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# The Federal Communications Commission's Spectrum Auction Authority: History and Options for Reinstatement

Updated September 12, 2023

**Congressional Research Service**

<https://crsreports.congress.gov>

R47578



# The Federal Communications Commission's Spectrum Auction Authority: History and Options for Reinstatement

Radio spectrum (“spectrum”) is the continuum of frequencies used to provide wireless services, such as radio broadcasting, mobile communications, and satellite services. It is a finite and valuable resource. In 1934, Congress created the Federal Communications Commission (FCC), an independent agency, to manage and allocate nonfederal use of spectrum. It grants licenses to nonfederal entities to use specific frequencies and sets terms and conditions to serve the public interest, avoid interference among users, and promote the most efficient use of spectrum.

In 1993, Congress authorized the FCC to use competitive bidding (i.e., auctions) to grant licenses for rights to use specific frequencies for commercial wireless communications. That general auction authority was originally due to expire on September 30, 1998, but Congress has extended it several times. The most recent long-term extension, granted as part of the Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96), was set to expire on September 30, 2022. Four additional extensions were made during the 117<sup>th</sup> Congress that allowed the FCC to conduct spectrum auction activities through March 9, 2023, when the FCC’s spectrum auction authority expired. It has not been reinstated.

Supporters of reinstating the FCC’s auction authority see auctions as an effective means to manage spectrum access and use. During the 117<sup>th</sup> Congress, three bills and one Senate Amendment (H.R. 7783, H.R. 7624, S. 4117, and S.Amdt. 6585) would have extended the FCC’s general auction authority, the FCC’s authority to auction specific bands, or a combination of both. None became law. These bills and the amendment, however, highlight different methods for addressing the FCC’s spectrum auction authority that the 118<sup>th</sup> Congress could consider if it seeks to reinstate the FCC’s general spectrum auction authority or its auction authority for specific bands.

In the House of Representatives, Representative Cathy McMorris Rodgers, Chairwoman of the House Committee on Energy and Commerce, has introduced three bills to reinstate the FCC’s spectrum auction authority: H.R. 1108, introduced on February 21, 2023, would have reinstated the FCC’s auction authority through May 19, 2023 (passed by the House on February 27, 2023); H.R. 3345, introduced on May 15, 2023, would have reinstated the FCC’s auction authority through June 30, 2023; and H.R. 3565, introduced on May 22, 2023, would, among other spectrum provisions, reinstate the FCC’s spectrum auction authority through September 30, 2026. In the Senate, Senator Mike Rounds has introduced one bill to reinstate the FCC’s spectrum auction authority: S. 650, introduced on March 2, 2023, would reinstate the FCC’s auction authority through September 30, 2023. Members are currently debating the duration of a possible reinstatement of the FCC’s spectrum auction authority and the best legislative vehicle for it. Possible options include

- passing a stand-alone bill to provide a short-term (e.g., months) reinstatement of the FCC’s auction authority;
- passing a stand-alone bill to provide a mid-term (e.g., one- to two-year) reinstatement of the FCC’s auction authority;
- passing a stand-alone bill to provide a long-term (e.g., five or more years) or permanent reinstatement of the FCC’s auction authority;
- passing comprehensive spectrum legislation that contains multiple provisions, including a mid- or long-term reinstatement of the FCC’s auction authority;
- reinstating the auction authority in FY2023 appropriations legislation; or
- passing legislation that identifies specific bands and grants the FCC authority to auction those bands only.

Many Members support reinstating the FCC’s auction authority. Some see the support for the reinstatement as an opportunity to build consensus around a comprehensive spectrum bill that packages multiple provisions—the identification of additional spectrum bands for auction, allocation of spectrum auction revenues, improvement of interagency coordination of spectrum management—in addition to a mid- or long-term extension of the FCC auction authority. Each option—a stand-alone extension or comprehensive legislation—comes with its own policy benefits and challenges.

R47578

September 12, 2023

**Patricia Moloney Figliola**  
Specialist in Internet and  
Telecommunications  
Policy

**Jill C. Gallagher**  
Analyst in  
Telecommunications  
Policy

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## Introduction

Radio spectrum (“spectrum”) is the continuum of frequencies allocated for radio transmissions and is a finite and valuable resource. It is necessary for companies seeking to provide wireless services, such as radio broadcasting, mobile communications, satellite services, and land mobile radio communications. In 1934, Congress created the Federal Communications Commission (FCC), an independent agency, to manage and allocate nonfederal use of spectrum. It grants licenses to nonfederal entities to use specific frequencies within those bands and sets terms and conditions to serve the public interest, avoid interference among users, and promote the most efficient use of spectrum. According to the FCC, “Managing the airwaves is arguably the agency’s most important function. Nearly every commercial device that transmits a wireless signal on a radio frequency, from AM radios to satellites to 5G cell phones, must comply with our rules, from licensing to interference.”<sup>1</sup>

In 1993, Congress authorized the FCC to use competitive bidding (i.e., auctions) to grant licenses for rights to use specific frequencies for commercial wireless communications. That authority was originally due to expire on September 30, 1998, but Congress has extended it several times. The most recent long-term extension in 2012—through September 30, 2022—was granted as part of the Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96).

