

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

In the Matter of) WT Docket No. 12-295
) DA 12-1598
NSTAR Electric Company)
Request for T-Band Waiver) File No. 0005174965

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 NSTAR Electric Company (“NSTAR” or “Company”).² The Company has requested a waiver of the FCC’s “freeze” on 470-512 MHz band (“T-Band”) licensing³ to enable it to expand its existing system by adding frequencies at six base station locations in the Boston, Massachusetts area.

EWA strongly supports this and all other waivers of the T-Band freeze. In this case, NSTAR has made a compelling showing that denial of its Waiver Request would disserve the public interest. NSTAR provides electricity to more than one million customers and gas service

¹ See File No. 0005174965 Request for Rule Waiver (dated Sept. 13, 2012) (“Waiver Request”).

² Wireless Telecommunications Bureau Seeks Comment on NSTAR Electric Company’s Request for Waiver of the Suspension of Acceptance and Filing of Certain Applications for 470-512 MHz (T-Band) Spectrum, *Public Notice*, DA 12-1598 (rel. Oct. 5, 2012) (“Public Notice”).

³ 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”).

to nearly 300,000 customers in Massachusetts.⁴ Like all utilities, its ability to deliver these vital services, and to do so while protecting the safety of its employees and the public, is highly dependent on reliable wireless communications.

The Company explained that it began the process of migrating its operations from VHF to T-Band in response to the Commission's requirement that virtually all Part 90 licensees in the VHF and UHF bands convert to narrowband technology by January 1, 2013.⁵ NSTAR determined that a narrowband T-Band replacement system would best meet the requirements of users throughout its operating area by providing "a common radio platform, eliminating the need to change radios when moving between service territories."⁶ As explained in the Waiver Request, the more advanced features of its replacement system also provided capabilities such as enhanced emergency alert and GPS tracking that speak directly to safety concerns.⁷

NSTAR has already deployed this system in two of its three service territories, but its September 2011 application to add the third region was not coordinated and filed with the FCC until April 23, 2012, just days before the T-Band freeze was announced, which included a freeze on pending applications.⁸ The Company now is in the untenable position of having migrated much of its work force from VHF to UHF, while the remainder is stranded in a state of regulatory limbo of unknown duration. It must operate and maintain two entirely different systems depending on the service territory and develop a plan for bridging these systems when personnel migrate from one region to another in emergency or even day-to-day situations. It also

⁴ Waiver Request at 1.

⁵ See, e.g., Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau, and Office of Engineering and Technology Provide Reminders of the January 1, 2013 Deadline for Transition to Narrowband Operations in the 150-174 MHz and 421-512 MHz Bands and Guidance for Submission of Requests for Waiver and Other Matters, *Public Notice*, 26 FCC Rcd 9647 (WTB/PSHSB/OET 2011).

⁶ Waiver Request at 1.

⁷ *Id.*

⁸ *Id.* at 2.

means that NSTAR will need to seek relief from the narrowbanding requirement, presumably for the duration of the T-Band freeze.

EWA does not believe that the Middle Class Tax Relief and Job Creation Act of 2012 intended, required or even suggested such a disastrous result.⁹ 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.**”¹⁰ 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 such as NSTAR 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 Company, Somerset County, NJ,¹¹ Woodbridge

⁹ 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.

¹⁰ Freeze PN at 1 (emphasis added).

¹¹ See 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”).

Township, NJ¹² and others to serve existing, identifiable, and quantifiable user requirements without the expense and other resources involved in seeking waiver relief or, worse, being denied waiver relief.¹³

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 2004.¹⁴ Like T-Band, which is available for PLMR use in 11 discrete markets across the Company, 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.¹⁵ 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.

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

¹³ See Company of Bedford, Pennsylvania, *Order*, DA 12-1284 (rel. Aug. 8, 2012); Town of Sandwich, Massachusetts, *Order*, DA 12-1282 (rel. Aug. 8, 2012).

¹⁴ See FCC Auctions 37, 62, 68, 70, 79, 91, 93, and 94.

¹⁵ See, e.g., Auction 94 Freeze Announced for Certain FM Applications and Rulemaking Filings, *Public Notice*, DA 12-1451 (rel. Sept. 11, 2012).

EWA addressed the highly disruptive impact of lengthy freezes in its Comments on the T-Band waiver requests filed by the Somerset County, NJ and the Township of Woodbridge, NJ.¹⁶ It noted that the processing 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.¹⁷ 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.¹⁸

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 by companies such as NSTAR, 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.

¹⁶ 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 Frequencies in the Television Channel 19 (500-506 MHz) Band (rel. July 23, 2012); Comments of EWA filed on Aug. 7, 2012.

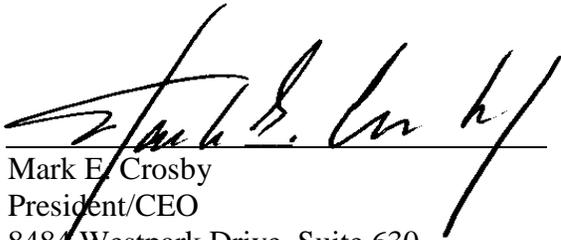
¹⁷ Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, Notice of Proposed Rulemaking and Order, ET Docket No. 95-183, 11 FCC Rcd 4930 at ¶ 124 (1996).

¹⁸ 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 Company'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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