Federal Use of the Radio Frequency Spectrum

NTIA's largest organizational unit is the Office of Spectrum Management (OSM). Led by an associate administrator, OSM executes NTIA's Section 305 responsibilities, primary of which is managing federal use of the radio frequency spectrum. OSM also maintains techniques, data bases, measurements, files, and procedures necessary for determining allocations to specific radio services and granting licenses.⁽⁴³⁾

OSM establishes policies, published in NTIA's *Manual of Regulations and Procedures for Federal Radio Frequency Management*,⁽⁴⁴⁾ for radio spectrum allocation, assignment, and use, and provides federal agencies with guidance to ensure that their telecommunications activities are consistent with these policies. The *NTIA Manual* covers the Assistant Secretary's frequency management responsibilities, and is updated three times a year.

OSM provides the chair and secretariat for the IRAC, and oversees the work of the Spectrum Planning and Policy Advisory Committee (SPAC), formerly the Frequency Management Advisory Council. The SPAC is a chartered federal advisory committee with mixed federal and private-sector membership, and provides advice to NTIA on a variety of issues, including radio frequency allocation and assignment matters.⁽⁴⁵⁾ OSM also helps prosecute the spectrum management aspects of NTIA's international policy responsibilities. In coordination with NTIA's Office of International Affairs, OSM participates in international radio conferences and meetings and, on behalf of the Administrator, advises OMB on the development of policies for the procurement and management of federal telecommunications systems.

2. Developing Executive Branch Telecommunications Policy

Although still somewhat unknown outside of government and the communications industry, NTIA is the principal telecommunications advisor to the President of the United States. In this role, the agency recently has gained some notoriety for its activities in support of the Clinton administration's NII Initiative.⁽⁴⁶⁾ NTIA is particularly active with the administration's Information Infrastructure Task Force and the Advisory Council on the National Information Infrastructure.

Every division of NTIA helps shape executive branch telecommunications policy. In addition to the Assistant Secretary's office, NTIA's principal policy divisions—for domestic and international matters, respectively—are the Office of Policy Analysis and Development (OPAD) and the Office of International Affairs (OIA). OSM, discussed above, also has a role in telecommunications policy development.

Specifically, OPAD conducts or obtains analyses addressing domestic policy issues and advises the Administrator on those issues. OIA, on the other hand, coordinates NTIA and interdepartmental economic, technical, operational, and related preparations for U.S. participation in international telecommunications conferences and negotiations. The development of spectrum management policies, which has become a key NTIA task in recent years, is shared among OSM, OPAD, and OIA.

The Assistant Secretary for Communications and Information is the Administrator of NTIA and is responsible for all of the agency's activities.⁽⁴⁷⁾ The Chief Counsel of NTIA has full responsibility for the development and administration of NTIA's legal program⁽⁴⁸⁾ but operates subject to the overall authority of the department's General Counsel, as set forth in DOO 10-6.⁽⁴⁹⁾ The Office of Congressional and Public Affairs works with the Administrator and Commerce Department officials to coordinate NTIA liaison with Congress and develop plans and programs for the

presentation of agency views and policies to congressional bodies.(50) Located in Boulder, Colorado, the Institute for Telecommunication Sciences (ITS), manages NTIA's technology research programs. ITS provides technical research support to other NTIA offices and, on a reimbursable basis, to other federal agencies and nonfederal entities.(51)

3. Administering the Federal Grants Programs

NTIA administers three programs through which grants of federal funds are made available to private-sector entities. For fiscal year 1995, nearly \$100 million initially was appropriated to these programs. In contrast, NTIA's fiscal year 1995 budget for salaries and operating expenses was less than \$21 million.(52)

a. Telecommunications and Information Infrastructure Assistance Program

The largest NTIA grant activity is less than two years old. This enterprise, the Telecommunications and Information Infrastructure Assistance Program (TIIAP) awarded grants totaling \$26 million in fiscal year 1994 and over \$45 million in fiscal year 1995.(53) The TIIAP grants funds for planning and demonstration projects in order to (1) promote the goals of development and widespread availability of advanced telecommunications technologies; (2) enhance the delivery of social services and generally serve the public interest; (3) promote access to government information and increase civic participation; and (4) support advancement of the nationwide telecommunications and information infrastructure.(54)

The TIIAP provides grants to state and local governments, nonprofit health care providers, school districts, libraries, universities, public safety services, and other nonprofit entities. NTIA provides up to 50 percent of the total project cost, unless extraordinary circumstances warrant a grant of up to 75 percent.

b. Public Telecommunications Facilities Program

The other major NTIA grant activity is the Public Telecommunications Facilities Program (PTFP), the budget for which is larger (\$29 million in fiscal year 1995)(55) than the budget for all of NTIA's nongrant programs combined. The telecommunications facilities grants program originated in 1962 and, before it was transferred to the Commerce Department, was administered by the Department of Health, Education, and Welfare.(56) The PTFP is run in accordance with Commerce Department rules that define grantee eligibility, grant application procedures, and funding priorities.(57)

In order to receive a PTFP Construction Grant, an applicant must be (1) A public or noncommercial educational broadcast station; (2) A noncommercial telecommunications entity; (3) A system of public telecommunications entities; (4) A nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or, (5) A state or local government or agency, or a political or special purpose subdivision of a state.(58)

In addition, NTIA's determination whether to fund a proposed project and the amount of the grant it awards, are governed by

whether the project will, in the following order of priority, result in (1) The establishment of new public telecommunications facilities to extend services to areas not currently receiving such services; (2) The expansion of the service areas of existing public telecommunications entities; or (3) The improvement of the capabilities of existing licensed public broadcasting stations to provide public telecommunications services.(59)

c. National Endowment for Children's Educational Television

A third grant program administered by NTIA is the National Endowment for Children's Educational Television (NECET), which was established in the Children's Television Act of 1990.(60) "NECET funds are intended to support

the creation and production of children's television programming that is specifically directed toward the development of fundamental intellectual skills. In so doing, NECET's efforts are intended to supplement children's educational programming that is funded by other governmental entities.(61) NECET funding levels are more modest than those for TIAP and PTFP. For fiscal year 1995, only \$2.5 million was appropriated by Congress.(62)

NECET makes awards for four categories of projects: (1) to initiate new series productions, or to complete a series project already underway; (2) to support production of new individual program(s) or special(s); (3) to support various preproduction activities (e.g., planning, research development, scripting, etc.) up through and including the production of pilot program(s); and (4) to support preliminary preproduction activities, such as planning, research, development and/or scripting, that will eventually lead to production.