Four additional extensions were made during the 117<sup>th</sup> Congress, which extended the FCC’s spectrum auction authority to March 9, 2023, as discussed in more detail below. When Congress could not come to agreement on terms of extension, the FCC’s spectrum auction authority expired on March 9, 2023. During the 117<sup>th</sup> Congress, several pieces of legislation would have extended the FCC’s spectrum auction authority, either as stand-alone legislation or as part of comprehensive spectrum legislation; none were enacted. These bills are discussed below in “Proposals in the 117<sup>th</sup> Congress to Extend the FCC’s Spectrum Auction Authority.”

In the 118<sup>th</sup> Congress, some Members have expressed support for reinstating the FCC’s spectrum auction authority, but they have not reached agreement over the period of the reinstatement.<sup>2</sup> Options for congressional consideration include a stand-alone bill; a comprehensive spectrum package that would include, among other things, an extension of FCC’s auction authority; or provisions in an annual appropriations bill.

This report provides a brief history of the FCC’s spectrum auction authority, a summary of the legislative activity in the 117<sup>th</sup> Congress, new proposals to extend the FCC’s authority introduced in the 118<sup>th</sup> Congress, and a discussion of options to reinstate the FCC’s authority in the 118<sup>th</sup> Congress.

## History of the FCC’s Spectrum Auction Authority

Congress added Section 309(i) to the Communications Act of 1934 in the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35, §1242), granting the FCC authority to assign licenses to prequalified applicants by random selection (i.e., lottery).<sup>3</sup> Under this system, applicants would

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<sup>1</sup> FCC Podcast, *More Than Seven Dirty Words*, episode #18, “Going Once, Going Infinitely: How the FCC Went from ‘Beauty Contests’ to Spectrum Auctions,” January 19, 2021, <https://www.fcc.gov/news-events/podcast/going-once-going-infinitely>.

<sup>2</sup> Jimm Phillips and Howard Buskirk, “No Hill Consensus on Reconsidering Sept. 30 FCC Spectrum Authority Renewal Bid,” *Communications Daily*, May 1, 2023, <https://communicationsdaily.com>.

<sup>3</sup> See Communications Act of 1934, as amended, at <https://transition.fcc.gov/Reports/1934new.pdf>. Codified at 47 U.S.C. §309(i).

apply for spectrum licenses and the FCC would randomly assign frequencies to them. However, as stated by the FCC in a 1997 report to Congress, the prequalification process itself often took many months (20 months in one case), and some license winners had “no intention of providing service to the public” and instead “were eager to trade their license rights for windfall profits.”<sup>4</sup>

Such profiteering led Congress to grant the FCC authority to conduct auctions to assign spectrum. Congress added Section 309(j) to the Communications Act of 1934 in the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66, §6002), which allowed the FCC to use competitive bidding (i.e., auctions) to grant spectrum licenses. The act required the FCC to protect the public interest and promote specific objectives, such as speeding deployment of new technology and services to rural regions, increasing competition and diversity among licensees, recovering some of the value of this federal resource for the public, and achieving the most efficient use of spectrum.<sup>5</sup> By awarding licenses to the highest bidders from a diverse pool and including build-out requirements as a condition of licensing, the FCC could ensure that spectrum-holders were ready and able to use the spectrum, provide services to consumers in all areas, and enhance competition. Under this act, the FCC’s auction authority expired on September 30, 1998.

On August 5, 1997, Congress extended the FCC’s auction authority for 10 years through the passage of the Balanced Budget Act of 1997 (P.L. 105-33, §3002), allowing the FCC to use competitive bidding for license applications through September 30, 2007.

The Deficit Reduction Act of 2005 (P.L. 109-171, §3003), enacted February 8, 2006, extended FCC auction authority for four years, through September 30, 2011. The act specified that \$7.363 billion of proceeds from the authorized auctions be applied to deficit reduction. It also set aside a portion of the proceeds for digital television transition and public safety communications, and created the Digital Television Transition and Public Safety Fund.<sup>6</sup>

The Digital Television Delay Act (P.L. 111-4, §5), enacted February 11, 2009, extended the FCC’s auction authority for one year, through September 30, 2012, to manage the auctions mandated under P.L. 109-171.

The Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96, Title VI) included several spectrum-related provisions. It established a process for television broadcasters to release spectrum licensed to them and for the FCC to auction that spectrum for commercial use. It included provisions to auction certain spectrum and apply revenues from those auctions toward deficit reduction. It also required revenues be used to establish a new agency to manage the public safety broadband network (First Responder Network Authority), to build out that network, and to fund several new public safety programs and initiatives. The act (§6405) also extended the FCC’s auction authority for 10 years, through September 30, 2022.

The Spectrum Pipeline Act of 2015 (Title X in the Bipartisan Budget Act of 2015, P.L. 114-74) requires the FCC to auction certain spectrum as specified in Section 1004(a) of the act.<sup>7</sup> The act extended FCC auction authority for only this designated spectrum through September 30, 2025.

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<sup>4</sup> Federal Communications Commission, *Report to Congress on Spectrum Auctions*, FCC 97-353, adopted September 30, 1997, released October 9, 1997, p. 7, at <https://wireless.fcc.gov/auctions/data/papersAndStudies/fc970353.pdf>.

<sup>5</sup> Sections 309(j)(7) and (8) discuss treatment of revenue from spectrum auctions, and state that the FCC may not base a finding of public interest, convenience, and necessity solely or predominantly on the expectation of federal revenue.

<sup>6</sup> For more information, see CRS Report R40674, *Spectrum Policy in the Age of Broadband: Issues for Congress*, by Linda K. Moore. For further inquiries, congressional staff may contact Jill C. Gallagher or Patricia Moloney Figliola.

<sup>7</sup> A “spectrum pipeline plan” refers to the federal government selecting frequencies for auction and setting the timeline for conducting these auctions.

## **Temporary Extensions of the FCC's Spectrum Auction Authority in the 117<sup>th</sup> Congress**

On September 30, 2022, President Biden signed the Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023 (P.L. 117-180). Division C, Title I, Section 101 extended the FCC's spectrum auction authority from September 30, 2022, to December 16, 2022.

On December 16, 2022, President Biden signed the Further Continuing Appropriations and Extensions Act, 2023 (P.L. 117-229). Division B, Title I, Section 101 extended the FCC's spectrum auction authority from December 16, 2022, to December 23, 2022.

On December 23, 2022, President Biden signed the Further Additional Continuing Appropriations and Extensions Act, 2023 (P.L. 117-264). Division B, Title I, Section 101 extended the FCC's spectrum auction authority from December 23, 2022, to December 30, 2022.

On December 29, 2022, President Biden signed the Consolidated Appropriations Act, 2023 (P.L. 117-328). Division O, Title IX, Section 901 extended the FCC's spectrum auction authority from December 30, 2022, to March 9, 2023.

Since no further extension legislation was signed into law by the March 9, 2023, deadline, the FCC's spectrum auction authority lapsed on that date.

**Figure 1** illustrates the timeline of changes to the FCC's spectrum auction authority from the establishment of the FCC's authority to grant licenses in 1981 through the expiration of its auction authority on March 9, 2023 (except for certain spectrum auctioned under the authority of the Spectrum Pipeline Act of 2015).

## **Proposals in the 117<sup>th</sup> Congress to Extend the FCC's Spectrum Auction Authority**

In addition to the short-term extensions described above, Members introduced three bills and one Senate Amendment during the 117<sup>th</sup> Congress to extend either the FCC's general auction authority or the FCC's authority to auction specific bands. None became law. These bills and the amendment, however, highlight different methods for addressing the FCC's spectrum auction authority that the 118<sup>th</sup> Congress could consider if it seeks to reinstate the FCC's general spectrum auction authority or its auction authority for specific bands.

