

# U.S. Spectrum Policy Overview: A Period of Transition

WCA Navigating the Spectrum Event 2024

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\*The views expressed in this presentation are those of the presenter alone and are not to be construed as those of Kelley Drye or any of its clients



# Topics

- Federal Communications Commission: A Full House
- Presidential Memorandum on Spectrum
- NTIA National Spectrum Strategy
- FCC Spectrum Management Policy Statement
- Select FCC Actions in Past Year and New Pending Proceedings
- World Radiocommunication Conference 2023

# Five-Member FCC: *Can you say Open Internet?*

- Anna Gomez sworn in as fifth FCC Commissioner in late September
- FCC Chair wasted no time to initiate a Net Neutrality proceeding to reclassify Broadband Internet Access Service (including Internet traffic exchange/peering) as a Title II common carrier service - a key Democrat policy issue.
- A lot of oxygen likely will be sucked out of the room in 2024 as a result.
- But spectrum will remain a bipartisan issue and changes will continue.
- A top priority for FCC is reestablishment of general spectrum auction authority
  - 5G SALE Act signed into law in December 2023 limited to targeted effect on processing 2.5 GHz licenses

# White House Memorandum: Call to Modernize U.S. Spectrum Policy

- On November 13, 2023, the White House released the ***Memorandum on Modernizing United States Spectrum Policy and Establishing a National Spectrum Strategy***
- The Memorandum expresses goals of
  - (1) accelerating U.S. leadership
  - (2) unlocking innovations that benefit the American people, and
  - (3) ensuring necessary ongoing access to spectrum for all users, including “scientific, public safety, critical infrastructure, and national security uses.”

# WH Call to Modernize Spectrum Policy (cont'd)

- The Memorandum recognizes NTIA and FCC as the nation's joint spectrum managers
- The Memorandum establishes the Interagency Spectrum Advisory Council ("ISAC"), the principal interagency forum with senior agency representatives to advise NTIA on spectrum policy matters
  - The Interdepartmental Radio Advisory Committee ("IRAC") will continue to advise NTIA regarding spectrum allocation, spectrum management, and Federal spectrum use
- The Executive Office of the President and the FCC will participate in the work of the ISAC.

# WH Call to Modernize Spectrum Policy (cont'd)

- The Memorandum adopts **an escalation and adjudication process** when NTIA and an agency cannot reach a consensus on the views to be presented to FCC
  - Unresolved disputes will be referred for resolution to the Assistants to the President for National Security Affairs and Economic Policy, who shall consult with the Director of the Office of Science and Technology Policy and the National Space Council
- The Memorandum also adopts a **process to resolve situations when an agency believes that, for a reason *unforeseen* before FCC action**, an FCC action permitting non-Federal use is causing or potentially will cause harmful RFI to existing operations
- The Memorandum requires the Secretary of Commerce and the ISAC will, by May 14, 2025 – *i.e.*, six months before the initial NTIA spectrum studies are to be completed – publish a report identifying spectrum management principles and methods to guide the Federal Government in spectrum studies and science

# NTIA and the National Spectrum Strategy (“NSS”)

- NSS was issued on November 13, 2023, simultaneously with WH Memo
- NSS articulates four pillars to advance U.S. innovation, economic vitality, and security.
  - **Pillar One:** A spectrum pipeline with emphasis on dynamic spectrum sharing
  - **Pillar Two:** Long-term decisions through transparent processes based on broad collaboration that is data-driven (technical considerations balanced with potential benefits/harms of spectrum actions)
  - **Pillar Three:** Promote advanced spectrum access technologies through spectrum testbeds, a National Spectrum R&D Plan, and private R&D, including cloud-based spectrum management, AI-enabled methods, and a common spectrum management platform
  - **Pillar Four:** Expand spectrum expertise and elevate national awareness

# NSS Spectrum Pipeline: Initial Bands to Be Studied

- The NSS identified five bands for study over the next two years (through November 13, 2025) for possible repurposing
- 2786 megahertz of spectrum
  - 3.1-3.45 GHz – study possible flexible use in mission critical Federal radar band
  - 5.03-5.091 GHz – following anticipated FCC rulemaking action, study to optimize UAS spectrum access
  - 7.125-8.4 GHz – possible wireless broadband use (licensed or unlicensed) in Federal band used for multiple mission critical applications
  - 18.1-18.6 GHz – study possible expanded Federal/non-Federal satellite operation
  - 37.0-37.6 GHz – further study of possible co-equal Federal/non-Federal sharing



# NSS Implementation Plan

- Implementation Plan (due March 13, 2024) will address how studies are to be completed and with which priority. Intense interest in the Implementation Plan: Over 70 comments filed
  - Members of the Senate Armed Services Committee have expressed concern over revisiting the 3.1-3.45 GHz band which DOD studied in 2022 and 2023; joined by aerospace and defense industry
  - Mobile industry is pushing for quick resolution of studies and regulatory action in the lower 3 GHz and 7-8 GHz bands
- NSS allows that additional spectrum bands may be studied in future for potential repurposing
- The Implementation Plan can be expected to establish the basic framework for any future studies

# FCC Policy Statement: Spectrum Management Principles for Transmitters and Receivers

- Adopted in April 2023 after voluminous record created in mid-2022
- Responsibility for coexistence is shared between transmitters and receivers – mutual obligations to stay in their respective lanes.
- Spectrum is increasingly congested, and zero risk of occasional service degradation or interruption cannot be guaranteed.
- Services should plan for the spectrum environment in which they intend to operate on an ongoing basis, accounting for changes in operating environments over time.
- The exchange of relevant information about transmitter and receiver standards, guidelines, and operating characteristics is needed for data-driven and fact-based regulation to promote effective spectrum management and efficient co-existence.

