

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

In the Matter of)
)
Temporary Filing Freeze on the) WT Docket No. 17-200
Acceptance of Certain Part 90 Applications)
For 896-901/935-940 MHz (900 MHz Band))
Spectrum)

To: Chief, Wireless Telecommunications Bureau

**REPLY TO PETITION
FOR CLARIFICATION AND/OR RECONSIDERATION**

The Enterprise Wireless Alliance (“EWA” or “Alliance”), in accordance with Section 1.106(g) of the Federal Communications Commission (“FCC” or “Commission”) rules and regulations, supports the request of the Utilities Technology Council (“UTC”)¹ that the Wireless Telecommunications Bureau (“WTB”) reconsider aspects of its temporary application filing freeze (“Freeze”) on certain applications for 896-901/935-940 MHz (“900 MHz Band”) spectrum.² EWA, jointly with pdvWireless, Inc. (“PDV”), filed a Petition for Rulemaking³ seeking realignment of the 900 MHz Band to provide a private enterprise (“PE”) broadband option. The realignment approach set out in that Petition is under consideration in the instant proceeding. EWA is encouraged that issuance of the Freeze PN, and its statement that the WTB wishes to freeze the current license landscape “as part of its ongoing inquiry into potential rule

¹ Petition for Reconsideration or Clarification of the Utilities Technology Council, WT Docket No. 17-200 (filed Oct. 15, 2018) (“UTC Petition”).

² Wireless Telecommunications Bureau Announces Temporary Filing Freeze on the Acceptance of Certain Part 90 Applications for 896-901/935-940 MHz (900 MHz Band) Spectrum, *Public Notice*, DA 18-949 (rel. Sept. 13, 2018) (“Freeze PN”). Although UTC identifies pending 900 MHz applications filed by utilities as an example of how the Freeze could threaten utility operations and investments, this Freeze does not apply to pending applications, only those filed on or after the date of the Freeze PN. Pending applications will be processed routinely.

³ Petition for Rulemaking of the Enterprise Wireless Alliance and Pacific DataVision, Inc., RM-11738 (filed Nov. 17, 2014) (“900 MHz RM Petition”).

changes to promote next generation technologies and service in the band”⁴ suggests that the industry soon may have an opportunity to comment on a Notice of Proposed Rulemaking that addresses the joint broadband proposal.

As a proponent of the 900 MHz RM Petition, EWA agrees with the WTB that a stable spectrum landscape will maximize the Commission’s options in this proceeding for introducing new technologies in the 900 MHz Band. Nevertheless, the Alliance also represents 900 MHz Band incumbents who, like the entities described in the UTC Petition and other licensees in this band, may need to respond to changing business requirements while the FCC determines its next steps. EWA believes that a modified freeze, one modeled after the earlier 900 MHz Band freeze,⁵ would accommodate the legitimate needs of band incumbents, without opening the door for speculative applications that compromise spectrum management and efficiency objectives.

Thus, EWA recommends that the Freeze be modified to allow incumbent licensees to modify existing systems by relocating and/or adding both sites and frequencies, even if doing so increases the spectral landscape. As EWA and others have advised the Commission with regard to the now six-year old freeze imposed on the 470-512 MHz Band (“T-Band”),⁶ the markets in which incumbent licensees operate do not stand still while the regulatory process unfolds: sites become unusable because of changes in the physical environment; superior sites become available; businesses expand and need more extensive coverage; additional capacity is required

⁴ Freeze PN at 1.

⁵ Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band, WT Docket No. 05-62, *Public Notice*, 19 FCC Rcd 18277 (2004) (“2004 Freeze PN”).

⁶ See “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).

to address increased usage.⁷ The same will be true for incumbents in the 900 MHz Band, and their responses to these changes should not be impeded by an inability to make essential modification to their communications networks.

