

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

In the Matter of)
)
Reallocation of 470-512 MHz) PS Docket No. 13-42
(T-Band) Spectrum)

**REPLY COMMENTS
OF THE
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA” or “Alliance”), in accordance with Section 1.415 of the Federal Communications Commission (“FCC” or “Commission”) rules, respectfully submits its Reply Comments in the above-identified proceeding.¹ The record could not be clearer or more consistent: (1) implementation of the Section 6103 T-Band Mandate² is contrary to the public interest because of the extraordinarily adverse impact it would have on the communications capabilities of both Public Safety (“PS”) and Industrial/Business (“I/B”) licensees operating on that spectrum; and (2) even if comparable replacement spectrum for these licensees were available (and no such spectrum has been identified) and if their relocation costs would be covered (which the record confirms will not be the case), the statutory timetable for relocating even PS licensees is not achievable given the magnitude of the undertaking and the process PS entities must follow to comply with their own legal requirements. In short, what Congress has declared must be done cannot be done. The T-Band Mandate must be repealed.

This record comes as no surprise to the Commission. Chairman Pai has long-recognized that implementing this Congressional directive was an impossibility:

¹ *Reallocation of 470-512 MHz (T-Band) Spectrum*, PS Docket No. 13-42, Notice of Proposed Rulemaking, 35 FCC Rcd 6896 (2020) (“NPRM”).

² Middle Class Tax Relief and Job Creation Act of 2012, Publ. L. No. 112-96, § 6103, 126 Stat. 156, 205-206 (2012), (codified at 47 U.S.C. § 1413).

The agency has extensively analyzed the T-Band and concluded that moving forward is not viable. Relocation costs for public-safety licensees would likely far exceed any potential auction revenue, making it impossible to fund the relocation and comply with the mandate.³

The GAO reached the same conclusion and so advised Congress:

If FCC conducts such an auction [triggering the displacement of at least PS licensees from the band] it is unclear that all public safety users in the affected areas will be able to relocate. If alternative spectrum is not available, public safety would be jeopardized in some of the nation's largest metropolitan areas. Even if alternate available spectrum can be found, public safety users are likely to bear significant costs associated with relocating and reestablishing interoperability. These costs could go well beyond the revenue produced by such an auction.⁴

Both the Chairman's and GAO's prediction regarding the revenue potential of the mandated auction are borne out in the Comments. Bidding in spectrum auctions typically is driven by commercial wireless providers such as nationwide or regional carriers, by cable operators, and by WISPS. There is no indication that the latter two categories have any interest in this spectrum. Commercial carriers have described in detail why such an auction should not be expected to produce revenue anywhere near the amount needed to fund even PS relocation costs.

As stated by Verizon:

This spectrum holds little value for commercial wireless services due to the lack of nationwide availability. The auctioned spectrum in most markets would not all be contiguous. And the T-Band spectrum will be adjacent to high powered broadcast television transmitters. All of these factors will diminish auction participation and limit auction revenue.⁵

T-Mobile USA, Inc. ("T-Mobile") was even more blunt in its assessment. After complementing the FCC for its aggressive pursuit of spectrum that could meet the requirements for 5G wireless

³ Chairman Pai Calls on Congress to Protect Public Safety and Repeal T-Band Mandate, Dec. 2, 2019: <https://www.fcc.gov/document/chairman-pai-calls-congress-repeal-t-band-mandate>.

⁴ GAO Report to Subcommittee on Emergency Preparedness, Response, and Recovery, Committee on Homeland Security, House of Representatives: *Emergency Communications: Required Auction of Public Safety Spectrum Could Harm First Responder Capabilities*, GAO 19-508 at 25 (June 21, 2019): <https://www.gao.gov/assets/700/699916.pdf>.

⁵ Verizon Comments at 5.

networks, it offered a detailed checklist explaining why T-Band spectrum was of no interest for that purpose:

First, there simply is not enough spectrum since the maximum amount in any market would be 18 megahertz.

Second, it would only be available within an 80-mile radius of 11 markets, with different amounts of typically non-contiguous spectrum in each market.

Third, T-Band spectrum would remain encumbered by I/B licensees that are not subject to the T-Band Mandate.

Fourth, there are no 3GPP standards for this spectrum.⁶

The National Association of Broadcasters (“NAB”) analyzed the per MHz-pop valuations in the forward portion of the Broadcast Incentive Auction and concluded that bidders in a T-Band auction would need to pay more than 10 times those amounts for what it called “orphan spectrum” to cover just PS relocation costs.⁷ It also referenced the numerous situations that have arisen with digital TV stations causing interference to T-Band operations and advised that “flexible use operations would be expected to be much more intensive, resulting in more frequency and more widespread interference that will not be easily corrected.”⁸

The NPRM also suggests that utilities and other large enterprise entities might participate in a T-Band auction. In EWA’s opinion, that is not a realistic option. The combination of very limited geographic areas and very large PS relocation costs alone will discourage private enterprise entities from pursuing this spectrum, particularly in light of the opportunities for meeting Internet of Things-type fixed or mobile devices needs in the 900 MHz, 3.5 GHz bands

⁶ T-Mobile Comments at 4-6.

