



December 14, 2024

Hon. Charles Schumer
Senate Majority Leader

Hon. Mitch McConnell
Senate Minority Leader

Hon. Jack Reed, Chair,
Senate Armed Services Committee

Hon. Roger Wicker, Ranking Member,
Senate Armed Services Committee

Hon. Maria Cantwell, Chair
Senate Committee on Commerce, Science
& Transportation

Hon. Ted Cruz, Ranking Member
Senate Committee on Commerce, Science
& Transportation

Hon. Ben Ray Lujan, Chair
Senate Subcommittee on Communications,
Media, and Broadband

Hon. John Thune, Ranking Member
Senate Subcommittee on Communications,
Media, and Broadband

United States Senate
Washington, D.C. 20510

Re: Amendment to National Defense Authorization Act (NDAA, HR 5009)

Dear Leaders Schumer and McConnell, Chairs Reed, Cantwell, and Lujan, and Ranking Members Wicker, Cruz, and Thune,

We write regarding the National Defense Authorization Act (NDAA) HR 5009, currently under consideration in the Senate.¹ We ask that you take one of the following actions:

Option 1) Remove section 5403 (FCC auction authorization),

or

¹ Passed 12/11/24 in the House: [https://docs.house.gov/billsthisweek/20241209/RCP_HR5009_xml\[89\].pdf](https://docs.house.gov/billsthisweek/20241209/RCP_HR5009_xml[89].pdf)
Roll call vote: <https://clerk.house.gov/Votes/2024500>

Option 2) Amend section 5403, as shown below, to make auction authority contingent upon the FCC complying with a mandate issued more than three years ago by the US Court of Appeals DC Circuit, which the FCC continues to ignore.

Insert in Section 5403:

(c) Until the FCC complies with, and satisfies the requirements contained in, the mandate issued October 5, 2021 by the U.S. Court of Appeals D.C. Circuit in case number 20-1025, subsections (a) and (b) of this section shall have no force or effect and shall not go into effect. Such compliance shall consider, without limitation, materials submitted at any time prior to the date of this Act in FCC Dockets 13-84, 03-137, and 19-226.

Rationale

Since 2021, the FCC has ignored the US Court of Appeals DC Circuit order, issued in the successful lawsuit *Environmental Health Trust et al. v. FCC*, to provide an explanation for why the FCC decided not to update its human exposure limits for wireless radiation.² The FCC has not considered the latest science since 1996, as it is obligated to do under the law. Making more spectrum available while failing to update its exposure limits puts all Americans at risk, and is harming millions of Americans.³

Current wireless exposure standards are based largely on 11 monkeys and 12 rats, which were exposed for less than one hour, over 40 years ago.⁴ GAO first recommended that the FCC revisit these limits back in 2012 and the FCC has not yet done so.⁵

Amendment #2 above would incentivize FCC to follow the law. Complying with laws passed by Congress and a court order is not optional for the FCC – this is an administrative agency acting with impunity while 100% of its budget is paid for by the industry it is supposed to be regulating.⁶

Making spectrum available for commercial use will automatically trigger heavy-handed preemption of states' rights over wireless facilities, known as Section 6409.⁷ In fact, as soon as

² <https://media.cadc.uscourts.gov/opinions/docs/2021/08/20-1025-1910111.pdf>

³ <https://thenationalcall.org/wp-content/uploads/2024/05/Congressional-Briefing-5-19-24-FINAL.pdf>

⁴ <https://doi.org/10.1186/s12940-022-00900-9>

⁵ Exposure and Testing Requirements for Mobile Phones Should Be Reassessed, GAO-12-771, Jul 24, 2012
<https://www.gao.gov/products/gao-12-771>

⁶ <https://docs.fcc.gov/public/attachments/DOC-401129A1.pdf>

⁷ Section 6409 states:

“a State or local government may not deny, and shall approve, any eligible facilities request”

See Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 47 USC 1455.

more spectrum is made available, carriers across the country can add almost unlimited additional antenna and additional power output on their existing facilities to emit radiofrequency radiation using the new spectrum – despite no US government agency assessing these emissions for safety.⁸ Hundreds of localities around the country have sued the FCC over its rules implementing section 6409.⁹

We would be happy to discuss this letter and related matters further with you.

Sincerely,

DocuSigned by:

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⁸ Testimony submitted to Senate Commerce Committee, March 27, 2024
<https://ehtrust.org/wp-content/uploads/EHT-Testimony-to-Senate-Commerce-Committee-on-S3909-03272024.pdf>

⁹ See, e.g., *Montgomery County et al. v. FCC* (Fourth Circuit, No. 15-1240, 2015)
T-Mobile v. San Francisco 658 F. Supp. 3d 773 (N.D. Cal. 2023)
League of California Cities et al. v. FCC (Ninth Circuit, No. 20-71765, 2024)