

§ 1205. Funding**(a) In general**

In addition to any amounts provided by appropriation Acts, funding for this chapter shall be provided from the Digital Transition and Public Safety Fund in accordance with section 3010 of the Digital Television Transition and Public Safety Act of 2005 (47 U.S.C. 309 note).

(b) Compensation

The Assistant Secretary of Commerce for Communications and Information shall compensate any such broadcast station licensee or permittee for reasonable costs incurred in complying with the requirements imposed pursuant to section 1201(c) of this title from funds made available under this section. The Assistant Secretary shall ensure that sufficient funds are made available to effectuate geographically targeted alerts.

(c) Credit

The Assistant Secretary of Commerce for Communications and Information, in consultation with the Under Secretary of Homeland Security for Science and Technology and the Under Secretary of Commerce for Oceans and Atmosphere, may borrow from the Treasury beginning on October 1, 2006, such sums as may be necessary, but not to exceed \$106,000,000, to implement this chapter. The Assistant Secretary of Commerce for Communications and Information shall ensure that the Under Secretary of Homeland Security for Science and Technology and the Under Secretary of Commerce for Oceans and Atmosphere are provided adequate funds to carry out their responsibilities under sections 1203 and 1204 of this title. The Treasury shall be reimbursed, without interest, from amounts in the Digital Television Transition and Public Safety Fund as funds are deposited into the Fund.

(Pub. L. 109-347, title VI, § 606, Oct. 13, 2006, 120 Stat. 1941.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c), was in the original “this title”, meaning title VI of Pub. L. 109-347, Oct. 13, 2006, 120 Stat. 1936, which is classified principally to this chapter. For complete classification of title VI to the Code, see Short Title note set out under section 1201 of this title and Tables.

Section 3010 of the Digital Television Transition and Public Safety Act of 2005, referred to in subsec. (a), is section 3010 of Pub. L. 109-171, which is set out in a note under section 309 of this title.

CHAPTER 12—BROADBAND

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§ 1301. Findings

The Congress finds the following:

(1) The deployment and adoption of broadband technology has resulted in enhanced economic development and public safety for com-

munities across the Nation, improved health care and educational opportunities, and a better quality of life for all Americans.

(2) Continued progress in the deployment and adoption of broadband technology is vital to ensuring that our Nation remains competitive and continues to create business and job growth.

(3) Improving Federal data on the deployment and adoption of broadband service will assist in the development of broadband technology across all regions of the Nation.

(4) The Federal Government should also recognize and encourage complementary State efforts to improve the quality and usefulness of broadband data and should encourage and support the partnership of the public and private sectors in the continued growth of broadband services and information technology for the residents and businesses of the Nation.

(Pub. L. 110-385, title I, § 102, Oct. 10, 2008, 122 Stat. 4096.)

SHORT TITLE

Pub. L. 110-385, title I, § 101, Oct. 10, 2008, 122 Stat. 4096, provided that: “This title [enacting this chapter and amending section 1302 of this title] may be cited as the ‘Broadband Data Improvement Act.’”

EX. ORD. NO. 13616. ACCELERATING BROADBAND INFRASTRUCTURE DEPLOYMENT

Ex. Ord. No. 13616, June 14, 2012, 77 F.R. 36903, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and in order to facilitate broadband deployment on Federal lands, buildings, and rights of way, federally assisted highways, and tribal and individual Indian trust lands (tribal lands), particularly in underserved communities, it is hereby ordered as follows:

SECTION 1. Policy. Broadband access is essential to the Nation’s global competitiveness in the 21st century, driving job creation, promoting innovation, and expanding markets for American businesses. Broadband access also affords public safety agencies the opportunity for greater levels of effectiveness and interoperability. While broadband infrastructure has been deployed in a vast majority of communities across the country, today too many areas still lack adequate access to this crucial resource. For these areas, decisions on access to Federal property and rights of way can be essential to the deployment of both wired and wireless broadband infrastructure. The Federal Government controls nearly 30 percent of all land in the United States, owns thousands of buildings, and provides substantial funding for State and local transportation infrastructure, creating significant opportunities for executive departments and agencies (agencies) to help expand broadband infrastructure.