II. Private-Sector Participation in NTIA Activities

NTIA lacks the FCC's regulatory authority over the spectrum of utilization of private-sector entities, which, as we use the term in this Article, are all nonfederal government entities, including individuals, companies, associations, and state and local governments. As discussed in Part I, however, that private-sector entities frequently are affected by NTIA decisions and, accordingly, such entities often have reason to participate in NTIA's work. Methods of participation are explored in this section.

A. Spectrum Management

Like real estate, utilization of one "segment" of radio spectrum can affect the use of adjacent segments. Like real property, users also can share the same frequencies. Not surprisingly, therefore, situations warranting private-sector participation often arise because NTIA co-manages the radio frequency spectrum with the FCC. By one measure, as much as 70 percent of the radio spectrum is shared among federal and nonfederal users and all federal spectrum frequencies are, to some extent, adjacent to nonfederal spectrum.

The need to coordinate federal and nonfederal use of the airwaves was recognized officially soon after the creation of the FCC when, in 1940, the FCC and the IRAC agreed that:

The Interdepartment Radio Advisory Committee will cooperate with the Federal Communications Commission in giving notice of all proposed actions which would tend to cause interference to non-Government station operation, and the Federal Communications Commission will cooperate with the Interdepartment Radio Advisory Committee in giving notice of all proposed actions which would tend to cause interference to Government station operation.(63)

Today, private-sector participation in NTIA spectrum management can be accomplished through a number of means, including (1) the Interdepartment Radio Advisory Committee, (2) so-called "spectrum openness," (3) the Spectrum Planning and Policy Advisory Committee, and (4) notice of inquiry proceedings.(64)

1. The Interdepartment Radio Advisory Committee

IRAC is an advisory committee to NTIA composed of representatives of "the 20 most active federal [agency] users of the spectrum and a liaison representative from the FCC.(65) IRAC and its predecessors have existed for over seventy years. The purely advisory nature of IRAC's relationship to NTIA was emphasized recently by the agency, which stated that "[t]he advisory role of IRAC and the decision-making role of NTIA should be clarified(66) IRAC's primary function is to assist NTIA "in assigning frequencies to U.S. Government radio stations and in developing and executing policies, programs, procedures, and technical criteria pertaining to the allocation, management, and use of the spectrum.(67) IRAC meets twice a month at NTIA's offices in Washington, D.C.

As a purely intragovernment—not private sector—advisory committee, IRAC is not subject to the requirements of the Federal Advisory Committee Act (FACA),(68) which mandates, for example, that advance public notice of meetings be given in the Federal Register and that "[i]nterested persons shall be permitted to attend [meetings of], appear before, or file statements with [an] advisory committee. . . .(69) IRAC's exemption from FACA requirements was clear in the

past, but recent changes to the committee's structure may mean that portions of IRAC meetings are subject to FACA requirements.

Indeed, although IRAC meeting dates, times, and agendas were not secret in the past, they also were not readily available to those outside federal agencies. Further, IRAC meetings generally were not open to the public "because they often involve review of considerable data on classified uses of the spectrum, examination of documents that are likely to be exempt under the Freedom of Information Act (FOIA),(70) and deliberation and development of advice on federal policies.(71) On an *ad hoc* basis, however, private-sector groups were allowed to make presentations to IRAC. Such presentations facilitated IRAC's spectrum management mission and were particularly helpful when the issue at hand was so complex that it would be difficult for the FCC liaison representative to completely explain the frequency management implications.

In order to "add structure and regularity to the present informal, *ad hoc* procedures" and "provide a useful exchange of information and viewpoints between private and federal users," NTIA decided a few years ago to provide, on occasion, "a period at the beginning of IRAC meetings for members of the public to present new proposals for spectrum use or management and comments on spectrum policy issues and to seek, in turn, the advice and perspectives of IRAC members on such proposals and issues.(72)

This open portion of the IRAC agenda is used for prearranged private-sector topics and presentations. Thus, the principal difference between the current arrangement and the prior "*ad hoc* procedures" is that now other private-sector individuals and groups—those not part of the prearranged presentation—may attend and participate. This arrangement raises the possibility that IRAC, with nonfederal participants, may constitute a body utilized by the agency and, thus, may be subject to the strictures of FACA.

2. "Spectrum Openness"

In 1991, NTIA implemented a program of "Openness of the Federal Process.(73) Objectives of this initiative include: (1) to make available information on government frequency management; (2) to establish forums, facilities, and procedures for private-sector submission of information to NTIA and the IRAC; (3) to designate staff and establish procedures for analyzing private-sector technology/service proposals; (4) to set up a computer-based bulletin board containing general and specific information on NTIA to promote effective and efficient coordination between the NTIA and the private sector;(74) (5) to establish a spectrum management reference room for public access to documents and computer terminals; and (6) to plan and execute outreach activities to inform the private sector about the openness program.(75)

The spectrum openness program offers the simplest starting point for private-sector participation in NTIA frequency management activities. Outside entities need not know the persons or groups within NTIA's Office of Spectrum Management handling a specific issue; they need only contact the openness program manager and ask to arrange a meeting with relevant personnel. From there, the private-sector entity may be directed to the IRAC, to the Associate Administrator of OSM, to another NTIA office (particularly to NTIA's domestic or international policy offices), or to the Assistant Secretary.

