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**RE: White Paper Response - Request for Information – Dynamic Spectrum Sharing**

This White Paper is filed in response to the Department of Defense's (DoD) Request for Information (RFI), dated September 18, 2020, inviting responses regarding enabling dynamic spectrum sharing (DSS) within DoD's currently allocated spectrum, including for 5G. This White Paper expresses the views of Randolph May, President of the Free State Foundation, and Seth Cooper, Senior Fellow and Director-Policy Studies.<sup>1</sup> The Free State Foundation is an independent, nonpartisan, non-profit free market-oriented think tank focusing heavily on communications and Internet law and policy.

Many of the individual information requests are not objectionable, and we appreciate those that are directed, in the words of the RFI, to ensuring "the greatest effective and efficient use of the Department of Defense's spectrum for training, readiness, and lethality." But to the extent that the RFI suggests or implies that DoD should or could somehow "own or operate" networks as a commercial 5G wireless provider, we strongly oppose any such suggestion or implication.

Private sector leadership is essential to securing and maintaining the U.S. position at the forefront of deployment and innovative development of 5G services. U.S. policy with regard to commercial communications services, including 5G, has been and should

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<sup>1</sup> The views expressed do not necessarily represent the views of others associated with the Free State Foundation.

remain staked on free market enterprise. Department of Defense entry into the commercial 5G market by virtue of "ownership and operation" of 5G networks would contravene that policy. DoD almost certainly lacks legal authority to engage in such commercial ventures. And to do so would put taxpayer money at risk. There is a line separating DoD using its own spectrum allocations for its own purposes from private sector providers using their spectrum allocations to offer commercial wireless services. Nothing about the transition from 4G to 5G makes maintaining the separation of that line any less important.

As it had done previously, in March 2020, the Trump Administration endorsed "the private sector led domestic rollout of 5G."<sup>2</sup> Indeed, just this month, the White House released a "National Strategy for Critical and Emerging Technologies," in which it declares as a Pillar I goal: "Leverage private capital and expertise to build and innovate."<sup>3</sup> To the extent any such notion exists, the Department of Defense should discard any idea of operating 5G networks for commercial uses, the practical result of which would be, to one degree or another, "nationalizing" 5G communications.

In the Telecommunications Act of 1996, Congress established the policy of the U.S. "to preserve the vibrant and competitive free market that presently exists for the Internet."<sup>4</sup> This acknowledges the vital role of the private sector in providing broadband Internet services to American consumers and business enterprises. Additionally, federal law and policy establishes the distinct role of the Federal Communications Commission (FCC) regarding spectrum allocations for private networks providing commercial broadband Internet services as well as the roles of other federal agencies in carrying out public safety, military, and other distinctly governmental purposes.

Federal communications policy's emphasis and reliance on free market competition has been successful in promoting U.S. leadership in commercial broadband wireless services. Private broadband providers have invested massive resources to develop and deploy next-generation broadband networks that benefit our nation's economy. Wireless providers have invested \$261 billion in 4G networks over the past decade, increasing wireless gross domestic product (GDP) by 253%, and creating nearly 10% of the total increase in U.S. GDP during that span.<sup>5</sup> Fixed wireline broadband providers invest \$80 billion or more per year in network infrastructure used to deliver advanced services.<sup>6</sup> Also, it is estimated that \$225 billion in private capital expenditures will be needed over 2019 – 2025 to fully

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<sup>2</sup> White House, Strategy to Secure 5G (March 2020), at 2, at: <https://www.whitehouse.gov/wp-content/uploads/2020/03/National-Strategy-5G-Final.pdf>.

<sup>3</sup> National Strategy for Critical and Emerging Technologies (October 2020), at: <https://www.whitehouse.gov/wp-content/uploads/2020/10/National-Strategy-for-CET.pdf>.

<sup>4</sup> 47 U.S.C. § 230(b).

<sup>5</sup> See Recon Analytics, "The 4G Decade: Quantifying the Benefits" (July 2020), at: <https://api.ctia.org/wp-content/uploads/2020/07/The-4G-Decade.pdf>.