SEC. 2. Broadband Deployment on Federal Property Working Group. (a) In order to ensure a coordinated and consistent approach in implementing agency procedures, requirements, and policies related to access to Federal lands, buildings, and rights of way, federally assisted highways, and tribal lands to advance broadband deployment, there is established a Broadband Deployment on Federal Property Working Group (Working Group), to be co-chaired by representatives designated by the Administrator of General Services and the Secretary of Homeland Security (Co-Chairs) from their respective agencies, in consultation with the Director of the Office of Science and Technology Policy (Director) and in coordination with the Chief Performance Officer (CPO).

(b) The Working Group shall be composed of:

(i) a representative from each of the following agencies, and the Co-Chairs, all of which have significant ownership of, or responsibility for managing, Federal lands, buildings, and rights of way, federally assisted highways, and tribal lands (Broadband Member Agencies):

- (1) the Department of Defense;
- (2) the Department of the Interior;
- (3) the Department of Agriculture;
- (4) the Department of Commerce;
- (5) the Department of Transportation;
- (6) the Department of Veterans Affairs; and
- (7) the United States Postal Service;

(ii) a representative from each of the following agencies or offices, to provide advice and assistance:

- (1) the Federal Communications Commission;
- (2) the Council on Environmental Quality;
- (3) the Advisory Council on Historic Preservation;

and

- (4) the National Security Staff; and

(iii) representatives from such other agencies or offices as the Co-Chairs may invite to participate.

(c) Within 1 year of the date of this order, the Working Group shall report to the Steering Committee on Federal Infrastructure Permitting and Review Process Improvement, established pursuant to Executive Order 13604 of March 22, 2012 (Improving Performance of Federal Permitting and Review of Infrastructure Projects), on the progress that has been made in implementing the actions mandated by sections 3 through 5 of this order.

SEC. 3. *Coordinating Consistent and Efficient Federal Broadband Procedures, Requirements, and Policies.* (a) Each Broadband Member Agency, following coordination with other Broadband Member Agencies and interested non-member agencies, shall:

(i) develop and implement a strategy to facilitate the timely and efficient deployment of broadband facilities on Federal lands, buildings, and rights of way, federally assisted highways, and tribal lands, that:

(1) ensures a consistent approach across the Federal Government that facilitates broadband deployment processes and decisions, including by: avoiding duplicative reviews; coordinating review processes; providing clear notice of all application and other requirements; ensuring consistent interpretation and application of all procedures, requirements, and policies; supporting decisions on deployment of broadband service to those living on tribal lands consistent with existing statutes, treaties, and trust responsibilities; and ensuring the public availability of current information on these matters;

(2) where beneficial and appropriate, includes procedures for coordination with State, local, and tribal governments, and other appropriate entities;

(3) is coordinated with appropriate external stakeholders, as determined by each Broadband Member Agency, prior to implementation; and

(4) is provided to the Co-Chairs within 180 days of the date of this order; and

(ii) provide comprehensive and current information on accessing Federal lands, buildings, and rights of way, federally assisted highways, and tribal lands for the deployment of broadband facilities, and develop strategies to increase the usefulness and accessibility of this information, including ensuring such information is available online and in a format that is compatible with appropriate Government websites, such as the Federal Infrastructure Projects Dashboard created pursuant to my memorandum of August 31, 2011 (Speeding Infrastructure Development Through More Efficient and Effective Permitting and Environmental Review).

(b) The activities conducted pursuant to subsection (a) of this section, particularly with respect to the establishment of timelines for permitting and review processes, shall be consistent with Executive Order 13604 and with the Federal Plan and Agency Plans to be developed pursuant to that order.

(c) The Co-Chairs, in consultation with the Director and in coordination with the CPO, shall coordinate, re-

view, and monitor the development and implementation of the strategies required by paragraph (a)(i) of this section.