The NTIA Organization Act requires the agency to institute and maintain various openness programs.(76) Specifically, NTIA was required to amend its regulations to provide for Federal Register publication of major unclassified policy proposals that involve spectrum management and provide adequate opportunity for public review and comment on those proposals.(77) Furthermore, NTIA must publish policy decisions on such matters in the Federal Register and must make available unclassified spectrum management information, including access to electronic databases.(78) Finally, NTIA is required to maintain procedures for the prompt and impartial consideration of private-sector requests for access to federal spectrum, including provisions requiring disclosure of the status and ultimate disposition of such requests.(79)

Titled "Public Access to the Federal Spectrum Management Process," Chapter 11 of the NTIA Manual "sets forth policies and general guidance for the implementation of [the NTIA Organization Act].(80) Therein, NTIA briefly describes the procedures for planning presentations to IRAC and spectrum management officials, requesting federal spectrum management information, and requesting access to spectrum allocated for federal use. Persons who want

access to federal spectrum are advised to inform NTIA which frequency band(s) would be affected, reasons why the need cannot be met within the nonfederal spectrum, the likely impact on current spectrum users, a technical description and the geographic area of the proposed service, the planned implementation schedule, and a description of the FCC actions requested.(81)

At present, there are two official databases of information on radio frequency assignments in the United States. The information for each station includes the licensee, frequency, location, power, and type of service. The assignments list for the private sector is maintained by the FCC, and is known as the Master Frequency List (MFL). The assignments list for the federal government is maintained by NTIA, and is known as the Government Master File (GMF). The MFL is available publicly, but the GMF is not because it contains classified national security information.

The separation of the files and the inability of private-sector spectrum users to access the government lists are sources of great frustration to nonfederal entities, who are left to estimate the extent and location of federal assignments in shared hands. Planning and coordination are very difficult in such circumstances. Further, some private-sector users believe that the spectrum allocated to federal use (in shared or exclusively federal bands) may be used inefficiently. If true, this valuable spectrum could be reallocated to private-sector uses.(82)

Based on growing private-sector demand to receive some information on federal government frequency assignments, a demand which appeared strongly in responses to the 1989 Spectrum Policy Notice of Inquiry,(83) NTIA is working to create a single, publicly accessible frequency assignment database. Although, for security reasons, the new database will not contain all the information now contained in the GMF, a major task of the initiative is to declassify as much GMF information as possible for inclusion in the database. When complete, the database capability will permit members of the private sector to participate more effectively in NTIA's frequency management activities.

3. The Spectrum Planning and Policy Advisory Committee

The Frequency Management Advisory Council (FMAC), a committee of fifteen nonfederal members, was established in 1965 to provide advice "on radio frequency spectrum allocation and assignment matters and means by which the effectiveness of federal government frequency management may be enhanced.(84) Specifically, the FMAC was charged to "(a) review, as appropriate, recommendations of [IRAC]; (b) review the progress of electromagnetic compatibility programs; and (c) provide recommendations for United States positions on spectrum matters with respect to International Telecommunication Union conferences.(85) Subject to the provisions of FACA, the FMAC was composed of members "appointed by the Secretary of Commerce to assure a balanced representation in such functional areas as manufacturing, analysis and planning, operations, research, academia, and international negotiations.(86) Members of the FMAC required security clearance because, as described in 1975 by the Office of Telecommunications Policy, "[n]o information needed by the Council [was] withheld and the members [were] encouraged to and do speak freely.(87) FMAC reported to the Administrator of NTIA after the agency was established in 1978.

In rechartering the FMAC in early 1991, the Secretary of Commerce directed the Committee to advise NTIA on strategic spectrum planning issues and increased commercial access to the spectrum allocated to the federal government.(88) This additional responsibility for the FMAC grew out of NTIA's decision in the *Spectrum Report* to establish

a private-sector/government-agency planning group consisting of experts from both the private sector and from the government agencies . . . [in order to] address both specific, immediate problems and long-term issues to assist NTIA and the FCC in developing rational, unified spectrum management plans and policies based on the best interests of the nation as a whole.(89)

Also, upon recharter in 1991, the FMAC was renamed the Spectrum Planning Advisory Committee (SPAC), and its membership was expanded to nineteen members: fifteen nonfederal, and four federal.(90) In 1993, the committee was rechartered and again renamed, this time to the "Spectrum Planning and Policy Advisory Committee.(91)

NTIA periodically seeks SPAC input on specific spectrum management issues and on "strategic planning" matters.(92) NTIA's increased reliance on SPAC advice should provide—at least for SPAC members—an excellent and consistent means of participation in the agency's spectrum management work. Because they usually are open to all members of

the public,(93) SPAC meetings provide opportunities to hear about the issues NTIA currently is considering.

4. Spectrum Inquiries

On occasion, NTIA conducts an inquiry in which the agency specifically solicits public participation in its spectrum management activities. There are two recent examples. The first is the spectrum requirements inquiry,(94) in which NTIA investigated the spectrum needs of federal and nonfederal users, and from which a comprehensive report was released in March 1995.(95) The second is the 200 MHz spectrum reallocation inquiry, as required by Title VI of the Omnibus Budget Reconciliation Act of 1993,(96) in which NTIA sought comment on its proposed choice of 200 MHz of spectrum to be reallocated from federal to nonfederal use. The final report on this study was released in February 1995.(97)

B. Executive Branch Telecommunications Policy Making

1. Telecommunications Policy Making in General

Although spectrum management and the grants programs consume roughly 90 percent of NTIA's budget, perhaps the most visible function of the agency is the development and external representation of executive branch telecommunications policy. NTIA tends to emphasize this role, as in this self-description:

[NTIA] is the Executive Branch Agency principally responsible for developing and articulating domestic and international telecommunications policies. Under Executive Order 12046, NTIA acts as the principal adviser to the President on telecommunications policies. Accordingly, NTIA conducts studies and makes recommendations regarding telecommunications policies, activities, and opportunities, and presents Executive Branch views on telecommunications matters to the Congress, the Federal Communications Commission (the FCC), state and local governments, and members of the public.(98)

Because NTIA lacks the FCC's private-sector regulatory authority in telecommunications policy matters, however, NTIA has less direct impact on private-sector activities in this capacity than it does in its spectrum management and grants administration roles. The agency states that "[a]s a general matter, NTIA, in coordination with other Executive branch agencies as necessary, will formulate a telecommunications policy position. That proposal will then be submitted to the FCC for its consideration, possible adoption, and ultimate implementation.(99) Of course, NTIA's telecommunications policy development role is not limited to issues that relate to its federal spectrum management or grants program responsibilities. For example, NTIA's recent inquiry on telecommunications privacy addresses primarily wireline or nonfederal radio telecommunications issues unrelated to the grants and only indirectly related to federal spectrum management.(100)

Yet these facts should not suggest that NTIA lacks significant power in the implementation of telecommunications policy.(101) To the contrary, NTIA is charged with the important responsibility to "ensure that the views of the executive branch on telecommunications matters are effectively presented to the Commission and, in coordination with the Director of the Office of Management and Budget, to the Congress.(102) With this duty, NTIA can wield a powerful influence over the bodies that have primary authority to implement telecommunications policies.

2. NII-Related Activities

A key recent example of NTIA policymaking has been with the government's NII initiative. In 1993, President Clinton established the Information Infrastructure Task Force (IITF) "to articulate and implement the Administration's vision for the NII.(103) Chaired by the Secretary of Commerce, the IITF is comprised of senior officials from government agencies closely involved with the development and application of information technologies. Although the IITF's functions partially replicate the duties of its constituent agencies, a principal goal of the group is to seek rapid interagency consensus on difficult government-wide policy issues.

NTIA's Administrator chairs the Telecommunications Policy Committee, one of the three principal IITF committees. This group is charged to "formulate a consistent Administration position on key telecommunications issues,(104) and has three working groups—Universal Service (also chaired by NTIA's Administrator); International Telecommunications Policy (chaired by the NTIA's Associate Administrator for International Affairs); and Network Reliability and Survivability.(105)

IITF committees and working groups occasionally invite presentations from private-sector entities. These meetings provide excellent opportunities to influence the views of important policy makers. Because they are not regularly scheduled, however, and attendance is by invitation only, such meetings provide only limited opportunities for most private-sector entities.

President Clinton also chartered a private-sector advisory committee—the United States Advisory Council on the National Information Infrastructure—to provide organized input to the IITF "on matters related to the development of the National Information Infrastructure [and] on a national strategy for promoting the development of a[n] [NII].(106) The Council, whose secretariat is provided by NTIA and is supported by TIIAP funds, meets several times a year to discuss and formulate recommendations on NII issues.

3. Notices of Inquiry

Private-sector participation in the development of executive branch telecommunications policy frequently is sought by NTIA through proceedings in which the agency releases a detailed questionnaire-style notice of inquiry and develops policy positions using the responses it receives. However, as such, proceedings are not always NTIA's chosen method for seeking private-sector advice. In a series of meetings in 1988, for example, NTIA sought the advice of senior private-sector telecommunications experts on the development of a major report on the status and future of telecommunications. The paper, *NTIA TELECOM 2000: Charting the Course for a New Century*, represented "the first comprehensive review of the communications and information sectors undertaken by the Executive branch in some 20 years.(107) Private-sector entities invited to participate in the writing of *TELECOM 2000* participated directly in the development of NTIA's major policy statement of the late 1980s.

4. Ex Parte Communications

Private sector spectrum users "often meet directly with the NTIA Administrator or Deputy Administrator, or the staffs of OSM and the Office of Policy Analysis and Development . . . on such issues as use of frequencies allocated to the federal government for private purposes or on general policy concerns.(108) As with spectrum management issues, such meetings on policy issues give private-sector entities an opportunity to discuss important topics with NTIA in a private environment, and can have significant influence on the agency's policymaking decisions. Furthermore, because NTIA presents executive branch telecommunications policy to the FCC and Congress, private-sector influence on NTIA's policy-making decisions may also persuade those bodies which directly regulate private-sector entities.

5. Preparations for International Conferences

NTIA's Office of International Affairs most frequently interacts with the private sector in relation to preparations for international conferences and meetings. Conferences of the International Telecommunication Union and its subgroups are particularly important. Other key events include meetings of the international communications satellite consortiums INTELSAT and INMARSAT; and meetings of the Conference on InterAmerican Telecommunications (CITEL), a subgroup of the Organization of American States.

Historically, the United States spent several years preparing for each ITU conference. Recently, however, the process has been modified to match the more frequent and periodic ITU meeting schedule. Conference preparations are undertaken in parallel by NTIA, for federal interests, and the FCC for nonfederal interests. NTIA, the FCC, and the State Department then prepare a single set of conference proposals and positions. There is significant communication between the parallel preparatory efforts, and information about telecommunications systems and future spectrum use and regulatory needs is exchanged.

C. Federal Grants Programs Administration

Private-sector entities participate in the grant programs by applying for funds. The TIIAP, PTFP, and NECET programs each have application rules and procedures for their annual grant cycles. Applicants for TIIAP funding must complete and submit to NTIA a standard form with extensive supporting documentation. The agency then distributes the application among private-sector "peer" reviewers, who provide recommendations back to the TIIAP staff. The final funding decision, of course, remains with the Assistant Secretary.

