



555 12th St. NW, Ste. 1001  
Washington, D.C. 20004

November 20, 2023

Hon. Gina M. Raimondo  
Secretary of Commerce  
Department of Commerce  
1401 Constitution Avenue NW  
Washington, DC 20230

Hon. Jacob J. Sullivan, Assistant to the President  
for National Security Affairs  
Hon. Lael Brainard, Assistant to the President  
for Economic Policy  
Hon. Arati Prabhakar, Director of the Office  
of Science and Technology Policy  
The White House, Washington, DC 20500

Dear Madam Secretary, Mr. Sullivan, Dr. Brainard, and Dr. Prabhakar:

On November 13, 2023, the President issued a Memorandum on “Modernizing United States Spectrum Policy and Establishing a National Spectrum Strategy,” 88 *Fed. Reg.* 80079 (November 17, 2023). Section 3 of the Memorandum provides that, by December 31, 2023, the Secretary of Commerce shall develop a National Spectrum Strategy (Strategy) and submit it, through the President’s staff advisers for national security affairs, economic policy, and science and technology policy, to the President. Section 4 requires the Secretary of Commerce to publish an Implementation Plan for the Strategy within 120 days after she submits the Strategy to the President. Given the short deadlines for preparing the Strategy and the Implementation Plan, the National Federation of Independent Business (NFIB)<sup>1</sup> takes this early opportunity to remind those involved in the preparation to take proper account of the spectrum needs of America’s small businesses.

As section 1 of the Memorandum acknowledges, “[r]adio frequency spectrum is among our Nation’s most important national resources” and there is “increased competition for scarce spectrum resources.” Given the scarcity of and competition for this vital resource, section 3 of the Memorandum requires the Strategy, among other things, to include “a roadmap to make spectrum resources available to continue United States leadership in advanced wireless technologies and services, which shall provide a ‘pipeline’ of spectrum bands to support commercial innovation . . . .” Future American leadership in advanced wireless technologies and services depends significantly upon innovation driven by America’s small businesses in a competitive marketplace for spectrum-based services and associated goods.

As President Biden said on July 18, 2023, “[s]mall businesses are the engines of our economy and the heart and soul of our communities, and investing in our small-business entrepreneurs means investing in competition and job creation.”<sup>2</sup> The 33,185,550 small businesses in America

<sup>1</sup> NFIB is an incorporated nonprofit association representing small and independent businesses. NFIB protects and advances the ability of Americans to own, operate, and grow their businesses and ensures that governments of the United States and the fifty states hear the voice of small business as they formulate public policies.

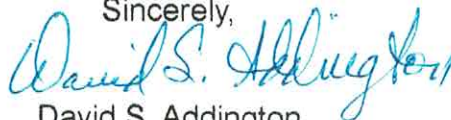
<sup>2</sup> The White House, Statement from President Joe Biden on Record Procurement from Small Business (July 18, 2023), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/18/statement-from-president-joe-biden-on-record-procurement-from-small-business/> (visited November 20, 2023).

constitute 99.9% of all American firms. The 61,000,000 jobs small businesses provide for Americans amount to 46.4% of private sector workers. And small businesses produce 43.5% of all the goods and services produced in America in a year.<sup>3</sup> In writing the Strategy, the Implementation Plan, and, inevitably, regulations, the Department of Commerce no doubt will consider the spectrum needs of the big businesses that claim most of the department's attention, but the department also must work to understand and accommodate the spectrum needs of the other half of the economy -- America's small businesses.

With the Regulatory Flexibility Act (RFA),<sup>4</sup> Congress called for federal agencies to take account of the special needs of America's small businesses.<sup>5</sup> Specifically with respect to licenses and permits for spectrum accomplished through competitive bidding systems, Congress has by law instructed the Federal Communications Commission (FCC) to promote the objective, among others, of "economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses . . . ." Further, the law requires FCC implementing regulations to "prescribe area designations and bandwidth assignments that promote . . . economic opportunity for a wide variety of applicants, including small businesses . . ." and to "ensure that small businesses . . . are given the opportunity to participate in the provision of spectrum-based services . . . ." <sup>6</sup>

Many small businesses use, and other small businesses provide, spectrum-based services and associated goods in their work. As you prepare the National Spectrum Strategy and its Implementation Plan, please bear in mind the needs of those small business users and providers. America's small businesses are the key to achieving the presidential objectives for spectrum management of accelerating U.S. leadership in wireless communications and unlocking innovations that benefit the American people.

Sincerely,



David S. Addington

Executive Vice President and General Counsel

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<sup>3</sup> Office of Advocacy, Small Business Administration, *Frequently Asked Questions* (March 2023), available at <https://advocacy.sba.gov/wp-content/uploads/2023/03/Frequently-Asked-Questions-About-Small-Business-March-2023-508c.pdf> (visited November 20, 2023).

<sup>4</sup> 5 U.S.C. 601 note.

<sup>5</sup> In paragraphs 2(a)(4) and (6) of the RFA, Congress declared that "the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity . . ." and that "the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation . . . ."

<sup>6</sup> Section 309(j)(3)(B) and (j)(4)(C) and (D) of the Communications Act of 1934, 47 U.S.C. 309(j)(3)(B) and (j)(4)(C) and (D).

**From:** [Addington, David](#)  
**To:** [DOExecSec](#)  
**Subject:** National Spectrum Strategy Letter from National Federation of Independent Business (11/20/2023)  
**Date:** Monday, November 20, 2023 3:39:55 PM  
**Attachments:** [NFIBItronNationalSpectrumStrategytoCommerceandWhiteHouseNovember20of2023.pdf](#)

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Please see attached letter. Signed copy will follow by U.S. First Class Mail.