

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Somerset County, NJ ) DA 12-1453  
Request for T-Band Waiver )

To: Chief, Public Safety and Homeland Security Bureau

**COMMENTS  
OF THE  
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA” or “Alliance”), in accordance with Section 1.45 of the Federal Communications Commission (“FCC” or “Commission”) rules, respectfully submits its comments in response to the waiver request<sup>1</sup> filed by Somerset County, New Jersey (“Somerset” or “County”).<sup>2</sup> The County has requested waivers to modify its existing 470-512 MHz band (“T-Band”) system to add both Part 90 and Part 22 T-Band frequencies, modify its transmitter locations, and secure an exemption from the “freeze” on T-Band licensing.<sup>3</sup>

EWA takes no position on the technical aspects of the waiver relief requested by the County, although the license modifications proposed appear consistent with waiver relief granted to numerous other entities. However, it strongly supports this and all other waivers of the T-

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<sup>1</sup> See File Nos. 0004598355, 0004598374, 0004598382, 0004983388, 0004993152, 0004994418, 0004994929 Requests for Waiver (dated January 31, 2011 and updated May 2, 2012) (collectively “Waiver Request”).

<sup>2</sup> Public Safety and Homeland Security Bureau Seeks Comment on Request for Waiver Filed by Somerset County, New Jersey to Upgrade Its Public Safety Communications System by Modifying Its Sites and Adding Frequencies in the Television Channel 19 (500-506 MHz) Band and a Part 22 Frequency, *Public Notice*, DA 12-1453 (rel. Sept. 6, 2012) (“Public Notice”).

<sup>3</sup> Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Suspend the Acceptance and Processing of Certain Part 22 and 90 Applications for 470-512 MHz (“T-Band”) Spectrum, *Public Notice*, DA 12-643 (rel. Apr. 26, 2012) (“Freeze PN”); see also Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Clarify Suspension of the Acceptance and Processing of Certain Part 22 and 90 Applications for 470-512 MHz (“T-Band”) Spectrum, *Public Notice*, DA 12-892 (rel. June 7, 2012) (“Clarification PN”).

Band freeze. In fact, the Alliance submits that the public interest is not served by restricting routine licensing in this band years in advance of the spectrum auction called for in Section 6103 of the Middle Class Tax Relief and Job Creation Act of 2012.<sup>4</sup>

The Commission adopted the freeze saying that “prudent spectrum management dictates that we should stabilize the existing spectrum landscape by suspending the acceptance and processing of T-Band licensing applications that could alter the spectrum landscape **and thereby make implementing the [Spectrum] Act more difficult or costly.**”<sup>5</sup> EWA respectfully disagrees that the future cost of clearing this spectrum is more relevant to prudent spectrum management than meeting the ongoing requirements of private land mobile radio (“PLMR”) entities that need T-Band spectrum today to meet critical communications needs. The Alliance recognizes that a licensing freeze has become the standard antecedent to the auction of encumbered spectrum. While inconvenient or even disruptive for incumbent licensees, auction participants are entitled to know the spectrum landscape before placing bids and need assurance that it will not change during the course of the auction. But these restrictions should be imposed at the last reasonable time before the information is needed by potential bidders and not at the earliest possible date in an effort to minimize the relocation costs they might incur. Containing costs for parties that may bid on T-Band spectrum at some unknown date in the distant future does not outweigh the public interest in allowing T-Band licensees like the County, Woodbridge Township,<sup>6</sup> and others to serve existing, identifiable, and quantifiable user requirements without

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<sup>4</sup> Pub. L. No. 112-96, 126 Stat. 156 (2012) (“Spectrum Act”). The Alliance reminds the FCC once again that the legislation says nothing about an auction of T-Band spectrum used by Industrial/Business licensees, but only “‘T-Band spectrum’ currently used by public safety eligibles,” yet the FCC has applied the freeze to all T-Band channels.

<sup>5</sup> Freeze PN at 1 (emphasis added).

<sup>6</sup> See Township of Woodbridge, New Jersey, *Order*, DA 12-1483 (rel. Sept. 13, 2012).

the expense and other resources involved in seeking waiver relief or, worse, being denied waiver relief.<sup>7</sup>

The Commission's decision to freeze all of T-Band while it determines how to implement this aspect of the Spectrum Act is not required by the Act. In fact, the Spectrum Act says only that the **auction must take place not later than nine years from enactment** – or February 2021. It suggests nothing about minimizing the relocation costs that will be incurred as a result of the anticipated sale of this spectrum. Moreover, this decision is inconsistent with the FCC's past practice vis-à-vis when freezes are imposed in anticipation of a spectrum auction.