Similar procedures have been established for the PTFP. For a proposed project to be eligible for a grant, it must be designed to achieve one of the three general purposes of the PTFP (establishment of new public telecommunications facilities, expansion of service areas, or improvement of capabilities), or to establish new entities to serve areas already receiving public telecommunications services. Applicants for projects requiring FCC authorization must contemporaneously file an application for that license, and no PTFP grant will be awarded until confirmation has been received from the FCC that any necessary authorization will be issued.(109) After the annual filing deadline, NTIA's PTFP staff examines each application for timeliness, completeness, eligibility, and FCC authorization, and publishes in the Federal Register a list of all applications accepted for filing. PTFP staff incorporates public comments received in response to the Federal Register publication into applicants' files and, following consultation with the FCC, determines "whether to approve or defer a . . . grant application, in whole or in part, and the amount of such grant . . ."(110)

There is a two-step application procedure for the NECET program. First, a "Preliminary Application," which consists of a standard form and a five-page narrative summary of the proposed project, is required for each proposal. NECET Preliminary Applications are reviewed and evaluated by outside reviewers with expertise in the area of children's television programming and by NTIA/NECET staff. Recommendations are submitted to the Administrator, who makes a final determination. Each successful preliminary applicant is invited to submit to NECET a "Full Application," which is a comprehensive document that consists of forms, five sections of additional information, and exhibits.

III.Recommendations for Abolition and Reorganization of NTIA

A. The Current Environment

For more than a year, the Department of Commerce has been under fire from Congress and Republican candidates for president. Senators William V. Roth, Jr. (R-Del.) and Spencer Abraham (R-Mich.) and Representative Dick Chrysler (R-Mich.) have introduced bills that would abolish the Commerce Department, and presidential candidate Senator Robert Dole (R-Kan.) and former presidential candidate Senator Phil Gramm (R-Tex.) have advocated its demise. Each proponent of abolition would preserve some of the Department's current functions, but none would maintain all of them. In response, Secretary of Commerce Ronald Brown has announced President Clinton's intention to "veto any legislation that dismantles the Department.(111)

On the one hand, it might be possible to dismiss this talk of eliminating the Commerce Department, parts of which date to the eighteenth century, as the product of election-year politics, especially since Secretary Brown, a prominent Democrat, may be something of a lightning rod for political controversy. Indeed, last year the House of Representatives only moderately trimmed NTIA's budget from \$101 million in fiscal year 1995 to \$79 million in fiscal year 1996.(112)

On the other hand, the political rhetoric has been quite strong. The GOP presidential candidates have made dismantling the Commerce Department a campaign pledge. Additionally, Representative John Kasich (R-Ohio), chairman of the powerful House Budget Committee, said "[t]he Commerce Department is history. Put a fork in it. It's dead.(113) If the Commerce Department is indeed on its way out, the question then becomes "whither goest NTIA?"

NTIA, itself, has attracted some unfavorable attention in recent years, particularly with the largesse of the TIIAP whose grant recipients, some say, engage in activities typically within the province of private industry and investment. Moreover, PTFP is under attack because it is another way in which the government funds public broadcasting. Indeed,

elimination of these grants programs is the kernel of agreement among proponents of NTIA's abolition. Further, with so many important policy recommendations coming from the IITF, some believe NTIA's policy-making role has been diminished. With the grants programs left as its most visible function, NTIA is an easy target for budget cutters.

It may make sense to consider the future of NTIA on a function-by-function basis and, specifically, that NTIA's grants programs should be considered separately from NTIA's spectrum management and policy making functions. The decision of whether to continue some or any of NTIA's grants programs is a fairly straightforward determination for Congress and the President.

However, there are two remaining issues which deserve discussion. First, since no one advocates abolition of federal spectrum management, where should it be carried out, if not at NTIA? Second, should NTIA's policy-making functions be maintained and, if so, where?

B. Spectrum Management Functions

Several possible locations for NTIA's current spectrum management responsibilities have been mentioned, including the FCC, the Executive Office of the President (White House), General Services Administration (GSA), Office of Management and Budget (OMB), and the Treasury Department. The FCC probably would not be an appropriate agency to handle the needs of federal users because an independent agency then would control the radio operations of executive branch agencies. Further, the Commission is comparatively familiar with the needs of private-sector users and, thus, would have a difficult time weighing the competing needs of the two groups.

There are more options in the executive branch. Senator Roth proposes that GSA handle NTIA's current spectrum management functions.⁽¹¹⁴⁾ Representative Chrysler favors OMB.⁽¹¹⁵⁾ Although both proposals are tenable, the former raises the question of whether GSA can evenhandedly adjudicate spectrum disputes when it is responsible for providing radio equipment for federal users. As another large multidisciplinary cabinet department, the Treasury Department probably would provide a home most similar to the Commerce Department. Any of these three agencies might serve as the new location for federal spectrum management. Conversely, the White House probably is not well suited to the large staffs and more mundane technical tasks required in spectrum management.

C. Policy-Making Functions

There is no broad agreement that NTIA's policy-making functions should be maintained. Senator Roth would transfer the international policy functions to the U.S. Trade Representative or elsewhere,⁽¹¹⁶⁾ while Rep. Chrysler and others would abolish these functions altogether. In any event, NTIA's domestic and international policy-making functions should be maintained. Without expertise in these areas, it would be difficult for the President to take positions on telecommunications issues with independent agencies such as the FCC and the Federal Trade Commission, with Congress, or with foreign governments.

NTIA's policy-making functions should not be moved to the FCC. It would not be appropriate for an independent agency to advise the President on policy. Further, NTIA's policy-making functions probably should not be moved to the White House because there is insufficient congressional oversight of White House operations. Some believe that GSA, OMB, or the Treasury Department would be better locations, of course, because the spectrum management and policy-making functions are related closely; a single agency probably should be responsible for both.