The earlier 900 MHz freeze acknowledged these operational needs and allowed the modification of existing facilities.⁸ While the language of the 2004 Freeze PN could have been more specific, it was interpreted by the WTB licensing staff as allowing the addition and/or modification of stations that were integrated with an incumbent system. Proposed stations that were geographically or functionally unrelated to existing systems were not allowed.

The 900 MHz RM Petition filed by EWA/PDV volunteered that if the FCC determined that a 900 MHz freeze was needed, it should be modeled after the earlier freeze:

That freeze recognized the interests of incumbents that already had invested in operational systems. It permitted not only the assignment of licenses, but also the “modification of existing facilities.” Thus, licensees that needed to relocate stations or add frequencies were permitted to do so. This allowed them to respond to normal marketplace requirements without being inhibited by the freeze. On the other hand, they were not permitted to establish “new facilities,” those determined not to have an operational nexus to already licensed systems.⁹

EWA recommends that the Freeze PN be modified to provide comparable flexibility for incumbent 900 MHz Band systems, albeit with a more clearly articulated standard for what constitutes operational nexus to an incumbent system.

The UTC Petition appears to recommend a broader exemption from the Freeze. At several points, it suggests that it not apply to entities “affiliated with current licensees” as well as incumbent licensees themselves.¹⁰ It also would exempt “new systems necessary to support

⁷ See, e.g., Letter dated April 27, 2018 to Lisa Fowlkes, Chief, Public Safety and Homeland Security Bureau and Donald Stockdale, Chief, Wireless Telecommunications Bureau from the Land Mobile Communications Council requesting a relaxation of the T-Band Freeze.

⁸ 2004 Freeze PN at n. 8.

⁹ 900 MHz RM Petition at 21.

¹⁰ See, e.g., UTC Petition at 1, 6, and 7.

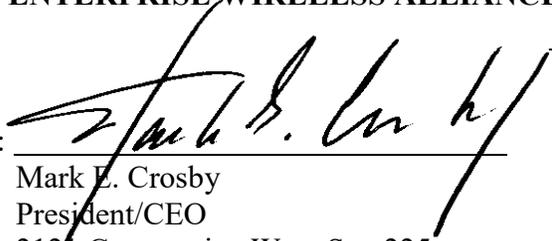
recently acquired utility service territories.”¹¹ EWA does not necessarily oppose allowing such systems to be licensed while the Freeze is in effect, but the scope of the proposed exemption requires clarification. For example, is an affiliated entity one that has a legal ownership or control affiliation with the incumbent, or simply an entity with which the incumbent does business? As for recently acquired service territories, if the system covering that area is to be interoperable with incumbent facilities, as suggested in the UTC Petition, EWA agrees that would constitute an appropriate operational relationship to warrant exemption from the Freeze. On the other hand, if the new territory is geographically remote from existing operations, it might be more appropriate to provide a showing in accordance with Rule Section 1.925 as to why deployment of a new 900 MHz system warrants waiver relief.

If utilities, pipelines, nationwide delivery services, major manufacturing entities and other recognized, responsible licensees were the only incumbents in the 900 MHz Band, the exemptions sought by UTC might be appropriate. Such entities may constitute the majority of 900 MHz Band incumbents, but there are other licensees as well, and the Freeze criteria must apply to all equally. EWA believes the better approach is to limit exemptions to facilities deployed by incumbents that have an operational relationship to an existing system and consider other requests pursuant to normal waiver procedures, with a bias toward flexibility when the need is compelling and filed by a demonstrably legitimate applicant.

¹¹ *Id.* at 6 and 7.

EWA respectfully urges the Commission to modify the Freeze PN in accordance with the recommendations contained herein.

ENTERPRISE WIRELESS ALLIANCE

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October 25, 2018

CERTIFICATE OF SERVICE

I, Linda J. Evans, with the law firm of Lukas, LaFuria, Gutierrez and Sachs, LLP, hereby certify that I have, on this 25th day of October 2018 electronically mailed the foregoing Reply to Petition for Clarification and/or Reconsideration to the following:

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