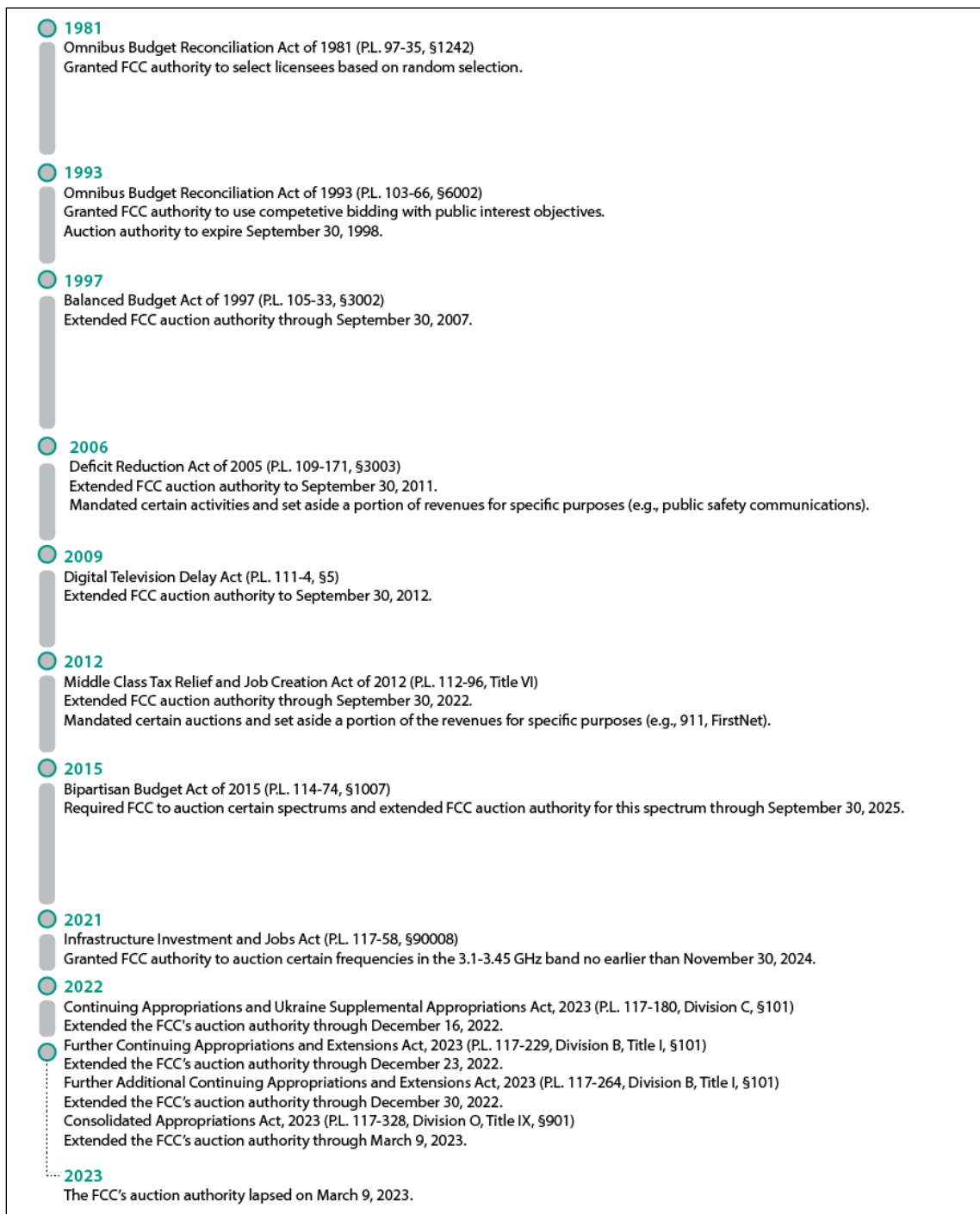
### **Extending America's Spectrum Auction Leadership Act of 2022 (H.R. 7783)**

The Extending America's Spectrum Auction Leadership Act of 2022 (H.R. 7783), a stand-alone bill introduced on May 16, 2022, would have extended FCC auction authority through March 31, 2024 (i.e., 18 months from its September 30, 2022, expiration). The House Energy and Commerce Committee's Subcommittee on Communications and Technology approved the bill on June 15, 2022.

### **Spectrum Innovation Act of 2022 (H.R. 7624)**

The Spectrum Innovation Act of 2022 (H.R. 7624), introduced on April 28, 2022, was passed by the House on July 27, 2022 (H.Rept. 117-429), and referred to the Senate Committee on Commerce, Science, and Transportation. The bill would have extended the FCC's spectrum

**Figure I. The FCC's Spectrum Auction Authority: Timeline of Changes**  
(1981-2023)



Source: CRS.

auction authority through March 31, 2024 (the same timeline approved by the House Energy and Commerce Committee's Subcommittee on Communications and Technology in H.R. 7783).

This bill would have repealed Section 90008 of the Infrastructure Investment and Jobs Act (IIJA, P.L. 117-58), which provided funds from the Spectrum Relocation Fund (SRF)<sup>8</sup> to the Department of Defense (DOD) to study the 3.1-3.45 GHz band in order to make it available for shared (federal and nonfederal) use. H.R. 7624 specified a new purpose and process for auctioning the 3.1 GHz-3.45 GHz band.<sup>9</sup> Specifically, the bill would have provided federal entities operating in the band SRF funding for the purpose of research and development, engineering studies, economic analyses, activities with respect to reconfiguring systems, or other planning activities to make spectrum available for nonfederal use, shared federal and nonfederal use, or a combination thereof.

