



PUBLIC NOTICE

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TEMPORARY FREEZE ON NON-FEDERAL APPLICATIONS IN THE 3100-3550 MHZ BAND

WT Docket No. 19-39

By this Public Notice, the Wireless Telecommunications Bureau (Bureau), announces a temporary freeze on the acceptance and processing of applications for new or expanded Part 90 Radiolocation Service operations in the 3100-3550 MHz frequency band.¹ The purpose of this freeze is to preserve the current landscape of authorized operations in the 3100-3550 MHz band in light of Congress' mandate that the Secretary of Commerce, working through the National Telecommunications and Information Administration (NTIA), and the Commission consider alternate uses of the band.² The freeze is effective February 22, 2019.

Background

The MOBILE NOW Act mandates that, by March 23, 2020, “in consultation with the Commission and the head of each affected Federal agency (or a designee thereof), the Secretary [of Commerce], working through the NTIA, shall submit to the Commission and the appropriate committees of Congress a report evaluating the feasibility of allowing commercial wireless services, licensed or unlicensed, to share use of the frequencies between 3100 megahertz and 3550 megahertz.”³ The MOBILE NOW Act also requires that, by December 31, 2022, “the Secretary [of Commerce], working through the NTIA, and the Commission shall identify a total of at least 255 megahertz of Federal and non-Federal spectrum for mobile and fixed wireless broadband use.” The Act further specifies that “100 megahertz below the frequency of 8000 megahertz shall be identified for use on an unlicensed basis” and that “100 megahertz below the frequency of 6000 megahertz shall be identified for use on an exclusive, licensed basis for commercial mobile use, pursuant to the Commission's authority to implement such licensing in a flexible manner. . . .”⁴

¹ 47 CFR pt. 90, subpt. F.

² Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, Division P (RAY BAUM'S Act of 2018), Title VI (MOBILE NOW Act), §§ 603(a), 605(a), 132 Stat. 348. The Consolidated Appropriations Act, 2018 incorporates the Repack Airwaves Yielding Better Access for Users of Modern Services (RAY BAUM'S) Act. Title VI of the RAY BAUM'S Act enacted provisions from the Senate-approved Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless (MOBILE NOW) Act, which directly addresses the 3 GHz band and multiple other spectrum related policies. See MOBILE NOW Act, § 605(a).

³ MOBILE NOW Act, § 605(a).

⁴ *Id.*, § 603(a). In February 2018, NTIA announced that it had identified the 3450-3550 MHz band “for potential repurposing to spur commercial wireless innovation.” David J. Redl, NTIA Identifies 3450-3550 MHz for Study as Potential Band for Wireless Broadband Use (Feb. 26, 2018), <https://www.ntia.doc.gov/blog/2018/ntia-identifies-3450-3550-mhz-study-potential-band-wireless-broadband-use>. Following NTIA's announcement, CTIA filed an informal request urging the Commission to adopt an immediate freeze “on the acceptance, processing, or grant of any non-federal applications in the 3450-3550 MHz band.” Letter from Scott K. Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, at 1, 2 (filed Apr. 27, 2018) (CTIA Letter).

Filing Freeze in 3100-3550 MHz Band

In light of the statutory mandates upon the Commission, the freeze in the 3100-3550 MHz band is necessary to maintain a stable spectral environment in a band that is under active consideration for possible alternative use.

Effective immediately and until further notice, the Bureau will not accept or process: (1) applications for new licenses; (2) applications that seek to modify existing licenses by adding or changing frequencies or locations; (3) applications that seek to modify existing licenses by changing technical parameters in a manner that expands the station's spectral or geographic footprint, such as, but not limited to, increases in bandwidth, power level, antenna height, or area of operation; and (4) any other application that could increase the degree to which the 3100-3550 MHz band currently is licensed.⁵ Affected applications that are now pending will not be processed further until the Commission decides how to proceed in this band.⁶ We note that the 3100-3550 MHz band freeze does not change the substantive standard by which the Commission evaluates any pending applications for Part 90 Radiolocation Service licenses in the band and does not change the application method for previously filed applications.⁷

This action does not apply to applications that would not materially increase spectral congestion in the band, including: (1) applications to renew existing licenses without modification; (2) applications that seek to modify existing licenses by deleting frequencies or locations; (3) applications that seek to modify existing licenses by changing technical parameters in a manner that does not expand the station's spectral or geographic coverage, such as decreases in bandwidth, power level, or antenna height; (4) applications that seek to modify existing licenses by changing the number of associated mobile units or temporary fixed stations; (5) applications that seek to modify existing licenses by adding or moving control points; (6) applications to assign, transfer, or lease existing licenses; (7) notices of construction or

⁵ Accordingly, these enumerated types of applications should not be filed during the freeze. Applications subject to the freeze that are filed on or after the date of this Public Notice will be dismissed without prejudice and filing fees will not be automatically refunded. Applicants and potential applicants may have recourse to the waiver provisions in Section 1.925 to request an exception to the filing and processing freeze. Parties filing such a request should carefully review the rule's criteria for a waiver and, in their waiver requests, they must provide complete support, including but not limited to documentation, demonstrating that they meet the criteria set out in the rule.

