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### Spectrum Allocation

Last fall, the Department of Defense released its Electromagnetic Spectrum Strategy to address near-term and longer-term spectrum challenges. In this BNA Insight, Charles A. Blanchard, Maureen R. Jeffreys, Scott Morrow, and Lauren E. Manning, of Arnold & Porter LLP, write that the document balances two competing federal objectives—allocating additional spectrum to meet the growing demand for commercial wireless broadband services on the one hand, and ensuring that the Pentagon also has access to sufficient spectrum to deliver critical military capabilities on the other.

## DOD Unveils Strategy to Better Manage Spectrum, Pave Way for New Technologies

By CHARLES A. BLANCHARD, MAUREEN R. JEFFREYS,  
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The Department of Defense recently released its Electromagnetic Spectrum (EMS) Strategy to address near-term and longer-term spectrum challenges.<sup>1</sup>

This comes in response to the Obama administration's calls, over the last few years, for federal agencies to help address the exploding demand for wireless broadband services. The National Broadband Plan<sup>2</sup> and two presidential memoranda<sup>3</sup> have tasked federal agencies with accelerating efforts to make spectrum avail-

able for commercial use and allow shared access to spectrum allocated for federal use.

Among other things, the National Broadband Plan encouraged incumbent federal users to reallocate or repurpose spectrum.<sup>4</sup> The June 2010 Presidential Memorandum directed the Secretary of Commerce, the National Telecommunications and Information Administration, and the Federal Communications Commission to collaborate to make 500 MHz of federal and nonfederal spectrum available for wireless broadband use within 10 years.<sup>5</sup> Furthering these efforts, the June 2013 Presidential Memorandum directed agencies to take additional steps to accelerate shared access to spectrum.<sup>6</sup>

The DOD's EMS Strategy seeks to strike a balance between maintaining critical military capabilities and increasing available spectrum for the commercial wireless industry. The DOD will continue to work closely with other federal agencies, including the NTIA, FCC,

<sup>1</sup> Department of Defense, *Electromagnetic Spectrum Strategy 2013, A Call to Action*, available at <http://www.defense.gov/news/dodspectrumstrategy.pdf>; see also Press Release, Department of Defense, DoD Releases Electromagnetic Spectrum Strategy (Feb. 20, 2014), available at <http://www.defense.gov/Releases/Release.aspx?ReleaseID=16547>.

<sup>2</sup> See *Connecting America: The National Broadband Plan* (2010), available at <http://download.broadband.gov/plan/national-broadband-plan.pdf>; see also Arnold & Porter LLP, *FCC Launches Proceedings to Implement National Broadband Plan; Department of Commerce Opens Review of Internet Privacy Policy* (May 2010), available at [http://www.arnoldporter.com/public\\_document.cfm?id=15719&key=6J3](http://www.arnoldporter.com/public_document.cfm?id=15719&key=6J3).

<sup>3</sup> The White House, *Presidential Memorandum: Expanding America's Leadership in Wireless Innovation* (June 14, 2013), available at <http://www.whitehouse.gov/the-press-office/2013/06/14/presidential-memorandum-expanding-americas->

<http://www.whitehouse.gov/the-press-office/2013/06/14/presidential-memorandum-expanding-americas-> leadership-wireless-innovation ("June 2013 Presidential Memorandum: Expanding America's Leadership in Wireless Innovation"); The White House, *Presidential Memorandum: Unleashing the Wireless Broadband Revolution* (June 28, 2010), available at <http://www.whitehouse.gov/the-press-office/presidential-memorandum-unleashing-wireless-broadband-revolution> ("June 2010 Presidential Memorandum: Unleashing the Wireless Broadband Revolution").

<sup>4</sup> See National Broadband Plan at 81-83.

<sup>5</sup> See June 2010 Presidential Memorandum: Unleashing the Wireless Broadband Revolution.

<sup>6</sup> See June 2013 Presidential Memorandum: Expanding America's Leadership in Wireless Innovation.

and the White House Office of Science and Technology Policy, along with private industry, to achieve the dual goals of promoting innovation and economic growth and advancing the agencies' missions.

The three key goals of the DOD's EMS Strategy are:

**(1) Advancing spectrum-dependent technologies that are more efficient, flexible, and adaptable in their use of spectrum.** In order to do this, DoD will expedite the development of technologies designed to access wider frequency ranges, exploit spectrum-efficiency gains, utilize less congested portions of the spectrum, and adapt to changing electromagnetic environments. In addition, the DOD will pursue spectrum-sharing opportunities; evaluate commercial service capabilities, such as smartphones and 4G mobile technologies, for mission use; and improve its oversight of spectrum use.

**(2) Increasing the agility of DOD's spectrum operations.** To meet this goal, the DOD will focus on managing spectrum-dependent systems in near-real-time by developing tools and techniques to quantify spectrum requirements and identify and mitigate spectrum issues; improving the ability to identify, predict, and mitigate harmful interference; and pursuing access to spectrum allocated for non-federal use and spectrum sharing technologies.

**(3) Encouraging DOD participation in changing national and international spectrum policy and regulation.** In particular, the DOD plans to develop innovative alternatives that consider both Defense and commercial interests; and improve its ability to adapt and implement regulatory and policy changes while maintaining full military capability.

To implement its EMS Strategy, DOD will develop, over the course of the next six months, a supporting roadmap and action plan to provide the necessary actions, associated lead organizations, cost, schedule, deliverables, and metrics.<sup>7</sup>

The DOD's EMS Strategy balances several competing federal objectives: allocating additional spectrum to meet the growing demand for commercial wireless broadband services on the one hand, and ensuring that DOD also has access to sufficient spectrum to deliver critical military capabilities on the other.

The EMS Strategy also presents an opportunity for public-private partnerships to leverage and expand commercial wireless industry technologies to enhance the efficient, flexible, and adaptable use of spectrum for both DOD and commercial purposes. For government contractors, the new EMS Strategy means that future procurements will likely include requirements that seek to ensure that weapons (and other) systems and equipment can adapt to the realities of increasingly scarce spectrum resources and that purchasing decisions will feature spectrum efficiency, flexibility, and adaptability as key criteria.

This will make it critical that government contractors have an understanding of current NTIA and FCC rules and policies as well as evolving DOD and White House strategies.

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<sup>7</sup> February 20, 2014 Press Briefing on Release of DoD Electromagnetic Spectrum Strategy, available at <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=5374>.