

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

In the Matter of)	
)	
Township of Woodbridge, NJ)	DA 12-1177
Request for T-Band Waiver)	File No. 0004536973
)	

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 request¹ filed by the Township of Woodbridge, New Jersey (“Township” or “Woodbridge”).² In addition to waivers of certain technical requirements, the Waiver Request seeks approval to replace seven TV Channel 20 frequencies already authorized for the Township’s use with seven frequencies from TV Channel 19.³ This aspect of Woodbridge’s proposal requires a waiver because of the recent “freeze” on virtually all licensing activities in the 470-512 MHz band (“T-Band”) adopted by the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau.⁴

¹ See File No. 0004536973 Petition for Waiver of Woodbridge Township, New Jersey (dated July 20, 2012) (“Waiver Request”).

² 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 Frequencies in the Television Channel 19 (500-506 MHz) Band (rel. July 23, 2012) (“Public Notice”).

³ EWA takes no position on the technical waiver relief sought by the Township.

⁴ 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

For the reasons described herein and in the Alliance's May 8, 2012, Request for Clarification of the Freeze PN, EWA supports Woodbridge's request to be allowed to exchange already authorized T-Band frequencies for an equal number of entirely fungible T-Band channels, a licensing action that in the opinion of the Alliance should not be subject to the T-Band licensing freeze.

The Township explained in an April 10, 2012 letter supplementing its then-pending waiver request that it has experienced intermittent, but persistent, interference due to intractable ducting problems on the channels it seeks to exchange.⁵ It noted that the Commission previously had allowed Woodbridge to substitute six TV Channel 16 frequency pairs for six originally authorized TV Channel 20 pairs for this same reason. The Supplemental Request stated that grant of this further request would fully resolve the interference problem and result in the return to the FCC of all Channel 20 spectrum previously granted to the Township.

The Township also inferentially noted the February 22, 2012, Middle Class Tax Relief and Job Creation Act of 2012 that included Section 6103, entitled "470-512 MHz Public Safety Spectrum."⁶ It stated that by "exchanging the channel 20 frequencies, Woodbridge gains no leverage in a transition and relocation from the 470-512 MHz band."⁷ The Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau subsequently released the Freeze PN and the Clarification PN in response to the Spectrum Act. The Clarification PN specifically prohibited the substitution of one T-Band channel for another while the freeze is in effect.

Applications for 470-512 MHz ("T-Band") Spectrum, *Public Notice*, DA 12-892 (rel. June 7, 2012) ("Clarification PN").

⁵ See File No. 0004536973, April 10, 2012 Letter from Captain Scott Kuzma to David Furth, Deputy Chief, Public Safety and Homeland Security Bureau ("Supplemental Request").

⁶ Pub. L. No. 112-96, 126 Stat. 156 (2012) ("Spectrum Act").

⁷ Supplemental Request at p. 2.

Woodbridge submitted its further Waiver Request on July 20, 2012, in response to the Clarification PN suspending the processing of T-Band applications proposing frequency substitutions. It explained that exchanging frequencies would neither alter its frequency footprint nor require additional sites or infrastructure. According to the Township, “There will be no changes or instability accruing to the spectrum landscape.”⁸ It noted that the Spectrum Act “does not preclude modifications to public safety licensees in the 470-512 MHz band segment” and that allowing the substitution “will not inhibit the Commission’s discretion under section 6103...to preserve the spectrum landscape or manage the radio spectrum.”⁹ The Waiver Request also detailed the public safety benefits that would result from grant of the Township’s application.

The Alliance supports Woodbridge’s Waiver Request. While EWA appreciates the public interest arguments favoring resolution of the Township’s interference problem, in the Alliance’s opinion the T-Band processing freeze should not apply to any application that seeks only to substitute one or more T-Band channels for an equal number of frequencies from that band. The Township has explained its justification for wishing to exchange frequencies, but there are any number of reasons that could be equally valid and that do not involve public safety communications.¹⁰ The Alliance raised this point in response to the Freeze PN and asked the FCC to clarify that frequency swaps would not be covered.¹¹ In response, the Clarification PN stated:

⁸ Waiver Request at p. 3.

⁹ *Id.* at p. 5.