⁶ See Application of Southern California Edison Company, Universal Licensing System (ULS) File No. 0008495115 (filed Jan. 17, 2019); Application of Fort Myers Broadcasting Company, ULS File No. 0008282472 (filed July 12, 2018) (Fort Myers Application); *see also* Informal Objection of CTIA to Application of Fort Myers Broadcasting Company, ULS File No. 0008282472 (filed Aug. 14, 2018); Consolidated Opposition of Fort Myers Broadcasting Company to Informal Objection of CTIA, ULS File No. 0008282472 (filed Aug. 28, 2018); Informal Objection of Nokia, ULS File No. 0008282472 (filed Aug. 28, 2018); Informal Objection of Wireless Innovation Forum (WinnForum) to Application of Fort Myers Broadcasting Company, ULS File No. 0008282472 (filed Aug. 29, 2018); Informal Objection of Federated Wireless, Inc. to Application of Fort Myers Broadcasting Company, ULS File No. 0008282472 (filed Aug. 29, 2018); Response of CTIA to Fort Myers Broadcasting Consolidated Opposition to Informal Objection of CTIA, ULS File No. 0008282472 (filed Sept. 11, 2018); Consolidated Opposition of Fort Myers Broadcasting Company to Informal Objection of Nokia et al, ULS File No. 0008282472 (filed Sept. 11, 2018).

⁷ This approach is consistent with previous Commission freezes. *See, e.g., 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); *General Freeze on the Filing and Processing of Applications for Channel 51 Effective Immediately and Sixty (60) Day Amendment Window for Pending Channel 51 Low Power Television, TV Translator and Class A Applications*, Public Notice, 26 FCC Rcd 11409 (MB 2011).

consummation; (8) requests for extensions of time to construct or consummate previously granted applications; (9) applications to cancel licenses; and (10) applications for special temporary authority for short-term operations. In the future, the Bureau may begin placing a special condition on new, renewed, and modified licenses for stations subject to this action to remind licensees that the stations may be subject to future relocation or other Commission action taken pursuant to or in connection with the MOBILE NOW Act.

The decision to impose this freeze is procedural in nature, and therefore the freeze is exempt from the notice and comment and effective date requirements of the Administrative Procedure Act.⁸ We also find good cause not to use the notice-and-comment procedures and not to delay the effective date of the freeze until after publication in the Federal Register because such delays would be impracticable and contrary to the public interest.⁹ By imposing this freeze immediately, the Bureau will help preserve the options available to the Commission for consideration of additional uses of the band, while limiting the potential for speculative applications that might be filed in anticipation of potential future actions by the Commission.

For further information, contact the FCC ULS Customer Support Hotline at (877) 480-3201 option 2, (717) 338-2888, or (717) 338-2824 (TTY). The Hotline is available to assist with questions Monday through Friday 8:00 a.m. to 6:00 p.m. ET. To provide better service to the public, all calls to the Hotline are recorded.

Action by the Chief, Wireless Telecommunications Bureau.

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⁸ See 5 U.S.C. § 553(b)(A), (d); see also *Mendoza v. Perez*, 754 F.3d 1002, 1024 (D.C. Cir. 2014); *JEM Broad. Co. v. FCC*, 22 F.3d 320, 327 (D.C. Cir. 1994); *Neighborhood TV Co. v. FCC*, 742 F.2d 629, 637-38 (D.C. Cir. 1984); *accord Buckeye Cablevision, Inc. v. United States*, 438 F.2d 948, 952-53 (6th Cir. 1971); *Kessler v. FCC*, 326 F.2d 673, 681-82 (D.C. Cir. 1963).

⁹ See 5 U.S.C. § 553(b)(B), (d)(3); see also *Util. Solid Waste Activities Grp. v. EPA*, 236 F.3d 749, 755 (D.C. Cir. 2001); *Nader v. Sawhill*, 514 F.2d 1064, 1068 (Temp. Emerg. Ct. App. 1975).