Among other things, the bill would have established the Public Safety and Secure Networks Fund and directed a portion of spectrum auction proceeds for specific purposes. The bill would have provided \$3.08 billion in spectrum auction revenues to supplement the Secure and Trusted Communications Networks Reimbursement Program. Additionally, the bill would have made available \$10 billion from such revenues to improve 911 systems and services.

## **Spectrum Innovation Act of 2022 (S. 4117)**

The Spectrum Innovation Act of 2022 (S. 4117), introduced on April 28, 2022, would have repealed Section 90008 of the IIJA; mandated the auction of the 3.1-3.45 GHz band for nonfederal, shared federal and nonfederal use, or a combination thereof; and extended the FCC's authority to auction this segment of spectrum for seven years from the date of enactment of the bill. The bill would have directed the Office of Management and Budget to transfer SRF funding to federal entities operating in the 3.1-3.45 GHz band to plan and conduct studies to facilitate the reallocation, with oversight from the National Telecommunications and Information Administration (NTIA) and the Executive Office of the President. It would have required the Secretary of Commerce to identify 200 MHz for reallocation and to work with DOD, FCC, and the White House Office of Science and Technology Policy to make spectrum available for new uses, while also protecting incumbent users. The bill was referred to the Committee on Commerce, Science, and Transportation.

### **Senate Amendment 6585 (S.Amdt. 6585)**

Senate Amendment 6585 (S.Amdt. 6585) was a comprehensive spectrum package submitted on December 20, 2022, by Senator Maria Cantwell as an amendment to the Consolidated Appropriations Act, 2023 (P.L. 117-328). It would have amended Section 90008 of the IIJA; mandated the auction of the 3.1-3.45 GHz band for nonfederal use, shared federal and nonfederal use, or a combination thereof; and provided funds from the SRF to the DOD and other affected agencies operating in the 3.1-3.45 GHz band to study making the band available for nonfederal use, shared federal and nonfederal use, or a combination thereof. It specified a new process for coordinating the identification and auction of frequencies, authorized the FCC to auction those frequencies available for auction, set aside auction revenue for deficit reduction and several

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<sup>8</sup> As authorized by the Commercial Spectrum Enhancement Act, Title II of P.L. 108-494, the Spectrum Relocation Fund provides a centralized and streamlined funding mechanism through which federal agencies can recover the costs associated with relocating their radio communications systems or sharing the reallocated spectrum. For more information, see NTIA, *Manual of Regulations for Federal Radiofrequency Spectrum Management*, "Annex O: Procedures and Guidance Related to the Spectrum Relocation Fund and Transition Activities in Support of Relocation or Sharing by Federal Government Stations," January 2021 edition, <https://ntia.gov/publications/redbook-manual>.

<sup>9</sup> CRS In Focus IF12350, *Repurposing 3.1-3.55 GHz Spectrum: Issues for Congress*, by Jill C. Gallagher.



public interest programs, identified several spectrum bands for future study and auction, invested in spectrum research, and extended the FCC's auction authority through December 31, 2025. The bill proposed changes to the IJA related to the reallocation of the 3.1-3.45 GHz band from federal (e.g., DOD) to nonfederal use—including DOD's role in identifying available frequencies, how much of the band could be reallocated from federal to nonfederal use, and how the band could be shared between federal and nonfederal users.<sup>10</sup>

## **What Happened When the FCC's Spectrum Auction Authority Lapsed?**

As Congress did not reach agreement to extend the FCC's spectrum auction authority by March 9, 2023, the FCC's spectrum auction authority lapsed. The expiration of the FCC's auction authority has created uncertainty around the activities the FCC can perform.<sup>11</sup> The FCC does not have authority to auction new spectrum licenses; however, there is debate on whether the FCC can grant licenses already won (but not yet granted) from previous auctions. The lapse also has created uncertainty around FCC spectrum planning activities and future spectrum availability.<sup>12</sup>

## **Proposals in the 118<sup>th</sup> Congress to Extend or Reinstatement the FCC's Spectrum Auction Authority**

In the House of Representatives, Representative Cathy McMorris Rodgers, Chairwoman of the House Committee on Energy and Commerce, introduced three bills to reinstate the FCC's spectrum auction authority:

- H.R. 1108, introduced on February 21, 2023, would have reinstated the FCC's auction authority through May 19, 2023. The bill passed the House on February 27, 2023.
- H.R. 3345, introduced on May 15, 2023, would have reinstated the FCC's auction authority through June 30, 2023. The bill was forwarded to the House Committee on Energy and Commerce by its Subcommittee on Communications and Technology on May 17, 2023.
- H.R. 3565, introduced on May 22, 2023, would, among other spectrum provisions, reinstate the FCC's spectrum auction authority through September 30, 2026. This bill was ordered to be reported by the Committee on Energy and Commerce on May 24, 2023.

