

United States Senate

WASHINGTON, DC 20510

January 9, 2012

The Honorable Harry Reid
Majority Leader
United States Senate
522 Hart Senate Office Building
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
317 Russell Senate Office Building
Washington, DC 20510

Dear Majority Leader Reid and Minority Leader McConnell:

For the first time in a long time, Congress is very seriously considering reforms to how we manage our nation's airwaves. Given the industry's pressing need for additional network capacity to meet the growing demand for wireless broadband services, this effort is very welcome and long overdue. But we need to do it right.

Over the past several years, we have advocated for comprehensive spectrum management reform legislation to promote the more efficient and productive use of wireless spectrum, including encouraging the Federal Communications Commission (FCC) and the National Telecommunications and Information Administration (NTIA) to perform a comprehensive spectrum inventory and exercise their authority to effectively allocate spectrum in order to encourage efficiency, innovation, competition, and economic growth. Some of what we proposed can be found in the various bills the House and Senate are currently considering. But, we do have some concerns about certain proposals that have been included in the dialog.

Our first concern is whether or not the FCC should set aside some spectrum in certain bands for unlicensed use. We believe the FCC should be afforded some discretion to make this decision in order to maximize the economical and social benefits of our nation's airwaves. It is quite possible such allocation would allow for a new wave of innovation different from but complimentary to the work in the licensed space—it should not be an “either-or” scenario but an environment where both can thrive. A recent MSNBC article highlights the growing demand for unlicensed spectrum—65 percent of tablet users utilize Wi-Fi connections only, up from 60 percent only six months ago.¹ And close to 50 percent of all IP traffic in 2015 is estimated to be delivered over Wi-Fi.² Also, a 2009 report by Perspective Associates estimated that unlicensed applications could provide up to \$37 billion of economic benefit *annually* over the next 15 years to our economy.³

In the rush to fill the Treasury's coffers with revenue from spectrum auctions, we must not neglect the fertile ground for innovation that unlicensed spectrum offers and the subsequent economic value it produces. Unlicensed use created an opportunity for the market to welcome Wi-Fi, Bluetooth devices, cordless phones, and countless other innovations and with it hundreds of companies and thousands of jobs. None of these inventions were predicted or foreseeable. Also, unlicensed presents the truest form of “free markets”—anyone can use unlicensed spectrum as long as they adhere to nominal rules to prevent interference between devices. Unlicensed spectrum is the “public parks” of our nation's airwaves—allowing consumers, entrepreneurs, small businesses, and corporations to share this vital resource equally.

¹ Suzanne Choney, “Wi-Fi beats cellular for tablet connections, MSNBC, http://technolog.msnbc.msn.com/_news/2011/12/12/9393150-wi-fi-beats-cellular-for-tablet-connections

² Janko Roettgers, “Wi-Fi to Overtake Wired Network Traffic by 2015,” *gigaom*, <http://gigaom.com/broadband/cisco-wifi-vni-report/>

³ Richard Thanki, *The economic value generated by current and future allocations of unlicensed spectrum*, 66

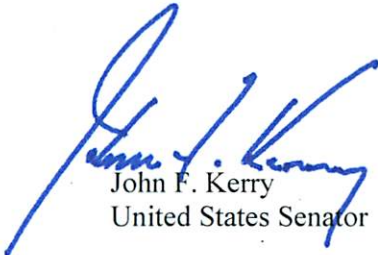
Unfortunately, a proposal currently being considered prohibits the FCC from allocating spectrum cleared in the broadcast bands for unlicensed use. We have reservations with this provision. It may be that the spectrum cleared is best left for licensed use, but Congress should defer to the FCC to make the proper determination of optimizing the allocation of spectrum given the dynamic nature of the industry and wireless technologies.

We are also concerned about proposals to limit the FCC's authority to carefully design future spectrum auctions. Some have proposed prohibiting the agency from imposing eligibility conditions on auction participants. While at first this may seem appropriate to ensure an open auction where all can take part and would be in a market with perfect competition, upon closer examination this could have a deterring effect on fostering competition and maximizing auction proceeds to pay for a public safety network and deficit reduction. Maintaining the FCC's current range of tools for structuring a spectrum auction, as prescribed by the statute, provides the agency with the requisite flexibility to attract a sufficient number of bidders to ensure the competitive bidding necessary to maximize auction revenues and that the market for spectrum remains competitive for companies of all sizes.⁴

Lastly, we believe any legislative effort must sufficiently foster greater technological innovation in the wireless space. Spectrum alone will not solve the looming spectrum crisis but it will require a combination of spectrum, technology, and infrastructure. Also, if we are to have any success in making more efficient use of spectrum used by government agencies in an effort to free up additional spectrum or provide greater sharing opportunities then we must ensure those required technologies are available. The quickest way to achieve this is if there is a coordinated effort between the public and private sectors to develop these technologies together and the proper experimental programs to evaluate them.

Modernizing our nation's radio spectrum planning, management, and coordination activities to better meet the future spectrum needs of *all* users is a difficult undertaking which deals with very complex issues that demand flexibility. We must suppress our desire to be overly prescriptive to derive some predetermined outcome and because of the ever-changing landscape allow the FCC to set the proper course, over the long-term, to maximize the full economic and social benefit that wireless spectrum offers.

Sincerely,



John F. Kerry
United States Senator



Olympia J. Snowe
United States Senator



Mark Warner
United States Senator



Jerry Moran
United States Senator

Cc: The Honorable Gene B. Sperling, Director, National Economic Council

⁴ One of the primary objectives outlined in Section 309 of the Communications Act is for the Commission, in its design of a competitive bidding system, to promote "economic opportunity and competition" by "disseminating licenses among a wide variety of applicants" including small businesses, rural carriers, and minority and woman-owned businesses.