<sup>6</sup> See USTelecom, USTelecom Research Brief: "U.S. Broadband Investment Continued Upswing in 2018" (July 31, 2019), at: <https://www.ustelecom.org/wp-content/uploads/2019/07/USTelecom-Research-Brief-Capex-2018-7-31-19.pdf>.

deploy 5G in the U.S., and that this investment will create 1.2 million new jobs each year and create \$1.7 trillion in additional output during that time span.<sup>7</sup>

Within the last year, several commercial 5G networks have been deployed nationwide. Investments in those networks have been made with the expectation that competition among private market competitors – not competition from the federal government – is the ground rule that will incentivize continued innovation and deployment of 5G services.

When the RFI asks how DoD could "own and operate" independent 5G networks in the 3100-3550 MHz band for its domestic operations, it is not entirely clear what the RFI means regarding the scope of those operations. But it may suggest possible contemplation of DoD-operated 5G networks for commercial uses. Yet the RFI provides no legal authority for DoD to pursue such commercial uses, and we think DoD almost certainly lacks such authority to manage or lease spectrum for 5G commercial uses.<sup>8</sup>

It is not proper for DoD to enter into the commercial 5G wireless marketplace, whether as a wholesale network operator, network backbone provider, or any other capacity. Any DoD deployment of 5G networks for commercial uses, to one degree or another, would involve an improper "nationalization" of the private sector wireless marketplace. This would jeopardize U.S. private market leadership in communications services. Nationalization of the commercial 5G market surely would thwart the investment-backed expectations of private providers. And the threat of competition with the government would deter much needed private sector investment for full and rapid 5G deployment in the U.S.

DoD entry into the commercial wireless market would also be highly detrimental from a taxpayer and fiscal responsibility standpoint. Broadband Internet services and other commercial communications services are risky capital-intensive ventures that require considerable business acumen and experience for successful operation. Taxpayer money should not be spent by DoD to go into the 5G market in competition with private market providers that already have invested trillions in private capital. Operating 5G networks for commercial purposes is not consistent with the primary military functions that are within DoD's purview. Embarking on the provision of commercial 5G services would divert or waste resources that ought to be spent on the DoD's core military purposes.

Moreover, entry by DoD into the commercial 5G market likely would raise a host of additional legal and policy problems, including issues involving network management

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<sup>7</sup> See James E. Prieger, "An Economic Analysis of 5G Wireless Deployment: Impact on the U.S. and Local Economies," *Perspectives from FSF Scholars*, Vol. 15, No. 28 (June 1, 2020), at: <https://freestatefoundation.org/wp-content/uploads/2020/06/An-Economic-Analysis-of-5G-Wireless-Deployment-060120.pdf>.

<sup>8</sup> We recognize the propriety of DoD operating its own networks in connection with its own spectrum allocations for military purposes. This may include upgrading older networks to 5G standards to better carry out military activities. However, DoD must maintain the line separating DoD's network operations for internal military purposes from network operations for private enterprise purposes.

practices and oversight by the FCC and the Federal Trade Commission (FTC). DoD entry into the commercial market also improperly would incentivize the government to give itself special privileges and disadvantage private sector providers. Indeed, just the uncertainty created by entertaining the prospect of the government providing 5G services in the commercial marketplace is likely to depress the private commercial market investment that is essential to securing and maintaining U.S. global leadership on 5G and other next-generation communications technologies.

Consistent with the accepted national policy, DoD should identify unused and underused spectrum within its existing allocations – particularly mid-band spectrum – and proceed with dispatch to vacate that spectrum for FCC reallocation to private commercial usage. And in those instances where it can be demonstrated that vacating particular spectrum significantly jeopardizes specific national security interests, DoD should proactively seek to share usage of that spectrum with private commercial providers to the fullest extent reasonably achievable. Both of these approaches crucially maintain the line that separates DoD's use of its allocated spectrum for its own purposes from network operations used for private purposes.

We urge DoD to reject any nationalization of the 5G commercial marketplace and to encourage private sector leadership regarding 5G in the U.S.

Respectfully Submitted,

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