For example, the FCC has been auctioning vacant non-reserved band FM allotments on a rolling basis since 2004.<sup>8</sup> Like T-Band, which is available for PLMR use in 11 discrete markets across the county, these allotments are geographically distinct. The FCC did not freeze all such allotments in 2004 in anticipation of auctioning them. Rather, it imposes a freeze on “petitions and counterproposals that propose a change in channel, class, community, or reference coordinates for any of the vacant non-reserved band FM allotments” that are included in a particular auction approximately six months prior to conducting the auction.<sup>9</sup> EWA recognizes that these auctions do not involve the cost of relocating incumbent licensees. Nevertheless, the Commission has allowed the FM marketplace to operate normally until the FCC takes concrete steps to schedule the competitive bidding process for particular allotments.

EWA addressed the highly disruptive impact of lengthy freezes in its Comments on the T-Band waiver request filed by the Township of Woodbridge, NJ.<sup>10</sup> It noted that the processing

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<sup>7</sup> See County of Bedford, Pennsylvania, *Order*, DA 12-1284 (rel. Aug. 8, 2012); Town of Sandwich, Massachusetts, *Order*, DA 12-1282 (rel. Aug. 8, 2012).

<sup>8</sup> See FCC Auctions 37, 62, 68, 70, 79, 91, 93, and 94.

<sup>9</sup> See, e.g., Auction 94 Freeze Announced for Certain FM Applications and Rulemaking Filings, *Public Notice*, DA 12-1451 (rel. Sept. 11, 2012).

<sup>10</sup> See Public Safety and Homeland Security Bureau Seeks Comment on Request for Waiver Filed by the Township of Woodbridge, New Jersey to Operate a Trunked Public Safety Communications System Using Part 90 and Part 22

freeze in the 39 GHz band that was cited by the FCC in support of its T-Band freeze covered only applications filed on or after a date one month before the FCC adopted a Notice of Proposed Rulemaking in which it proposed specific amendments to the technical and licensing rules governing that band, a step the FCC has not yet taken vis-à-vis the T-Band.<sup>11</sup> The Alliance also noted the Commission's appropriate sensitivity to the impact of freezes in the context of the 800 MHz rebanding proceeding where it stated the following:

We strongly agree with the parties who point out the adverse effects such a three-year freeze could have on their companies' business plans.... [W]e will do everything possible to minimize the effect the incremental freezes may have on incumbent licensees and new applicants, and direct the Transition Administrator to make accommodations in the implementation plan that will avoid such adverse effects.<sup>12</sup>

The wisdom of and necessity for imposing a freeze on all spectrum in all T-Band markets almost a decade before the reallocation mandated by the Act, at best, is questionable. It reflects a balancing of the public interest that, in EWA's opinion, without any economic analyses or recognition of the benefits that accrue to the American public through the use of T-Band spectrum, improperly elevates the benefit of cost containment for future bidders over the immediate and ongoing communications needs of public safety, critical infrastructure, and other important PLMR user requirements.

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Frequencies in the Television Channel 19 (500-506 MHz) Band (rel. July 23, 2012); Comments of EWA filed on Aug. 7, 2012.

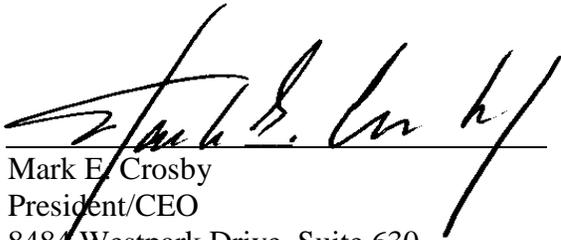
<sup>11</sup> Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, Notice of Proposed Rulemaking and Order, ET Docket No. 95-183, 11 FCC Rcd 4930 at ¶ 124 (1996).

<sup>12</sup> Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969 at ¶ 204 (2004).

For these reasons, EWA supports the County's request for a waiver of the T-Band freeze, but also urges the FCC to revisit the timing and scope of that freeze in light of the comments herein.

Respectfully submitted,

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September 20, 2012

CERTIFICATE OF SERVICE

I, Linda J. Evans, with the law firm of Lukas, Nace Gutierrez and Sachs, LLP, hereby certify that I have, on this 20<sup>th</sup> day of September, 2012 caused to be e-mailed the foregoing Comments to the following:

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