



February 19, 2025

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

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

United States Senate
Washington, D.C. 20510

Submitted to:
Ryan_Cannon@commerce.senate.gov
docs_commerce@commerce.senate.gov

**Re: Written testimony submitted for the hearing on February 19, “America Offline?
How Spectrum Auction Delays Give China the Edge and Cost Us Jobs”**

Re: HR 651

Dear Chair Cruz, Ranking Member Cantwell, and members of the Committee,

We respectfully submit these comments in opposition to legislation or policies that endanger our national security or public safety. Please include this letter in the written record for today’s hearing, “America Offline? How Spectrum Auction Delays Give China the Edge and Cost Us Jobs.”¹

We ask that you take the following actions:

First choice: Oppose HR 651²

¹ <https://www.commerce.senate.gov/2025/2/america-offline-how-spectrum-auction-delays-give-china-the-edge-and-cost-us-jobs>

² HR 651 <https://www.congress.gov/bill/119th-congress/house-bill/651/>

Bill text: https://allen.house.gov/uploadedfiles/spectrum_pipeline_act_of_2025.pdf

We urge the Committee to halt and oppose any legislation that authorizes any spectrum auction or any additional commercial use of spectrum until the FCC and appropriate regulatory agencies have determined the safe levels of these emissions for the public.

Second choice: Amend HR 651

If the Committee proceeds with spectrum legislation, we urge incorporating one of the specific text amendments proposed below, making auction authority contingent upon the FCC complying with a mandate issued more than three and a half years ago by the US Court of Appeals DC Circuit, which the FCC continues to ignore.

Amendment Option A) Direct the FCC to update its 1996 radiofrequency exposure limits prior to auctioning additional spectrum. Text to be inserted in HR 651, and any other spectrum bill.

(a) The Commission shall

- (1) within 180 days of the date of enactment of this Act begin a rulemaking to update its radiofrequency exposure limits contained in 47 CFR Part 1 Subpart I, including without limitation the limits in §1.306 and §1.310; and**
- (2) within two years of the date of enactment of this Act complete such rulemaking.**

Such rulemaking shall consider, without limitation, input from other federal agencies with relevant expertise and materials submitted at any time prior to the date of this Act in FCC Dockets 13-84, 03-137, and 19-226.

(b) Notwithstanding anything to the contrary in this Act, section 2 paragraphs (c), (d), (e), and (g) shall have no force or effect and shall not go into effect until the FCC completes the rulemaking described in this section.

Note: paragraph references above refer to HR 651 and should be inserted into any spectrum legislation.

Amendment Option B) If there is insufficient support at the moment for Option A, an alternative option (although not as good), would be to direct the FCC, prior to auctioning additional spectrum, to comply with a court order issued by the US Court of Appeals DC Circuit in 2021, which dates back to feet-dragging that FCC began in 2013. The court ordered the FCC to justify its decision not to update its current limits.

Text to be inserted in HR 651, and any other spectrum bill:

Notwithstanding anything to the contrary in this Act, section 2 paragraphs (c), (d), (e), and (g) of this Act shall have no force or effect and shall not go into effect 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. Such compliance shall consider, without limitation, input from other federal agencies with relevant expertise and materials submitted at any time prior to the date of this Act in FCC Dockets 13-84, 03-137, and 19-226.

Notes:

- Any auction authority should be contingent upon rulemaking and compliance with the court order, as set out in options A and B above, and any such bill should be so amended.
- In the absence of spectrum legislation during this Congress, we urge the Committee to include language similar to Option A in another piece of legislation, or as a standalone bill, requiring the FCC to complete a rulemaking within two years or face legislative sanction, such as limiting or curtailing its budget or activities related to spectrum auctions, and/or preparation for such options, until it completes such rulemaking. FCC's continuing work to make more spectrum available while failing to update its exposure limits puts all Americans at risk and is harming millions of Americans.

Amend HR 5009 (118th)

In addition to spectrum auction authority being considered in the current 119th Congress, we urge the Committee to amend the spectrum auction authority granted in the 118th Congress for the AWS-3 band,³ for the same reasons given above. We urge you to insert the following text in *any legislation* before the Committee, as soon as possible (given that FCC is already moving ahead with rulemaking to conduct the AWS-3 auctions)⁴:

The Spectrum and Secure Technology and Innovation Act of 2024 (Public Law 118-159) is hereby amended as follows: by inserting the following text at the end of section 5403:

Notwithstanding anything to the contrary in this Act, subsections (a) and (b) of this section shall have no force or effect and shall not go into effect 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. Such compliance shall consider, without limitation, input from other

³ Public 'Spectrum and Secure Technology and Innovation Act of 2024
<https://www.congress.gov/118/bills/hr5009/BILLS-118hr5009enr.pdf>

⁴ Notice of Proposed Rulemaking: Enhancing National Security Through the Auction of AWS-3 Spectrum Licenses, FCC-CIRC2502-01
<https://docs.fcc.gov/public/attachments/DOC-409404A1.pdf>

federal agencies with relevant expertise and 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.⁵ 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.⁶

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.⁷ GAO first recommended that the FCC revisit these limits back in 2012 and the FCC has not yet done so.⁸

The amendments 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.⁹

Making spectrum available for commercial use will automatically trigger heavy-handed preemption of states' rights over wireless facilities, known as Section 6409.¹⁰ In fact, as soon as 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.¹¹ Hundreds of localities around the country have sued the FCC over its rules implementing section 6409.¹²

⁵ <https://media.cadc.uscourts.gov/opinions/docs/2021/08/20-1025-1910111.pdf>

⁶ <https://thenationalcall.org/wp-content/uploads/2024/05/Congressional-Briefing-5-19-24-FINAL.pdf>

⁷ <https://doi.org/10.1186/s12940-022-00900-9>

⁸ Exposure and Testing Requirements for Mobile Phones Should Be Reassessed, GAO-12-771, Jul 24, 2012 <https://www.gao.gov/products/gao-12-771>

⁹ <https://docs.fcc.gov/public/attachments/DOC-401129A1.pdf>

¹⁰ 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.

¹¹ 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>

¹² 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)

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

Sincerely,

A handwritten signature in black ink that reads "Odette J. Wilkens". The signature is written in a cursive style with a large, stylized initial "O".

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