# FCC Spectrum Policy Statement (cont'd)

- Does not create enforceable rules *per se* but foreshadows future regulatory direction in spectrum proceedings and decisions
- Not binding on the Commission or other parties – does not preclude a contrary decision in any particular future spectrum matter
- Relates to management of non-Federal spectrum; it does not address issues relating to Federal spectrum or clearly address shared bands.
- Provides guidance related to spectrally adjacent and proximate services, but not necessarily co-channel services.
- The Commission intends to explore, in future rulemakings, interference limits policies in particular spectrum bands that incumbent service receivers will have to meet before making a claim of harmful interference, but the Commission has not yet adopted, and did not propose, any such limits in the policy statement.

# Key FCC Spectrum Actions Taken in Past Year

- Expanded unlicensed use of the **6 GHz band** by permitting **very low power (“VLP”) devices** to operate in two sub-bands and proposed in a pending Further NPRM to expand VLP device operations to remainder of the band (Oct. 2023) (ET Docket No. 18-295; GN Docket No. 17-183)
- Adopted **secondary allocations for commercial space launch and reentry operations in 2025-2110 and 2200-2290 MHz** and rules for nationwide licensing (subject to pre-launch coordination) and sought comment on possible expanded use of the 1435-1525 and 2360-2390 MHz aeronautical mobile telemetry bands for such operations (Sep. 2023) (ET Docket No. 13-115; RM-11341)
- Adopted rules conferring more flexibility on **Part 15 unlicensed radars/field disturbance sensor devices in the 57-71 GHz band (60 GHz band)** while ensuring coexistence with other unlicensed technologies (e.g., AR/VR and other communications devices) and Federal incumbents in the band (May 2023) (ET Docket No. 21-264)
- Adopted rules for **point-to-point (“P2P”) links to aeronautical and maritime endpoints in motion in 70/80 GHz**, and made other changes to existing E-Band rules to increase utility of terrestrial P2P links (Jan. 2024) (WT Docket 20-133)

# FCC Spectrum Proceedings Launched in 2023

- Launched technical Notice of Inquiry into obtaining **more sophisticated real-time knowledge of non-Federal spectrum usage** in a cost-effective, accurate, scalable, and actionable manner and by leveraging new data sources, methods, and technologies such as AI and machine learning (Aug. 2023) (Docket No. 23-232)
- Initiated a rulemaking to explore how the **greenfield 42-42.5 GHz band** might be made available through one of several **non-exclusive spectrum sharing access** models (June 2023) (WT Docket No. 23-158; GN Docket No. 14-177)
- Proposed in a Further NPRM to authorize **12.7-13.25 GHz for mobile broadband** and other expanded uses coexistent with incumbent uses, while issuing an accompanying Order declining to authorize mobile operations in 12.2-12.7 GHz to protect current and future satellite services (May 2023) (WT Docket No. 20-443, GN Docket No. 22-352)

# FCC Spectrum Proceedings Launched (cont'd)

- Initiated a rulemaking proposing a regulatory framework for **Supplemental Coverage from Space (“SCS”)** by which satellite operators would collaborate with terrestrial licensees to expand coverage to the terrestrial provider’s subscribers in terrestrial exclusively licensed flexible-use spectrum (Mar. 2023) (GN Docket No. 23-65, IB Docket 22-271)
- Commenced rulemaking seeking comment on service and licensing rules for **uncrewed aircraft systems (“UAS operations”)** in the **5030-5091 MHz Band** and other ancillary UAS matters (Jan. 2023)(WT Docket No. 22-323)

# FCC Spectrum Proceedings on February Agenda

- Open Meeting to be held tomorrow, February 15, 2024
- Proposing **framework to license space stations conducting in-space servicing, assembly, and manufacturing (“ISAM”)** but intending case-by-case review of frequency authorization, as opposed to proposing specific frequency bands for ISAM-related communications, recognizing that operators are “thinking creatively about various frequencies and service allocations that may be able to accommodate ISAM communication needs.” (IB Docket Nos. 22-271, 22-272)
- Adopting rules for a new wireless microphone technology – **Wireless Multi-Channel Audio System (“WMAS”)**— that uses a wider bandwidth in the TV bands, a 4-megahertz portion of the 600 MHz duplex gap, and in the 900 MHz, 1.4 GHz, and 7 GHz bands and would enable more wireless mics per MHz (ET Docket No. 21-115)

# Interplay between Domestic Policy and U.S. Positions on International Stage: WRC-23

- U.S. leveraged FCC actions in 6 GHz to promote a regional consensus: After a strong push by China, a designation for IMT in parts of the 6 GHz band was adopted in Regions 1 and 3 (namely ROTW other than the Americas) but rejected in Region 2 where U.S. stood its ground bringing other countries in the Americas along; individual countries to decide going forward.
- Intentions to study 7125-8400 MHz as part of the NSS for possible repurposing for commercial mobile use in parallel with agenda item for WRC-27 adopted at WRC-23 that will examine the same spectrum for possible IMT (international mobile telephony) designation globally
- Absence of 4.4 GHz band in the NSS consistent with U.S. position (and outcome) at WRC-23 that 4400-4800 MHz should not be examined for IMT in preparation for WRC-27 in Region 2, whereas all or parts of the band will be studied in Regions 1 and 3.



# Questions and Further Discussion



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