In the Senate, Senator Mike Rounds introduced a bill to reinstate the FCC's spectrum auction authority:

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<sup>10</sup> Jimm Phillips, "3.1-3.45 GHz 5G Structure Deal Elusive in Spectrum Bill Talks' Waning Days," *Communications Daily*, December 16, 2022, <https://communicationsdaily.com>.

<sup>11</sup> Howard Buskirk, "House Republican Criticizes FCC for Not Issuing T-Mobile 2.5 GHz Licenses Amid Authority Lapse," *Communications Daily*, April 19, 2023, <https://communicationsdaily.com>.

<sup>12</sup> Jimm Phillips and Howard Buskirk, "Rosenworcel, Other Biden Officials Push for US Leadership on 6G at Summit," *Communications Daily*, April 24, 2023, <https://communicationsdaily.com>.

- S. 650, introduced by on March 2, 2023, would reinstate the FCC’s auction authority through September 30, 2023. The bill was referred to the Committee on Commerce, Science, and Transportation.

## Options for Congress

Although many Members have expressed support for reinstating the authority, they have not reached agreement on the period of the reinstatement.<sup>13</sup> The 118<sup>th</sup> Congress may consider several possible legislative vehicles for reinstatement, including a stand-alone bill; a comprehensive spectrum package that would include, among other things, an extension of FCC’s auction authority; or provisions in an annual appropriations bill.

**Table 1** presents six policy options for Congress to extend the FCC’s spectrum auction authority, including possible benefits and challenges of each.

**Table 1. Congressional Options to Reinstatement the FCC’s Spectrum Auction Authority**

Option for Congress	Possible Benefits	Possible Challenges
Pass a stand-alone bill to provide a short-term (e.g., months) reinstatement of the FCC’s spectrum auction authority.	The FCC’s spectrum auction authority would be reinstated. Spectrum-related activities, including the granting of licenses from previous auctions, would resume.	Some Members have expressed interest in comprehensive spectrum legislation rather than a short-term stand-alone bill. If passed, the reinstatement of the FCC’s auction authority would be limited to a finite number of months and may not provide public and private sector stakeholders with planning certainty.
Pass a stand-alone bill to provide a mid-term (e.g., one to two year) reinstatement of the FCC’s spectrum auction authority.	The FCC’s spectrum auction authority would be reinstated. Spectrum-related activities, including the granting of licenses from previous auctions, would resume.  Congress could use the duration of the reinstatement to develop comprehensive spectrum legislation, potentially incorporating information from the DOD spectrum study mandated under P.L. 117-58 to identify new spectrum bands for reallocation and auction.	Some Members have expressed preference for comprehensive spectrum legislation. If passed, it is uncertain how a mid-term extension would affect the development of comprehensive spectrum legislation, which might delay the identification of new spectrum bands for auction. Spectrum availability may impact industry’s ability to develop and deploy new wireless technologies.

<sup>13</sup> Jimm Phillips and Howard Buskirk, “No Hill Consensus on Reconsidering Sept. 30 FCC Spectrum Authority Renewal Bid,” *Communications Daily*, May 1, 2023, <https://communicationsdaily.com>.

Option for Congress	Possible Benefits	Possible Challenges
<p>Pass a stand-alone bill to provide a long-term (e.g., five or more years) or permanent reinstatement of the FCC's auction authority</p>	<p>The FCC's spectrum auction authority would be reinstated. Spectrum-related activities, including the granting of licenses from previous auctions, would resume.</p> <p>Congress could use the duration of the reinstatement to develop comprehensive spectrum legislation, potentially incorporating information from the DOD spectrum study mandated under P.L. 117-58 to identify new spectrum bands for reallocation and auction.</p> <p>A long-term or permanent reinstatement of the FCC's spectrum auction authority may provide public and private sector stakeholders the greatest degree of planning certainty.</p>	<p>Long-term or permanent authorities may reduce deadline-driven opportunities for Congress to maintain oversight of FCC spectrum auction activity and to introduce spectrum reforms.</p> <p>If passed, it is uncertain how a long-term extension would affect the development of comprehensive spectrum legislation, which might delay the identification of new spectrum bands for auction. Spectrum availability may impact industry's ability to develop and deploy new wireless technologies.</p>
<p>Pass comprehensive spectrum legislation that includes a mid- or long-term or permanent reinstatement of the FCC's spectrum auction authority.</p>	<p>Comprehensive spectrum legislation that reinstates the FCC's spectrum auction authority for some number of years, identifies specific bands for auction, and sets priorities for spending auction revenues may provide public and private sector stakeholders with planning certainty and foster the development and deployment of new wireless technologies.</p>	<p>Members may have a number of divergent priorities for comprehensive spectrum legislation and negotiations could be lengthy. Bundling reinstatement of the FCC's spectrum auction authority in comprehensive legislation may delay reinstatement for the duration of negotiations.</p>
<p>Temporarily reinstate the FCC's spectrum auction authority in a continuing resolution or FY2024 appropriations legislation.</p>	<p>A temporary reinstatement of the FCC spectrum auction authority would provide the agency a finite period to continue work from previously conducted auctions (e.g., 2.5 GHz).</p>	<p>Waiting for an appropriations bill could leave the FCC without auction authority for many months.</p>
<p>Pass legislation that identifies specific bands for auction and grants the FCC authority to auction those bands only.</p>	<p>Identifying specific bands for auction and granting the FCC authority to auction only those bands may allow Congress to play an active role in identifying spectrum to be auctioned, for what purpose, and when.</p>	<p>Congress would assume the task of identifying spectrum for auction, shifting this responsibility away from the FCC and other federal agencies. Congress would have to grant the FCC auction authority for each identified band, which could add time to the spectrum identification and auction processes.</p>