⁷ NAB Comments at 3-4.

⁸ *Id.* at 7.

and other bands.⁹ The fact that no such entities filed comments indicating any interest in acquiring auctioned T-Band spectrum speaks volumes.

Thus, there is no record evidence supporting the possibility of a successful auction under the terms set out in the T-Band Mandate. Such an auction cannot be expected to generate revenues sufficient to fund even PS relocation costs, and successful bidders also would be assuming the costs of clearing the spectrum for productive use by buying or relocating I/B licensees. Even if funding were not an issue, as the record clearly indicates it is, no spectrum has been identified to which PS systems could be moved, and the only realistic possibility for I/B systems is to consolidate them into a contiguous portion of a T-Band channel(s) in each market.

For these reasons, EWA recommended that the overlay auction the FCC is contemplating include a reserve price for each 6 megahertz channel block in each market based on the estimated PS relocation costs, that it assign very substantial upfront payments for each block, and that licenses be issued only if the reserve price is reached for all channels in a market.¹⁰ While the FCC may have no choice but to pursue an auction process if the T-Band Mandate is not repealed, this at least might enable it to avoid the time and expense of actually conducting an auction without a reasonable prospect of reaching the minimum financial benchmark – the PS relocation cost.

EWA also urged the FCC to establish relocation ground rules that would be the least disruptive for I/B incumbents. As they are not mentioned in the T-Band Mandate, the Commission has broad flexibility in determining how to address them. The NPRM proposes to require auction winners to reach voluntary agreements to clear I/B incumbents from T-Band

⁹ Several investor-owned utilities were successful bidders in the recent 3.5 GHz PAL Auction 105: <https://www.fcc.gov/document/fcc-announces-winning-bidders-35-ghz-band-auction>.

¹⁰ Joint EWA/API Comments at 8. The Commenters explained that many T-Band incumbents have frequencies from multiple T-Band channels in their systems. Allowing one, but not all, channels in a market to convert to flexible use would make a seemingly impossible relocation process even less viable.

spectrum. That, of course, is the appropriate course. The burden on them should be the minimum possible since their existence is not even recognized in the law, indicating that Congress had no opinion on how they should be treated. Should this proceeding – despite all evidence to the contrary – ever progress to an auction that generates sufficient revenue to relocate PS incumbents to comparable spectrum, the auction winners should be required to negotiate voluntary agreements with each I/B incumbent they wish to clear. Some may be willing to relocate; others may not. But that is a risk the winning bidders should assume.

If, on the other hand, the FCC adopts a mandatory relocation process for I/B incumbents, an option presented in the NPRM, it is EWA's position that the FCC must define "comparable facilities" as replacement T-Band channels in a contiguous portion of a 6 megahertz channel.¹¹ Incumbents would be free to accept other alternatives voluntarily, but could not be required to relocate except to other T-Band channels. EWA explained that Part 90 VHF and UHF channels are not comparable to T-Band frequencies. They are intensively used in T-Band markets and cannot provide the channel exclusivity that is the norm in T-Band. Exclusivity enables T-Band channels to function as control channels in technically advanced digital systems combining T-Band and shared UHF Part 90 spectrum. That system design allows deployment of the digital equipment that has become the state-of-the-art technology licensees require to maintain critical enterprise operations.

Finally, it also is essential that the FCC require auction winners, if there are any, to fund the relocation of I/B incumbents they wish to clear, whether the relocation is pursuant to a voluntary or mandatory relocation process. As explained in its Comments, auction proceeds cannot be used for that purpose.¹² While these additional costs should be obvious to any

¹¹ *Id.* at 11.

¹² *Id.* at 11-12.

participant in an overlay auction, EWA encourages the FCC to affirmatively alert prospective bidders to them in the materials it provides to prospective participants.

This proceeding represents the rarest of situations: all participating parties and the FCC agree that there should not be a proceeding and that the T-Band Mandate that has triggered this exercise should be repealed. However, while all parties affected by this ill-conceived Congressional stratagem to extract spectrum from PS in exchange for the 700 MHz FirstNet award have been disadvantaged, PS at least secured 20 MHz of broadband spectrum. The I/B incumbents, whose business operations already have been frozen for more than eight years¹³ in anticipation of an auction that may never take place and that is expected to fail if it does, received no benefit from being caught up in a *quid pro quo* to which they were not a party. They will never be compensated for the economic losses experienced during almost a decade of enforced non-growth. Without Congressional action, the FCC's hands may be tied with regard to the requirements of the T-Band Mandate, but not the freeze. That decision was the FCC's alone and could be reversed immediately. In EWA's opinion it should be. It is more than time to allow I/B incumbents to resume normal business operations in this band, irrespective of the impact on what increasingly appears to be a purely hypothetical T-Band auction.

¹³ 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*, 27 FCC Rcd 4218 (WTB/PSHSB 2012); *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*, 27 FCC Rcd 6087 (WTB/PSHSB 2012).

Respectfully submitted,

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September 29, 2020

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