(d) Broadband Member Agencies may limit the information made available pursuant to paragraph (a)(ii) of this section as appropriate to accommodate national security, public safety, and privacy concerns.

SEC. 4. *Contracts, Applications, and Permits.* (a) Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112-96) contains provisions addressing access to Federal property for the deployment of wireless broadband facilities, including requirements that the General Services Administration (GSA) develop application forms, master contracts, and fees for such access. The GSA shall consult with the Working Group in developing these application forms, master contracts, and fees.

(b) To the extent not already addressed by section 6409, each Broadband Member Agency with responsibility for managing Federal lands, buildings, or rights of way (as determined by the Co-Chairs) shall, in coordination with the Working Group and within 1 year of the date of this order, develop and use one or more templates for uniform contract, application, and permit terms to facilitate nongovernment entities' use of Federal property for the deployment of broadband facilities. The templates shall, where appropriate, allow for access by multiple broadband service providers and public safety entities. To ensure a consistent approach across the Federal Government and different broadband technologies, the templates shall, to the extent practicable and efficient, provide equal access to Federal property for the deployment of wireline and wireless facilities.

SEC. 5. *Deployment of Conduit for Broadband Facilities in Conjunction with Federal or Federally Assisted Highway Construction.* (a) The installation of underground fiber conduit along highway and roadway rights of way can improve traffic flow and safety through implementation of intelligent transportation systems (ITS) and reduce the cost of future broadband deployment. Accordingly, within 1 year of the date of this order:

(i) the Department of Transportation, in consultation with the Working Group, shall review dig once requirements in its existing programs and implement a flexible set of best practices that can accommodate changes in broadband technology and minimize excavations consistent with competitive broadband deployment;

(ii) the Department of Transportation shall work with State and local governments to help them develop and implement best practices on such matters as establishing dig once requirements, effectively using private investment in State ITS infrastructure, determining fair market value for rights of way on federally assisted highways, and reestablishing any highway assets disturbed by installation;

(iii) the Department of the Interior and other Broadband Member Agencies with responsibility for federally owned highways and rights of way on tribal lands (as determined by the Co-Chairs) shall revise their procedures, requirements, and policies to include the use of dig once requirements and similar policies to encourage the deployment of broadband infrastructure in conjunction with Federal highway construction, as well as to provide for the reestablishment of any highway assets disturbed by installation;

(iv) the Department of Transportation, after outreach to relevant nonfederal stakeholders, shall review and, if necessary, revise its guidance to State departments of transportation on allowing for-profit or other entities to accommodate or construct, safely and securely maintain, and utilize broadband facilities on State and locally owned rights of way in order to reflect changes in broadband technologies and markets and to promote competitive broadband infrastructure deployment; and

(v) the Department of Transportation, in consultation with the Working Group and the American Association of State Highway and Transportation Officials, shall create an online platform that States and counties may use to aggregate and make publicly available

their rights of way laws and joint occupancy guidelines and agreements.

(b) For the purposes of this section, the term “dig once requirements” means requirements designed to reduce the number and scale of repeated excavations for the installation and maintenance of broadband facilities in rights of way.

SEC. 6. *General Provisions.* (a) This order shall be implemented consistent with all applicable laws, treaties, and trust obligations, and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) Independent agencies are strongly encouraged to comply with this order.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

UNLEASHING THE WIRELESS BROADBAND REVOLUTION

Memorandum of President of the United States, June 28, 2010, 75 F.R. 38387, provided:

Memorandum for the Heads of Executive Departments and Agencies

America's future competitiveness and global technology leadership depend, in part, upon the availability of additional spectrum. The world is going wireless, and we must not fall behind. The resurgence of American productivity growth that started in the 1990s largely reflects investments by American companies, the public sector, and citizens in the new communications technologies that are what we know today as the Internet. The Internet, as vital infrastructure, has become central to the daily economic life of almost every American by creating unprecedented opportunities for small businesses and individual entrepreneurs. We are now beginning the next transformation in information technology: the wireless broadband revolution.