Source: CRS.

## Discussion

Some Members have previously favored stand-alone legislation to extend the FCC's spectrum auction authority, with a commitment to work on a comprehensive spectrum package that could incorporate various congressional priorities (e.g., identification of spectrum for future auction, interagency coordination on spectrum reallocation, funding proposals, and an extension of FCC auction authorities).<sup>14</sup> These Members have generally proposed stand-alone bills with short-term

<sup>14</sup> For example, see "Senate Hearing on Wireless Spectrum," C-SPAN.org, August 2, 2022, at <https://www.c-span.org/video/?522120-1/senate-hearing-wireless-spectrum>. (See opening statements of Senator Roger Wicker [00:07:27], statement of Senator John Thune [0:12:54], and statement of Senator Ben Ray Lujan [00:40:39].)

extensions (e.g., several months), to ensure the FCC's auction authority did not lapse and to provide Congress with time to come to agreement on a comprehensive spectrum package.

Some Members have proposed longer-term extensions (e.g., 18 months, 2 years) in comprehensive spectrum packages from the 117<sup>th</sup> Congress (e.g., H.R. 7624 and S.Amdt. 6585). Both bills included elements of a comprehensive package such as interagency coordination, allocation of revenues, investment in spectrum research, and an extension of FCC's auction authority, but neither included a spectrum pipeline provision (i.e., the identification of several specific bands for auction). Some Members supported these bills because they address a number of spectrum policy issues, while providing Congress more time to identify future bands for inclusion in a potential spectrum pipeline.<sup>15</sup> Other Members support the development of comprehensive spectrum legislation that would identify specific spectrum bands for auction.<sup>16</sup>

Some Members have asserted that the FCC's spectrum auction authority gives both federal agencies and the wireless industry planning certainty.<sup>17</sup> They have advocated for a long-term extension of the FCC's spectrum auction authority, similar to the long-term extension adopted in 2012 (P.L. 112-96, Title V), which extended the authority for a decade.<sup>18</sup> They assert the 2012 approach was effective and integral to supporting innovation and economic growth in the United States.<sup>19</sup> These Members support development of comprehensive spectrum legislation that would couple a long-term reinstatement of the FCC's spectrum auction authority with the identification of spectrum for future auctions, the allocation of auction revenues to public interest programs, and the improvement of interagency spectrum coordination.<sup>20</sup>

The Infrastructure Investment and Jobs Act (IIJA, P.L. 117-58, §90008) directs the DOD to conduct a study of the 3.1-3.45 GHz band to inform its future use and potential future auction of frequencies in the band.<sup>21</sup> During the 117<sup>th</sup> Congress, Members introduced legislation (H.R. 7624, S. 4117) and proposed amending legislative language (S.Amdt. 6585) to repeal or amend certain aspects of Section 90008 of the IIJA. These proposals would have changed the focus of the DOD study of the 3.1-3.45 GHz band, the process for identifying frequencies in the 3.1-3.45 GHz band for auction, and authorities given to DOD in determining which frequencies could be shared.<sup>22</sup> The proposals also included additional spectrum provisions, such as improvements to interagency coordination on spectrum reallocation, identification of spectrum for auction, allocation of

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<sup>15</sup> Ibid. (See statement of Senator John Thune [00:14:26].)

