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May 8, 2012

Mr. David Furth, Acting Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Mr. Rick Kaplan, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**RE: Request for Clarification
Public Notice, DA 12-643
470-512 MHz “Freeze”**

Gentlemen:

The Enterprise Wireless Alliance (“EWA” or “Alliance”) represents a large number of Federal Communications Commission (“FCC”) licensees that are affected by the “limited suspension” of acceptance and processing of certain applications for Part 22 and Part 90 470-512 MHz (‘T-Band’) spectrum announced in the above-referenced Public Notice.¹ The Public Notice states that this limited suspension, or freeze, is needed to “maintain a stable spectral landscape while the Commission determines how to implement recent spectrum legislation contained in the Middle Class Tax Relief and Job Creation Act of 2012 (the ‘Act’).”² It further states that the FCC will not accept or process applications “that could alter the spectrum landscape and thereby make implementing the Act more difficult or costly.”³ EWA is still assessing how this freeze will negatively affect the day-to-day operations of its members that

¹ 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) (“Public Notice”).

² Public Notice at 1.

³ *Id.* The Act directs the FCC to reallocate and auction T-Band spectrum used by public safety eligibles and states that proceeds from the auction may be used as grants to fund public safety relocation costs. There is no provision in the Act that requires the FCC to auction non-public safety T-Band licensees and, therefore, there is no defined mechanism for financing the relocation of non-public safety systems.

rely on T-Band spectrum in their business enterprise and commercial activities and will have further recommendations for the FCC when that assessment is complete.

As an initial matter, however, the Alliance requests immediate clarification or modification of one aspect of the FCC's action. The Public Notice describes several categories of applications that will not be accepted or processed during the pendency of the freeze, the length of which is uncertain, but which is likely to be measured in years rather than months. The second category of prohibited filings is "applications that seek to modify existing licenses by adding or changing frequencies or locations."⁴ EWA believes that this category is too broad. By its terms, it includes applications that would not "make implementing the Act more difficult or costly," and imposes unnecessary restrictions on licensees in this band.⁵

For example, it would prevent a licensee from changing a location even if the modified site did not expand or even reduced the geographic footprint of a frequency. This prohibition is highly unusual. Virtually all spectrum freezes have permitted relocations as long as they do not involve a contour expansion.⁶ The Public Notice offers no explanation for adopting a more restrictive standard in this band, one that would put T-Band licensees at a distinct disadvantage in future site lease negotiations, since site owners would be free to raise their rates knowing that the FCC rules prevent the licensee from relocating. Moreover, although the Public Notice exempts T-Band license assignments, transfers, and leases from the freeze,⁷ by prohibiting all site modifications, it actually limits them to situations where the current location precisely meets the new entity's needs – even if a relocation to a preferred site would not expand the existing footprint.

Finally, the Public Notice fails to explain why it is necessary to prevent licensees from changing (as opposed to adding) a frequency. There are technical and operational reasons why a licensee might choose to exchange one assigned frequency for a different one, either through the frequency coordination process or through a one-for-one exchange with another licensee. There is no obvious reason why it would be more difficult or expensive to implement the Act if a licensee replaces frequency X with frequency Y at an existing site while the freeze remains in place.

EWA understands that the FCC is attempting to prevent T-Band licensing that might frustrate Congressional intention in enacting this legislation. But that objective must be balanced

⁴ *Id.* at 2.

⁵ The Public Notice states that parties are free to request a waiver of the freeze pursuant to Section 1.925. *Id.* at n. 4. But waivers are time-consuming and costly, both for the applicant and the FCC. They should not be used as a safety valve for relieving applicants of restrictions that need not be imposed in the first place.

⁶ *See, e.g.,* the freeze imposed during the 800 MHz rebanding process, which excluded applications "that do not...expand the coverage area of existing systems." *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); *See also Second Report and Order and Second Further Notice of Proposed Rule Making*, PR Docket No. 89-553, 10 FCC Rcd 6884 at ¶ 5 (1995).

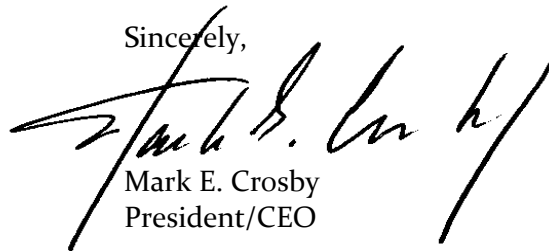
⁷ Public Notice at 2.

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against the reasonable requirements of T-Band licensees, particularly Industrial/Business entities whose use of this spectrum is not even referenced in the Act. These T-Band licensees might have to operate within the FCC's freeze parameters for years. Those parameters should impose no restrictions that are not absolutely necessary and certainly should not be more burdensome than freezes that have been applied to other bands.

For the reasons described herein, the Alliance urges the FCC to clarify or modify the Public Notice to permit changes in location that do not expand a frequency contour and to permit a change in frequency at an already authorized location.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark E. Crosby". The signature is stylized and written over the printed name and title.

Mark E. Crosby
President/CEO