Few technological developments hold as much potential to enhance America's economic competitiveness, create jobs, and improve the quality of our lives as wireless high-speed access to the Internet. Innovative new mobile technologies hold the promise for a virtuous cycle—millions of consumers gain faster access to more services at less cost, spurring innovation, and then a new round of consumers benefit from new services. The wireless revolution has already begun with millions of Americans taking advantage of wireless access to the Internet.

Expanded wireless broadband access will trigger the creation of innovative new businesses, provide cost-effective connections in rural areas, increase productivity, improve public safety, and allow for the development of mobile telemedicine, telework, distance learning, and other new applications that will transform Americans' lives.

Spectrum and the new technologies it enables also are essential to the Federal Government, which relies on spectrum for important activities, such as emergency communications, national security, law enforcement, aviation, maritime, space communications, and numerous other Federal functions. Spectrum is also critical for many State, local, and tribal government functions. As the wireless broadband revolution unfolds, innovation can enable efficient and imaginative uses of spectrum to maintain and enhance the Government's capabilities.

In order to achieve mobile wireless broadband's full potential, we need an environment where innovation thrives, and where new capabilities also are secure, trustworthy, and provide appropriate safeguards for

users' privacy. These characteristics will continue to be important to the adoption of mobile wireless broadband.

This new era in global technology leadership will only happen if there is adequate spectrum available to support the forthcoming myriad of wireless devices, networks, and applications that can drive the new economy. To do so, we can use our American ingenuity to wring abundance from scarcity, by finding ways to use spectrum more efficiently. We can also unlock the value of otherwise underutilized spectrum and open new avenues for spectrum users to derive value through the development of advanced, situation-aware spectrum-sharing technologies.

I therefore am hereby directing that executive departments, agencies, and offices, and strongly encourage that independent agencies, take the following steps:

SECTION 1. The Secretary of Commerce, working through the National Telecommunications and Information Administration (NTIA), shall:

(a) collaborate with the Federal Communications Commission (FCC) to make available a total of 500 MHz of Federal and nonfederal spectrum over the next 10 years, suitable for both mobile and fixed wireless broadband use. The spectrum must be available to be licensed by the FCC for exclusive use or made available for shared access by commercial and Government users in order to enable licensed or unlicensed wireless broadband technologies to be deployed;

(b) collaborate with the FCC to complete by October 1, 2010, a specific Plan and Timetable for identifying and making available 500 MHz of spectrum as described in subsection (a) of this section. For purposes of successfully implementing any repurposing of existing spectrum in accordance with subsection (a) of this section, the Plan and Timetable must take into account the need to ensure no loss of critical existing and planned Federal, State, local, and tribal government capabilities, the international implications, and the need for appropriate enforcement mechanisms and authorities;

(c) convene the Policy and Plans Steering Group (PPSG) to advise NTIA on achieving the objectives in subsections (a) and (b) of this section. The Secretaries of Defense, the Treasury, Transportation, State, the Interior, Agriculture, Energy, and Homeland Security, the Attorney General, the Administrators of the National Aeronautics and Space Administration (NASA) and the Federal Aviation Administration, the Director of National Intelligence, the Commandant of the United States Coast Guard, and the head of any other executive department or agency that is currently authorized to use spectrum shall participate and cooperate fully, or in the case of independent agencies are strongly encouraged to, in the activities of the Department of Commerce in accomplishing subsections (a) and (b) of this section and promptly provide appropriate funding and staff resources for agency support to these efforts and the work of the PPSG; and

(d) submit, not later than 180 days after the Plan and Timetable described in subsection (b) of this section are completed, to the National Economic Council (NEC), the Office of Management and Budget (OMB), and the Office of Science and Technology Policy (OSTP) an interim report to assess progress against the Plan and Timetable developed in accordance with subsection (b) of this section. Additional interim reports shall be submitted 180 days after the submission of the first interim report and then annually thereafter until such time as the Plan and Timetable are completed. In preparing these reports, the Secretary of Commerce shall work cooperatively with the FCC and other relevant departments, agencies, and offices.