D. Spectrum Auctions

In contrast to NTIA's activities that have fallen out of favor with some, the FCC's spectrum auctions have produced a chorus of praise and staggering sums for the Treasury since they were authorized by Congress in 1993.⁽¹¹⁷⁾ They also have promoted new communications services and efficient commercial use of the radio frequencies. Because most frequency bands are not readily auctionable, however, competitive bidding has been applied only to extremely limited

blocks of spectrum.

There are two principal impediments to the "auctionability" of spectrum. First, when bands are crowded with incumbent users, it may not be practical or fair to sell new or renewal licenses. Second, huge portions of the radio spectrum are shared with or used exclusively by federal agencies. The challenge, therefore, is to find or create auctionable bands which, by definition, are free of incumbent nonfederal users and federal use.

Simply "finding" auctionable bands is unlikely because vacant nonfederal bands tend to exist only beyond the reaches of current technology. Indeed, although the spectrum officially is allocated to particular radio services all the way up to 300 GHz, today's technological limitations preclude significant practical use above about 30 to 60 GHz. Not surprisingly, bands above 30 GHz are little used and not in great demand by nonfederal or federal users.

Thus, if significant additional spectrum is to be auctioned, it must be "created" either by removing incumbent nonfederal users by abolishing certain private-sector services or by making existing users become more spectrum efficient. Alternatively, spectrum can be "created" by obtaining frequencies from the federal agencies. Although the former approach—removing existing nonfederal users—is fully within the FCC's purview and authority, the latter approach must be handled by a body with authority over federal agency spectrum use.

Accordingly, Congress should consider establishing an executive agency office with the mandate to create auctionable spectrum by transferring frequency bands from federal to nonfederal control. The new office could be organized within NTIA or even the National Security Council (NSC). If, for political or other reasons, NTIA, its successor, the NSC, or the administration is unwilling or unable to serve as the home for this office, then it could be housed in an agency of Congress such as the Congressional Budget Office.

The new office should be established subject to a few guiding principles. Most importantly, legitimate federal agency spectrum needs must be respected. It does taxpayers little good to obtain auction revenues by crippling government functions such as national defense and law enforcement. High-level national security concerns also must be protected. There are federal spectrum uses about which very few people should know the details. The office should not probe or reveal these high security uses. In addition, the office must operate under the fundamental principle that agencies should have economic incentives to relinquish spectrum: individual agencies might be given a percentage of the auction revenues obtained from the spectrum they turn over to nonfederal use. Along the same lines, federal agencies might pay for spectrum use. This would go far beyond the current, and meritorious, proposals to require agencies to pay NTIA or spectrum management costs.(118)

E. Other Issues

Finally, regardless of which executive branch agency eventually houses NTIA's remaining functions, we believe several important issues must be addressed. First, the great strides NTIA has made in opening federal spectrum management and policy-making processes to private-sector participation should not be lost in reorganization. Second, domestic and international policy making should be combined into a single functional unit for better information flow between the disciplines. Third, every effort should be made to declassify the GMF to the furthest possible extent; without this information, it will be hard for private users to gauge federal use and spectrum value. Finally, the new organization should utilize its private-sector advisory bodies to a greater extent than NTIA, which has relied minimally on outside expertise.

Conclusion

The National Telecommunications and Information Administration is a federal executive branch agency charged with three principal duties: managing federal use of the radio spectrum, serving as the President's telecommunications policy advisor, and administering three federal grants programs. Although NTIA lacks the FCC's regulatory authority over the private sector, the agency's work directly affects private-sector telecommunications entities. The efforts to abolish or reorganize NTIA should recognize the agency's essential spectrum management functions as well as the President's critical need for a telecommunications policy-making staff, and possibly should include provisions for a new office to

oversee the auction and transfer of spectrum from federal use to nonfederal applications and auctions.

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(2)** Former Spectrum Engineer, National Telecommunications and Information Administration; Associate, Wiley, Rein & Fielding.

(1). Exec. Order No. 12,046, 3 C.F.R. 158 (1978).

(2). Telecommunications Authorization Act of 1992, Pub. L. No. 102-538, 106 Stat. 3533 (codified in scattered sections of 47 U.S.C.) [hereinafter NTIA Organization Act].

(3). Minutes of Open Meeting of (1st) Department of Commerce Conference on Radio Telephony 1 (February 27-28, 1922).

(4). Radio Act of 1927, ch. 169, 44 Stat. 1162, *repealed by* Communications Act of 1934, ch. 652, § 602(a), 48 Stat. 1064, 1102.

(5). Communications Act of 1934, ch. 652, 48 Stat. 1064 (codified as amended in scattered sections of 47 U.S.C.).

(6). *Id.* at 47 U.S.C. § 305 (1994).

(7). *Id.* § 305(a)-(c). Except for Army mobile stations, all federal stations must be issued FCC call letters. *Id.* § 305(c).

(8). *Id.* § 305(d).

(9). Exec. Order No. 10,297, 3 C.F.R. 828 (1949-1953).

(10). Exec. Order No. 10,460, 3 C.F.R. 947 (1949-1953).

(11). Exec. Order No. 10,705, 3 C.F.R. 363 (1954-1958).

(12). Exec. Order No. 10,995, 3 C.F.R. 535 (1959-1963).

(13). Reorg. Plan No. 1 of 1970, 3 C.F.R. 1068 (1966-1970), *reprinted in* 5 U.S.C. app. at 1547 (1994), *and in* 84 Stat. 2083 (1970).

(14). *Id.*

(15). Exec. Order No. 11,556, 3 C.F.R. 956 (1966-1970).

(16). *Id.* § 2(a)

(17). *Id.* § 2(b).

(18)" . *Id.* § 2(c).