<sup>16</sup> Jimm Phillips and Howard Buskirk, "Dueling House, Senate Spectrum Bill Approaches to Clash Before August Recess," *Communications Daily*, July 19, 2022, at <https://communicationsdaily.com>. See also C-SPAN, "Senate Hearing on Wireless Spectrum," C-SPAN.org, August 2, 2022, <https://www.c-span.org/video/?522120-1/senate-hearing-wireless-spectrum>. (See statements of Senators Maria Cantwell [01:42:32].) See Jimm Phillips and Howard Buskirk, "Spectrum Bill Talks Continue; Cantwell Balks at 18-Month FCC Auction Law Extension," *Communications Daily*, June 29, 2022, at <https://communicationsdaily.com>. (Discusses Senator Cantwell stating that she would like Senate Commerce to weigh in on House legislation, "instead of automatically backing the House proposals.")

<sup>17</sup> "Senate Hearing on Wireless Spectrum," C-SPAN.org, August 2, 2022, at <https://www.c-span.org/video/?522120-1/senate-hearing-wireless-spectrum>. (See statement of Senator John Thune [0:14:38].)

<sup>18</sup> Jimm Phillips and Howard Buskirk, "Congress Extends Spectrum Bill Talks via FCC Stopgap, but Stumbling Blocks Remain," *Communications Daily*, October 3, 2022, <https://communicationsdaily.com>.

<sup>19</sup> "Senate Hearing on Wireless Spectrum," C-SPAN.org, August 2, 2022, at <https://www.c-span.org/video/?522120-1/senate-hearing-wireless-spectrum>. (See opening statements of Senator Roger Wicker [00:08:05], and Senator John Thune [00:14:26].)

<sup>20</sup> Ibid.

<sup>21</sup> CRS In Focus IF12350, *Repurposing 3.1-3.55 GHz Spectrum: Issues for Congress*, by Jill C. Gallagher.

<sup>22</sup> Section 90008 of the IIJA requires that the Secretary of Commerce can identify frequencies for shared use only if the Secretary of Defense has determined that sharing those frequencies with nonfederal users would not impact the primary mission of military spectrum users in the band.

expected auction revenue to public interest programs, and extension of the FCC's general auction authority, which had bipartisan support.<sup>23</sup> However, some Members strongly opposed the repeal or amendment of Section 90008 of the IIJA.<sup>24</sup> None of these spectrum proposals were enacted.

In May 2023, DOD reported in its *DOD Strategic Management Plan (2022-2026)* that it is continuing its study of the 3.1-3.45 GHz band. DOD reported that it is working in partnership with the National Spectrum Consortium (NSC), and has established the Partnering to Advance Trusted and Holistic Spectrum Solutions (PATHSS) Task Group to identify sharing solutions, inform policy and processes, and create a replicable approach for addressing future spectrum sharing scenarios. DOD listed the targeted completion date for the study as FY 2023.<sup>25</sup>

The 118<sup>th</sup> Congress has introduced both stand-alone legislation to renew the FCC's auction authority (H.R. 1108, H.R. 3345, and S. 650) and comprehensive spectrum legislation (H.R. 3565) that would identify spectrum for auction, auction new spectrum bands, distribute revenues for public interest programs, and renew the FCC's auction authority. Still, some Members have reiterated the need to wait for this DOD study of the 3.1-3.45 GHz band before proceeding on a comprehensive spectrum bill.

## Author Information

Patricia Moloney Figliola  
Specialist in Internet and Telecommunications  
Policy

Jill C. Gallagher  
Analyst in Telecommunications Policy

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<sup>23</sup> Jimm Phillips and Howard Buskirk, "Senators Eye Replicating Spectrum Deal in 2023 amid 3.1-3.45 GHz Text Fracas," *Communications Daily*, December 28, 2022, [https://communicationsdaily.com/article/view?search\\_id=729862&p=1&id=1461394&BC=bc\\_64fbfe98c2126](https://communicationsdaily.com/article/view?search_id=729862&p=1&id=1461394&BC=bc_64fbfe98c2126). (Stating that there was "four-corners agreement between" House Commerce Committee Chairman Frank Pallone, D-N.J., ranking member Cathy McMorris Rodgers, R-Wash., Senate Commerce ranking member Roger Wicker, R-Miss., and Senator Cantwell).

<sup>24</sup> Jimm Phillips, "Deal to Attach Spectrum Innovation Act to Omnibus Is Dead, Aides Confirm," *Communications Daily*, December 20, 2022, [https://communicationsdaily.com/article/view?search\\_id=591977&p=4&id=1454165&BC=bc\\_64fbfddd2f4ec](https://communicationsdaily.com/article/view?search_id=591977&p=4&id=1454165&BC=bc_64fbfddd2f4ec). (Citing opposition from Senator Rounds.)

<sup>25</sup> U.S. Department of Defense, *DOD Strategic Management Plan 2022-2023 (updated)*, March 6, 2023, p. 44, <https://media.defense.gov/2023/Mar/13/2003178168/-1/-1/1/DOD-STRATEGIC-MGMT-PLAN-2023.PDF>.