SEC. 2. The Director of OMB shall work with the Secretary of Commerce, through NTIA and in consultation with affected departments, agencies, and offices, to incorporate into the Plan and Timetable referred to in section 1(b) of this memorandum adequate funding, incentives, and assistance to enable executive agencies or

other affected entities to accomplish the actions specified in section 1(a) of this memorandum.

SEC. 3. The Secretary of Commerce, working through NTIA, in consultation with the National Institute of Standards and Technology, National Science Foundation (NSF), the Department of Defense, the Department of Justice, NASA, and other agencies as appropriate, shall create and implement a plan to facilitate research, development, experimentation, and testing by researchers to explore innovative spectrum-sharing technologies, including those that are secure and resilient.

SEC. 4. The FCC is strongly encouraged to work closely with the Department of Commerce, through NTIA, to carry out this memorandum as it relates to the FCC, including the repurposing of nonfederal Government spectrum as appropriate and identifying the mechanisms necessary to ensure compliance with the FCC's decisions.

SEC. 5. The NEC, the OMB, and the OSTP (in consultation with the Department of Commerce, working through NTIA, FCC, and the National Security Staff) shall assess, based on the interim report developed pursuant to section 1(d) of this memorandum, whether there has been sufficient progress in achieving the objectives of this memorandum or whether some other mechanism, such as an independent review panel, is needed to address those areas where sufficient progress is not occurring. The NEC, the OMB, and the OSTP shall make any necessary recommendations to the President regarding such progress 45 days after receiving the initial interim report required by section 1(d) of this memorandum and, as appropriate, following subsequent reports.

SEC. 6.

(a) To the extent permitted by law and within existing appropriations, the Department of Commerce, through NTIA, shall provide administrative support for the interagency groups created in this memorandum.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(c) Nothing in this memorandum shall be construed to require the disclosure of classified information, law enforcement sensitive information, or other information that must be protected in the interests of national security.

(d) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(e) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 7. The Secretary of Commerce is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

EXPANDING AMERICA'S LEADERSHIP IN WIRELESS
INNOVATION

Memorandum of President of the United States, June 14, 2013, 78 F.R. 37431, provided:

Memorandum for the Heads of Executive Departments and Agencies

A combination of American entrepreneurship and innovation, private investment, and smart policy has positioned the United States as the global leader in wireless broadband technologies. Expanding the availability of spectrum for innovative and flexible commercial uses, including for broadband services, will further promote our Nation's economic development by providing citizens and businesses with greater speed and availability of coverage, encourage further development of cutting-edge wireless technologies, applications, and services, and help reduce usage charges for households

and businesses. We must continue to make additional spectrum available as promptly as possible for the benefit of consumers and businesses. At the same time, we must ensure that Federal, State, local, tribal, and territorial governments are able to maintain mission critical capabilities that depend on spectrum today, as well as effectively and efficiently meet future requirements.

In my memorandum of June 28, 2010 (Unleashing the Wireless Broadband Revolution), I directed the Secretary of Commerce, working through the National Telecommunications and Information Administration (NTIA), to collaborate with the Federal Communications Commission (FCC) to make 500 MHz of Federal and nonfederal spectrum available for wireless broadband use within 10 years. Executive departments and agencies (agencies), including NTIA, have done an excellent job of pursuing the twin goals of advancing their agency missions and promoting innovation and economic growth. Although existing efforts will almost double the amount of spectrum available for wireless broadband, we must make available even more spectrum and create new avenues for wireless innovation. One means of doing so is by allowing and encouraging shared access to spectrum that is currently allocated exclusively for Federal use. Where technically and economically feasible, sharing can and should be used to enhance efficiency among all users and expedite commercial access to additional spectrum bands, subject to adequate interference protection for Federal users, especially users with national security, law enforcement, and safety-of-life responsibilities. In order to meet growing Federal spectrum requirements, we should also seek to eliminate restrictions on commercial carriers' ability to negotiate sharing arrangements with agencies. To further these efforts, while still safeguarding protected incumbent systems that are vital to Federal interests and economic growth, this memorandum directs agencies and offices to take a number of additional actions to accelerate shared access to spectrum.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 et seq., and in order to promote economy and efficiency in Federal procurement, I hereby direct the following:

SECTION 1. *Spectrum Policy Team.* (a) The Chief Technology Officer and the Director of the National Economic Council, or their designees, shall co-chair a Spectrum Policy Team that shall include representatives from the Office of Management and Budget (OMB), the National Security Staff, and the Council of Economic Advisers. The Spectrum Policy Team shall work with NTIA to implement this memorandum. The Spectrum Policy Team may invite the FCC to provide advice and assistance.

(b) The Spectrum Policy Team shall monitor and support advances in spectrum sharing policies and technologies. Within 1 year of the date of this memorandum, the Spectrum Policy Team shall publish a report describing how NTIA and FCC are incorporating spectrum sharing into their spectrum management practices. The report shall include recommendations that enable more productive uses of spectrum throughout our economy and society and protect the current and future mission capabilities of agencies. The Spectrum Policy Team shall also assess national security, law enforcement, safety-of-life, economic, scientific, social, international, and other policy considerations related to licensed and unlicensed spectrum use, including standardization as well as the extent to which the revenue potential of spectrum auctions affects spectrum policy.

SEC. 2. *Collaboration on Spectrum Sharing.* (a) The Secretary of Commerce, working through NTIA, has been facilitating discussions between agencies and non-federal entities that have produced an unprecedented level of information-sharing and collaboration to identify opportunities for agencies to relinquish or share spectrum, currently focusing on the 1695–1710 MHz band, the 1755–1850 MHz band, and the 5350–5470 and

5850–5925 MHz bands. The NTIA shall continue to facilitate these discussions and the sharing of data to expedite commercial entry into these bands where possible, provided that the mission capabilities of Federal systems designed to operate in these bands are maintained and protected, including through relocation, either to alternative spectrum or non-spectrum dependent systems, or through acceptable sharing arrangements. These discussions shall also be expanded to encompass more spectrum bands that may be candidates for shared access, specifically those in the range below 6 GHz, subject to the protection of the capabilities of Federal systems designed to operate in those bands.

(b) Within 3 months of the date of this memorandum, the Secretary of Commerce, working through NTIA and the National Institute of Standards and Technology (NIST), and building on the results from the Networking and Information Technology Research and Development Program, shall publish an inventory and description of Federal test facilities available to commercial and other stakeholders engaged in research, development, testing, and evaluation of technologies to enhance spectrum sharing and other spectrum-related efficiencies. To maximize the productive use of these facilities and to facilitate greater collaboration among agencies and nonfederal stakeholders, the Secretary of Commerce, working through NTIA, NIST, and other appropriate agencies, shall, within 6 months of the date of this memorandum, establish a plan for the development and promulgation of standard policies, best practices, and templates governing the following: research, development, testing, and evaluation of spectrum sharing technologies by and among commercial, Government, and academic stakeholders at Federal facilities.

(c) All policies, practices, and templates shall be subject to safeguards reasonably necessary to protect classified, sensitive, and proprietary data. Within 6 months of the date of this memorandum, the Spectrum Policy Team, in consultation with the Department of Justice, the National Archives and Records Administration, the Office of the Director of National Intelligence, and other appropriate agencies, shall, consistent with applicable law, including 5 U.S.C. 552, as amended by Public Law 107–306 and Public Law 11–175 [110–175], and Executive Order 13526 of December 29, 2009 (Classified National Security Information), implement policies for the sharing with authorized nonfederal parties of classified, sensitive, or proprietary data regarding assignments, utilization of spectrum, system configurations, business plans, and other information.