- (19)" . *Id.* § 10.
- (20). *Id.* § 13.
- (21). 47 C.F.R. § 201.3 (1971).
- (22). NTIA Organization Act, *supra* note 2.
- (23). *Id.* at tit. I, § 102(b)(6).
- (24). *Id.* at tit. I, § 103(b)(1).
- (25). Reorg. Plan No. 1 of 1977, 3 C.F.R. 197 (1977), *reprinted in* 5 U.S.C. app. at 1567 (1994), *and in* 91 Stat. 1633 (1977).
- (26). *Id.*
- (27). Exec. Order No. 12,046, *supra* note 1.
- (28). U.S. Department of Commerce Organization Order No. 10-10, 43 Fed. Reg. 24,348 (1978) (as amended).
- (29). Exec. Order No. 12,046, *supra* note 1, § 1-1 (superseded by NTIA Organization Act, *supra* note 2, § 103(a)(1)-(2)).
- (30). *Id.* § 2-101 (superseded by NTIA Organization Act, *supra* note 2, § 103(b)(2)(A)).
- (31)" . NTIA Organization Act, *supra* note 2, § 103(b)(2).
- (32). *Id.* § 103(b)(2)(D).
- (33). *Id.* § 103(b)(2)(H).
- (34). *Id.* § 103(b)(2)(J).
- (35). *Id.* § 103(b)(2)(L)(i).
- (36)" . *Id.* § 103(b)(2).
- (37). *Compare* Exec. Order No. 12,046, *supra* note 1, § 2-502, *with* NTIA Organization Act, *supra* note 2, § 103(b)(2)(T).
- (38). NTIA Organization Act, *supra* note 2, § 105(b). The IRAC has, at various times, reported to six different agencies. Executive Office of the President, Office of Telecomm. Policy, TEL-IRAC-72-30, The Interdepartment Radio Advisory Committee: 50 Years of Service (1972) [hereinafter IRAC: 50 Years of Service].
- (39). NTIA Organization Act, *supra* note 2, § 104.
- (40). U.S. Department of Commerce Organization Order No. 10-10, *supra* note 28.
- (41). *Id.* § 4(b).

(42). U.S. Department of Commerce Organization Order No. 25-7, 43 Fed. Reg. 24,378

(1978) (as amended).

(43). The joint table of allocations is found in Part 2 of the FCC's Rules. 47 C.F.R.

§ 2.106 (1995).

(44). NTIA Manual of Regulations and Procedures for Federal Radio

Frequency Management (1992) [hereinafter NTIA Manual]; *see also* 47 C.F.R. § 300.1 (1995) (incorporating NTIA Manual by reference).

(45). Spectrum Planning Advisory Committee, *Notice of Recharter*, 56 Fed. Reg. 22,402

(1991). The SPAC charter was renewed in 1994. Spectrum Planning and Policy Advisory Committee, *Notice of Renewal*, 59 Fed. Reg. 9188 (1994).

(46). For a thorough explanation of the NII Initiative, *see, e.g.*, Jonathan D. Blake & Lee

J. Tiedrich, *The National Information Infrastructure Initiative and the Emergence of the Electronic Superhighway*, 46 Fed. Comm. L.J. 397 (1994).

(47). U.S. Department of Commerce Organization Order No. 10-10, *supra* note 28,

§ 3.02.

(48). U.S. Department of Commerce Organization Order No. 25-7, *supra* note 42,

§ 4.02.

(49). U.S. Department of Commerce Organization Order No. 10-6, 28 Fed. Reg. 6837

(1963) (as amended).

(50). U.S. Department of Commerce Organization Order No. 25-7, *supra* note 42,

§ 4.03.

(51). *Id.* § 7.

(52). Pub. L. No. 103-317, 108 Stat. 1724, 1747 (1994). NTIA also administers the

cooperative agreement between the federal government and the PEACESAT project, which is run by the University of Hawaii. A specific annual appropriation is funneled through NTIA to PEACESAT. In fiscal year 1995, this appropriation was \$1.5 million. *Id.*

(53). *Id.* TIIAP's fiscal year 1995 appropriation initially was set at \$64 million, but subsequent recissions reduced the outlays below \$50 million.

(54). 59 Fed. Reg. 10,562 (1994).

(55). Pub. L. No. 103-317, 108 Stat. 1724, 1747 (1994).

(56). Pub. L. No. 87-447, 76 Stat. 64 (1962).

(57). 15 C.F.R. § 2301 (1995) (setting forth these rules).

(58). 15 C.F.R. § 2301.4 (1995). To be eligible for a planning grant, an applicant must

be an organization eligible to receive a construction grant, or a nonprofit foundation, corporation, institution, or association organized for any purpose except primarily religious. *Id.*

(59). 15 C.F.R. § 2301.2 (1995).

(60). Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996 (1990)

(codified at 47 U.S.C. § 394 (1994)).

(61)" . 59 Fed. Reg. 14,024 (1994).

(62). Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies

Appropriations Act of 1995, 108 Stat. at 1748 (1994).

(63). IRAC: 50 Years of Service, *supra* note 38, at 8 (citing the IRAC/FCC

Agreement of Oct. 1940).

(64). Before 1990, however, the notice of inquiry avenue of participation was "the only

one . . . used by NTIA that provide[d] an opportunity for organized [as opposed to ad hoc ex parte contacts] public comment [on spectrum issues]." U.S. Department of Commerce, National Telecommunications and Information Agency, Spec. Pub. 91-23, U.S. Spectrum Management Policy: Agenda for the Future 28 (1991) [hereinafter Spectrum Report].

(65)" . *Id.* at 20 (footnote omitted). The number of participating federal agencies has varied

over the IRAC's history. The FCC representative was a regular IRAC member before 1952. IRAC: 50 Years of Service, *supra* note 38, at 10.

(66)" . Spectrum Report, *supra* note 64, at 21-22.

(67)" . NTIA Manual, *supra* note 44, § 1.3.4.

(68). Federal Advisory Committee Act, Pub. L. No. 92-463, 86 Stat. 770 (1972),

(codified at 5 U.S.C. app. II (1994)).

