



March 8, 2010

The Honorable Henry A. Waxman
Chairman, Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515-6115

Dear Mr. Chairman:

In anticipation of consideration by the House of Representatives of H.R. 3125, the "Radio Spectrum Inventory Act," I am writing to convey the views of the Administration on the establishment of an inventory of electromagnetic spectrum to be conducted by the National Telecommunications and Information Administration (NTIA) and the Federal Communications Commission (Commission). The Administration generally supports H.R. 3125, which calls for inventories of Federal and non-Federal uses of spectrum, but recommends the changes outlined below.

Innovative new uses of the public airwaves will help realize the Administration's goal of more widely accessible and affordable high-speed Internet access. The Administration supports bold steps to encourage innovators to develop new technologies for improved utilization of spectrum. However, critical national and homeland security, law enforcement, scientific and public safety uses of spectrum by the Administration must be taken into consideration. An inventory of current spectrum use that includes space, air, and ground-based systems, and that engages innovators and policymakers in a collaborative dialogue about how to enable new wireless services will help meet these goals. At the same time, the inventory must include adequate procedures to protect national security and other sensitive information.

The Administration appreciates the fact that the draft legislation is even-handed in dealing with Federal and non-Federal users. All non-Federal entities should be required to meet inventory demands equivalent to those required of Federal entities. All non-Federal users should also receive even-handed protection for national security and critical infrastructure-related spectrum inventory information.

In order to help insure equivalent treatment of Federal and non-Federal users, the Administration recommends improving H.R. 3125, in the following ways:

1. Section 119(a)(1) directs NTIA and the Commission to create an inventory of each radio spectrum band of frequencies used in the U.S. Table of Frequency Allocations "from 225 megahertz [MHz] to, at a minimum, 3.7 gigahertz [GHz], and to 10 gigahertz unless the NTIA and the Commission determine that the burden of expanding the inventory outweighs the benefits." The Administration recommends that the frequency range for the inventory initially be limited to 225 MHz to 3.7 GHz to address the frequency bands subject to the most pressing commercial demand. We would welcome the opportunity to

discuss with Congress whether an inventory of 3.7 GHz to 10 GHz is needed after the inventory from 225 MHz to 3.7 GHz is complete. We do not believe, however, that it is necessary to create a requirement for NTIA and the Commission to report on the reason the inventory was not extended from 3.7 GHz to 10 GHz.

2. With regard to section 119(a)(1)(F), which requires that the inventory include an approximation of the extent to which entities use each band of frequencies, the Administration remains concerned about the requirement to provide “amount and percentage” of time of use information. It is not possible to collect information on the time of use of individual systems or use by specific users. More importantly, this information is not a good measure of the criticality of the use being made of the band by users and could be misleading to the extent reallocation recommendations may be based on such data. Accordingly, for both Federal and non-Federal users, the resulting inventory should include information that will allow the public to understand generally the extent to which spectrum is used, based on time, geography, and other useful metrics. The Administration recommends removal of the words “such as the amount and percentage of time of use.”
3. Section 119(c)(4) of the bill requires NTIA and the Commission to submit biennial reports that include a recommendation regarding “which spectrum, if any, should be reallocated or otherwise made available for shared access...”. The Administration recommends that the bill not require the biennial report to include recommendations regarding reallocation or sharing of spectrum. The development of the inventory by itself does not provide an adequate basis to make recommendations on possible reallocation or sharing. Substantial additional work outside of the inventory would be required to propose such changes. This work would require, for instance, the development and analysis of costs for equipment-development research, costs and timelines to procure and implement new systems, and the identification of other bands to which systems can be moved. Sharing concepts will require analysis, and testing. Recommendations on reallocation or sharing should be the subject of a separate planning process. Therefore, the Administration recommends removal of this paragraph.
4. Subsection 119(d) of H.R. 3125 requires NTIA to “make all efforts necessary to maintain and update” the inventory “whenever there is a transfer or auction of a license or a change in an assignment or license.” Since assignments change frequently and are often authorized on a temporary basis, the Administration recommends that the inventory updates be periodic instead of event-driven.
5. Subsection 119(e) of H.R. 3125 provides that the head of a Federal executive agency may determine whether public disclosure of national security or other information for which there is a legal basis for non-disclosure would be detrimental to national security, homeland security, or public safety. It would require an agency to provide to NTIA publicly releasable spectrum inventory information; a summary description, suitable for public release, of classified national security or other withheld spectrum inventory information; and an annex containing the classified and other withheld information (classified annex). Subsection 119(e) would further require the classified annex to be

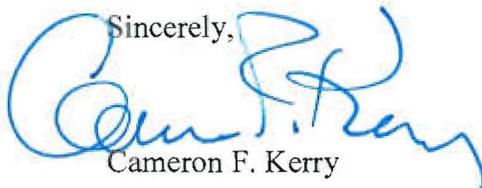
provided to the House Energy and Commerce Committee and the Senate Commerce, Science, and Transportation Committee. It also provides that non-Federal licensees may petition the Commission for a partial or total exemption from disclosure if there is a legal basis for the nondisclosure of national security and or other information held by that licensee.

Protecting information that is vital for national security, national defense, intelligence, foreign policy, homeland security, public safety, law enforcement, and other critical Federal missions against public disclosure needs to be a priority in this legislation. The heads of Federal agencies are in the best position to assess whether there is a legal basis for the nondisclosure of information in those categories. Accordingly, subsection (e) should be modified to permit the head of the affected Federal executive agency to make this determination with respect to the above categories of information, including that held by a non-Federal licensee.

Because a spectrum inventory has not been produced in the past, appropriate executive-level review will be required to determine whether the accumulation in one source and the public release of wide-ranging information about Federal operations presents risks to national security, homeland security, public safety, and law enforcement operations or would contravene U.S. international obligations. In addition, individual agency review of information specific to that agency will be needed. Moreover, the Administration objects to the mandatory disclosure of classified and sensitive information to congressional committees as set forth in subsection 119(e)(3).

Thank you for the opportunity to provide these views to you. The Administration looks forward to working with Congress to pass legislation regarding the spectrum inventory that ensures elements of the inventory are even-handed, reporting requirements are flexible, the resulting inventory adequately describes Federal and non-Federal spectrum use, and legally protected information is adequately safeguarded.

The Office of Management and Budget has advised that there is no objection to the submission of these views from the standpoint of the Administration's program.

Sincerely,

Cameron F. Kerry

cc: The Honorable Joe Barton, Ranking Member

The Honorable Rick Boucher, Chair
Subcommittee on Communications, Technology and the Internet

The Honorable Clifford B. Stearns, Ranking Member
Subcommittee on Communications, Technology and the Internet