SEC. 3. *Agency Usage of Spectrum.* (a) The NTIA, in consultation with the Spectrum Policy Team and appropriate agencies, shall include in its Fourth Interim Report required by section 1(d) of my memorandum of June 28, 2010, a plan directing applicable agencies to provide quantitative assessments of the actual usage of spectrum in those spectrum bands that NTIA previously identified and prioritized in its Third Interim Report and such other bands as NTIA and the Spectrum Policy Team determine have the greatest potential to be shared with nonfederal users. Each agency's assessment shall be prepared according to such metrics and other parameters as are reasonably necessary to determine the extent to which spectrum assigned to the agency could potentially be made available for sharing with or release to commercial users, particularly in major metropolitan areas, without adversely affecting agencies' missions, especially those related to national security, law enforcement, and safety of life. Each assessment shall also include a discussion of projected increases in spectrum usage and needs and shall identify where access to nonfederal spectrum could aid in fulfilling agency missions. The plan shall further require each agency to submit its assessments to NTIA and the Spectrum Policy Team within 12 months of the plan's release. In identifying spectrum bands with the greatest potential to be shared, NTIA and the Spectrum Policy Team shall consider the number and nature of Federal and nonfederal systems in a band, the technical suitability of the band for shared use, international im-

plications, any potential for relocating Federal systems to comparable spectrum or otherwise enabling comparable capabilities, and other factors NTIA and the Spectrum Policy Team deem relevant based on consultation with agencies and other stakeholders. A band shall be identified as a candidate for shared access under this subsection only if it has been likewise identified under section 2(a) of this memorandum.

(b) The reporting of information under this section shall be subject to existing safeguards protecting classified, sensitive, and proprietary data. The NTIA shall release a summary of the assessments publicly to the extent consistent with law. The NTIA and the Spectrum Policy Team shall make any appropriate recommendations regarding the possible availability of spectrum in the subject bands for innovative and flexible commercial uses, including broadband, taking into account factors such as the nature of the Federal systems in the bands and the extent to which those systems occupy and use the bands.

(c) The NTIA shall design and conduct a pilot program to monitor spectrum usage in real time in selected communities throughout the country to determine whether a comprehensive monitoring program in major metropolitan areas could disclose opportunities for more efficient spectrum access, including via sharing. The NTIA shall work with agencies to ensure the program will not reveal sensitive or classified information. The NTIA shall consult with each agency to determine the correct technical parameters to monitor usage.

(d) Within 6 months of the date of this memorandum, NTIA shall take such actions as are necessary to require that each agency's regular reviews of its frequency assignments include a quantitative assessment of its actual usage of spectrum under such assignments.

(e) The NTIA shall also take such actions as are necessary to require that an agency requesting a frequency assignment or spectrum certification for systems operating between 400 MHz and 6 GHz verify that it must operate in this critical range, and that it will use the minimum spectrum reasonably necessary to most effectively meet mission requirements. The requesting agency shall also verify that it is not reasonable to satisfy such requirements in some other manner, such as at higher frequencies, via commercial services, or via a system that is not spectrum-dependent, whether due to cost, technology, implementation, performance reasons, international obligations, or other practical or legal constraints. In the case of system certification requests only, the requesting agency shall also present with its request a narrative explaining why its proposed solution will most effectively meet its mission requirements, in light of potential alternative approaches and all practical and legal constraints. Further, requesting agencies shall identify spectrum that will no longer be used by any legacy systems that are replaced. In implementing this subsection, NTIA shall take all steps necessary to protect against disclosure of sensitive and classified information.

SEC. 4. *Spectrum Efficiency in Procurements.* Agencies shall include spectrum efficiency when considering procurement of spectrum-dependent systems and hardware, as a technical requirement, an evaluation criterion for award, or both. The Director of OMB, in consultation with NTIA, shall develop and incorporate spectrum efficiency guidelines into budget and procurement processes. These guidelines shall facilitate, as appropriate, the design and procurement of systems that increase flexibility through means such as multiple-band tuning capabilities and the use of commercial systems. The guidelines also shall require, to the extent possible, procurements of Federal systems such that emission levels resulting from reasonable use of adjacent spectrum will not impair the functioning of such systems, consistent with any applicable radio receiver performance criteria and international obligations.