(69)" . *Id.* at 5 U.S.C. app. II § 10 (1994).

(70). Freedom of Information Act, 5 U.S.C. § 552 (1994).

(71)" . Spectrum Report, *supra* note 64, at 21.

(72)" . *Id.* at 25.

(73)" . *See id.* at 22. The openness program now is known as the Center for Spectrum Management Information.

(74). The bulletin board may be accessed directly via telephone at (202) 482-1199

(2400/9600 baud, 8 bits, 1 stop bit, no parity) or via the Internet via telnet

ntiabbs.ntia.doc.gov or ftp ntiaftp.ntia.doc.gov or gopher ntiabbs.ntia.gov or World Wide Web at www.ntia.doc.gov.

(75). Norbert Schroeder, National Telecomm. and Info. Admn., Initiatives in

Opening the Federal Spectrum Management Process 3-4 (1995).

(76). NTIA Organization Act, *supra* note 2.

(77). *Id.* § 104(b)(2).

(78). *Id.* § 104(b)(3)-(4).

(79). *Id.* § 104(b)(5).

(80)" . NTIA Manual, *supra* note 44, § 11-1.

(81). *Id.* §§ 11-2, 11-3.

(82). *See infra* Part III (D).

(83). Comprehensive Policy Review of Use and Management of the Radio Frequency

Spectrum, *Notice of Inquiry*, 54 Fed. Reg. 50,695 (1989). Responses to this notice were incorporated in the Spectrum Report, *supra* note 64.

(84)" . NTIA Manual, *supra* note 44, § 1.5.2.1.

(85)" . *Id.* § 1.5.2.2.

(86)" . *Id.* § 1.5.3.1.

(87)" . Office of Telecommunications Policy, The Radio Frequency Spectrum:

United States Use and Management C-4 (1975).

(88). Spectrum Planning Advisory Committee, *Notice of Recharter*, 56 Fed. Reg. 22,402

(1991).

(89). Spectrum Report, *supra* note 64, at 28.

(90). 56 Fed. Reg. 22,402 (1991).

(91)" . 58 Fed. Reg. 37,717 (1993). The acronym "SPAC" remains unchanged.

(92). Spectrum Report, *supra* note 64, at 28.

(93). Government in the Sunshine Act, Pub. L. No. 94-409, 90 Stat. 1241 (1976)

(codified at 5 U.S.C. § 552(b) (1994)). The SPAC may hold some closed sessions to address classified material. *Id.* at 5 U.S.C. app. I § 10(d) (1994).

(94). Current and Future Requirements for the Use of Radio Frequencies in the United

States, *Notice of Inquiry*, 57 Fed. Reg. 25,010 (1992).

(95). U.S. Department of Commerce, National Telecommunications and Information Administration, Spec. Pub. 94-31, U.S. National Spectrum Requirements: Projections and Trends (1995).

(96). Preliminary Spectrum Reallocation Report, *Notice of Release and Request for Public Comments*, 59 Fed. Reg. 6005 (1994).

(97). U.S. Department of Commerce, National Telecommunications and Information Administration, Spec. Pub. 95-32, Spectrum Reallocation Final Report (1995).

(98). Comprehensive Policy Review of Use and Management of the Radio Frequency Spectrum, 54 Fed. Reg. 50,694 (1989).

(99)" . U.S. Department of Commerce, National Telecommunications and Information Administration, Spec. Pub. 88-21, NTIA TELECOM 2000: Charting the Course for a New Century 170 (1988) [hereinafter TELECOM 2000].

(100). *See Inquiry on Privacy Issues Relating to Private Sector Use of Telecommunications-Related Personal Information*, 59 Fed. Reg. 6842 (1994).

(101). As noted above and described below, however, NTIA recently has been denied the latitude to use fully its powers in this area. Instead, the principal telecommunications policy- making decisions have come from the White House.

(102)" . NTIA Organization Act, *supra* note 2, § 103(b)(2)(J).

(103)" . The National Information Infrastructure: Agenda for Action, 58 Fed. Reg. 49,025, 49,025 (1993).

(104)" . *Id.*

(105). *Id.*

(106)" . Executive Order No. 12,864, 58 Fed. Reg. 48,773, 48,773 (1993).

(107)" . TELECOM 2000, *supra* note 99, at 3.

(108)" . Spectrum Report, *supra* note 64, at 24.

(109). Federal Communications Commission Authorization, 15 C.F.R. § 2301.8 (1994).

(110)" . 15 C.F.R. §§ 2301.11-2301.14 (1995). Applicants are given opportunity to reply to public comments. *Id.* § 2301.11(c). NTIA may grant up to 75 percent of cost for construction of a public telecommunications facility, and up to 100 percent of cost for planning a public telecommunications project. *Id.* § 2301.16.

(111)" . Martha M. Hamilton, *Commerce Dept. Foes Hear Veto Threat*, Wash. Post, July

25, 1995, at A13.

(112). *House Panel Considers FCC and NTIA Budgets*, Comm. Daily, June 29, 1995, at 1.

(113)" . Stephen Barr, *House GOP Issues Plan for Eliminating Departments*, Wash. Post, May 24, 1995, at A23.

(114). Jeffrey Silva, *NTIA Defends Role as Congress Mulls Giving Commerce the Ax*, Radio Comm. Rep., Sept. 4, 1995, at 10, 11.

(115). *See* Stephen Barr, *Commerce Department Can't Shake Freshman Lawmaker*, Wash. Post, Oct. 10, 1995, at A11.

(116). *See* 141 Cong. Rec. S9471 (daily ed., June 29, 1995) (statement of Sen. Roth).

(117). Pub. L. No. 103-66, 107 Stat. 387, 392 (1993).

(118). *See, e.g.*, Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill, H.R. 2076, 104th Cong., 1st Sess. (1995).