¹⁰ As the FCC is aware, EWA has objected to the inclusion of Industrial/Business (“I/B”) T-Band spectrum in the processing freeze as the Spectrum Act makes no reference to any regulatory changes vis-à-vis I/B T-Band channels. *See* June 25, 2012, Letter from Mark E. Crosby, President, EWA to David Turetsky, Chief, Public Safety and Homeland Security Bureau and Ruth Milkman, Chief, Wireless Telecommunications Bureau.

¹¹ *See* May 8, 2012, Request for Clarification from Mark E. Crosby, President, EWA to David Turetsky, Chief, Public Safety and Homeland Security Bureau and Rick Kaplan, Chief, Wireless Telecommunications Bureau.

...the purpose of the freeze is to stabilize the existing spectrum landscape. Allowing licensees to alter their active frequencies in the T-Band would be inconsistent with this purpose and would lead to an unpredictable and unstable spectral environment. This approach is consistent with prior filing and processing suspensions.¹²

EWA disagrees. The Spectrum Act does not call for a reallocation of even public safety spectrum for another nine years. Other than the Freeze PN and the Clarification PN, the FCC has made no public statements about how it intends to implement this aspect of the Spectrum Act. That decision will need to be adopted through a rulemaking proceeding that likely will take well over a year once the process is initiated. At that point, and depending on what rules ultimately are adopted, the FCC might elect to favor the interests of unidentified, prospective auction applicants over those of existing licensees in the band. However, until then, EWA cannot agree that allowing T-Band licensees to exchange frequencies on a one-for-one basis would create an “unpredictable or unstable spectrum environment” or have any impact whatsoever on the FCC’s disposition of this spectrum.

The citations in the Clarification PN in support of the FCC’s claim that its action in this regard was consistent with previous application processing suspensions actually support the position of EWA and the Township. For example, the Commission was appropriately sensitive to the impact of freezes in the context of the 800 MHz rebanding proceeding, a process that required the Transition Administrator appointed by the FCC to manage this intra-band relocation undertaking to identify replacement frequencies for incumbents. Even then, the FCC 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. Nonetheless, we see no alternative to a freeze if band reconfiguration is to be timely accomplished. There is a middle ground, given the incremental implementation of band reconfiguration Region by Region. Therefore we will freeze 800 MHz

¹² Clarification PN at p. 2.

applications for a region when we issue the *Public Notice* announcing the date when voluntary negotiation of relocation agreements must be concluded. This freeze will last until thirty working days after the completion of mandatory negotiations for a given Region....Moreover, we 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.¹³

Thus, that freeze was not implemented until after the actual relocation process began. This was well after final rules were adopted and years after the FCC first considered that it might need to implement such a band relocation process. The processing freeze in the 39 GHz band cited by the FCC also had very limited retroactive impact. It 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.¹⁴

By contrast, in this instance the FCC has imposed a freeze on all pending T-Band applications, whenever filed, and has done so before it has taken any concrete steps to modify the rules governing this band, steps that may not be implemented for an extended period. There is no need to “stabilize the existing spectrum landscape” years before any FCC action to reallocate the band and certainly no need to extend the freeze to the entirely neutral situation wherein one T-Band frequency is exchanged for another without altering the licensee’s spectrum footprint.

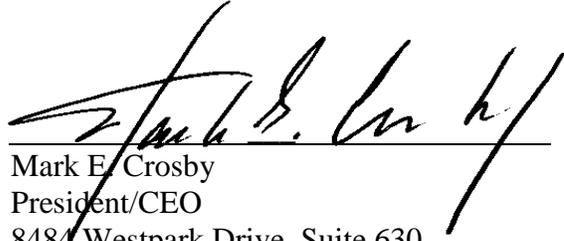
For these reasons, EWA supports the Township’s request, but also urges the FCC to revisit the scope of its T-Band freeze in light of the comments herein.

¹³ 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).

¹⁴ 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).

ENTERPRISE WIRELESS ALLIANCE

By:

A handwritten signature in black ink, appearing to read "Mark E. Crosby", is written over a horizontal line.

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August 7, 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 7th day of August, 2012 caused to be e-mailed the foregoing Comments to the following:

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/s/ Linda J. Evans