SEC. 5. *Performance Criteria for Radio Receivers.* The FCC is strongly encouraged, in consultation with NTIA, where appropriate, the industry, and other

stakeholders, to develop to the fullest extent of its legal authority a program of performance criteria, ratings, and other measures, including standards, to encourage the design, manufacture, and sale of radio receivers such that emission levels resulting from reasonable use of adjacent spectrum will not endanger the functioning of the receiver or seriously degrade, obstruct, or repeatedly interrupt the operations of the receiver. In developing such a program, the FCC is strongly encouraged to give due consideration to existing policies and prudent investments that have been previously made in systems, including receivers. In its consultation with the FCC, NTIA shall provide information regarding Federal receiver standards and agency practices under those standards.

SEC. 6. *Incentives for Agencies.* The Spectrum Policy Team shall, within 6 months of the date of this memorandum, publish a report making recommendations to the President regarding market-based or other approaches that could give agencies greater incentive to share or relinquish spectrum, while protecting the mission capabilities of existing and future systems that rely on spectrum use. The report shall consider whether the Spectrum Currency and Spectrum Efficiency Fund proposals made by the President's Council of Advisors on Science and Technology would be effective. The report shall also analyze the impact of the Commercial Spectrum Enhancement Act of 2004 (Title II of Public Law 108-494), as modified by the Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112-96).

SEC. 7. *Rapid Deployment of Wireless Broadband.* The FCC is strongly encouraged, in collaboration with NTIA, where appropriate, to expedite the repurposing of spectrum and otherwise enable innovative and flexible commercial uses of spectrum, including broadband, to be deployed as rapidly as possible by:

(a) identifying spectrum allocated for nonfederal uses that can be made available for licensed and unlicensed wireless broadband services and devices, and other innovative and flexible uses of spectrum, while fairly accommodating the rights and reasonable expectations of incumbent users;

(b) identifying spectrum allocated for nonfederal uses that can be made available to agencies, on a shared or exclusive basis, particularly where necessary to accommodate agencies seeking to relocate systems out of bands that could be made available for licensed services or unlicensed devices;

(c) promulgating and enforcing rules for licensed services to provide strong incentives for licensees to put spectrum to use and avoid spectrum warehousing. Such rules may include build-out requirements or other licensing conditions as appropriate for the particular circumstance;

(d) establishing and maintaining conditions that promote a reliable secondary market for spectrum, including provisions enabling negotiated access by agencies and uses not addressed in subsection (b) of this section;

(e) promulgating and enforcing rules for licensed services and unlicensed devices to share Federal spectrum that accommodate mission changes and technology updates by both Federal and nonfederal users; and

(f) consulting with the Department of State regarding international obligations related to spectrum use.

SEC. 8. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to any agency, or the head thereof; or

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) Nothing in this memorandum shall be construed to require the disclosure of classified information, law enforcement sensitive information, or other information that must be protected in the interest of national security or public safety.

(c) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(e) Independent agencies are strongly encouraged to comply with the requirements of this memorandum.

(f) The Presidential Memorandum of November 30, 2004 (Improving Spectrum Management for the 21st Century), is hereby revoked.

(g) The Secretary of Commerce is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 1302. Advanced telecommunications incentives

(a) In general

The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.

(b) Inquiry

The Commission shall, within 30 months after February 8, 1996, and annually thereafter, initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) and shall complete the inquiry within 180 days after its initiation. In the inquiry, the Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.

(c) Demographic information for unserved areas

As part of the inquiry required by subsection (b), the Commission shall compile a list of geographical areas that are not served by any provider of advanced telecommunications capability (as defined by subsection (d)(1))¹ and to the extent that data from the Census Bureau is available, determine, for each such unserved area—

- (1) the population;
- (2) the population density; and
- (3) the average per capita income.

(d) Definitions

For purposes of this subsection:²

(1) Advanced telecommunications capability

The term “advanced telecommunications capability” is defined, without regard to any

¹ See References in Text note below.

² So in original. Probably should be “section.”